

Ius Laboris Webinar

The EU Framework Agreement: Discussion with Mr Bruno De Pauw

Tuesday 4 June 2024

15:00 – 16:15 CET

Speakers

OUR SPECIAL GUEST



Sophie Maes - Partner
Claeys & Engels (Belgium)



Melania Soncin – Senior Associate
Toffoletto De Luca Tamajo (Italy)



Bruno De Pauw - Advisor General
Belgial National Office for Social Security
(dept. International relations)
and **rapporteur** of the ad hoc group on telework
of the Administrative Commission

Regulation (EC) No. 883/2004

Which social security legislation is applicable:

- **Principle of territoriality (art. 11):** a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State
- **Exceptions:**
 - Postings (art. 12)
 - Multi-state workers (art. 13)
 - Agreements among Member States for exceptions (art. 16)

Special rules (art. 12)

EMPLOYEES

Possibility to maintain social security legislation of the Member State of origin:

- A person pursues an activity as an **employed person** in such Member State
- The **employer** normally carries out its activities in the same Member State
- The employee is **posted** by that employer to another Member State to perform work **on that employer's behalf**
- The anticipated duration of such work does not exceed **24 months** and that he is not sent to replace another person

Special rules (art. 12)

SELF-EMPLOYED

Possibility to maintain social security legislation of the Member State of origin if:

- A person **normally pursues** an activity as a self-employed person in a Member State
- The self-employed person goes to pursue a **similar activity** in another Member State
- anticipated duration of such activity does not exceed **24 months**

Multi-State workers (art. 13)

EMPLOYEES

A person who normally pursues an activity as an employed person in **two or more Member States**

WITH ONE EMPLOYER

If they pursue a **substantial part** of their activity in the **Member State of Residence**



- **Substantial part of the activity:** at least **25%** of the **working time and/or the remuneration**
- **Marginal activities** (less than 5%) are not considered

Multi-State workers (art. 13)

WITH MORE THAN ONE EMPLOYER

and do not perform a substantial part of the activity in the Member State of residences

- Employers with registered office or place of business in the **same Member State**: legislation of that Member State
- One employer in the Member State of residence and one not: legislation of the **Member State, different from the one of residence, where the other employer is**
- At least two employers with registered office or place of business in the Member State of residence: legislation **Member State of residence**

If they do perform a substantial part of the activity in the Member State of residences, the legislation of this Member State prevails

Multi-State workers (art. 13)

SELF-EMPLOYED WORKERS

Perform a **substantial part** of the activity in the **Member State of residence**

yes

Member State of **residence**

no

No – Member State in which they have
their centre of interest of their activities

- **Substantial part of the activity:** at least **25%** of the **turnover, working time, number of services rendered and/or income**

BOTH EMPLOYEES AND SELF-EMPLOYED WORKERS

The legislation of the Member State where the employment relationship is performed prevails

Agreements on exceptions (art. 16)

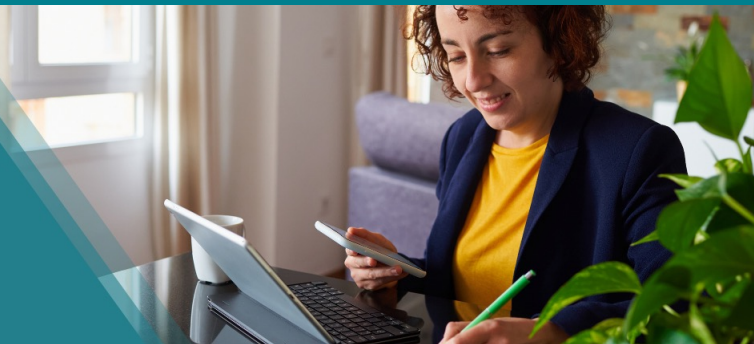
- Two or more Member States, the competent authorities of these Member States or the bodies designated by these authorities may by **common agreement** provide for **exceptions** to Articles 11 to 15 in **the interest of certain persons or categories of persons, e.g.:**
 - Agreements to obtain an A1 form in case of posting for over 24 months
 - Framework agreement on habitual cross-border telework

Applicable social security legislation in cross-border remote work

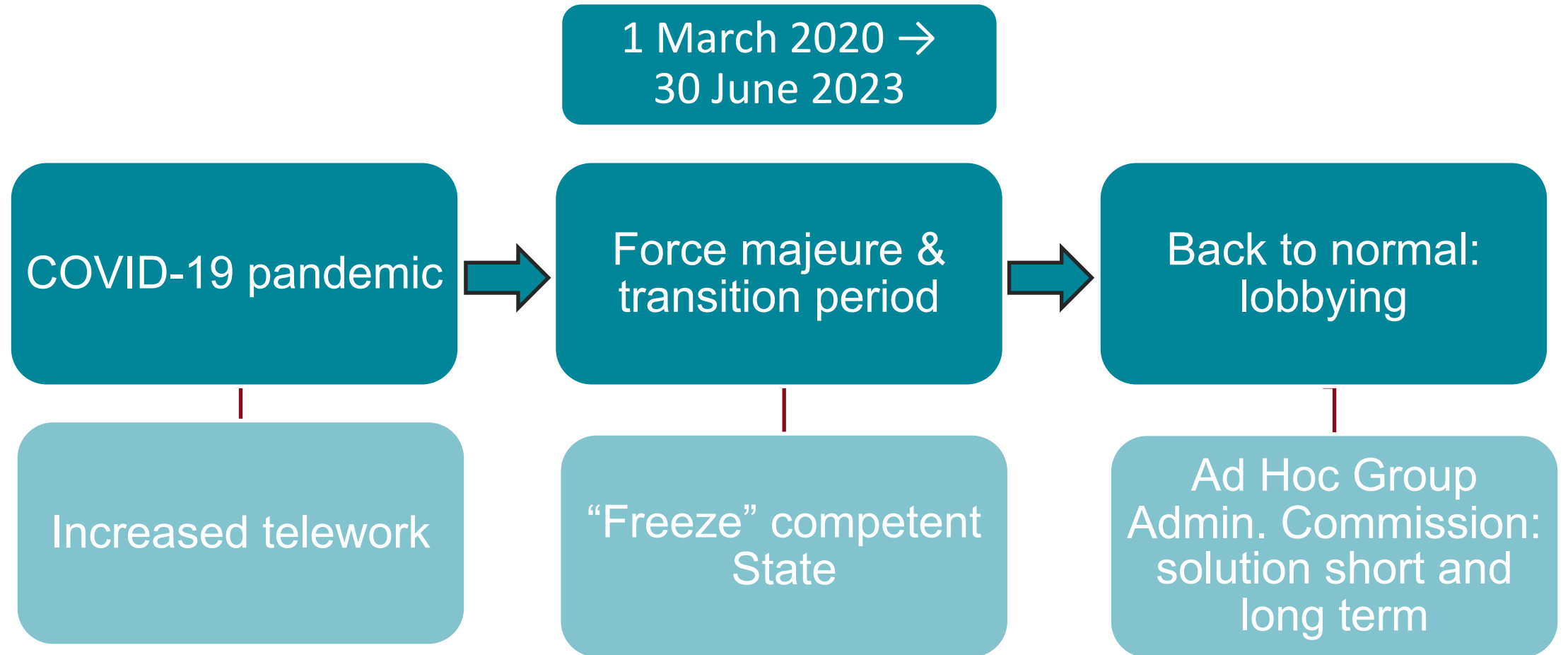
the new Framework Agreement and its implementation

Bruno DE PAUW Advisor-General

DEPARTMENT FOR
INTERNATIONAL
RELATIONS



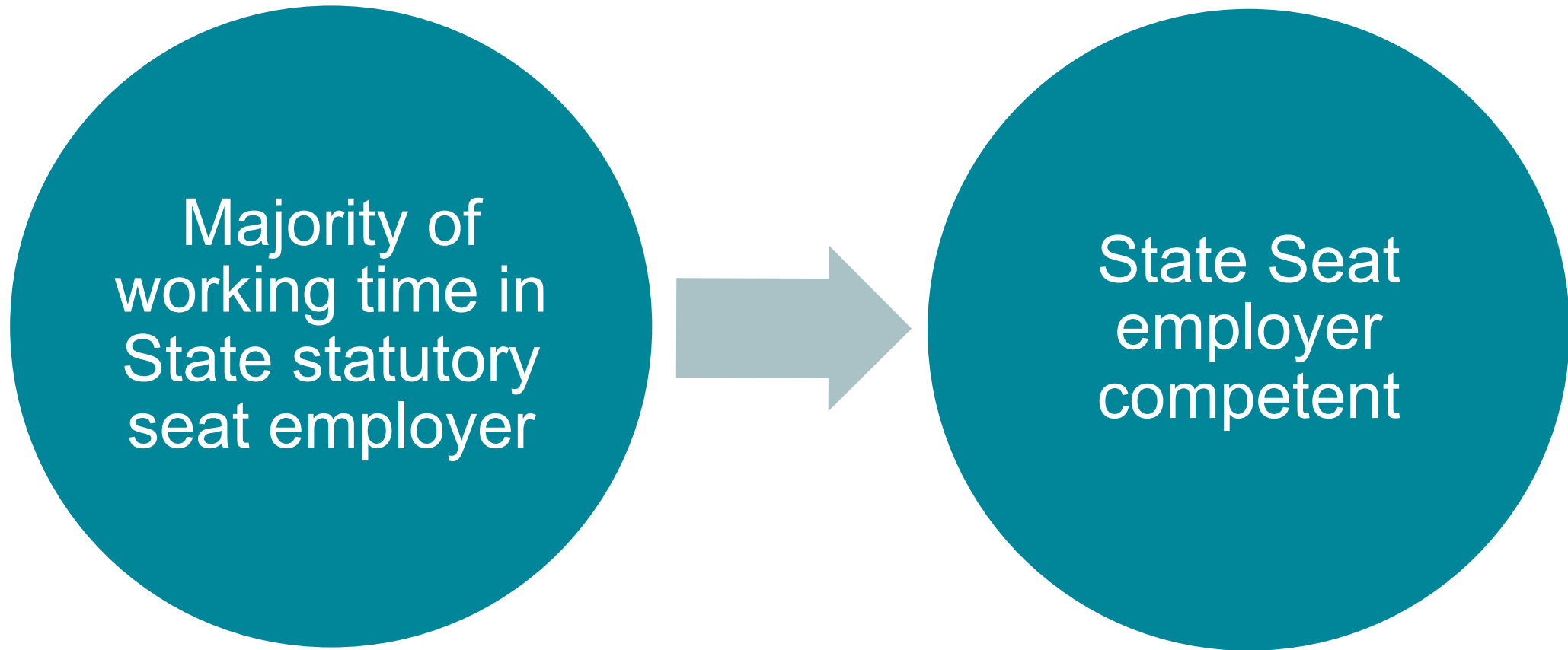
Applicable legislation on telework during the pandemic





Framework Agreement on Telework

Conflict rule Framework Agreement



Framework agreement on telework: definition & limited scope

Activity than can be carried out
from any location

Digital telework

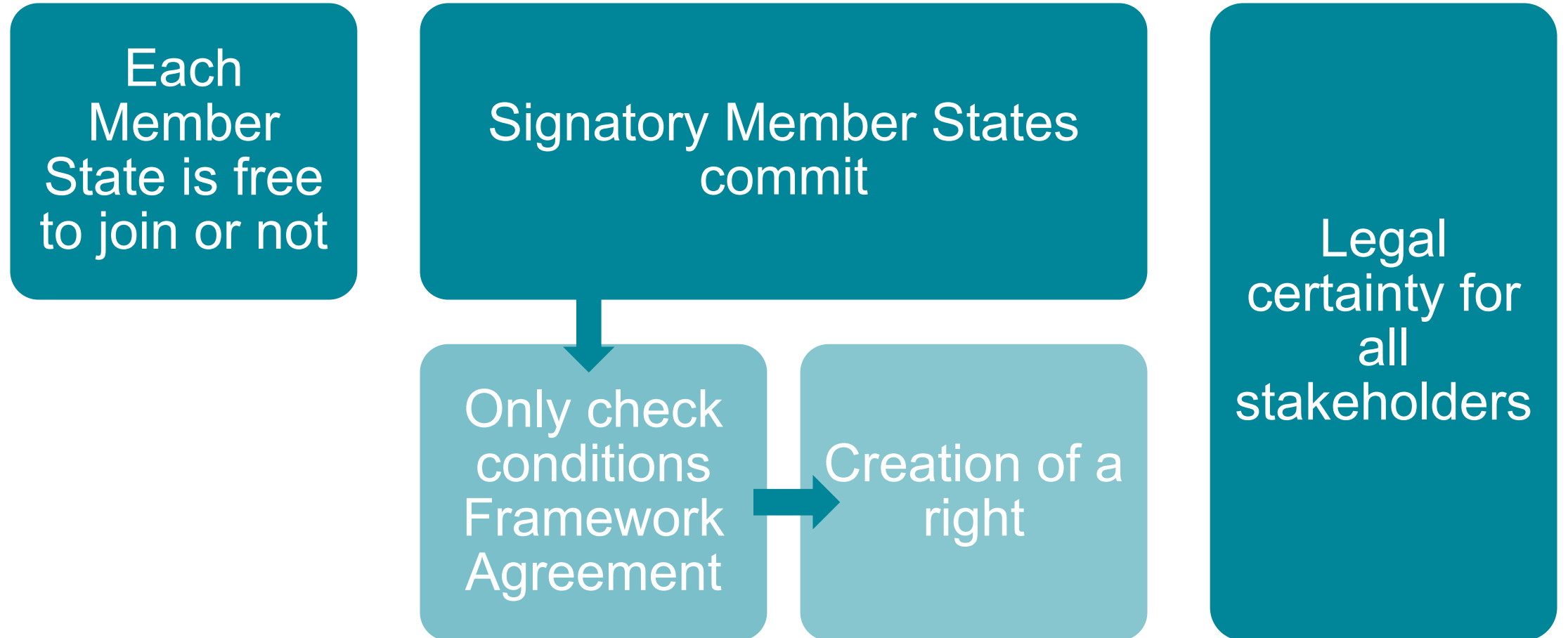
Habitually working only
in two Member States

State « registered
office » (statutory seat)
of employer(s)

« Habitual residence »
State employee
via teleworking

NO additional activities!

Model Framework Agreement article 16



Hybrid crossborder telework: ALWAYS action needed!

Framework Agreement opt-in

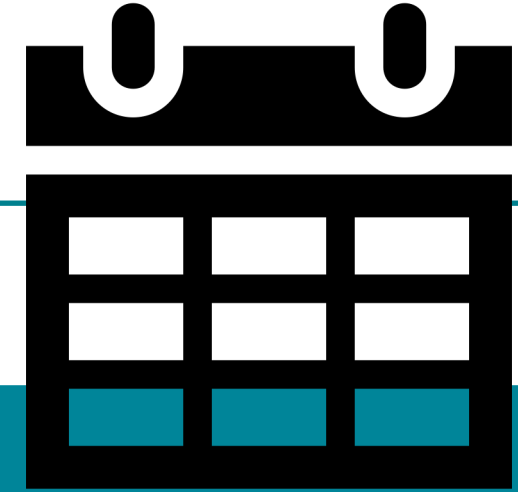
- Request in Member State employer
- Check conditions FA + A1 issued, box *'exceptional agreement'*
- Member State of residence informed



Outside Framework Agreement

- Notification Member State of residence
- (provisional) determination applicable law
- A1 issued, box *'multistate'*

Entry into force Framework Agreement



18
Member
States

1 July 2023

Late-
comers

1st of month following date of signature

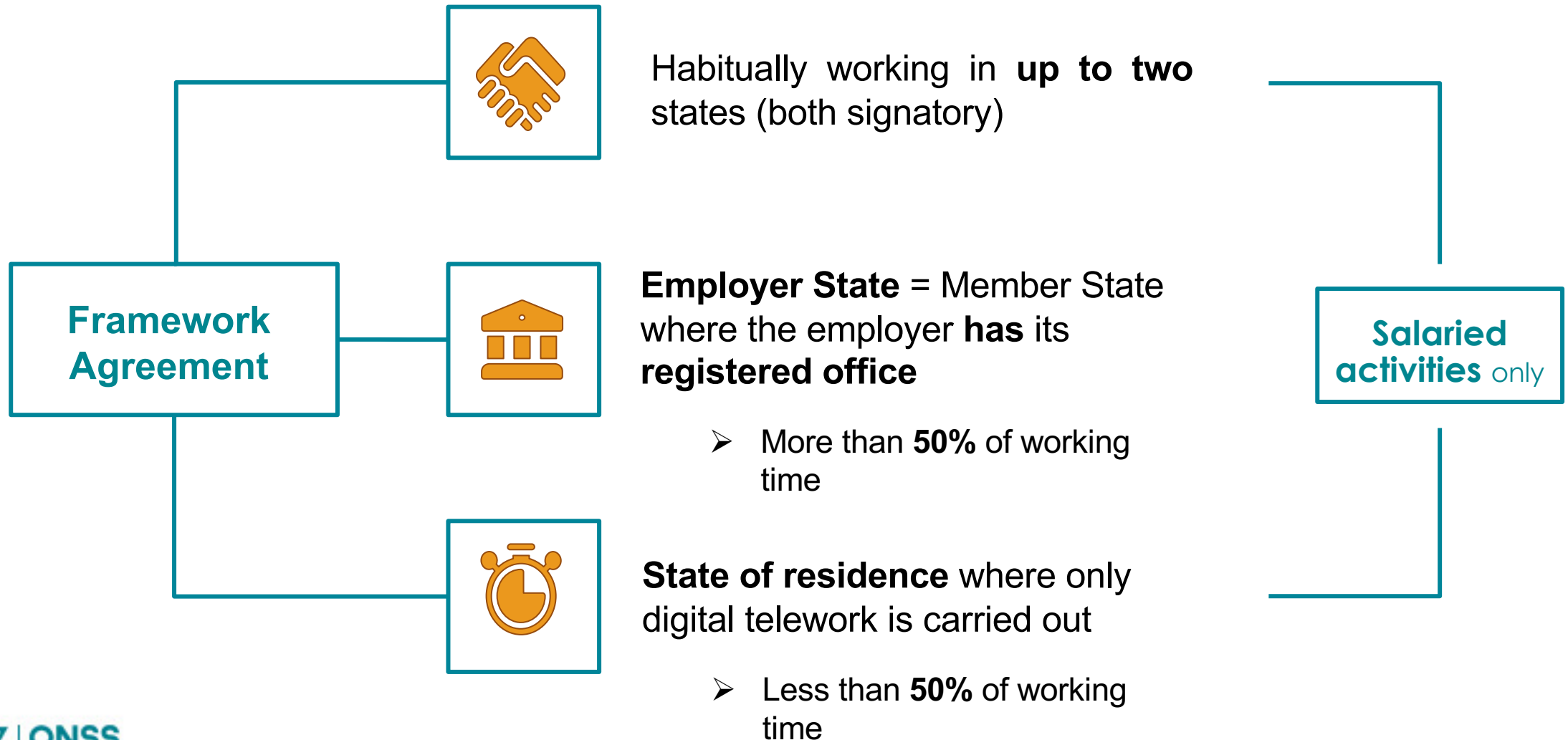
Signatory States

22

Austria
Belgium
Croatia
Czech Republic
Finland
France
Germany
Italy (1/1/2024)
Ireland (1/6/2024)
Liechtenstein
Lithuania (1/5/2024)
Luxembourg
Malta
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Slovenia (1/9/2023)
Slovakia
The Netherlands






<https://socialsecurity.belgium.be/en/internationally-active/cross-border-telework-eu-eea-and-switzerland>

Summary of Framework Agreement conditions








Occasionally working in 3rd State(s)

Silvia

-  - Residence Switzerland
-  - Seat employer Lichtenstein
-  - 60% of work in Lichtenstein
-  - 40% in Switzerland (telework@home)
-  - 5-day conference in France





Ilka

-  - Residence Germany
-  - Seat employer Switzerland
-  - 53% of work in Switzerland
-  - 40% in Germany (telework@home)
-  - 7% anticipated business travel to clients in France







Working in a branch office

Adelheid

-  - Residence France
-  - Seat employer Luxembourg
-  - working 3 days Luxembourg
-  - 2 days in France @ French branch office of Lux employer



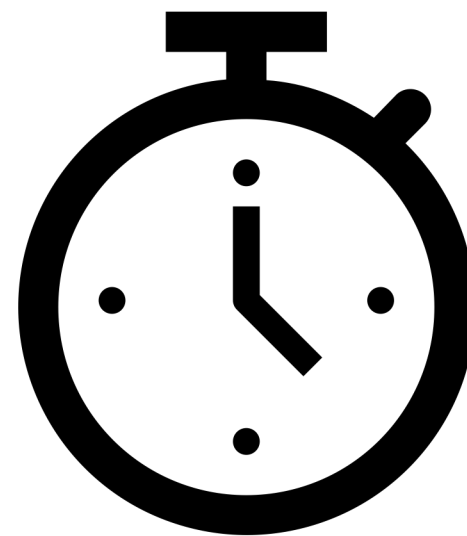
Albrecht

-  - Residence Germany
-  - Seat employer Austria
-  - 60% in Strasbourg (French branch)
-  - 40% in Germany (telework@home)





Time for action?



Teleworking outside the Framework Agreement



Standard request for
individual exception:
Art 16



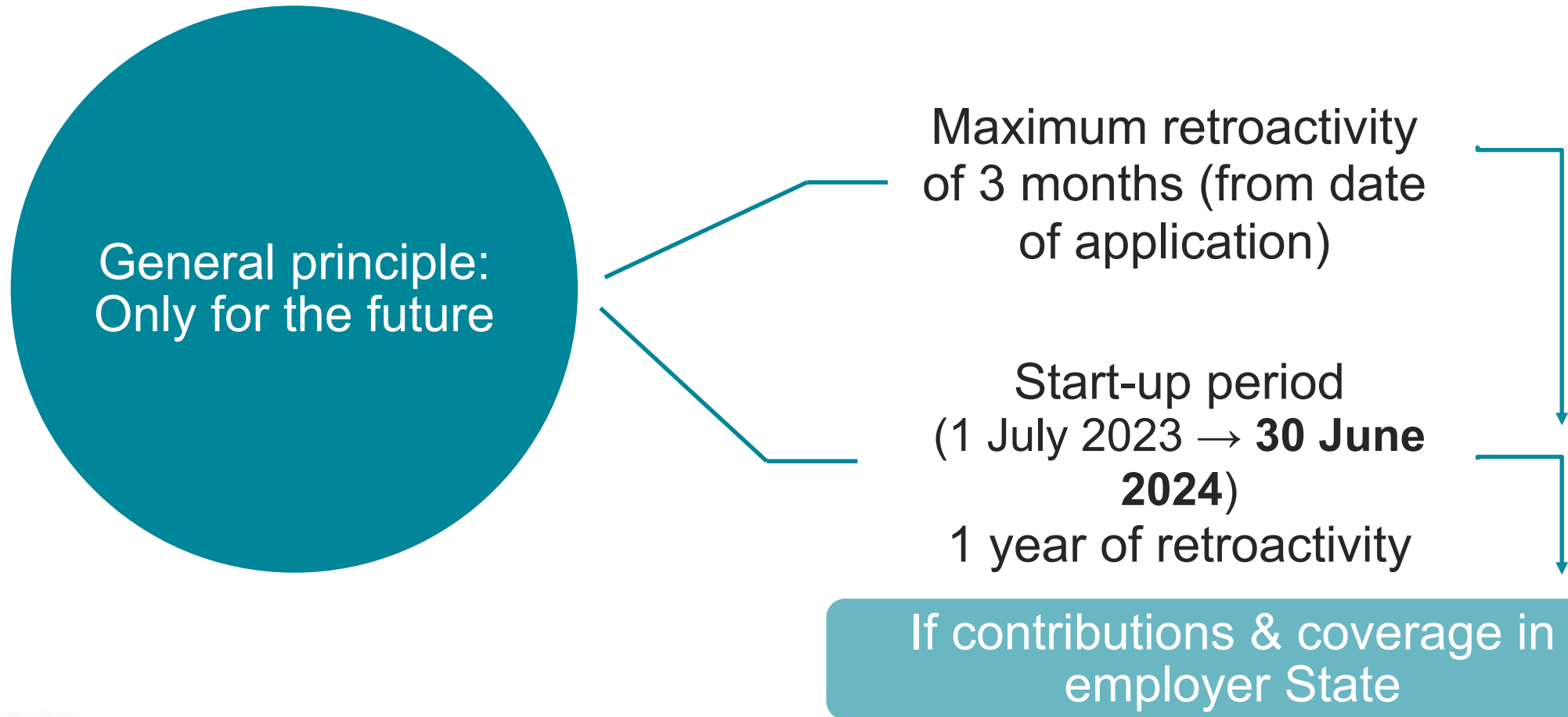
Example:

- 3rd country statutory seat
- Belgium: Working in EEA branch office
- MS X residence: telework



Discretionary
assessment by both
Member States
separately

Article 16 - Retroactive applications



Time for Action:

- Check who is a cross-border teleworker
- Check if the conditions of the FA are complied with
- Have a policy on cross-border telework (conditions, limits, tracking of number of teleworking days, tracking of secondary activities, ...)
- Check impact on other aspects (taxes, employment rights, data privacy and security, ...)
- Apply timely for the application of the FA in the state of the Employer

Thank you

for joining our webinar



Sophie Maes - Partner
Claeys & Engels (Belgium)
Sophie.Maes@claeysengels.be



Melania Soncin – Senior Associate
Toffoletto De Lucas Tamajo (Italy)
melania.soncin@toffolettodeluca.it

CONTACT

NL/EN: ContactRSZMigr@onssrszlss.fgov.be

FR/EN: ContactONSSMigr@onssrszlss.fgov.be

**DEPARTMENT FOR
INTERNATIONAL
RELATIONS**





North America: Canada – Mexico

Central & South America: Argentina - Brazil - Chile - Colombia - Panama - Venezuela

Western Europe: Austria - Cyprus - Denmark - Finland - France - Germany - Greece - Ireland - Italy - Luxembourg - Malta - Netherlands - Norway - Portugal- Spain - Sweden - Switzerland - United Kingdom

Eastern Europe: Bulgaria - Croatia - Czech Republic - Estonia - Hungary - Latvia - Lithuania - Poland - Romania - Serbia - Slovakia - Slovenia - Turkey - Ukraine

Middle East & Asia Pacific: Australia - Bahrain - China - Hong Kong - India - Israel - Japan - Kazakhstan - New Zealand - Papua New Guinea - Saudi Arabia - Singapore - South Korea - Thailand - United Arab Emirates

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