



COVID-19 WATCH ETUC BRIEFING NOTE

FRONTIER WORKERS 3 APRIL 2020

THE SITUATION FOR FRONTIER WORKERS

Frontier workers¹ in the EU enjoy the right to the free movement of workers who are EU nationals working in another Member State, and they play an important role for regional labour markets and economies. After the COVID-19 outbreak, the situation of 1.5 million frontier workers in European border regions has worsened every day, due to the absence of coordinated measures taken by national governments and the decision taken by some EU member states to close their borders.²

It has become impossible for most of the frontier workers to commute and teleworking is often encouraged. For many frontier workers, however, teleworking is not an option as they work in e.g. manufacturing, food industry, cleaning services, hotels and restaurants. Furthermore, sick leave from neighbouring countries are sometimes questioned by employers and workers are therefore put under pressure to return to work. There are problems reported that a quarantine order from the member state of residence – which is due when cross-border workers return home – is not accepted as sick leave by the company in the member state where the work takes place.

Teleworking may lead to the negation of the frontier workers' legal definition and requisites laid down in EU Regulation 883/2004 on the coordination of the systems of social security. When governments advise workers to work as much from home as possible, frontier workers can come in a situation of working more than 25% in the country of residence. If this situation continues there is a risk that the competent state for social security changes.

The same question is about the competent state for taxation, when due to the COVID-19 measures workers are forced to work in their country of residence.

Moreover, there have been cases reported of self-employed frontier workers falling outside the scope of a national temporary emergency scheme in the member state of establishment due to the fact that they are not residents of that member state, but also falling outside the scope of measures introduced in the member state of residence. Some cases also show that emergency social security benefits are only available for frontier workers which have an employer with a legal personality, not for those that have an employer that is a physical person, which is the case for domestic workers.

¹A frontier worker is defined by Regulation (EC) 883/2004, Article 1(f) as: "any person pursuing an activity as an employed or self-employed person in a Member State and who resides in another Member State to which he returns as a rule daily or at least once a week". A frontier worker who resides in an EU-, EEA-country or Switzerland and works in another is subject to the social security of the country of employment. However, in the event of substantial activity in the Member State of residence (i.e. at least 25% of working time), the latter State becomes competent.

²See national measures mapping by Frontex in Annex.



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FRONTIER WORKERS 3 APRIL 2020

In addition, some member states have introduced very bad practices and/or do not respect Regulation 883/2004. For instance, the Czech Ministry of the Interior has implemented restrictions for cross-border workers:

<https://www.mvcr.cz/docDetail.aspx?docid=22241482&doctype=ART>.

In Croatia, every person, including Croatian nationals, coming back to Croatia from Italy are forced to stay at home for a period of quarantine or self-imposed isolation of 14 days:

<http://www.mvep.hr/en/info-servis/press-releases/coronavirus-control-strengthening-measures-for-croatian-and-foreign-nationals-entering-the-republic-of-croatia,32735.html>

Whereas the Belgian government has decided that they will treat frontier workers in this teleworking situation as if the hours are made in the country where the employer is situated. Read more [here](#).

The situation caused by the COVID-19 outbreak and lack of coordinated response is undermining the legal protection for frontier workers. There is a need for better coordination between member states and national authorities, including on quarantine regulations and documents, and a common understanding of frontier workers' social and labour rights. Member states also need to respect the right of freedom of establishment with regard to self-employed persons, in order to avoid any discrimination based on nationality for the purpose of their free movement.

One note of caution, this briefing note captures a dynamic situation which is subject to ongoing change. We therefore kindly ask affiliates to provide us with further information on COVID 19-related measures that have been introduced in your country so that we can update this briefing note.

Possible solutions

Part of the solution is to be found through amendments to existing bilateral agreements concerning frontier workers. On 19 March, France, Germany, Belgium and Switzerland agreed on changes to the tax system for frontier workers during the pandemic. The bilateral tax treaties in place provide for exclusive taxation of the salaries of frontier workers in their state of residence, provided that they do not exceed a certain number of days worked outside the border area of the other state. The new agreement means that the days that frontier workers remain at home during the COVID-19 crisis will not be taken into account in this count.

There is also a change in the tax treaty between France and Luxembourg, providing for an authorised period of 29 days during which French frontier workers may telework for their Luxembourg employers without the related remuneration being taxed in France. During the pandemic, teleworking days will not be taken into account when calculating this period.



COVID-19 WATCH ETUC BRIEFING NOTE

FRONTIER WORKERS 3 APRIL 2020

For Belgium, exceptions on bilateral agreements and applicable legislation were made concerning:

- Taxation of telework: days worked from home will not count and will be taxed in the country of work.
- Social security: the applicable legislation will not change.

Several special arrangements were made for temporary unemployment (e.g. in Belgium and Italy), partial unemployment (e.g. in France, Luxembourg and Italy) and reduced working hours (e.g. in the Netherlands and Germany).

The Gibraltar government has put a ban on redundancies and guarantees a salary of 1,260 euros for workers affected by the corona virus. The measure will benefit the 14,300 cross-border employees, including 9,000 Spaniards who were going to be excluded from the aid as they were not eligible for the Temporary Employment Regulation Plan (ERTE) decreed by the Spanish government.

And in Germany, the competent authority (DVKA) has made it clear that the status of cross-border commuters with regard to social security does not change because of the temporary home office and is therefore in conformity with EU Regulation 883/2004 (https://www.dvka.de/de/arbeitgeber_arbeitnehmer/coronaav.html).

If frontier workers are quarantined in their country of residence, they do not necessarily receive benefits from the country of work, e.g. under the German Infection Protection Act. It is therefore necessary that quarantine certificates from neighbouring countries are recognised in the country of work and reimbursement is made.

The role of the ETUC Interregional Trade Union Councils

In this context the colleagues of the 45 Interregional Trade Union Councils (IRTUCs) are doing a great job in order to reach agreements with the employers on the one hand, and to give the correct and updated information to frontier workers on their websites.

Germany/Poland/Czech Republic

They have quickly produced information material in the three languages: <https://sachsen.dgb.de/cross-border-workers>. Multilingual information and advice have been provided by the Advice Centre for Foreign Workers in Saxony (BABS) and the EURES TriRegio.

Germany/France

German: https://www.eures-t-oberrhein.eu/fileadmin/user_upload/Coronavirus_GrenzgaengerInnen_F-D_2020-03-15.pdf



COVID-19 WATCH ETUC BRIEFING NOTE

FRONTIER WORKERS 3 APRIL 2020

French: https://www.eures-t-rhinsuperieur.eu/fileadmin/user_upload/Downloads/fr/Coronavirus_frontalieres_F-D_2020-03-15.pdf

Belgium/France/Germany/Netherlands/Luxembourg

<http://www.abvv.be/-/grensarbeid-en-coronavirus-wat-moet-je-weten-> and <http://www.fgtb.be/-/travail-frontalier-et-coronavirus-ce-qu-il-faut-savoir>

Italy/Switzerland

<https://www.italicanet.com/aggiornamenti/business/lavoratori-transfrontalieri-il-punto-di-giuseppe-augurusa.kl>

Spain/France

http://csir-pirimed-pyremed.over-blog.com/2020/03/declaracio-del-csir-pyremed/pirimed-declaration-du-csir-pyremed/pirimed.html?utm_source=ob_email&utm_medium=ob_notification&utm_campaign=ob_pushmail

Netherlands/Belgium

The IRTUC Schelde/Kempen has made a digital information session for crossborder workers in the Flemish/Dutch region about the corona virus and crossborder work.

<https://werkenoverdegrens.eu/event/digitale-sessie-grensarbeid-en-corona/>



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ANNEX

COVID-19 Restrictions

