



THE SITUATION FOR FRONTIER WORKERS

This briefing note was originally produced on 3 April 2020 and has been updated on 24 April 2020, on 4 May 2020, on 12 June 2020 and on 18 September 2020 to take account of developments in Belgium, Austria, Croatia, Luxembourg, Germany, Italy/Slovenia and Italy/Croatia.

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

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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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.

In addition, some members 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 were 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>

On 11 May 2020 the Croatian Government has changed its position about the entry and stay of the EU nationals in Croatia. Instead of a mandatory period of 14 days of quarantine or self-imposed isolation, now at the check-borders the authorities of Croatia only give to the ingoing EU nationals papers containing written information with some instructions and recommendations to follow during their stay. Also if not specifically named, the frontier workers resident in Croatia and employed in Italy have benefited from the new instructions (see the link below). In fact, they are free to come back home at the end of their working day in Italy, without any restrictions at the Croatian border.

<https://www.koronavirus.hr/travelling-find-all-important-information-in-one-place/210>

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



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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.

On Monday 31 August the French Ministry of Economy and Finance announced that the agreements concerning frontier and cross-border workers, which France concluded with Germany, Belgium, Luxembourg and Switzerland last March in the context of the Covid-19 pandemic, will continue to apply until 31 December 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.

In order to ensure the continuation of activities in the harbor of Ghent (Belgium), following consultation between Belgian and Dutch authorities and to avoid Dutch workers are blocked at borders, a special crossborder worker vignette has been introduced, a kind of “laisser passer” which is downloadable from the site of the Belgian crisis center: <https://crisiscentrum.be/nl/news/grensarbeiders-vitale-sectoren-en-met-cruciaal-beroep-kunnen-sneller-de-grens-met-nederland>

Belgium and the Netherlands have reached an agreement that allow frontier workers forced to work from home due to the Covid-19 pandemic to be taxed by the country that employs them. The tax treaty between the two countries did not provide an exception for this type of situation. Thus, the new agreement specifies that all days worked at home by frontier workers between 11 March and 31 May will be counted as days worked in the country of employment and not in the country of residence. This period could be extended if necessary.



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Belgium concluded similar agreements with France on 19 March 2020 and Luxembourg on 17 March 2020.

And since Monday 20 April 2020, workers residing in the Flemish region but working abroad (so mainly cross border workers) will also get a Flemish energy bonus of around 200 euros. There are certain conditions though.

Nevertheless, other temporary measures concerning cross border issues have also been adopted. Consequently the new requests for exportation of Belgian unemployment allowances are not accepted and the requests which have been submitted but not yet approved are refused.

The Belgian trade union ACV-CSC has made available a lot of very detailed information for cross border workers and EU Mobile workers:

In Dutch : <https://www.hetacv.be/actualiteit/campagnes/coronavirus-op-het-werk/sectornieuws/grensarbeider>

In English : https://www.hetacv.be/docs/default-source/acv-csc-docsitemap/3980-actualiteit-actualiteit/3985-campagnes--campagnes/202003_corona/faq-cross-border-employment_v20200416.pdf?sfvrsn=10fe6983_4

In French : <https://www.lacsc.be/actualite/campagnes/les-impacts-du-coronavirus-au-travail/informations-par-secteurs/travailleurs-frontaliers>

In June and July 2020, with regard to frontier workers forced to remain in the country of residence as teleworker, due to the pandemic COVID-19, the Italian Government has signed agreements, namely with the Austrian Government, the Swiss Government and the French Government, in order to integrate the text of the relevant Conventions to avoid the double taxation.

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).

In Luxembourg, agreements have been found with the governments of France, Belgium and Germany with regard to cross border workers. These agreements allow cross-border workers to cross the border to come and work in Luxembourg and also to switch to teleworking without their remuneration being taxed in their country of residence. These provisions on telework are temporary for the duration of the crisis.

In addition, in order to support tourism in Luxembourg, residents older than 16 year and frontier workers are entitled to receive a 50€ voucher to stay overnight in the country. The voucher can be used for any accommodation (hotel, camping, youth hotel).

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-

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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

The Interregional Trade Union Council Elbe-Neisse has called on the governments of Germany, Poland and the Czech Republic to immediately re-establish freedom of movement on the cross-border labour market for all cross-border workers: <https://sachsen.dgb.de/themen/1/++co++f5db3b3e-849e-11ea-970d-52540088cada>.

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

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>

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Italy/Switzerland

<https://www.italicanet.com/aggiornamenti/business/lavoratori-transfontalieri-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/>

Austria/Hungary

The Facebook page of the Austria-Hungary Project is constantly updated:

https://www.facebook.com/oegb.bld/?_tn_=%2Cd%2CP-R&eid=ARB3o9IZORcLEvKq9LQdfCPhxMDejehibBQn-aYGdoO_N7Mem_KSVkQb0wyTaBECDxRhH6ODgemT0E7i

In addition, frontier workers' specific questions and challenges that have emerged in the course of the corona crisis are collected. The document is continually edited, updated and translated:

German: <https://cryptpad.fr/pad/#/2/pad/edit/rvxJzhVKU3IL-se6LQ1e6XSE/>

English: <https://cryptpad.fr/pad/#/2/pad/edit/dOMcl2iiGiCDm1ifBPSma5JJ/>

It is also worth mentioning that the ÖGB publishes general information in 11 languages (including Hungarian and Czech): <https://jobundcorona.at/download/>

Italy/Croatia

<https://www.cislvg.it/corona-virus/emergenza-coronavirus-tutti-facciano-la-propria-parte-e-non-i-furbi/>



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In August 2020, after a protest (pursued also by the Upperadriatic Italo-Croatian IRTUC), the Italian Health Minister decided to exempt the frontier workers that move between Italy and Croatia of the recent decree (August 12th, 2020) which obliges the persons coming from Spain, Greece, Malta and Croatia to enter in Italy with a negative COVID-19 test, obtained not more than 72 hours before, or, as alternative solution, to submit themselves to a similar test in Italy, remaining in a self-isolated period in Italy till the test (negative) result.

Italy/Slovenia

<http://www.csifvgslo.org/it/>

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SYNDICAT
EUROPÉEN
TRADE UNION

ANNEX

COVID-19 Restrictions

