



COVID-19 WATCH ETUC BRIEFING NOTE FRONTIER WORKERS

14 JANUARY 2022

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, on 18 September 2020 and on 14 January 2022 to take account of developments in Belgium, Austria, Croatia, Luxembourg, Germany, Italy, Slovenia and Croatia.

Frontier workers¹ in the EU enjoy the right to the free movement of workers who are EU nationals working in another Member State. They play an important role for regional labour markets and economies. Since the COVID-19 outbreak, however, the situation of 1.5 million frontier workers in European border regions has significantly worsened, due to the absence of coordinated measures taken by national governments in relation to the public health measures imposed and their impact on the freedom of movement.²

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.

Challenges experienced by frontier workers

In the wake of the pandemic, cross-border commuting has become more difficult, and teleworking is often encouraged. For many frontier workers, however, teleworking is not an option as they work in e.g. care, manufacturing, food industry, cleaning services, hotels and restaurants. Furthermore, sick leave from neighbouring countries is 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. With vaccinations being carried out by Member States under different strategies and at varying paces, problems of mutual recognition of certificates have also been reported by frontier workers.

Likewise, teleworking has resulted in legal uncertainty for frontier workers. It 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

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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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.

In addition, some Members States have introduced discriminatory 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 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](#).

Luxembourg on 16 December 2021 passed a new COVID-19 Law, specifying the rules for access to the workplace. As of 15 January 2022, workers who are not vaccinated or recovered from COVID-19 are required to be tested every day. Anyone who refuses to present a



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certificate of vaccination or recovery, or proof of a certified daily test will not be allowed to work. Also short-time work is prohibited for people without a valid certificate. As an alternative, such workers can with the agreement of their employer take paid leave. Without leave, however, these workers will not be paid for the time not worked.

As a rule, testing continues to be charged. As of 14 January 2022, however, residents in Luxembourg who have received their first vaccination can be tested free of charge. For this purpose, they will receive 20 vouchers from the Luxembourg government to realize 20 free certified antigen tests until 28 February 2022, thereby allowing them time to complete their second dose.

However, frontier workers who have only had a first dose and who are still waiting for their second dose, cannot benefit from these free antigen tests in Luxembourg. This discriminatory rule makes access to work for frontier workers more difficult. The measure is being criticized by the OGBL and LCGB trade unions, calling for the same rights for cross-border workers, who should also be able to be tested free of charge. This would ensure equal treatment between residents and cross-border workers in Luxembourg.

All in all, the situation caused by the COVID-19 outbreak and lack of coordinated response is undermining the legal certainty for frontier workers. There is a need for better coordination between Member States and national authorities, including on quarantine requirements 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.

Possible solutions to address the needs of frontier workers

The challenges experienced by frontier workers under COVID-19 on the one hand calls for exemptions from border restrictions and quarantine requirements, ensuring essential travel for workers who need to be able to reach their physical workplace. On the other hand, exemption agreements regarding social security coordination and taxation must be put in place between Member States to accommodate the needs of teleworking frontier workers. Frontier workers who work remotely from home must be able to maintain their status as frontier worker although they do not for a longer period commute to the Member State of employment, but in fact work in their State of residence.

Part of the solution is to be found through amendments to existing bilateral agreements concerning frontier workers. On 19 March 2020, **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.



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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 31 August 2020 the French Ministry of Economy and Finance announced that the agreements concerning frontier and cross-border workers, concluded by **France with Germany, Belgium, Luxembourg and Switzerland** in the context of the COVID-19 pandemic, would 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 cross-border 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. Similar agreements were concluded by **Belgium with Luxembourg and France** on 17 and 19 March 2020 respectively.

In **Belgium**, also other temporary measures concerning cross border issues have 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. Moreover, as of as of 20 April 2020, workers residing in the **Flemish region** but working abroad (so mainly cross border workers) will also get an energy bonus of around 200 euros, under certain conditions.

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](#), [French](#) and [English](#).

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, agreements were concluded by



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Italy with Austria, Switzerland and France, in order to integrate the text of the relevant Conventions to avoid the double taxation. The agreements can be found [here](#).

Several special arrangements have been 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**).

Agreements regarding cross-border workers have been concluded by **Luxembourg with France, Belgium and Germany**. 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.

The implementation of the agreement between **Luxembourg and Belgium** foresees that the days of telework performed by frontier workers due to COVID-19 measures are not taken into account from 11 March 2020 up to 31 December 2021 for the determination of the applicable tolerance threshold for taxation. (For Belgian cross-border workers, a threshold of 24 day is applicable. Once this threshold is exceeded, the employee is taxed in his country of residence.) Luxembourg and Belgium have decided to extend this mutual agreement until 31 March 2022. Thereafter, if the agreement is not terminated by one of the competent authorities at least two weeks before 31 March 2022, it will be extended by tacit agreement until 30 June 2022. Moreover, for the year 2022 the agreement also envisages the extension of the tolerance threshold from 24 days to 34 days.

The agreement between **Luxembourg and France** establishes that the days of telework performed due to COVID-10 are not taken into account from 14 March 2020 to 31 December 2021 for the determination of the tolerance threshold applicable for taxation. (For French cross-border workers, a threshold of 29 day is applicable. Once it is exceeded, the employee is taxed in his country of residence.) Luxembourg and France have decided to extend the mutual agreement until 31 March 2022. The agreement stipulates that the derogations will be automatically renewed for a period of three months until 30 June 2022 unless one of the contracting parties cancels the agreement one week before its expiration.

As agreed between **Luxembourg and Germany**, the days of telework performed exclusively because of measures to combat the spread of Covid-19 are not considered from 11 March 2020 to 31 March 2022 for the determination of the tolerance threshold applicable for taxation. (For German cross-border workers, a threshold of 19 day is applicable. Once this tolerance level is exceeded, the employee is taxed in his country of residence.)

According to the agreements between **Luxembourg and its three neighboring countries**, the limit of 25% of annual working time or remuneration for the determination of the country of affiliation to social security will not apply to the time period of telework performed in the context of the COVID-19 pandemic.



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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.

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).

However, 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

To address the specific needs of frontier workers during the pandemic, the colleagues of the [46 Interregional Trade Union Councils](#) (IRTUCs) are doing a great job in order to reach agreements with the employers, 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>.

It has produced materials in German, Czech and Polish to inform frontier workers about entry requirements, access to the workplace (vaccination, recovery tests), short-time work schemes, etc. <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

The IRTUC Dreilaendereck (D-F-CH) and the IRTUC EUREGIO (F-D) are members of the EURES cross-border partnership EURES-T Oberrhein/ Rhin Supérieur. Due to the Covid-19 pandemic, the regulations for cross-border workers when entering the country of employment or accessing the workplace (vaccination, recovery tests, validity of green pass) change very often. Both IRTUCs therefore decided to no longer update the COVID-FAQ-Info, originally produced in March 2020. But the IRTUC EURES advisers provide individual consultations. Contact via EURES-T Oberrhein/ Rhin Supérieur: beratung@eures-t-oberrhein.eu or conseil@eures-t-rhinsuperieur.eu.



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Although not directly linked to the COVID-19 crisis, the increase of short-time work as a result of the pandemic has shed light on a very specific issue of discrimination of frontier workers living in France and working in Germany. While awaiting further clarifications from federal institutions in Germany, a leaflet has been produced to raise awareness of the issue:

German: https://www.eures-t-oberrhein.eu/fileadmin/user_upload/Downloads/de/KUG_GrenzgaengerInnen_F-D_2021-12-10.pdf

French: https://www.eures-t-rhinsuperieur.eu/fileadmin/user_upload/Downloads/fr/KUG_frontalier.e.s_F-D_2021-12-10.pdf

Belgium/France/Germany/Netherlands/Luxembourg

<http://www.abvv.be/-/grensarbeid-en-coronavirus-wat-moet-je-weten->

<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/>

Austria/Hungary

The [Facebook page](#) of the Austria-Hungary Project is constantly updated:

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:



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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.cislvfg.it/corona-virus/emergenza-coronavirus-tutti-facciano-la-propria-parte-e-non-i-furbi/>

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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ANNEX: COVID-19 border restrictions in March 2020

COVID-19 Restrictions

