

For the attention of cross border workers, frontier workers and posted workers affected by the restrictions on free movement of people being imposed by certain EU Member States further to the COVID-19

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This message will inform you about the general rules applicable to your work contract and potential measures that you may have to take regarding your health insurance and social security coverage. Please note they are intended as an orientation and do not constitute legally binding information as regards your specific situation.

This message is not addressed to EU citizens who habitually reside and work in a MS of which they are not nationals². Such EU citizens are entitled to the same treatment as nationals in all respects. In particular, a Member State must not deny entry to EU citizens residing on its territory³. They may be subject to the same limitations in their rights as nationals (including their right to move within or exit the Member State). Member States can also take appropriate measures such as requiring EU citizens to undergo self-isolation or similar measures, provided they impose the same requirements on their own nationals.

Are you a cross-border/frontier worker? You are a cross-border / frontier worker if you fully or partially work in a Member State other than your Member State of residence (meaning that you go to work in one country, and return regularly to another country where you reside).

Are you a posted worker? You are a posted worker if you are temporarily sent by your employer situated in one Member State to work in another Member State in order to carry out a service. For the purpose of your social security coverage, you are considered posted in case you are sent by your employer to carry out any work related activity in another country, or also if you are self-employed and went abroad to pursue a similar activity to what you normally pursue in your Member State of origin.

Are the restrictions to free movement imposed by the Member State where you work legal? Under Article 45(3) TFEU, limitations to the right to free movement of workers may be justified on grounds of public health, amongst others. After the characterization by the World Health Organisation (WHO) of COVID19 as a pandemic, the restrictions imposed by Member States may be justified under the concept of public policy as a genuine and sufficiently serious threat to a fundamental interest of society. However, even in that case, the justification for the restrictions is

¹ The Commission services are constantly monitoring the situation as it evolves and are assessing whether further information may be needed in due course. This document will be updated regularly in order to take into account developments as they happen.

² Such EU workers benefit from the safeguards of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

³ C(2020) 1753 final.

to be narrowly construed⁴. This means that the restrictions with regard to free movement of workers must satisfy the criteria of necessity and proportionality as well as being based on objective and non-discriminatory criteria.

What if I want to return to my home Member State of nationality/residence?

To avoid a further spread of COVID-19, Member States may, for reasons of public health, restrict the freedom of movement of EU citizens, provided certain safeguards are complied with.⁵ This may also take the form of restrictions to the exit from/entry to a Member State.

In any case, Member States must facilitate transit of EU citizens who are on their way home. Before departing, please check the applicable restrictions imposed by the Member States that are on your route home.

If you are a frontier/cross-border worker:

What is the applicable law to your contract?

Under EU law (Article 8 of Regulation (EC) No 593/2008 on the law applicable to contractual obligations) the law applicable to individual employment contracts is normally the law of the Member State where the work is habitually carried out. In other words, if due to the restrictions of exit or entry you, as a cross border / frontier worker, cannot perform your obligations under the employment contract, the law of the Member State where you habitually work will determine the legal consequences of the impossibility to work. According to Article 7 of Regulation (EU) No 492/2011 on freedom of movement of workers within the Union you should have access to the same social and tax advantages granted by the Member State of your work as those granted to national workers whose movement rights are restricted.

If you are a cross-border worker, who cannot go to work in the other Member State and have to telework from your home Member State, do you become a posted worker?

No. You will not be considered as a posted worker under the Posting of Workers Directives⁶. That means that your home Member State's basic employment conditions will not become applicable to you, as there is no service provision/service recipient in your home Member State. Your employment contract will continue to be governed by the same Member State's law as before, normally, it is the law of the Member State where the work is carried out, if you have not agreed with your employer differently. This means in practice that you do not have to introduce any specific request or form in this respect. According to Article 45 TFEU and Article 7 of Regulation 492/2011 on freedom of movement of workers within the Union you should have access to the

⁴ See to that effect Joined cases 115/81 and 116/81 *Adoui and Cornuaille*, EU:C:1982:183

⁵ Articles 27(1) and 29 of Directive 2004/38.

⁶ Directive 96/71/EC <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31996L0071>
Directive 2014/67/EU <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584454887016&uri=CELEX:32014L0067>

same social and tax advantages granted by the Member State of your work as those granted to national workers whose movement rights are restricted, including in the case of partial redundancy.⁷ As to partial redundancy, frontier and cross border workers enjoy the same rights as resident and national workers.⁸

If you are a frontier or a cross-border worker and become wholly unemployed during this period

If you are a **frontier worker** (meaning you work in a Member State other than the Member State of residence, to which you return at least once a week) and during this period you become unemployed, you should contact the unemployment insurance institution in your Member State of residence. You will be entitled to unemployment benefits from the Member State of residence under the same conditions as unemployed persons in that Member State, and should make yourself available to the employment services in the Member State of residence.

If you are a **cross border worker** (meaning you work in a Member State other than the Member State of residence, to which you return less frequently than once a week) and during this period you become unemployed, you should contact the unemployment insurance institution:

- in your Member State of last employment, if you are not planning to return to your Member State of residence. You will be entitled to unemployment benefits from the Member State of last employment under the same conditions as unemployed persons in that Member State, and should make yourself available to the employment services in the Member State of last employment.
- in your Member State of residence, if you return to your Member State of residence. You will be entitled to unemployment benefits from the Member State of residence under the same conditions as unemployed persons in that Member State, and should make yourself available to the employment services in the Member State of residence.

Which social security legislation applies to you in view of the national restrictions on border crossing and the recommendations to telework due to the COVID-19 pandemic?

In the current scenario, the European rules on the coordination of social security continue to apply. However, the rules offer certain flexibility for the workers concerned to remain insured in the Member State where they were insured prior to the COVID-19 pandemic outbreak. The following scenarios and proposed solutions may be applied depending on the situation the workers find themselves in:

If you are a cross border / frontier worker working exclusively in a Member State other than the Member State of residence

⁷ According to Article 7 of Regulation 492/2011 on freedom of movement of workers within the Union

⁸ By virtue of Article 45 TFEU and Article 7 of Regulation (EU) No 492/2011.

You are currently insured in the Member State of employment. If you are now unable to work in your ordinary Member State of employment, and for a temporary period of time due to the pandemic, you are required to physically work from home, this situation should not in principle lead to a change in the applicable legislation as regards your social security coverage in view that the situation is temporary. The fact that the number of hours worked in your Member State of residence during the whole year will be marginal when compared to the total working time in all Member States, this should not have an impact on your social security situation, and you will not be considered as a person normally employed in two or more Member States⁹. You will continue to be entitled to all social security benefits from the Member State of employment.

If you are a cross border worker, who is working in both Member State of employment and the Member State of residence, and you are insured in the Member State of employment because your activity in the Member State of residence is not substantial

You are currently insured in the Member State of employment. Now that the activity in your Member State of residence is going to increase, it may become substantial (understood as more than 25% of your working time over a period of 12 months) in which case the legislation of your Member State of residence could become applicable under Article 13 of Regulation (EC) No 883/2004 only if this situation continues throughout a long period of time. Therefore the fact that for the next few weeks you will be performing a substantial activity in your Member State of residence, this should not have an impact on your social security situation. You should be already in possession of a PD A1 issued under Article 13 of Regulation (EC) No 883/2004 by the competent institution in the Member State of employment.

If you are a cross border worker, who is working in both Member State of employment and the Member State of residence, and you are insured in your Member State of residence because already currently your activity in the Member State of residence is substantial (over 25% of your working time)

You are currently insured in the Member State of residence. You should be already in possession of a PD A1 issued under Article 13 of Regulation (EC) No 883/2004 by the competent institution in the Member State of residence. The border restrictions and the teleworking should not have an impact on your social security coverage.

What if the above scenarios are not applicable to your case and as a result of the COVID-19 pandemic, you may end up with a change in the Member State of social insurance?

In other cases where the above scenarios are not applicable, which could lead to a change in the Member State of insurance of the worker, Member States can make use of an exception provided in Article 16 of Regulation (EC) No 883/2004. The employer should request the competent institution of the Member State where they are established for such an agreement, substantiating the request that it is in the best interest of the workers concerned to maintain the social security

⁹ Case C-570/15, *X v Staatssecretaris van Financiën*, EU:C:2017:674

coverage by the Member State where they are currently covered. Member States are encouraged to exercise their discretion positively when considering requests for exception agreements under Article 16, which would be in the best interest of the workers concerned. Nevertheless, such agreements should be limited in time and only applicable to the affected persons.

For more information about the PD A1, please consult:

<https://ec.europa.eu/social/BlobServlet?docId=11366&langId=en>

For details of the social security institution responsible for issuing the PD A1, please consult:

https://europa.eu/youreurope/citizens/work/social-security-forms/contact_points_pd_a1.pdf

What if I am a cross border worker, and I fall ill while I am either still working in the Member State of my employment, or while I was teleworking from my Member State of residence?

If you work in one EU country and live in another, you are entitled to medical treatment in both countries.

You are most likely already registered in the country where you work and received an S1 form from your health insurance authority (if not yet done, you should register and request such a form, and submit it to any health insurance authority in the country where you live). This form gives you the right to get healthcare in the country where you live, under the same condition as nationals who are insured in that country.

If you are a posted worker:

Do you have to follow host Member State rules relating to work?

If you are in the Member State where your employer sent you to provide the services (the ‘host Member State’) and you will continue to work there, the host Member State law regarding the basic employment conditions (minimum wage, maximum working and minimum rest time, rules regarding health, safety and hygiene at work etc.) will remain applicable. In case it is not allowed to go to the workplace due to COVID-19 restrictions, you have to respect the rules of the host Member State. However, you will remain entitled to social security benefits from the Member State where you pay social security contributions, and not from the host Member State.

Which social security legislation applies to you in view of the national restrictions on border crossing and the recommendations to telework due to the COVID-19 pandemic?

- **If you are a posted worker and your activity started before the outbreak of the COVID-19 pandemic**

If you are a posted worker and your activity in the other Member State started before the outbreak of the COVID-19 pandemic, you should not be affected by any national restrictions on border

crossings, if you are already physically in the Member State to which you were posted. You should continue the posting period as specified on the PD A1 and you will remain insured in the Member State where your employer is established or in which you are normally insured, as a self-employed person.

- **If you are a posted worker and your activity started before the outbreak of the COVID-19 pandemic, however you move to another Member State for example, during off periods**

If you are a posted worker and your activity in the other Member State started before the outbreak of the COVID-19 pandemic, you may still be affected if you exit the Member State to which you are posted, and want to re-enter at a later stage. This is the case if your activity is carried out in a Member State which imposes national entry restrictions on persons coming from outside the country or from certain affected regions. Therefore, before exiting the Member State to which you are posted, you should check with the relevant authorities whether you will be granted access on your return. If you are denied entry and therefore are unable to continue your posting period, your employer should contact the competent institution which issued the PD A1 for further instructions.

- **If you are a posted worker and your activity was planned to start after the outbreak of the COVID-19 pandemic**

If you are a posted worker and your activity was planned to start in the other Member State after the outbreak, the start of your posting period may be delayed due to national entry restrictions in certain Member States. In this case your employer, or you as a self-employed person should contact the competent institution of the Member State which issued the PD A1 for further instructions.