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COMMUNICATION FROM THE COMMISSION

Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak

COVID-19

Guidelines concerning the exercise of the free movement of workers

The Covid-19 crisis has led to the introduction of unprecedented measures across EU Member States, including reintroduced checks at their internal borders.

The *Guidelines for border management measures to protect health and ensure the availability of goods and essential services*¹ have set out the principles for an integrated approach to effective border management to protect public health while preserving the integrity of the internal market. According to paragraph 23 of the Guidelines, Member States should permit and facilitate the crossing of frontier workers, in particular but not only those working in the health care and food sector, and other essential services (e.g. child care, elderly care, critical staff for utilities) to ensure continued professional activity.

While restrictions to the right to free movement of workers may be justified on grounds of public policy, public security or public health, they must be necessary, proportionate and based on objective and non-discriminatory criteria.

Frontier workers, posted workers² as well as seasonal workers live in one country but work in another. Many of them are crucial for their host Member States, for instance for the health care system, the provision of other essential services including the setting up and maintenance of medical equipment and infrastructure, or ensuring the supply of goods. A coordinated approach at EU level, facilitating that these workers can continue to cross the internal borders, is therefore key.

Following the European Council call³ to the Commission to address the situation of the cross-border and seasonal workers who have to be able to continue essential activities while avoiding further spread of the virus and further to the *Guidelines for border management measures to protect health and ensure the availability of goods and essential services*, in particular paragraph 23 thereof, the Guidelines outlined below invite Member States to take specific measures ensuring a coordinated approach at EU level⁴. This relates to workers referred to above, in particular those workers who need to cross borders in order to reach their place of work because they exercise critical occupations by performing activities related to essential services. This should also apply in cases where workers referred to above use a Member State only as a transit country to reach another Member State. These Guidelines are without prejudice to the specific measures outlined in the *Communication on the implementation of the Green Lanes*⁵ or in the *Guidelines on Facilitating Air Cargo operations during the COVID-19 outbreak*⁶.

Member States should treat self-employed persons exercising the critical occupations listed in these Guidelines in the same manner.

Workers exercising critical occupations

1. In some parts of the EU, in particular in border regions, frontier workers exercise critical occupations for which unhindered movement across borders is essential.

¹ C(2020) 1753 final

² Workers who are temporarily sent by their employer situated in one Member State to work in another Member State in order to carry out a service.

³ Paragraph 4 of the Joint statement of the European Council Members of 26 March 2020.

⁴ The Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy C(2020) 2050 final, contains measures in relation to frontier and seasonal workers from third country.

⁵ C(2020) 1897 final.

⁶ C(2020) 2010 final

Restrictions introduced by Member States related to the crossing of their borders can lead to additional difficulties or even hinder efforts to fight the Covid-19 crisis.

2. The continued free movement of all workers in critical occupations is essential, including both frontier workers and posted workers. Member States should allow workers to enter the territory of the host Member State and have unhindered access to their place of work if they exercise in particular one of the following occupations⁷:
 - Health professionals including paramedical professionals;
 - Personal care workers in health services, including care workers for children, persons with disabilities and the elderly;
 - Scientists in health-related industries;
 - Workers in pharmaceutical and medical devices industry;
 - Workers involved in the supply of goods, in particular for the supply chain of medicines, medical supplies, medical devices and personal protective equipment, including in their installation and maintenance;
 - Information and Communications Technology Professionals;
 - Information and Communications Technicians and other technicians for essential maintenance of the equipment;
 - Engineering professionals such as energy technicians, engineers and electrical engineering technicians;
 - Persons working on critical or otherwise essential infrastructures;
 - Science and engineering associate professionals (includes water plant technicians);
 - Protective services workers;
 - Firefighters/Police Officers/Prison Guards/Security Guards/ Civil Protection Personnel;
 - Food manufacturing and processing and related trades and maintenance workers;
 - Food and related products machine operators (includes food production operator);
 - Transport workers⁸, in particular:
 - Car, Van and Motorcycle Drivers⁹, Heavy Truck and Bus Drivers (includes Bus and tram drivers) and ambulance drivers, including those drivers who transport assistance offered under the Union Civil Protection Mechanism and those transporting repatriated EU citizens from another Member State to their place or origin;
 - Airline pilots;
 - Train drivers; wagon inspectors, maintenance workshops' staff as well as the infrastructure managers' staff involved in traffic management and capacity allocation;
 - Maritime and inland navigation workers;
 - Fishermen;
 - Staff of public institutions, including international organisations, in critical function.

⁷ The categories follow the ESCO classification (European Skills, Competences, Qualifications and Occupations) which is the European multilingual classification of Skills, Competences, Qualifications and Occupations. See <https://ec.europa.eu/esco/portal/howtouse/21da6a9a-02d1-4533-8057-dea0a824a17a>

⁸ See further specific guidance on transport workers in C(2020) 1897 final – Communication from the Commission on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services.

⁹ Motorcycle drivers only when they transport medical supplies, medical devices or personal protective equipment.

3. The Commission urges Member States to establish specific burden-free and fast procedures for border crossings with a regular flow of frontier and posted workers, to ensure a smooth passage for them. This may be done for instance and where appropriate, by means of dedicated lanes at the border for such workers or with specific stickers recognised by neighbouring Member States to facilitate their access to the territory of the Member State of employment. The Commission will also urgently consult the Technical Committee on the Free Movement of Workers in order to identify the best practices that can be extended to all Member States, which allow these workers to exercise their crucial occupations without undue hindrance.

Health screening

4. Health screening for frontier and posted workers must be carried out under the same conditions as for nationals exercising the same occupations.
5. Health screening can be carried out before or after the border, depending on the available infrastructure, to ensure traffic remains fluid. Member States should coordinate between them to carry out health screening on one side of the border only, in order to avoid overlaps and waiting times. Checks and health screening should not necessitate the workers to leave the vehicles and should in principle be based on electronic body temperature measurement. Temperature checks on workers should normally not be carried out more than three times within the same day. In case the worker has fever and the border authorities deem that she/he should not be allowed to continue the journey, the worker should have access to appropriate health care under the same conditions as the nationals of the Member State of employment. The information on this person should be shared with the neighbouring Member State concerned.
6. For the transport workers referred to in paragraph 19 of the *Communication on the implementation of the Green Lanes*, the specific health screening measures referred to in those Guidelines apply.

Other workers

7. Member States should allow frontier and posted workers to continue crossing their borders to their workplace if work in the sector concerned is still allowed in the host Member State.
8. In situations that could lead to a change in the Member State of insurance of the worker¹⁰, Member States should make use of the exception provided for in Article 16 of Regulation (EC) No 883/2004¹¹ with a view to maintaining the social security coverage unchanged for the worker concerned. To apply for such an exception, the employer must submit a request to the Member State whose legislation the worker requests to be subject to.

Seasonal workers

9. Some sectors of the economy, in particular the agricultural sector, rely heavily in several Member States on seasonal workers from other Member States. In order to respond to labour shortages in these sectors as a result of the crisis, Member States should exchange information on their different needs, for instance via established

¹⁰ In case of pluriactivity in two Member States, where a frontier worker who currently works in both the Member State of employment and the Member State of residence and is insured in the Member State of employment because her/his activity in the Member State of residence is not substantial, exceeds the threshold of 25% of the working time as a result of the confinement measures taken by certain Member States.

¹¹ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

channels of the Technical Committee on the Free Movement of Workers. It is recalled that in certain circumstances seasonal workers in agriculture perform critical harvesting, planting or tending functions. In such a situation, Member States should treat those workers in the same manner as the workers that exercise critical occupations referred to above. Equally, Member States should allow such workers to continue crossing their borders to work if work in the sector concerned is still allowed in the host Member State. Member States should also communicate to the employers the necessity to provide for adequate health and safety protection.

10. The Commission urges Member States to establish specific procedures to ensure a smooth passage for such workers and it will also use the Technical Committee on the Free Movement of Workers to identify the best practices that can be extended to all Member States in order to allow these workers to exercise their occupations without undue hindrance.