

Ministry of Social Affairs and
Employment

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Date
Subject Telework and frontier workers

Our reference
2022-0000135803

Dear Commissioner Schmit,

The COVID-19 pandemic disrupted the working patterns of many frontier workers. Due to measures taken by national authorities, these workers had to telework from their member state of residence, which was not the same as their normal member state of employment.

In early 2020, the Commission published guidelines concerning the exercise of the free movement of workers during the COVID-19 pandemic, which proposed that member states should make use of the exception provided for in Article 16 of Regulation (EC) No 883/2004 in order to maintain the social security coverage unchanged for the workers concerned. On 15 May 2020 Administrative Commission notes 074/20 and 075/20 set out further guidance, providing direction and support for national measures adopted on the basis of an interpretation of the Regulation (EC) No 883/2004 and the notion of *force majeure*. The further guidance has been extended several times and is now due to expire on 1 July 2022.

National measures, such as the obligation or recommendation to work from home due to the COVID-19 pandemic, have been withdrawn by all or almost all member states. However we expect that teleworking is likely to remain common practice and we encourage both employees and employers to take advantage of the possibilities of hybrid working. In many member states people are being encouraged to work from home on a longer-term basis, at least for part of their hours, since this can improve work-life balance, cut costs (energy, travel, office space etc.) and reduce carbon emissions. Moreover member states might have to reimplement national measures due to a resurgence of the Covid-19 virus this autumn or winter. However, under the current legal framework, making increased use of the opportunity to telework will often lead to a change in the legislation applicable to frontier workers: it will no longer be the legislation of the country of work, but instead that of the country of residence.

I have received many letters from representatives of both employers and employees about the effects of a change in the applicable social security legislation. They fear this might increase their administrative burden. Some employers are already excluding or considering excluding employees from their

general teleworking policies due to the perceived administrative and financial risks. I feel that this would be a regrettable development. Furthermore, regions with a large proportion of frontier workers are afraid that employers will become less willing to employ frontier workers, when these frontier workers face a shift of the applicable legislation to the state of residence due to teleworking. These regions fear that they will become less attractive to businesses and workers, while their regional economies are largely reliant on frontier workers. Whether the change in applicable legislation is beneficial or detrimental to employers and frontier workers will depend on the social security systems concerned. However, I generally feel that we should not allow it to become more cumbersome for employers to hire individuals who live on the other side of the border owing to the greater administrative and financial risks involved in potentially having to insure them in their member state of residence. The letters and job descriptions which we have seen (allowing people to work from home for only a limited amount of time) indicate that this could become a significant obstacle to the free movement of workers and therefore to the functioning of the Single Market.

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Therefore the Netherlands firmly believes that there is a need to discuss how the new reality of increased teleworking for frontier workers should be accommodated within the framework of Regulations 883/2004 and 987/2009. Within the Administrative Commission, the French delegation has proposed creating a working group of experts to discuss this topic. We believe that creating such a working group is the best way forward for discussing long-term solutions. In addition we appreciate and welcome the work that the Commission is doing on this issue in cooperation with the Portuguese, Austrian and French delegations.

However, the scheduled expiry date of the guidance is drawing near and work has not yet started on a long-term solution. In our view, a temporary solution is now urgently needed in order to avoid a situation in which people are unnecessarily confronted with changing legislation twice.

We would therefore ask you to take the foregoing considerations into account when deciding on the need for temporary solutions from 1 July onwards to facilitate teleworking opportunities for frontier workers. My experts are at your disposal to discuss the form that such a temporary solution for this time sensitive issue could take.

Yours sincerely,

C.E.G. van Gennip
Minister of Social Affairs and Employment