
Krakow, 19 May 2020

**COVID-19 EXIT STRATEGY-
HOW TO RESTORE MOBILITY OF LABOUR AND SERVICES WITHIN THE EU
with a special focus on the posting of workers**

The economic and health crisis caused in the European Union by pandemic of COVID-19 has hit hardy European economy and European companies. There are indeed sectors that are especially affected, among others companies providing services all around Europe and their cross-border workers. As the pandemic situation improves, European institutions and Member States are working on exit strategies. As announced by the European Commission in the recently published Tourism and Transport Package one of the aims is to bring back mobility to Europe to its level from before the crisis. This is needed by the economy, by the employers, workers and citizens.

With that respect the Labour Mobility Initiative, representing professionals and experts in the field of mobility of labour and services in Europe, presents herewith **a list of guiding recommendations to be taken into account by the European and national decision makers.**

Persisting problems while crossing the internal borders

Despite Commission's *Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak* from March it is still difficult for many mobile workers to cross borders within the EU. They are still confronted with obligatory quarantine or are simply not allowed to take up their duties. Some countries, while adopting exit measures, have introduced **discriminatory provisions allowing frontier and seasonal workers to cross their borders but excluding posted workers.** This is again in contradiction to the Commission's *Communication Towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls* which states, that *"Member States should (...) allow workers, in particular transport, frontier, posted and seasonal workers, and service providers to cross borders and have unhindered access to their place of work"*. **Implementing Commission's guidelines by all Member States, in a coordinated manner, is a condition for economic recovery in the EU. This will enable the companies to restart providing services and mobile employees to keep their job.**

Health and safety of workers is of utmost importance. Employers should therefore train their workers on how to keep social distance and protect their health while providing services. They should also provide them with necessary safety equipment. However, as confirmed by the Commission, **obligatory**

quarantines just because the border was crossed should be lifted. This safety measure should be reserved for persons who contacted contaminated persons and persons with symptoms. **However as long as quarantines are in force, they should be mutually recognised by Member States.** A mobile worker that has just undergone a quarantine e.g. in his/her place of residence, directly before going to work abroad, should not be asked to apply again this safety measure. **The same should apply to tests if performed by mobile workers- their results should be mutually recognised. Any obligatory tests should be financed from national social and health security systems.**

Free movement of third country nationals also needs to be facilitated. Economically justified travels from outside the EU are allowed, even if they are very often followed by obligatory quarantines. The biggest obstacle however, in the case of non-EU citizens, is **mutual recognition of automatically prolonged visas or residence permits. The European Commission has already called on Member States to recognise various documents in the transport sector. The same should also apply to other sectors.**

Social security, health and safety of cross-border workers

The COVID-19 pandemic has demonstrated the need for legal clarity, continuity and stability of social security coverage applicable to mobile workers. Unfortunately, due to complex and unclear European rules frontier as well as seasonal workers have suffered the most and experienced lack of social safety net. In contrary, **the situation of the posted and highly mobile workers has shown that current rules work well and that the principle of continuity and applicability of only one social system protects them against unexpected situations.**

This experience should be taken into account by current legislative process with regards to the revision of the coordination of social security systems. Situation of frontier and seasonal workers has to be clarified. **In case of posted workers and workers performing services in two or more Member States rules should be kept unchanged as much as possible. The applicable legislation for persons carrying out work in two or more Member States cannot be made dependent on frequently changing factors such as turnover or working time, as they lead to huge uncertainty and unnecessary changes of social security systems, especially in crisis situations** (this should be taken into account in case of art. 15 of Regulation 987/2009).

This has been confirmed by the European Commission again in its guidelines from March this year. The Commission made it clear that any unnecessary changes of applicable legislation due to COVID-19 should be avoided and make it possible to use article 16 of Regulation 883/2004 with that respect. Also Belgium has introduced provisions with an aim to keep mobile workers in their usual social security system, irrespective of factual situation.

Legal clarity

Since the very beginning of the pandemic posting companies have been confronted with various administrative measures and safety requirements in Member States. Despite common guidelines issued by the European Commission at various occasions there is still no coordination between countries when it comes to their application. As a result, there is a huge level of legal uncertainty both for companies and mobile workers. This situation will continue together with the appearance of exit measures such as e.g. obligatory use of masks already introduced in some countries or requirements with regards to transport of passengers.

Therefore, a common European database **of COVID-19 related rules applicable per Member should be developed. This database should be updated on a regular basis and be publicly available.**

Future-oriented approach

As another wave of pandemic cannot be excluded we **support the idea to develop an EU-wide certificate for mobile workers, that will enable them to cross borders in the future in case mobility throughout Europe will have to be restricted again.**

COVID-19 pandemic also has influence on the implementation of revised Posting of Workers Directive. In less than 2,5 months, on the 30th of July 2020, revised rules should be applicable in all Member States. Unfortunately, till nowadays none of the biggest receiving countries have adopted national measures and published them on single official national websites making it therefore impossible for the employers to adapt.

Member States are currently busy with dealing with the pandemic crisis which will definitely delay the implementation process. It is certain that neither national administrations nor employers and employees will be ready for new legal reality. **Therefore, it is justified to postpone the date of application of the revised rules by a year, till 30 July 2021. This will give Member States time to adapt national rules and employers to prepare to apply them. This call is supported by a wide range of employers' organisations from all Member States.**