



## ETUC comments on the European Commission ‘Guidelines on Free Movement of Workers during the COVID-19 Outbreak’

On 30 March 2020 the European Commission published [Guidelines](#) on the exercise of the free movement of workers in view of the COVID-19 outbreak and the border restrictions that have been put in place by Member States. The aim of these Guidelines is to ensure that mobile workers, such as frontier, posted and seasonal workers within the EU, will be able to reach their workplace also in cross-border situations between Member States, in particular workers in critical occupations.

These Guidelines complement the ones published on 16 March regarding [border management measures to protect health and ensure the availability of goods and essential services](#), which did not sufficiently address the situation of workers. Similarly, they complement also the ones published on 30 March regarding the [temporary restriction on non-essential travel to the EU](#), which in part address the issue of EU entry for third-country national frontier and seasonal workers.

**The ETUC believes that the guiding principles for any measure taken should be the health and safety of all workers, respect for all working conditions in force as well as their effective enforcement, equal treatment between local and cross-border workers, while at the same time recognising the particularly vulnerable situation of mobile workers in view of the COVID-19 outbreak.**

Regarding the Commission Guidelines of 30 March on the free movement of workers intra-EU, it is positive that equal treatment is set out as the overarching principle. Similarly, the Guidelines do not suggest any temporary exceptions from working conditions in force – contrary to the problematic Commission Communication of 23 March on the implementation of [Green Lanes](#) for the purpose of facilitating transports at border-crossings, with far-reaching consequences to the detriment of working conditions of transport workers. In fact, the Guidelines on free movement of workers emphasise critical occupations, whereas the Commission recommends the Green Lanes apply to all transportation of goods as opposed to goods of strict necessity.

**The Commission Guidelines nevertheless fall short of sufficiently addressing crucial issues for cross-border workers linked to health and safety, taxation, social security, sick pay, access to decent accommodation, sanitary facilities and health care as well as the status of third-country national posted workers.** Similarly, the Commission [Factsheet](#) with questions and answers for frontier, posted and seasonal workers, which intends to complement the Guidelines, do not sufficiently address these problems of legal uncertainty and decent working conditions.

A fair balance has to be struck between providing safe access to free movement and work, on the one hand, while allowing for alternative arrangements and protective measures for other cross-border workers who cannot or should not access their place of work during the COVID-19 crisis. **The health and safety of all workers, regardless of status, must be put first.**

As recognised by the Guidelines, the free movement of workers (as well as the free provision of services) can be restricted on grounds of public policy, public security or public health, on the condition that they can be justified as being necessary, proportionate and based on objective and non-discriminatory criteria. In order for the imposed border restrictions based on the COVID-19 outbreak to be considered proportionate, these measures must sufficiently take into consideration the particular problems faced by mobile cross-border workers, such as frontier, posted and seasonal

workers. **A coordinated approach at EU level, facilitating that workers on the basis of equal treatment can continue to cross the internal borders, is therefore key, while at the same time protecting the health and safety of these workers and avoiding further spread of the virus.**

The overarching principle of these Guidelines must always be the **principle of equal treatment** under all circumstances. As set out by the Guidelines, Member States should allow frontier and posted workers to continue crossing their borders to their workplace, not only with regard to critical occupations, but also **if work in the sector concerned is still allowed** in the host Member State. Member States may establish specific fast procedures for border crossings with a regular flow of frontier and posted workers, allowing for **necessary health checks** while ensuring a smooth passage for them. In the workplace, health screening for frontier and posted workers must be carried **out under the same conditions** as for nationals exercising the same occupations. Any such health checks should be limited to what is strictly necessary and fully respect fundamental human rights of workers.

However, the Guidelines fail to sufficiently address many of the particular situations faced by cross-border workers, in connection to issues such as **taxation** of frontier workers (e.g. with regard to telework spent in the Member State of residence rather than in the Member State of work), **social security** for frontier and posted workers (e.g. unemployment benefits or other forms of compensation under short-term work schemes, and whether these can be accessed not only from the home Member State but also from the host Member State, as well as in situations where cross-border workers temporarily cannot access work due to precautionary closure of the sector), access to **sick pay** for frontier and posted workers (e.g. in case they receive a quarantine order upon return to the home Member State), **third-country national posting** from one Member State to another (e.g. such posted workers may experience restricted possibilities of returning “home” to the sending Member State and/or access social protection) as well as access to **health and safety equipment**, access to **decent accommodation, sanitary facilities and health care** for posted and seasonal workers (which may e.g. live many persons together in small facilities under deplorable conditions, being unable to follow rules of social distancing neither at work or in their place of accommodation, while also finding it hard to stay away from work in case they feel sick, afraid of losing their income).