

inARCO Project

Information Actions for Cooperation regarding Cross-border workers in Alpine Arch Countries - inARCO

inArco partners:



FVG



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Introduction

According to the scientific report on the mobility of cross-border workers between the EU-27/EES/EFTA Countries drafted on behalf of the European Commission in 2009, the number of cross-border workers was estimated to be approximately 780 000 people in 2006/2007. In the EU-15/EES/EFTA Countries the total number of these workers was estimated to have grown by 26% between 2000 and 2006/2007. These latest estimates provided by the European institutions do not provide a reliable picture of the actual reality of cross-border work, which, in fact, remains largely undefined. The evidence of the lack of reliable statistical data may be better understood by comparing these figures with the data contained in the press release of the European Commission (IP/12/340), which reported a figure of 1.2 million cross-border workers gross wages amounting to € 46.9 billion. In addition, it is important to recall that over a third of EU citizens live in border areas and cross the borders on a daily basis for work or leisure, or for cultural events.

Despite the uncertainty of the actual size of this phenomenon, cross-border mobility has been recognized as structural and increasingly relevant character of the European labor market and a major potential for the growth of employment in Europe. However, given the complexity and variability of the regulatory framework, this type of work requires a multidisciplinary approach to better understand the social security implications for these workers and their tax treatment, as well as the principle of equal treatment under the Labor Law.

With this document, the InArco project aims to analyze in depth cross-border work in the Alpine area, using a partnership of associations and unions in Italy, France and Slovenia.

In the first part, the document presents the European legislation on cross-border work, with particular reference to Regulation (EC) n.883/2004 on the coordination of the social security systems in the framework of EU legislation on the free movement of workers (EU Regulation .492/2011). Then, the survey illustrates the bilateral conventions against double taxation in force in the Alpine countries and, where applicable, the specific arrangements for the taxation of cross-border work income. Finally, it provides an overview of the quantitative and qualitative structure of this phenomenon in the countries concerned: Italy, France, Switzerland, Austria and Slovenia.

The second part focuses on the barriers to cross-border mobility, trying to identify specific cases of non-compliance with the fundamental principles of the free movement and equal treatment principles. The discrimination in the field of social security, taxation and labor legislation is mainly due to the peculiar conditions related to cross-border work, that is its split between the country of residence on the one hand, and the country of employment on the other. In fact, such discrimination is a deterrent that prevents or discourages cross-border mobility.

In the third and final part, starting from the empirical difficulties encountered in the past, the document identifies a list of recommendations addressed to policy makers at the European, national and local levels in order to improve the conditions of cross-border workers. The suggestions listed in this paper are designed to develop a more thorough regulatory framework for this type of work, so as to put an end to the often erratic provisions used for far in this field and to their consequences in terms of unequal treatment of workers.

Cross-border work in the EU labour market

1. The regulatory framework

When dealing with **cross-border work** (also called **frontier work** or **cross-border commuting**), there are four main aspects that are relevant in terms of observation of the dynamics of the phenomenon, namely social security, taxation, immigration and labour law. Providing a univocal definition of cross-border work covering all these relevant aspects is a complicated task. Different criteria can be considered to define cross-border work as opposed to other types of mobile work, the main distinction being between a time criterion (e.g. frequency and timing of return home) and a spatial one (e.g. distance from the border).

ETUC (2011) defines a cross-border worker as ‘an employee who works in one Member State (State of employment) and lives in another (State of residence). It is essential that he retains his normal place of residence outside the State of employment. If the cross-border employee moves to the State of employment, he becomes a migrant worker. A resident who moves to a neighbouring State but continues to work in his original State of employment (migrant resident), is also a cross-border or a frontier worker. The term “normal” place of residence does not exclude the possibility that the cross-border employee, for practical reasons, also has temporary accommodation in the State of employment’¹.

Definitions vary greatly whether social security rather than taxation aspects are taken into account.

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems defines a ‘frontier worker’ as any person pursuing an activity as an employed or self-employed person in a Member State and who resides in another Member State to which he/she returns as a rule daily or at least once a week.

Turning to the area of taxation, bilateral double taxation treaties may or may not include a specific mention of frontier workers. When a treaty does make particular provisions for such workers, the definition applied to the phenomenon is generally stricter than the one used for social security coordination purposes. A few tax agreements consider cross-border workers as persons living and working in a border area (e.g. within 10, 20 or 30 km of the border, depending on the agreement).

Since the focus of this Paper is on social security rights, the relevant definition will be the one contained in Regulation No 883/2004.

1.1. Social security benefits and the EU Social Security Coordination

Regulation (EC) No 883/2004, as amended by Regulation 988/2009 and together with the Implementing Regulation 987/2009, represents the legislative framework for modernised coordination of social security systems in the EU². These rules apply in all EU countries, in the other

¹ European Trade Union Confederation (2011). Guide for mobile European workers. Available at http://etuc.org/IMG/pdf/Brochure_Guide_travailleur_mobile_EN.pdf

² It should be pointed out that coordination does not necessarily entail any form of harmonization of social security systems,

countries of the European Economic Area (namely Norway, Iceland and Liechtenstein) and in Switzerland³.

The EC Regulation 883/2004 replaces any social security convention applicable between Member States falling under its scope; as a consequence, bilateral agreements between Member States that were in effect are suspended⁴.

The regulation establishes four main principles, namely:

1. A worker is covered by the legislation of one country at a time and only pays contributions in one country.
2. Nationals of a EU country and persons residing in that country without being nationals of it are equal in terms of rights and obligations provided for by the national legislation (principle of equal treatment or non-discrimination).
3. When claiming a benefit, previous periods of insurance, work or residence in other countries are taken into account if necessary (principle of aggregation of periods).
4. An individual who is entitled to a cash benefit from one country can generally receive it even if living in a different country (principle of exportability).

As a basic rule, an individual is subject to the legislation of the country where he actually works as an employed or a self-employed person, independently of where he lives, so that the competent institution for the provision of social security benefits is the one of the country of work. The country of work is therefore responsible for his social security benefits.

The right to various types of benefits is described in more detail hereafter.

a) Old-age benefits

The total old-age pension that the individual will receive will be made up of pensions paid by the States where the individual has been insured. Each country where the individual has worked will keep his insurance record until he reaches the pensionable age. Even when an individual has worked in several countries, he should apply for the pension in the country of residence, unless he never worked there. In the latter case, he should apply in the country where he last worked.

The legislation of most Member States makes eligibility to the old-age pension conditional upon completion of a minimum insurance period, and reaching a statutory retirement age.

Concerning the former, the **principle of aggregation of periods** applies. The institutions of the States where the individual has been insured will have to take account of periods of insurance or

which is not among the objectives of the EU. Each Member State is free to decide the rules of its social security systems, which benefits are granted and under what conditions; the purpose of EU law is not to harmonize or make the different national systems more uniform, but only to coordinate national legislations so that some basic rights are established for the workers.

³ The Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (Decision 2002/309/EC, Euratom), signed on 21 June 1999 and entered into force on 1 June 2002, provides for the coordination of social security systems under the principle of equal treatment for Switzerland as well.

⁴ Certain provisions of social security conventions entered into by the Member States before the date of application of this Regulation, however, continue to apply provided that they are more favourable to the beneficiaries or if they arise from specific historical circumstances and their effect is limited in time. For these provisions to remain applicable, they need to be included in Annex II of the regulation. Annex II lists only two agreements between partner countries, one between Italy and Slovenia and the other one between Austria and Slovenia, both concerning reckoning of periods of insurance completed before the mid '50s for specific groups of individuals.

residence completed in any other Member State, if this is necessary for entitlement to an old-age pension under their legislation⁵.

Concerning the statutory retirement age, the main issue is that pensionable ages vary greatly between Member States (MS). It is therefore possible that a person who has worked in different Member States does not reach the required age in all the MS where he/she has been insured at the same time.

If this is the case, only the Member State(s) whose conditions for entitlement to the old-age pension (including having reached pensionable age) are fulfilled – where appropriate after application of the principle of aggregation of periods, *including those periods completed under the legislation of the Member State(s) whose conditions are not fulfilled (yet)* – will proceed to calculate the amount of pension due. When performing this calculation, the periods completed under the legislation(s) whose conditions have not been satisfied are not taken into account when this would result in a lower amount of benefit.

Once an individual's entitlement to old-age pension under a State's legislation is established – for which purpose the principle of aggregation of periods can be applied – the person will receive a pension from each of these States. These 'partial' pensions are determined according to the method of pro rata calculation.

Those States where the individual qualifies for entitlement to old-age pension on the basis of national law, without resorting to the principle of aggregation of periods, will calculate two benefits:

1. a **national or independent benefit**, i.e. the pension to which the individual would be entitled by virtue of national legislation alone, without taking account of periods of insurance or residence completed in the other Member States;
2. a **pro-rata pension**, calculated following this procedure:
 - a. firstly, a **theoretical pension** is computed, i.e. the pension that would be due from the State concerned if all periods of residence or insurance completed under the legislation of the States to which the individual has been subject, had been completed in that State; in other words, the pension that the person would receive from the State concerned if she had worked her entire career there;
 - b. on the basis of this theoretical pension, each State will calculate a **pro-rata pension**, by applying to the theoretical amount the ratio between the duration of periods completed in the State concerned and the total duration of periods of insurance under the legislation of all Member States concerned.

These two pensions will then be compared, and the retiree will receive the highest amount of these two.

⁵ Note that overlapping periods are taken into account only once. In principle in such a case every Member State takes into account his own periods. Only in cases these periods are not so beneficial for entitlement or calculation of the pension as the overlapping periods of another Member State these more beneficial periods have to be taken into account. So for instance if (compulsory) insurance periods under the legislation of one Member State coincide with periods treated as such (e.g. during military service) or voluntary or continued optional insurance periods under the legislation of another Member State, only the compulsory insurance periods will be considered. Nevertheless, such periods of voluntary insurance are not lost. The Member State concerned has to grant a specific part of its pension corresponding to these periods.

Those States where the individual qualifies for entitlement to old-age pension only by resorting to the principle of aggregation of periods will pay the pro-rata pension.

It should be noted that the pro rata calculation shall not apply to schemes providing benefits in respect of which periods of time are of no relevance to the calculation, subject to such schemes being listed in part 2 of Annex VIII. In such cases, the person concerned shall be entitled to the benefit calculated in accordance with the legislation of the Member State concerned. This is the case of most NDC pension schemes.

As the requisite pensionable age is reached in the other State(s), this State (or these States) will also proceed to calculating the amount of pension due. At this point, the State(s) which is (are) already paying a pension must recalculate this pension, in accordance with the precise rules set out in the regulation.

If a worker is entitled to benefits in several EU countries, the total amount of the benefits must not be less than the minimum provided for in the legislation of his/her Member State of residence, if the State of residence has a minimum pension scheme. Otherwise, the institution of the Member State of residence must pay compensation.

It should be noted that the regulation provides that, as a rule, Member States are not obliged to award benefits in respect of periods of less than one year completed under their legislation. However, there are two exceptions to this rule. First, if by virtue of the legislation of the Member State(s) concerned, a right to benefit is acquired in respect of a period of less than one year, without any aggregation of periods, the benefit must be awarded. Second, if the effect of applying this rule would be to relieve all Member States where you have been insured of their obligation to pay old-age pension, you will receive a pension from the last of the Member States where you were insured and whose conditions for entitlement are satisfied once all periods are aggregated.

b) Pre-retirement benefits

Statutory pre-retirement schemes also come within the scope of the new EU coordination rules. This guarantees that these benefits will be granted to migrants under the same condition as nationals and may also be "exported" when retiring abroad.

However, the principle of aggregation of insurance periods does not apply: this means that the periods of insurance, employment or residence completed in other countries do not have to be taken into account when these benefits are granted.

It should be noted that the inclusion of pre-retirement benefits in the scope of the new EU coordination rules has limited practical relevance, as the new regulation only applies to statutory schemes and the bulk of national pre-retirement schemes are established through collective agreements.

c) Survivors' benefits

The coordination rules governing survivors' pensions are identical to those governing old-age pensions.

d) Invalidity benefits

The way invalidity benefits are calculated varies from one country to another within the European Union. There are two major methods of calculation when it comes to cross-border situations.

Some countries apply a risk-based logic (type A legislation). There the worker is entitled to the same pension regardless of his periods of insurance, but he must be insured when the invalidity occurs. This calculation method applies only to certain schemes which are listed in Annex VI to Regulation 883/2004, i.e. schemes in the Czech Republic, Estonia, Ireland, Greece, Latvia, Finland, Sweden and the United Kingdom.

All other countries apply a pro-rata method (type B legislation). This means that the invalidity pension is calculated on the length of the worker's insurance period in each country: the longer he was insured before becoming an invalid, the higher his pension will be. Even if he wasn't insured when becoming an invalid, he will still be entitled to a pension.

If the worker has been insured in several countries before becoming an invalid, a completely different coordination regime applies according to whether the person concerned has completed periods of invalidity insurance exclusively under type A systems or whether s/he has completed periods of invalidity insurance under at least one type B system. Since all partner countries fall within the group of type B systems, we will focus on the latter case.

The coordination rules which come into play are very similar to those governing entitlement and calculation of old-age pensions. In order to establish entitlement to an invalidity pension under the legislation of the States where s/he was insured, it is possible to make use of the principle of aggregation of periods, especially when one has to satisfy a minimum insurance period. As a consequence, the institution of the country where s/he claims an invalidity pension will take account of periods of insurance or residence that were completed under the legislation of any other country if this is necessary for the entitlement to the benefit.

The general rule is that the individual will receive an invalidity pension from each Member State to whose legislation s/he has been subject. For the calculation of these 'partial' invalidity pensions in each Member State, the principle of proratisation is applied; this procedure resorts to the same rules as the one applied for old-age pensions (i.e. the calculation of independent, theoretical and pro-rata pensions)⁶.

It should be noted that, since national social security legislations are not harmonised, each State is free to determine the conditions for granting invalidity pensions, including the required minimum level of incapacity for work, as long as it does not discriminate, directly or indirectly, against nationals of other Member States. It follows that there are important differences among Member States as to the criteria for invalidity, so each country having to pay an invalidity pension to the frontier worker can insist on examining him. As a result, it is possible that the individual is recognized as being incapable of work in one Member State, but not in another, or to a different degree.

⁶ Note that in some well-defined cases, which are listed in an annex to the regulation (Part 1 of Annex VIII to Regulation 883/2004), and provided certain conditions are met, the institution concerned may forego the calculation of the theoretical and pro-rata pension.

e) Medical treatment (health insurance)

A cross-border worker is entitled to medical treatment on both sides of the border. He is normally insured in the country of work and so he is entitled to healthcare there. He will then need a form from the health insurance authority in the country of work which entitles him to register for health insurance in the country where he lives.

The frontier worker's dependant family members are also entitled to medical treatment on both sides of the border if the worker lives and works in Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, France, Greece, Germany, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia or Slovenia.

If he lives or works in Denmark, Estonia, Finland, Hungary, Ireland, Italy, Lithuania, Spain, Sweden, the Netherlands, or the United Kingdom, his dependants cannot have 2 health insurance cards. They can only get treatment in the country of work when one of the following conditions is met:

1. treatment becomes necessary on medical grounds during their stay in that country, taking into account the nature of the treatment and the expected length of the stay;
2. there is an agreement between the countries/authorities concerned;
3. prior authorisation has been given by the relevant authority in the country where the dependant lives.

f) Family benefits

Family benefits are all benefits in kind or in cash intended to meet family expenses under the social security legislation of a Member State. These include:

- a) child-raising allowances or parental benefits, intended to enable one of the parents to devote him- or herself to the raising of a young child, and designed to remunerate the service of bringing up a child, to meet the other costs of caring for and raising a child and, as the case may be, to mitigate the financial disadvantages entailed in giving up income from an occupational activity
- b) Child care allowances, i.e. benefits paid to working parents for the care of their child(ren)
- c) Special allowances for single parents and for disabled children

Regulation (EC) No 883/2004 lays down that the State of employment is responsible, regardless of whether the family resides with the worker in another Member State. There are however specific provisions concerning these benefits, since the entitlement to family benefits for a frontier worker generally depends on the working condition of the other parent. In such cases, the relevant national authorities will take account of both parents' situations and decide which country has primary responsibility for paying the benefits. Their decision will be based on "priority rules".

If the benefits the frontier worker receives from the "primary" country turn out to be lower than what he would have received from the "secondary" country where he also had rights (because he works there or because he receives a pension there), the secondary country will pay a supplement equivalent to the difference between the two benefits. In this way, the worker is ensured of receiving the maximum benefits to which he is entitled.

If the frontier worker's spouse or partner — i.e. the children's other parent — works in the frontier worker's home country, the worker is entitled to child benefits there. If the amount of corresponding benefits in the country of work is higher, the country of work should pay a supplement corresponding to the difference between both benefits.

If the spouse or partner works in the same country as the frontier worker or doesn't work at all, the frontier worker is entitled to child benefits in the country where he works.

If the frontier worker and his partner work in different countries but none of them works in the country where their children live, they will receive family benefits from the country where the highest benefits are paid.⁷

Advances on maintenance payments and special childbirth and adoption allowances which are listed in Annex I of Regulation 883/2004 are excluded from the scope of the regulation.

The rules described until now are applicable to all mobile workers, including cross-border workers. For some benefits there are however special rules that apply to frontier workers only; these exceptions are represented by benefits in kind in the fields of sickness, accidents at work and occupational diseases, and by the area of unemployment.

g) Sickness, maternity and paternity benefits

The country where the worker is insured is responsible for paying sickness, maternity or paternity benefits in cash, i.e. **(cash) benefits** that replace a wage that has been suspended due to sickness. These benefits will be paid according to the rules of the country where the individual is insured, regardless of where he is living or staying⁸. By agreement between the two institutions, these benefits may be provided by the institution of the place of residence, at the expense of the institution of the country of work.

Benefits in kind⁹ are provided by the country of residence, on behalf of the competent institution, i.e. that of the country where the individual works.

h) Benefits in respect of accidents at work and occupational diseases

The country where the worker is insured is always responsible for paying **cash benefits** in respect of accidents at work and occupational diseases, i.e. benefits that replace a wage that has been

⁷ In October 2011, the European Commission provided a 'reasoned opinion' under EU infringement procedures to Italy, requesting the country to comply with its obligations under EU law to pay certain family allowances given by the region of Trentino-Alto Adige and the province of Bolzano to people working there but living in Austria. Until then, Italian authorities had refused to pay these allowances to the workers, based on the fact that the workers did not reside in Trentino – Alto Adige or Bolzano. In December 2011, the provincial council established that the residence clause would not be applied anymore.

⁸ Where the legislation of the competent State provides that benefits are calculated on the basis of average income or average contribution, the competent institution will determine such income or such basis only by reference to the income earning during the periods you completed under the legislation of the competent State. Likewise, where the amount of benefits is related to standard income, only standard income for the periods during which you were subject to the legislation of the competent State will be considered for calculation purposes.

⁹ As specified in the Regulation, these include 'all benefits in kind provided for under the legislation of a Member State which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care', including long-term care benefits in kind.

suspended due to an accident at work or an occupational disease. Cash benefits are normally paid out directly by the institution of the country where the worker is insured. The country of insurance can, however, agree with the institutions of the country where he lives or stays that his cash benefits will be paid out by them. This will not change the amount he receives.

The country of residence is responsible for providing all **benefits in kind**, e.g. healthcare and medicines, on behalf of the competent institution, in accordance with the legislation of the place of residence.

i) Unemployment benefits and labour market reintegration.

A frontier worker who becomes wholly unemployed is entitled to unemployment benefits in accordance with the legislation of the Member State of residence, as if s/he had been subject to that legislation while lastly (self-)employed. The individual must make himself/herself available to the employment services of that country, register as a person seeking work with these services and will be subject to the control procedure and the conditions applicable in the State of residence. The benefits are paid by the institution of the place of residence, but that institution will be reimbursed by the institution of the competent State for the benefits it has provided during the first three months (or during the first five months, if the individual worked at least 12 months during the last 24 months in the State of last employment or self-employment), up to the amount of unemployment benefit that would be payable under the legislation of the competent State. Entitlement to benefit, and the amount of benefit, is assessed entirely according to the legislation of the country of residence, but taking account of the working periods abroad.

The principle of equal treatment provides that the frontier worker has the right to look for work and receive support from national employment offices of the country where he used to work. He can therefore register with the employment services of that country, but he will have to comply with the checking procedures and obligations in both countries. However, as the benefits are always paid by the country of residence, the obligations and job-seeking activities there have priority.

On the other hand, if the frontier worker is partially or intermittently unemployed, s/he will receive benefits in accordance with the legislation of the competent State (normally the country of last employment or self-employment), at the expense of the competent institution. This is logical, as the professional relation with the employer or the business ties continue to exist and s/he has the best chance of finding work in the former country of (self-) employment.

1.2. Taxes

As far as taxation is concerned, there is no harmonisation nor coordination in Europe in the area of cross-border work. There is no general rule and the status of a frontier worker for tax purposes depends solely on national laws and double tax agreements between countries, which vary considerably and generally do not contain any special arrangements for cross-border workers at all.

When a tax agreement exists, the frontier worker will have to pay taxes in the country designated as competent in the double tax agreement between the country of residence and the country of employment.

The general rule applying to individuals residing in Italy and working abroad (and therefore to Italian frontier workers as well, since there is no specific rule for such workers) provides that these individuals will have to declare their labour income in Italy, benefiting from a tax rebate, meaning that a part of the income is considered non-taxable. Between 2003 and 2011, the non-taxable income was worth 8,000 euros; for 2012, it has been reduced to 6,700 euros; the 2013 Stability Law passed in December 2012 extended the right to the same rebate to incomes earned in 2013 as well (L. 244/2007 Art. 1 c. 204; L. 228/2012).

The main agreements involving the partner countries are the following:

- Tax Treaty Italy-Austria¹⁰

An individual who has his residence in a Contracting State near the frontier and who has his place of employment also near the frontier in the other Contracting State, and usually goes to work there, shall be taxed with respect to his income from employment only in the State of which he is a resident.

- Convention Italy-France¹¹

Employment income of persons living in the frontier zone of one of the States (i.e. those areas in Italy and those departments in France which are adjacent to the border) and working in the frontier zone of the other State shall be taxable only in the State of which such a person is resident.

- Italy-Slovenia¹²

The bilateral convention between Italy and Slovenia for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of fiscal evasion does not include any reference to the specific case of frontier workers. As a consequence, it is not possible to exclude cases of double taxation, both at the source and in the income tax return.

- Double taxation agreement Switzerland-Italy:

The agreement between Switzerland and Italy regarding the taxation of cross-border workers, which dates back to October 1974 and applies to the cantons of Graubünden, Valais and Ticino, is an integral part of the Double Taxation Agreement. Italian frontier workers in Switzerland are defined as Italians working in one of these three Cantons and living in the area within 20 km from the Swiss border. Under the 1974 agreement, the Cantons levy a withholding tax on the income of cross-border workers and return a share of this (38%) to Italy.

If the frontier worker lives outside the area within 20 km from the Swiss border, he is taxed in Italy with the general rules for Italian residents working abroad (presented above).

- Double taxation agreement France-Switzerland:

¹⁰ http://www.finanze.it/export/download/dipartimento_pol_fisc/au-en.pdf

¹¹ http://www.finanze.it/export/download/dipartimento_pol_fisc/franc-en.pdf

¹² http://www.finanze.it/export/download/fiscalita_internazionale_convenzioni/convenzione_slovenia_eng.pdf

There are two bilateral agreements between France and Switzerland, the Swiss-French agreement to prevent double taxation of 9 September 1966 and the agreement of 11 April 1983 for taxation of frontier workers.

1.3. Immigration laws

The free movement of persons is one of the fundamental rights guaranteed in the European Economic Area, and a core principle of the Treaty on the Functioning of the European Union (enshrined in Article 45).

The *Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons* (Decision 2002/309/EC, Euratom), signed on 21 June 1999 and entered into force on 1 June 2002, establishes the principle of **free movement of persons** between the territory of the European Community and that of the Swiss Confederation as well. It pursues the objective of reciprocally granting the right of entry, residence, access to paid work, establishment on a self-employed basis and the right to stay in the territory after their employment has finished to both European and Swiss nationals. The right of entry and residence applies to everyone, including those without an economic activity in the host country. There are however safeguard clauses (i.e. quotas) that the Swiss Federal Council can decide to use to restrict access to the country¹³.

1.4. Labour law

According to the principle of equal treatment, if an individual is working in a country other than that where he lives, he must be treated exactly the same as other workers who are nationals of that country, i.e. he has the right to benefit from all the services and advantages that residents of that country have. This applies to a number of work-related rights, e.g.:

- Working conditions (e.g. salary, dismissal, etc.);
- Training opportunities;
- Joining trade unions and exercising the related rights.

¹³ Recently, the Federal Council decided to invoke the safeguard clause, applying quotas from May-June 2013. These quotas however do not apply to cross-border workers.

2. Cross-border cooperation

A fundamental role in cross-border cooperation is played by EURES cross-border partnerships and Interregional Trade Union Councils (IRTUCs).

EURES is a co-operation network set up in 1993 between the European Commission and the Public Employment Services of the EEA Member States (the EU countries plus Norway, Iceland and Liechtenstein) and other partner organisations. Switzerland also takes part in EURES co-operation. The purpose of EURES is to provide information, advice and recruitment/placement (job-matching) services for the benefit of workers and employers as well as any citizen wishing to benefit from the principle of the free movement of persons. EURES cross-border partnerships bring together public employment and vocational training services, employers and trades union organisations, local authorities and other institutions dealing with employment and vocational training, in order to meet the need for information and coordination connected with labour mobility in the border regions. They serve as valuable points of contact among employment administrations, both regional and national, and the social partners; they are also an important means of monitoring these cross-border employment areas.

Interregional Trade Union Councils¹⁴ bring together the regional trade union organisations of national ETUC (European Trade Union Confederation)-affiliated confederations in cross-border regions. Out of a total of 45 cross-border partnerships, 11 involve Italy and 7 the Alpine Arch.

Both EURES cross-border partnerships and IRTUCs are also one of the primary sources of figures on frontier work.


2.1. EURES cross border partnerships

Euradria (IT-SI)

The framework agreement for cooperation between the public employment services, employers' and workers' organisations of the adjacent regions of Slovenia and Friuli Venezia Giulia was signed in Trieste in December 2007. In March 2008 this partnership was recognised by the European Commission. The cross-border region includes the entire territory of Friuli Venezia Giulia - the province of Trieste, Udine, Gorizia, Pordenone and the statistical regions Goriška, Obalno-kraška and Notranjsko Kraska in Slovenia within its boundaries.

Using as a starting point the proper dissemination of information about living conditions and employment, the main aim of the partnership is to promote the mobility of workers in the cross-border region in the interest of matching labour demand and supply, stimulating this mobility by identifying and removing barriers to mobility, providing assistance to jobseekers and employers in their respective searches for job opportunities and staff, safeguarding workers' rights and finally, taxation and insurance matters. The action is also directed at encouraging active policies which support the development of an integrated and mutually beneficial labour market, promoting processes which will lead to a real and solid harmonisation of rules and to uncovering and combating the black economy.

¹⁴ *Consigli Sindacali Interregionali (CSIR).*



Eures Euradria is supported by a network of Eures advisors throughout the Euradria region, working within the public employment services or for trades union and employers' associations in both countries.

TransTirolia (IT-AT-CH)

The framework conditions for cross-border cooperation between the employment services and the employers' organisations of the Tyrol and South Tyrol were signed in 1997 and renewed and extended to other organisations in May 2000. In November 2002, Grisons joined the EURES TransTirolia with the Kantonales Amt für Industrie, Gewerbe und Arbeit (KIGA) (Cantonal Office for Industry and Labour). The partnership covers the Federal State of Tyrol, including the districts of Landeck, Imst, Innsbruck (city and State), Schwaz and Lienz in Austria; the Autonomous Province of Bolzano-South Tyrol in Italy; and the Canton of Grisons in Switzerland.

EURAZUR (FR-IT)

The Eurazur partnership covers the territory of the Liguria region in Italy and the Provence-Alpes-Côte d'Azur (PACA) region in France, specifically the département of Alpes Maritimes on the French side and the province of Imperia on the Italian side.

The EURES Cross-border region of Eurazur Liguria/PACA was created in 1994 on the initiative of a voluntary partnership, with the support of the European Commission. The objective of the partnership is to promote the geographical and professional mobility of workers in the two regions, above all by identifying and providing workers and businesses with all types of information on mobility in the two border regions: job offers, living and working conditions, social security, taxation, and the job market. One of its main tasks is to identify and eliminate obstacles to the free movement of workers.

3. Qualitative and Quantitative Survey of the data regarding Cross-border Workers

Estimating the relevance of the phenomenon of cross-border work is a very difficult task, since the availability of data describing flows of frontier workers and their characteristics is very limited.

There is a huge lack of homogeneity in the type and quantity of statistics available. The national statistical offices generally do not provide harmonized data on the issue, nor do they systematically collect data to measure the flows. The provision of data is generally limited to local institutions and organizations (e.g. local offices of trade unions), based in areas where the phenomenon is more relevant, and to EURES cross-border partnerships.

A relevant exception is represented by Switzerland, whose statistical office systematically collects information on the flows of workers across the Swiss border; this is due to the considerable impact of frontier workers on the Swiss economy.

The next sections will provide an overview of data available for the different cross-border regions.

3.1 Italy/Slovenia

There is a lack of systematic and integrated monitoring of the phenomenon by both Italy and Slovenia; the definition of its dimension is still based on estimates, since no official data exists. Also, the significant role played by undeclared work in the local labour market, especially in the case of frontier workers, makes the task of measuring its impact even more difficult. The main problem is the ability to track workers who cross the border to perform their economic activity, which has been further reduced by the change of status of Slovenians from extra-EU to EU workers in 2004, which entitles them to the right of free movement within the European Union, without the need for special procedures and the release of authorizations to live and work in Italy.

According to the EURES report 'Eures T Italia/Slovenia – La risposta alla mobilità ed ai diritti dei lavoratori transfrontalieri', in 2006 the estimated daily number of individuals crossing the border between Italy and Slovenia for work reasons was around 1,850 for the province of Gorizia, and 7/8,000 for the provinces of Udine and Trieste¹⁵.

In 2005, the Slovenians enrolled in the Italian National Health System and not resident in Italy were around 1,640; though not a precise indicator of the number of cross-border workers, this number can represent a reasonable proxy, since these individuals have likely been working in Italy – which makes the enrolment in the health system compulsory – but had no interest in establishing their residence in the Region Friuli Venezia Giulia.

According to a study carried out by MKW GmbH on behalf of the European Commission¹⁶, based on information provided by Eures T Euradria, in 2007, around 10,300 cross-border workers were estimated, 10,000 from Slovenia to Italy (but considering the important role of illegal working and periodical work – e.g. in agriculture and tourism – this amount can reach seasonal peaks of about 15,000) and 300 in the opposite direction.

¹⁵ These figures are hardly comparable to the employment levels in the frontier regions, so it is not possible to establish the relevance of the phenomenon when compared to the dimension of the local labour market.

¹⁶ MKW Wirtschaftsforschung GmbH and Empirica Kft. (2009). Scientific Report on the Mobility of Cross-Border Workers within the EU-27/EEA/EFTA Countries – Final Report.

Besides agriculture and tourism, most Slovenians working in Italy are employed in the construction industry and in services like trade, communication and transports. Female Slovenians are most frequently occupied in household and health services.

Italian cross-border workers on the other hand are generally employed in the transports and communications, followed by the construction and manufacturing industry (mainly metallurgy and electric sectors) and services like hotels/restaurants and commerce.

Among cross-border workers between Slovenia and Italy there is a relatively high share of women and of older workers (aged 50 and above). The skill level of these workers is relatively low; however, since due to huge problems with the recognition of qualifications many workers are overqualified for their jobs, their actual skill level is believed to be higher than that reflected in their job.

There is a high incidence of illegal work, especially on the Italian side (mainly in the sectors of construction, agriculture and many services); among those regularly employed, the prevailing contractual arrangement is a permanent contract.

3.2 Italy/Austria(/Switzerland)

According to EURES TransTirolia, in the area comprising Alto Adige, Tyrol and the Canton of Grisons, there were approx. 1,700 cross-border workers in 2006, and some 4,000 young people were enrolled in a course in a neighbouring country.

According to the abovementioned study carried out by MKW GmbH on behalf of the European Commission, based on information provided by Eures TransTirolia, Austrian online labour market monitoring, Austrian statistic of regional health insurance companies, around 1,200 cross-border workers between Austria and Italy were estimated in 2007, 600 in each direction. Such low level of cross-border work is produced on the one hand from the nature barrier of the Alps, and on the other hand by the relatively similar salary and economic sectors structured on both sides of the border.

Tourism, hotels and restaurants are among the main areas of employment of cross-border workers.

Workers are mainly men, young and middle-aged, and are generally middle- to high-skilled. The prevailing contractual arrangement is as permanent employees.

3.3 Italy/France

According to the abovementioned study carried out by MKW GmbH on behalf of the European Commission, based on information from the French Local Health Insurance Board, INSEE and the Department of Finance and Economic Affairs of the Government of the Principality of Monaco, around 1,900 cross-border workers were estimated between Italy and France in 2006, around 500 from France to Italy (especially employed in agriculture, construction, trade, hotels and restaurants, health and social work), and around 1,400 in the opposite direction (mainly found in hotels and restaurants, construction, trade and transport); in 2007, around 3,700 frontier workers were estimated from Italy to Monaco, and 21,400 from France to Monaco (generally employed in construction, trade, real estate, renting and business activities as well as hotels and restaurants).

Around 60% of cross-border workers are men, they are mostly young and middle aged, and generally middle-skilled. They are mainly seasonal workers, generally employees with fixed-term employment contracts.

The 2011 IRTUC report 'Development of the role of the IRTUCs in strengthening cross border cooperation in the field of collective bargaining' shows higher flows of cross-border workers, around 900 individuals from France to Italy, and around 2,500 units from Italy to France. Frontier workers in the Principality of Monaco are reported to be around 3,600 from Italy and approximately 39,000 from France.

3.4 Austria/Slovenia

According to the abovementioned study carried out by MKW GmbH (in this case based on information provided by the EURES cross-border partnership, the Statistical Offices of Slovenia and Austria, and the Statistical database of the Economic Chamber of Austria), the number of cross-border workers between Austria and Slovenia in 2006 was around 3,500, of which 3,000 from Slovenia to Austria¹⁷ and 500 in the opposite direction. Most of Slovenians working in Austria are active in the sectors of hotel industry, construction and manufacturing, and to a lesser extent commerce, agriculture and health.

Among cross-border workers between these two countries, there is a slight prevalence of men, and a high concentration in the 25-40 age group. They are mostly middle- to low-skilled, especially those from Slovenia to Austria, who are also prevalently employed with fixed-term contracts.

3.5 Frontier workers in Switzerland

The Swiss Federal Statistical Office (FSO) systematically releases detailed statistics on cross-border workers (**Cross-border Commuter Statistics, CCS**), produced starting from Job Statistics (JOBSTAT) and the Central Information System on Migration.


According to the FSO¹⁸, frontier workers represented 5.2% of employed individuals in Switzerland (around 245,000 out of 4,719,000) in 2011 (see Table 1). This share is particularly high in some Cantons; for example, in Ticino the share of cross-border workers is around 23%, indicating that nearly 1 in 4 workers is a frontier worker (more than 50,000 out of 220,000).

According to the latest release of figures (March 2013), the number of cross-border commuters working in Switzerland rose by 4.8% between the last quarter of 2011 and the last quarter of 2012, up to around 264,000. This is 12,000 more than in the same quarter of 2011 and 32,000 more than in the same quarter of 2010 (+13.7%). As highlighted by the FSO, there has been a continuous increase in cross-border commuters over the last few years.

According to the FSO **Swiss Earnings Structure Survey 2010**, in that year the median gross monthly wage in Switzerland was 6,210 Swiss francs (for private and public sectors combined). The

¹⁷ As reported in the study, according to statistics of an EURES feasibility study, a total amount of 4,863 working permits were issued for Slovenians in 2006 (up from 4,305 in 2002) – of which a notable number can be considered legal residents. The extrapolation of 3,000 commuters bases upon this calculation, on regional population statistics and includes information on illegal employment numbers.

¹⁸ Indicateurs du marché du travail 2012. Office fédéral de la statistique (OFS). Neuchâtel, 2012.



median for Swiss nationals was 6,490, for cross-border workers it was around 600 francs lower (5,904, 9% below the Swiss level). The differential was higher among men (-13.29%) than among women (-6.38%). When disaggregating by level of qualification, men continue to suffer from a negative gap, while women with high qualifications (i.e. performing extremely demanding and difficult tasks; performing independent and skilled work; and performing work requiring professional/technical skills) even show a wage premium when compared to Swiss nationals. Women performing simple and repetitive tasks present a 9% negative gap when compared to their national counterparts.

Table 1. Cross-border workers in Switzerland

	2010				2011				2012			
	T1	T2	T3	T4	T1	T2	T3	T4	T1	T2	T3	T4
Total cross-border workers in CH	225,292	231,093	233,112	232,112	243,458	247,277	248,909	251,768	256,036	262,094	264,741	263,813
Italian cross-border workers	50,756	52,431	52,780	52,863	55,660	56,818	56,913	57,509	58,773	60,392	61,801	60,960
% of cross-border workers in CH	22.53	22.69	22.64	22.77	22.86	22.98	22.87	22.84	22.95	23.04	23.34	23.11
Graubünden / Grigioni / Grischun	3,395	3,778	3,880	3,479	3,786	4,127	4,134	3,811	3,991	4,344	4,411	4,074
<i>% of Italian cross-border workers</i>	<i>6.69</i>	<i>7.21</i>	<i>7.35</i>	<i>6.58</i>	<i>6.80</i>	<i>7.26</i>	<i>7.26</i>	<i>6.63</i>	<i>6.79</i>	<i>7.19</i>	<i>7.14</i>	<i>6.68</i>
Ticino	46,174	47,387	47,618	48,247	50,551	51,306	51,351	52,403	53,344	54,505	55,798	55,462
<i>% of Italian cross-border workers</i>	<i>90.97</i>	<i>90.38</i>	<i>90.22</i>	<i>91.27</i>	<i>90.82</i>	<i>90.30</i>	<i>90.23</i>	<i>91.12</i>	<i>90.76</i>	<i>90.25</i>	<i>90.29</i>	<i>90.98</i>
Valais / Wallis	814	882	903	771	942	994	1,028	897	1,033	1,112	1,152	984
<i>% of Italian cross-border workers</i>	<i>1.60</i>	<i>1.68</i>	<i>1.71</i>	<i>1.46</i>	<i>1.69</i>	<i>1.75</i>	<i>1.81</i>	<i>1.56</i>	<i>1.76</i>	<i>1.84</i>	<i>1.86</i>	<i>1.61</i>
Other Cantons	374	384	379	366	382	392	402	398	405	430	440	439
<i>% of Italian cross-border workers</i>	<i>0.74</i>	<i>0.73</i>	<i>0.72</i>	<i>0.69</i>	<i>0.69</i>	<i>0.69</i>	<i>0.71</i>	<i>0.69</i>	<i>0.69</i>	<i>0.71</i>	<i>0.71</i>	<i>0.72</i>
French cross-border workers	118,597	121,225	122,112	121,917	128,146	129,979	131,039	132,774	134,932	137,694	138,542	139,228
% of cross-border workers in CH	52.64	52.46	52.38	52.53	52.64	52.56	52.65	52.74	52.70	52.54	52.33	52.78
Basel-Landschaft	10,835	10,909	10,826	10,689	11,055	11,069	10,956	10,862	10,846	10,959	10,863	10,515
<i>% of French cross-border workers</i>	<i>9.14</i>	<i>9.00</i>	<i>8.87</i>	<i>8.77</i>	<i>8.63</i>	<i>8.52</i>	<i>8.36</i>	<i>8.18</i>	<i>8.04</i>	<i>7.96</i>	<i>7.84</i>	<i>7.55</i>
Basel-Stadt	16,761	17,117	17,127	16,760	17,349	17,415	17,426	17,593	17,651	17,975	17,928	17,681
<i>% of French cross-border workers</i>	<i>14.13</i>	<i>14.12</i>	<i>14.03</i>	<i>13.75</i>	<i>13.54</i>	<i>13.40</i>	<i>13.30</i>	<i>13.25</i>	<i>13.08</i>	<i>13.05</i>	<i>12.94</i>	<i>12.70</i>
Genève	54,999	56,103	56,817	56,931	60,134	60,603	61,001	61,475	62,711	63,293	63,595	64,938
<i>% of French cross-border workers</i>	<i>46.37</i>	<i>46.28</i>	<i>46.53</i>	<i>46.70</i>	<i>46.93</i>	<i>46.63</i>	<i>46.55</i>	<i>46.30</i>	<i>46.48</i>	<i>45.97</i>	<i>45.90</i>	<i>46.64</i>
Neuchâtel	7,871	8,086	8,174	8,219	8,650	8,966	9,128	9,393	9,613	9,913	10,148	10,047
<i>% of French cross-border workers</i>	<i>6.64</i>	<i>6.67</i>	<i>6.69</i>	<i>6.74</i>	<i>6.75</i>	<i>6.90</i>	<i>6.97</i>	<i>7.07</i>	<i>7.12</i>	<i>7.20</i>	<i>7.32</i>	<i>7.22</i>
Vaud	17,415	17,970	18,132	18,267	19,209	19,763	20,202	20,951	21,293	22,158	22,490	22,681



	2010				2011				2012			
	T1	T2	T3	T4	T1	T2	T3	T4	T1	T2	T3	T4
<i>% of French cross-border workers</i>	14.68	14.82	14.85	14.98	14.99	15.20	15.42	15.78	15.78	16.09	16.23	16.29
Other Cantons	10,715	11,040	11,036	11,052	11,749	12,163	12,326	12,500	12,818	13,396	13,520	13,367
<i>% of French cross-border workers</i>	9.04	9.11	9.04	9.06	9.17	9.36	9.41	9.41	9.50	9.73	9.76	9.60
Austrian cross-border workers	7,201	7,392	7,471	7,415	7,762	7,906	7,940	8,083	8,214	8,113	8,120	7,990
% of cross-border workers in CH	3.20	3.20	3.21	3.19	3.19	3.20	3.19	3.21	3.21	3.10	3.07	3.03
Graubünden / Grigioni / Grischun	438	421	430	454	467	454	457	473	484	444	446	425
<i>% of Austrian cross-border workers</i>	6.09	5.70	5.76	6.13	6.02	5.75	5.75	5.85	5.90	5.47	5.49	5.32
St. Gallen	6,085	6,222	6,237	6,201	6,519	6,663	6,690	6,799	6,893	6,870	6,844	6,742
<i>% of Austrian cross-border workers</i>	84.49	84.17	83.47	83.63	83.98	84.27	84.26	84.12	83.92	84.69	84.29	84.39
Other Cantons	678	749	804	760	776	789	793	811	836	798	830	822
<i>% of Austrian cross-border workers</i>	9.42	10.13	10.77	10.24	10.00	9.98	9.99	10.03	10.18	9.84	10.22	10.29

Source: Own calculations on Cross-border Commuter Statistics, Swiss Federal Statistical Office.

3.6 France/Switzerland

According to the Swiss Cross-border Commuter Statistics, in 4Q2012 there were around 139 thousand French frontier workers in Switzerland (up from around 122 thousand in 4Q2010 and 133 thousand in 4Q2011), constituting more than half the cross-border workers in the country (see Table 1). Nearly half of these French workers (46.6%, around 65 thousand individuals) performed their activity in Genève, 16.3% (around 23 thousand) in Vaud and 12.7% (18 thousand) in Basel-Stadt. Around 40% of French frontier workers have their residence in Upper Savoy, 23% in Upper Rhein, 15% in Doubs and 12% in Ain.

According to figures from the Observatoire statistique transfrontalier de l'Arc Jurassien (OSTAJ) of the Federal Statistical Office, 37% of French frontier workers in Switzerland were women.

The average age of French cross-border workers in Switzerland is 36.5 years. They mainly work with open-ended employment contracts (CDI, Contract Duration Indeterminée).

Their level of qualification is variable, but has been increasing over the last 10 years. In the frontier urban centres (Geneva and Basel) there is a higher concentration of managerial staff, while on the Arc Jurassien cross-border workers are mostly blue-collar skilled workers.

The main sectors of activity in the secondary sector are:

- Watch manufacturing;
- Pharmaceutical industry;
- Manufacturing of machine tools and fine mechanics;
- Construction.

In the service sector, the main areas of activity are:

- hotels and restaurants;
- health;
- commerce.

3.7 Austria/Switzerland

Austrian cross-border workers in Switzerland were around 8 thousand in the last quarter of 2012 (3% of total frontier workers in the country). The vast majority works in St. Gallen (around 6.7 thousand, 84% of the total Austrians), 5% works in the Canton of Grisons.

3.8 Italy/Switzerland

According to the Swiss Cross-border Commuter Statistics, in the last quarter of 2012, there were nearly 60,960 Italian frontier workers in Switzerland, making up around 23% of total cross-border workers in the country. Over the three years considered in Table 1, the dimension of cross-border work from Italy increased even more significantly than the overall phenomenon (+6% in the last quarter of 2012 when compared to the same quarter of 2011, +15.3% on the same quarter of 2010). Around 91% of Italian cross-border workers (55,462) performed their activity in Ticino in 4Q2012, 6.7% in the Canton of Grisons (4,074) and 1.6% in the Canton of Valais (439). The distribution of cross-border workers between Cantons remained rather stable over time.

According to the MKW Report, in 2007 the number of Italian cross-border workers in Switzerland was around 44,000, reinforcing evidence of an increase in the dimension of the phenomenon over the last years. About 59% of cross-border workers in 2007 were men; 44% were in the age group 25-39, 36% were aged between 40 and 54. Female workers were on average younger; 56% of them were in the age group 15-39, the same share among men being 50%. Workers were mainly middle-skilled, and employed as permanent employees.

Using figures released by the Statistical Office of the Canton Ticino (Ustat) it is possible to provide a more complete picture of the characteristics of the workers in this Canton. Although not all statistics are disaggregated by country of residence, since almost all frontier workers are Italian it is possible to infer a lot about the features of the phenomenon of Italian cross-border work in the Canton.

As highlighted in Table 2, cross-border commuters are predominantly men; out of the 55,462 Italian frontier workers in Canton Ticino in 4Q2012, almost 34 thousand were males (60.75%).

In the last quarter of 2012, around 20% of cross-border workers in Ticino were below 30 years of age, 60% in their thirties or forties. 54.5% of workers were employed in the service sector (mostly wholesale and retail), 45.5% in the industry sector (mostly in manufacturing and construction), and 1% in the primary sector. Frontier workers represented 47% of employment in the secondary sector and 15% in the tertiary sector in 2008.

Table 2. Cross-border workers in Canton Ticino – 4th quarter 2012

	N.	% of total
All frontier workers	55,554	
- By gender		
Male	33,749	60.75
Female	21,805	39.25
- By age group		
15 - 19	638	1.15
20 - 24	3,647	6.56
25 - 29	6,567	11.82
30 - 34	7,630	13.74
35 - 39	8,872	15.97
40 - 44	8,677	15.62
45 - 49	8,011	14.42
50 - 54	5,225	9.41
55 - 59	3,456	6.22
60+	2,830	5.09
- By economic sector		
Primary	513	0.92
Secondary	24,756	44.56
Tertiary	30,285	54.51

Italian frontier workers		55,462	
<hr/>			
- By gender			
	Male	33,694	60.75
	Female	21,768	39.25

Source: Statistical Office of the Canton Ticino and own calculations.

According to data provided by UIL SGK, the number of cross-border workers living in Trentino-Alto Adige/Südtirol and active in Switzerland have been declining over most of the 2000s, from 506 in 2000 to 413 in 2003, then rising again but dropping back to 400 in 2006-2007. In 2009 a significant increase up to 620 was registered.

4. The reasons for cross-border work

The drivers of cross-border workers can be traced back to the ‘push and pull factors’ developed in migration theory. As mentioned in the MKW Report, ‘according to the “push factors” theory poverty and unemployment push people away from their home region, thus regulating the level of “out-commuting”¹⁹. In contrast “pull factors”, for example high income and good living conditions, attract people, “pulling” them towards a region; pull-factors regulate the level of “in-commuting”²⁰’.

In general, the main determinants of cross-border flows are wage and income differentials; employment opportunities; and individual opportunity and risk assessment.

When considering the case of Italian cross-border workers in Switzerland, there is a mix of push and pull factors. On the one side, a substantial push factor is the current crisis of the Italian labour market: as a matter of fact, ‘the economic situation of Switzerland and Italy are very different; while the Swiss GDP has been growing steadily at a rate between 1.5 and 2.5% over the last years (with the sole exception of 2009), Italy is still undergoing a tough economic recession, with decreasing employment and increasing unemployment rates. As a consequence, workers losing their job in Italy are encouraged to seek employment in Switzerland’ (UIL Frontalieri Como – Le motivazioni del lavoro frontaliero). On the other hand, the chance to earn higher wages is a relevant pull factor to Switzerland: ‘the average wage in Switzerland is considerably higher than the Italian level, an employee in Switzerland earning around 80% more than what he would earn in Italy for the same type of job. This consistent difference is driven mostly by a gross wage which is indeed higher than what would be paid in Italy, and partly also by a smaller burden of tax and contribution rates’ (UIL Frontalieri Como – Le motivazioni del lavoro frontaliero).

The reasons that have brought many French residents to work in Switzerland can be reconducted more to pull factors, and include:

- ‘The dynamism of the employment sector in Switzerland;
- The variety of jobs offered;
- The availability of skilled and highly skilled jobs that are not available in the country of residence;
- higher wages;
- the good knowledge of the language spoken in the country’ (Force Ouvrière).

¹⁹ I.e. the perspective that commuters leave their country of residence to work in a neighbouring country.

²⁰ I.e. the perspective that commuters from a neighbouring country enter the labour market of the respective country.

Obstacles to cross-border work in Alpine arch countries

Introduction

This second paper for the InArco Project is aimed at presenting an overview of the obstacles to cross-border work detected in the countries involved in the project. Given the local characterization of the phenomenon and the scarce availability of data, a limited number of studies have been carried out on this topic; several of them are based on contributions of organizations with a direct experience on the issue, rather than on comprehensive or sample surveys involving cross-border workers. As outlined in the first InArco Paper on “Cross-border work in the EU labour market”, EURES cross-border partnerships play a major role in supplying services and providing information, thus many of their documents were used as a source for the present paper. Inputs were also provided by trade unionists and other experts working in the area that were asked to fill in a questionnaire about the obstacles that cross-border workers face. Further inquiries, bilateral conventions and national laws complete the list of sources used.

5. Obstacles to cross-border workers mobility in the Alpine Arch Region

This section is aimed at providing a comprehensive overview of the situation of cross-border workers in the Alpine Arch Region, and of the obstacles they face.

The following tables present an overview of the situation in the countries, based on the evidence gathered and integrated by the assessments provided by the partners of the InArco project who were asked to fill in the questionnaire drafted by UIL (Unione Italiana dei Lavoratori).

Table 3 – Social security and labour law

	IT-HR	IT-SLO	IT-CH	IT-FR	FR-CH
Social security					
Presence of discrimination in payment of social security benefits to cross-border workers?	Yes	Yes	Yes	Yes	No
If yes, type of benefit and reason for not paying them	Although, given the recent accession of Croatia, cases of discrimination have not been registered yet, it is however possible to infer that, as for cross-border workers residing in Slovenia and working in Italy, workers residing in Croatia will not be entitled to the mobility allowance and in some cases to specific social security benefits either.	Cross border workers residing in Slovenia and working in Italy are not entitled to the mobility allowance and in some cases to specific social security benefits.	No special unemployment benefit for Italian cross-border workers anymore; no Italian unemployment benefit to those with double citizenship because of no G Permit; Uncertainty on taxation of revenues from the Swiss Second Pillar pension fund.	Access to social benefits and information is rather difficult. The cases in which benefits were not paid depend on the strong complexity and difficulty in understanding the rules and functioning of social security benefits.	
Level of cooperation between social security institutions in the border area	N/A	N/A	Insufficient	Insufficient	Sufficient

If scarce, for what benefits and reason for unequal treatment	-	-	Unemployment Second pillar	Workers resident on the Italian territory and working in France are forced to seek for reliable information in a number of different offices across the frontier, making it hard to find a solution to their problems. The same issue is true for the U1 form certifying insurance periods; cross-border workers need to make several journeys and wait for long periods to obtain this form.	
Possibility for cross-border workers who remained fully unemployed to enroll in Public Employment Services in the state of last employment	In Italy: no. In Croatia: N/A.	In Italy: no. In Slovenia: no.	In Italy: no. In Switzerland: no.	In Italy: no. In France: no.	In France: yes. In Switzerland: yes.
Labour law					
Disregard of principle of equal treatment in work legislation	Cross border commuters cannot enroll in Public Employment Centres in Italy	Cross border commuters cannot enroll in Public Employment Centres in the country of work (in both directions of commuting)	Cross border commuters cannot enroll in Public Employment Centres in the country of work (in both directions of commuting)	N/A	N/A

Table 4a – Taxation

	IT-FR	IT-SLO	IT-CH
Presence of a convention or agreement to avoid double taxation on income	Yes	Yes	Yes
If yes, does it provide a definition of cross-border worker?	No	No	Yes
If so, what is the definition?	-	-	Individuals residing in Italy and working in the cantons of Graubünden, Valais and Ticino, and living in the area within 20 km from the Swiss border, in one of the municipalities included in the list of frontier municipalities provided in the Directives of the Finance Department of Canton Ticino
Is this definition sufficient to ensure that cases of double taxation on income of cross-border workers are avoided?	-	-	No

	IT-FR	IT-SLO	IT-CH
If one or more Conventions or Agreements exist, but cross-border worker aren't mentioned and defined in it/them, how is the taxation of cross-border workers income?	In accordance to the article on subordinate work of the Agreement for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion between Croatia and Italy, taxes are paid in the country of employment (through the mechanism of the withholding agent), but the country of residence is entitled to ask the cross-border worker to include under his taxable income in his income tax return, also the wages earned in the country of work. The worker is however entitled to subtract the amount of taxes paid in the country of work from the amount due, up to a defined threshold.	In accordance to the article on subordinate work of the Convention for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of fiscal evasion between Italy and Slovenia, taxes are paid in the country of employment (through the mechanism of the withholding agent), but the country of residence is entitled to ask the cross-border worker to include under his taxable income in his income tax return, also the wages earned in the country of work. The worker is however entitled to subtract the amount of taxes paid in the country of work from the amount due, up to a defined threshold.	
Does, in the tax domestic laws of your country, a law definition of a cross-border worker exist?	In Italy: no. In Croatia: N/A.	In Italy: no. In Slovenia: N/A.	In Italy: no. In Switzerland: N/A.
Which tax authorities do cross-border workers in the border area have to respond to? Only one government or both governments?	Tax authorities of both countries	Tax authorities of both countries	Tax authority of country of work. Tax authority of country of residence, if they declare they work outside the 20 km area
If both governments, what's the level of cooperation between both tax authorities in order to avoid double taxation on income of cross-border workers?	Too early to tell	No cooperation	Insufficient

Table 4b – Taxation

	IT-FR	IT-AT	FR-CH	HR-SLO	AT-CH	AT-SLO
Presence of a convention or agreement to avoid double taxation on income	Yes	Yes	Yes	Yes	Yes	Yes
If yes, does it provide a definition of cross-border worker?	Yes	Yes	Yes	No	No - abolished by 2006 Protocol	No
If so, what is the definition?	Persons living in the frontier zone of one of the States and working in the frontier zone of the other State (Art. 15 of the Convention for the avoidance of double taxation of income and capital and for the prevention of fiscal evasion and fraud between Italy and France). According to the subsequent Protocol, frontier zones are defined as Regions (for Italy) and Departments (for France) close to the border (i.e. from the Italian side, the Regions Valle d'Aosta, Piemonte, Liguria and Sardegna; from the French side, the Departments Haute-Savoie, Savoie, Hautes-Alpes, Alpes de Haute Provence, Alpes-Maritimes and Corse du Sud).	An individual who has his residence in a Contracting State near the frontier and who has his place of employment also near the frontier in the other Contracting State, and usually goes to work there.	An individual residing in a State and employed in another State from an employer based in this State, and who usually returns daily to the State of residence.	-	-	-
Is this definition sufficient to ensure that cases of double taxation on income of cross-border workers are avoided?	Yes	No	Yes	-	-	-

	IT-FR	IT-AT	FR-CH	HR-SLO	AT-CH	AT-SLO
If one or more Conventions or Agreements exist, but cross-border worker aren't mentioned and defined in it/them, how is the taxation of cross-border workers income?					Taxes are paid in the country of work.	Taxes are paid in the country of work.
Does, in the tax domestic laws of your country, a law definition of a cross-border worker exist?	In Italy: no. In France: no	In Italy: no. In Austria: N/A	No			
Which tax authorities do cross-border workers in the border area have to respond to? Only one government or both governments?	Tax authority of country of residence	Tax authority of country of residence		Taxable in the State of residence, with 4.5% compensation to the State of work. Exception - Canton of Geneva: taxable in the Canton of work when this is Geneva, with 3.5% compensation to the Country of residence		
If both governments, what's the level of cooperation between both tax authorities in order to avoid double taxation on income of cross-border workers?	Insufficient		Insufficient			

Before analyzing problems connected with each region considered, it is useful to introduce some of the findings, connected with national evidence of some specific country or resulting across many of them.

Almost all the experts asked to assess Italy affirmed that there are differences in payment of social benefits that could be considered as discriminative practice. Some of the problems come from the principle of residence as a requirement for the entitlement to some social benefits (questionnaire compiled by the representative of UIL Friuli Venezia Giulia; Eures Euradria 2009). Another main issue that has been highlighted is double taxation. Since 2003 the Annual Budget Laws established a no tax area of 8,000 € for individuals residing in Italy and working abroad, therefore applicable to exempt cross border workers from bearing an excessive tax burden. In 2011 the Monti government intention not to reply such provision raised concerns by deputies both of center-left and center-right orientation, that obtained to reduce the scope of the government to a mere reduction to 6,700 €, later confirmed for the years 2012 and 2013. Recently the topic was also object of a purpose of Law with the aim to provide a stable framework for the no tax area (see Proposta di legge n. 1218 “Agevolazioni fiscali in favore dei lavoratori frontalieri” presented on 18/06/2013²¹). This category of workers however benefits also from the tax credit foreseen by Art. 165 of Testo Unico delle imposte sui redditi (DPR 917/86)²².

Switzerland, a major attractor for many Europeans, also presents some issues. Both Italian- and French-resident cross-border workers recently faced a change in the rules for unemployment benefits following Decision No 1/2012 of the Joint Committee on the Free Movement of Persons established between the European Community and its Member States, and the Swiss Confederation (31 March 2012) which extended the application of the rules established by EC Regulation 883/2004 to Switzerland as well. The transition between the systems previously in place, based on bilateral agreements between Switzerland and the two countries but also on national laws (e.g. Law 149/97 in Italy), and the current system caused relevant concerns for cross-border workers. There are also problems arising concerning taxation in Italy of the income from the compulsory second pillar pension accrued in Switzerland.

Another obstacle not to be underestimated is the phenomenon of wage dumping²³. As a matter of fact, the lower wages that cross-border workers tend to have when compared to local mean wages not only represent a case of discrimination in working conditions, but also creates tensions between resident and cross-border workers in Switzerland, culminating in episodes of intolerance of the resident population against cross-border workers.

On the other side, other factors favor cross border commuting. Foreign workers can subscribe a health insurance in the residence country and have access to health care in Switzerland paying a minor contribution (Eures Bodensee 2012). Furthermore, Switzerland provides social transfers for

²¹ Available at: http://www.camera.it/leg17/995?sezione=documenti&tipoDoc=lavori_testo_pdl&idLegislatura=17&codice=17PDL0007520

²² According to the Art. 165 they benefit from a “detrazione” (tax credit) equal to the taxes due in the foreign country for the quota of the income produced abroad on the total income perceived.

²³ Concerning the issue of wage dumping, we also refer to the opinion of the Committee of the Regions (ECOS-V-041) “*Frontier workers – Assessment of the situation after twenty years of the internal market: problems and perspectives*”. The Committee observes, under Point 25, that the presence of wage dumping “creates a particular challenge for the existing advisory services at the old external borders. The Committee calls on the Commission to ensure that frontier workers from countries with lower wage levels do not face discrimination in countries where wage levels are higher.”

child care to cross border workers that demonstrate not to have an analogue right in the residence state or when this right is limited (Eures Bodense 2012).

According to MKW Wirtschaftsforschung & Empirica Kft. (2009a), acceptance of educational qualifications acquired abroad is a factor hampering mobility between France and Italy, Italy and Slovenia, and Italy and Austria.

Problems can arise from lack of knowledge about careers or from different administrative systems that lead to the non acceptance of a qualification. In particular between Italy and Slovenia, MKW Wirtschaftsforschung & Empirica Kft. (2009a, 2009b) pointed out the length of administrative procedures that hardly comply with the timing required by the labour market functioning, determining cross-border workers to be employed in lower positions and preventing them from transferring.

Finally it is important to remark the role of the flow of information in easing mobility, by reducing asymmetries and preventing mistakes that could lead to unexpected charges. Besides the work of EURES cross-border partnerships and Interregional Trade Union Councils, it is worth mentioning, for instance, the work of websites such as www.frontalier.org and of www.ejg.info. Both portals provide information about legislation concerning cross border workers and work opportunities. The first one is focused on the French-Swiss border and is managed by an association of cross border commuters, while the second is supported by a trans-border partnership between the local institutions near the borders across Italy, Switzerland, Liechtenstein, France and Germany.

In the following, some of the issues presented in the Tables reported above will be further analyzed.

5.1 Italy – Slovenia

Concerning cross-border work between Friuli Venezia Giulia and Slovenia, both the questionnaire compiled by the representative of UIL Friuli Venezia Giulia and the other sources used for this section (MKW Wirtschaftsforschung & Empirica Kft , 2009a and 2009b; Eures Euradria, 2009) highlight the existence of a few obstacles for cross-border workers.

Social security

The Italian Social Security Institute does not grant the so called *indennità di mobilità* (mobility allowance, a social security benefit which exists only in Italy and was established by Law 223/91)²⁴ to those workers that, after being dismissed due to an occupational crisis, do not have at least the domicile in Italy. The absence of residence or domicile in the Italian territory is considered by INPS as a sign of lack of interest from the worker in finding further employment in the country; as a consequence, since the mobility allowance is a measure aimed at helping re-employment of the worker in Italy, those not residing or domiciled in the country are not entitled to receive the benefit.

Cross-border workers formerly employed in Italy, who would be entitled to the benefit if they had a domicile in the country (which is clearly not compatible with the status of cross-border worker),

²⁴ Certain categories of firms can ask for mobility procedures, where a collective dismissal takes place generally because of downsizing or closure. In such cases workers receive the mobility allowance, longer than the ordinary unemployment benefit, and employers are incentivized to hire them through a list mechanism.

can only enroll to Public Employment Services in the country of residence and apply for the ordinary unemployment benefit there, as established in the EC Regulation 883/2004, according to the rules of legislation of the country of residence concerning the amount and duration of the benefit.

However, since according to EU regulations, cross-border workers are covered by the social security system of the country of work and not of residence (with the exception of the unemployment benefit, as abovementioned), Italy should grant to cross-border workers the same treatment granted to resident workers. As a consequence, in case of job loss due to occupational crises that are dealt with through mobility allowance procedures ex l. 223/91 (which is a different measure than the ordinary unemployment benefit), cross-border workers residing abroad should be entitled to access this benefit. This is the position of the trade unions of Friuli Venezia Giulia, the region where such cases arise most frequently since this is the only region with a consistent inflow of cross-border workers; this position is unluckily not yet supported by any court sentence on the issue.

Furthermore, there are cases where access to specific social security benefits is made conditional upon a certain duration of stay in the Region, as for the family card from Regione Friuli Venezia Giulia, or even the Italian citizenship, as used to happen for the social card (questionnaire and Eures Euradria 2009).

Labour law

Cross-border workers are not entitled to enroll in Public Employment Services in the country of work.

Taxation

The Convention for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of fiscal evasion between Italy and Slovenia does not provide a definition of cross-border workers, so no specific provision for this category exists. In accordance to the article on subordinate work of the Convention, taxes are paid in the country of employment (through the mechanism of the withholding agent), but the country of residence is entitled to ask the cross-border worker to include under his taxable income in his income tax return, also the wages earned in the country of work. The worker is however entitled to subtract the amount of taxes paid in the country of work from the amount due, up to a defined threshold.

The questionnaire compiled by the representative of UIL Friuli Venezia Giulia underlines a general lack of coordination between the fiscal institutions of the two countries, which makes access to information and understanding of the procedures difficult for cross-border workers. As a result it is not possible to rule out the possibility that residents in Slovenia working in Italy can endure episodes of double taxation.

Other issues

Euradria (2009) and MKW Wirtschaftsforschung & Empirica Kft. (2009b) point out a number of other obstacles that are not specific to cross-border workers but can apply to all mobile workers between the two countries.

A first one is the possible lack of information. As a matter of fact, there is scarce communication between the institutions of the areas involved, with little information available about the possibility

to work across the border and a limited attitude of small firms on both sides of the frontier to extend the search for workers to the other side of the border. This problem is strengthened by a cultural attitude to consider Slovenia only as exporter of workforce, while also the general lower salaries seem to disincentive commuting to the close Slavic country.

Another obstacle is the adoption of different standards in the acceptance of qualifications, which often leads workers to accept jobs far under their level of education, thereby reducing heavily mobility of some categories, such as Italians working in Slovenian Health Sector. In the opposite direction, a strong cultural resistance is perceived against the employment in Italy of high-skilled Slovenians (e.g. doctors).

A third problem is the lack of public transport connecting the two countries.

Finally, differences of languages work as a further limit.

The teaching of both the languages in the border region schools, and the development of forms of cooperation between trade unions, employers organizations and institutions can be seen as a fundamental solution to remove some of the obstacles. A few cases of cooperation between institutions that represent best practices in the area are already in place, such as the Pact between Gorizia and Nova Gorica that ease the access to city hospitals to inhabitants of the two cities (EURES Euradria, 2009).

5.2 Italy – Switzerland²⁵

Social security

A particularly relevant issue in the area of social security that recently arose concerns the unemployment benefit. The Italian Law 147/97 established a fund constituted by contributions paid by Italian-resident cross-border workers and their Swiss employers that guaranteed a longer and more generous unemployment benefit than the ordinary Italian one for this category of workers. Starting from 2002, relations between Italy and Switzerland concerning social security are regulated by the EU-Switzerland agreement, establishing the application of EU regulations to Switzerland as well. Nevertheless, Switzerland accepted to maintain for further 7 years the previous bilateral agreement with Italy, so that the special unemployment benefit could continue to exist. At the end of the agreed period, in 2009, Switzerland decided not to prorogate the application of the bilateral agreement. In April 2013 the Italian National Security Institute (INPS) issued a circular letter providing for the application to cross-border workers residing in Italy and working in Switzerland of the same ordinary benefits that apply to the other Italian workers (see Circolare n. 50 of 04/04/2013), under the rules of the EC Regulation 883/2004 which – following Decision No 1/2012 of the Joint Committee on the Free Movement of Persons established between the European Community and its Member States, and the Swiss Confederation (31 March 2012) – are now applicable to relations with Switzerland. On the other hand, the Italian Trade Unions claimed that the cited Regulation aims at coordinating states' policies and not at substituting them. As a matter of fact, the special fund was established by an Italian Law which was never abrogated; the fund is

²⁵ Switzerland is mainly an importer of workforce, especially with regards to Italy. Therefore the following paragraph address issues regarding Italian commuters, while no relevant document was found about workers moving in the opposite direction. The MKW Wirtschaftsforschung & Empirica Kft analysis (2009b) deems their amount “insignificant”.

reckoned to have still a worthy 270 million endowment, which should be used for the purposes for which the fund was established until exhaustion of resources²⁶.

A second issue concerning unemployment has been identified in the Questionnaire compiled by the representative of Patronato ITAL-UIL of Mendrisio: beside pointing out the scarce overall cooperation between Italy and Switzerland concerning fiscal issues and social benefits, it is observed that Italy does not pay unemployment benefits to Italian-resident cross-border workers having dual citizenship, since they do not need the G Permit, i.e. the work permit specifically addressed at foreign cross-border workers in Switzerland that is generally used to certify this status.

Labour law

Another problem emerging in the questionnaire is that commuters are not allowed to enroll in public employment centres and benefit from their services in the working country.

Taxation

The agreement between Switzerland and Italy regarding the taxation of cross-border workers, which dates back to October 1974 and applies to the cantons of Graubünden, Valais and Ticino, is an integral part of the Convention between Switzerland and Italy for the avoidance of double taxation and the regulation of certain other questions relating to taxes on income and capital. Cross-border workers in Switzerland are defined as individuals residing in Italy and working in one of these three Cantons, and living in the area within 20 km from the Swiss border, in one of the municipalities included in the list of frontier municipalities provided in the Directives of the Finance Department of Canton Ticino²⁷.

Under the 1974 agreement, the Cantons levy a withholding tax on the income of cross-border workers and return a share of this (38%) to Italy.

If the frontier worker lives outside the area within 20 km from the Swiss border, he has to declare his labour income in Italy, benefiting from a tax rebate.

This arbitrary distinction between residents within or outside the 20 km area (and in the pre-determined list of municipalities) creates potential contradictions in treatment of cross-border workers.

An issue in the area of taxation concerns the taxation of Second Pillar pensions. Italian residents working in Switzerland pay compulsory pension insurance under the so called “First Pillar” (for the basic pension) and “Second Pillar” (the professional insurance that should ensure to maintain the habitual living conditions)²⁸. At the moment of receiving the pension, there is a twofold risk. According to the existing Convention pensions are taxed in Switzerland and retirees can ask back the eventual gap to the INPS. In reality Swiss taxes are lower than Italian ones, thus retirees are not

²⁶ The issue was also object of two parliamentary interrogations by deputies of Northern League and Democratic Party. While on. Braga cited the art. 1, paragraph 4 of the art. 147/97, that foresees that special unemployment benefits are paid as long as the fund has resources, the Government stressed that in order to respect budget equilibrium INPS cannot afford such expenses without having current transfers from Switzerland and that the recently introduced “*Assicurazione sociale per l’impiego*” (the new unemployment benefit that will gradually substitute the existing subsidies) will be tailored on the income perceived in the last 2 years thus reflecting differences in wages (see Interrogazione a risposta in Commissione 5/080064 at: http://banchedati.camera.it/sindacatoispettivo_16/showXhtml.Asp?idAtto=60716&stile=6&highLight=1).

²⁷ http://www4.ti.ch/fileadmin/DFE/DC/DOC-IF/Direttive_2012/dir_01-2010.pdf.

²⁸ Also a “Third Pillar” exists as a complementary voluntary insurance managed by private companies.

incentivized to declare the difference, while those who declare it undergo the risk that transfers paid under the Second Pillar are taxed as Italian *Trattamento di Fine Rapporto* (TFR, an end-of-service allowance), with high losses due to the consistent difference²⁹. Notwithstanding a document of Italian Revenue Agency (Agenzia delle Entrate) (Circolare n. 2004/66566) affirmed that only to the quota accumulated as interests on the paid contributions should be taxed as capital income (12.5%) according to the Law 482/85, uncertainty still occurs due to the lack of a punctual normative regulation (Cartolano 2006; Questionnaire compiled by the representative of Patronato ITAL-UIL of Mendrisio).

Other issues

Other issues at stake when considering problems of Italian residents commuting to Switzerland for work do not specifically concern cross-border workers. A first problem is the natural barrier created by the Alps, with the bad conditions of the streets in the winter. A second issue is the scarce provision of public transport across the countries (MKW Wirtschaftsforschung & Empirica Kft, 2009 b).

5.3 Italy – Croatia

Social security

Although, given the recent accession of Croatia, cases of discrimination have not been registered yet, it is possible to infer that cross-border workers residing in Croatia and working in Italy will be treated in the same way as those residing in Slovenia. They might be therefore not entitled to the mobility allowance and in some cases to specific social security benefits (see the Section on Italy-Slovenia).

Labour law

Cross-border workers residing in Croatia and working in Italy will not be entitled to enroll in Public Employment Services in the country of work.

Taxation

The Agreement for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion between Croatia and Italy does not include any specific provision for cross-border workers, which are not defined in the Agreement.

In accordance to the article on subordinate work of the Agreement, taxes are paid in the country of employment (through the mechanism of the withholding agent), but the country of residence is entitled to ask the cross-border worker to include under his taxable income in his income tax return, also the wages earned in the country of work. The worker is however entitled to subtract the amount of taxes paid in the country of work from the amount due, up to a defined threshold.

²⁹ Italian retirement benefits are shared between TFR, that give back in one payment a gross amount of the contributes paid, and the monthly pension. While it is difficult to estimate the average taxation of TFR, Swiss percentages are certainly lower. In fact TFR taxation is related to average income tax paid. While income from dependant work lower than 8.000 € are not taxed in Italy, the exceeding part is subject to progressive quotas from 23% up to 43%, while Switzerland taxes the pension with percentages usually around 5%, as indicated in the Direttiva N. 6 and 7 of Divisione Contribuzioni (<http://www4.ti.ch/dfe/dc/dichiarazione/direttive/dir-fonte-attuale/>).

5.4 Slovenia – Croatia

Taxation

Cross-border work is not explicitly taken into account in the Agreement between Croatia and Slovenia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital. As a consequence, a cross-border workers needs to fill in an income tax return in both countries, with the consequent risk of situations of double taxation.

5.5 France – Italy

Social security

The main obstacle identified in the Questionnaire compiled by the representative of Direzione Regionale INPS Liguria concerning frontier workers residing in Italy and working in France is the presence of relevant difficulties in accessing social benefits ascribed to the lack of coordination between institutions. These cross-border workers are forced to seek for reliable information in a number of different offices across the frontier, making it hard to find a solution to their problems. The same issue is true for the U1 form, the statement of insurance periods to be taken into account when calculating an unemployment benefit, that is issued by the public employment service or the competent social security institution in the last country(ies) where the worker was employed and needs to be submitted to the national employment service in the country of residence; cross-border workers need to make several journeys and wait for long periods to obtain this form.

No other relevant obstacle has been identified in the second Questionnaire, compiled by the representative of UIL Frontalieri Ventimiglia, which provides a positive assessment of the level of cooperation between the countries involved in the provision of social security benefits to cross-border workers.

Finally, it should be pointed out that the same obstacle presented in the case of Italy-Slovenia, i.e. the non-eligibility to mobility allowances for workers not residing in Italy, is applicable to workers residing in France as well.

Labour law

Cross-border workers are not allowed to enroll in public employment centres and benefit from their services in the working country.

Taxation

The Convention for the avoidance of double taxation of income and capital and for the prevention of fiscal evasion and fraud between Italy and France takes explicitly into account cross-border workers.

According to Art. 15 of the Convention, cross-border workers are defined as persons living in the frontier zone of one of the States and working in the frontier zone of the other State. According to the subsequent Protocol, frontier zones are defined as Regions (for Italy) and Departments (for France) close to the border (i.e. from the Italian side, the Regions Valle d'Aosta, Piemonte, Liguria and Sardegna; from the French side, the Departments Haute-Savoie, Savoie, Hautes-Alpes, Alpes de

Haute Provence, Alpes-Maritimes and Corse du Sud). Article 15 provides that the employment income of these individuals shall be taxable only in the country of residence.

Other issues

MKW Wirtschaftsforschung & Empirica Kft. (2009a, 2009b) highlight a few somewhat broader types of obstacles, namely:

- the scarcity of information available to commuters;
- language differences;
- weak connections, namely few trains crossing the borders and delays.

5.6 France – Switzerland

Social security

No particular issue concerning social security is highlighted in the questionnaire compiled by the representative of Force Ouvriere, and cooperation between institutions of the two countries is considered to be sufficient.

Taxation

Article 17 of the Convention between Switzerland and France for the avoidance of double taxation refers to the Agreement of 11 April 1983 on the taxation of wages of cross-border workers³⁰ as an integral part of the Convention. Article 3 of the Agreement defines a cross-border worker as an individual residing in a State and employed in another State from an employer based in this State, and who usually returns daily to the State of residence. It established that wages of cross-border workers are taxable only in the State of residence, but with a compensation to the other State equal to 4.5% of the retribution mass of these workers. This rule does not apply to the Canton of Geneva, which never joined the agreement. As a consequence, cross-border workers resident in France and working in this canton are taxable in the place of work, according to Article 17 Paragraph 1 of the Convention between Switzerland and France; following the Agreement between France and Geneva of 29 January 1973, the Canton pays a compensation equal to 3.5% of the gross wage mass of cross-border workers residing in France.

Other issues

MKW Wirtschaftsforschung & Empirica Kft. (2009b) identifies a few other more general obstacles to cross-border work between France and Switzerland, namely the lack of language skills, and asymmetries in acceptance of qualifications.

Furthermore, the growing presence of French workers, rather concentrated in Geneva, raised strong concerns in the local population (Jaberg & Fenazzi 2013).

³⁰ <http://www.amtsdruckschriften.bar.admin.ch/viewOrigDoc.do?id=10114139>

5.7 Italy – Austria

Social security

In the area of social security, a problem arose in recent years concerning family allowances paid by the Region Trentino-Alto Adige and the Province of Bolzano. In October 2011, the European Commission provided a ‘reasoned opinion’ under EU infringement procedures to Italy, requesting the country to comply with its obligations under EU law to pay certain family allowances given by the region of Trentino-Alto Adige and the province of Bolzano to people working there but living in Austria. Until then, Italian authorities had refused to pay these allowances to the workers, based on the fact that the workers did not reside in Trentino – Alto Adige or Bolzano. In December 2011, the provincial council established that the residence clause would not be applied anymore. However, in September 2013 the Regional Council of Trentino-Alto Adige reintroduced a residence clause for the benefit: the Decree of the President of the Region n. 60 of 11 September 2013 established that five years of residence in the region are required to be entitled to the family allowance. This provision is clearly in contrast also with the sentence of the Italian Constitutional Court of January 2013 (2/2013), which declared constitutionally illegitimate a similar residence clause in that it created a situation of unequal treatment.

Taxation

The Tax Treaty between Italy and Austria for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital includes a specific provision for cross-border workers. A cross-border worker is defined in the Tax Treaty as ‘an individual who has his residence in a Contracting State near the frontier and who has his place of employment also near the frontier in the other Contracting State, and usually goes to work there’. The Treaty provides that such worker shall be taxed with respect to his income from employment only in the State of which he is a resident.

Despite explicitly taking into account the case of cross-border workers, the type of definition provided for this group of workers leaves room for uncertainty. First of all, there is no clear definition of the territory covered by the definition; it is not specified whether this should be considered in terms of distance from the border, and there is no list of towns included in the area. Secondly, no explanation is provided of the temporal component, i.e. what ‘usually’ means.

Other issues

According to EURES TransTirolia (2003), another obstacle to cross-border work in the region is the lack of information. Information is not easily accessible since there are no “one-stop shops” where the worker can gather all the information he needs concerning vacancies, recognition of qualifications, fiscal and social security rules. Job offers are published only on local newspapers, and the description of qualifications is not homogeneous. Furthermore, there are still issues of recognition of qualifications, in particular concerning occupations in the health sector. Language can act as a barrier as well: for example, the website of the Italian Institute for Social Security is mainly in Italian only, which makes it more difficult to gather relevant information for those who do not speak the language.

5.8 Austria – Switzerland

Taxation

Article 15 of the Convention between Austria and Switzerland to avoid double taxation used to include a specific provision for cross-border workers. The Convention was modified by the Protocol of 24 May 2006 – which followed a round of negotiations between the two countries – which abolished the rule for these workers, establishing that the country of work has the right to tax labour incomes. Switzerland however compensates the lower revenues for the Austrian tax authority by transferring 12.5% of its tax revenues from wages of cross-border workers residing in Austria and working in Switzerland.

Other issues

Mobility among Austria and Switzerland is deemed not to present particular limits. In this case apart from problems arising from geography of the territory, with mountains higher than 4000 m, and the related mobility problems, research suggest that the main relevant limit is due to the lower income and the higher taxation in Austria than in Switzerland (MKW Wirtschaftsforschung & Empirica Kft . 2009b).

The mobility issue is underlined also by a report by EURES Bodensee. The study stresses how the presence of good connections favors the mobility towards the big centres, increasing their attractiveness. In particular, even if further from the border, cities of Zurich and San Gallo are the preferred by cross border workers in the Lake Costance Region. Overall Zurich offers also higher wages.

Mobility across the region was enhanced also by the liberalization of workers movements. Since 2004 Swiss employers are not anymore compelled to give priority to Swiss workers and there are not anymore quotas (Eures Bodensee 2010).

Finally the increase of cross border workers was slowed over the past decade by the easing of the possibility to take residence in Switzerland (EURES Bodensee 2008).

According to Eures Bodensee (2012), many occupations are equally regulated in the four states of the Lake Constance Region (Switzerland, Austria, Germany and Liechtenstein), including physician, nurse, architects and even chimney sweeps, forester and ski instructor. These occupations are regulated and recognised in compliance with the European Directive 2005/36 EC on the recognition of professional qualifications. For other qualifications problems can arise not only due to different regulations between the States, but also because of different cantonal laws across the Switzerland (Eures Bodensee 2012).

5.9 Austria – Slovenia

Taxation

The convention between Slovenia and Austria for the avoidance of double taxation with respect to taxes on income and on capital does not include specific provisions for cross-border workers. As a consequence, it is not possible to exclude the possibility of cases of double taxation between the countries.

Other issues

While commuting from Austria to Slovenia is generally discouraged by scarce knowledge of the Slovenian language, lower average incomes and higher levels of taxation in Slovenia, more relevant flows in the opposite direction are deemed to be hampered mainly by problems in the acceptance of qualifications (MKW Wirtschaftsforschung & Empirica Kft . 2009b). Especially in the health care and education sectors, authorities often require to pursue further studies in order to have the own qualification recognised. Until the 30th of April 2011 also restrictions towards Slovenian workers were in force.

6 RESULTS FROM OTHER STUDIES

Starting from other available studies on the issue, and in particular the Scientific Report on the Mobility of Cross-Border Workers within the EU-27/EEA/EFTA Countries (MKW Wirtschaftsforschung & Empirica Kft. 2009a), we report in this section a table showing the main obstacles to work mobility that are generally taken into account. It is important to underline that these factors represent obstacles to mobility of all European migrant workers, and do not specifically refer to the mobility of cross-border workers.

Obstacles were assessed using an order of relevance from 1 (minor obstacle) to 5 (major obstacle). Experts could also add clarifications. In line with the authors view, we consider an obstacles of medium relevance when its average is among 2.26 and 3 and of high relevance when it overcomes 3. However, due to the graphs used in the cited paper and the non-availability of the underlying data, we can only approximate the exact average scores.

Unfortunately the report does not provide all the indicators about the impact of variables in the different commuting directions (i.e. from country A and country B and from country B to country A separately).

Table 5 – Obstacles to mobility

Obstacles to mobility	ITA-	FR-	SLO-	ITA-	ITA-SLO	FR-	EU
Language	2.4	2.5	2.9	2.5	3.3	4.5	3.03
Lack of information	2.8	2.3	2.8	4.6	3.0	3.3	3.01
Tax systems	2.0	2.8	4.2	2.6	3.3	2.9	2.83
Infrastructure	2.6	2.3	2.0	3.3	2.2	3.3	2.74
Accept. Of qualifications	1.8	2.2	3.2	2.8	2.9	3.2	2.69
Other rights to social insurances	2.4	3.0	2.5	2.8	2.6	3.2	2.58
Lab. Market restrictions	1.5	1.8	3.4	1.9	1.8	3.8	2.44
Right to Pensions	1.3	1.4	1.7	3.0	3.1	1.4	2.40
Mentality	1.8	1.9	1.7	1.7	3.0	3.3	2.24
Average	2.06	2.24	2.71	2.8	2.8	3.21	2.66

Source: MKW Wirtschaftsforschung & Empirica Kft. (2009a) and our calculations.

*These data were originally split for the versus of migration. However since no significant difference was found we preferred to simplify the chart reporting for the average of the two scores.

Table 6 – Obstacle index (average of obstacles)

		TO				
		AUT	CH	F	ITA	SLO
FROM	AUT	-			3.06	1.67
	CH		-		2.11	
	F		2.24	-	3.41	
	ITA	2.53	2.00	2.76	-	2.76
	SLO	2.91			3.25	-

Source: MKW Wirtschaftsforschung & Empirica Kft. (2009a)

Even if some data is missing, it is evident that Italy presents on average higher obstacles than the other countries taken into account, while Slovenia and Switzerland are deemed to be the most accessible. As we will further explain, evidence gathered to draft this paper suggest indeed the presence of several obstacles to people commuting in Switzerland. Anyway Swiss wages and labour conditions still prove to be quite attractive.

Recommendations

In light of this investigation, it is clear that it is necessary to more thoroughly focus on cross-border work, so as to find a solution to the obstacles facing these workers on a daily basis.

The aim of this Third Part is to draft a list of recommendations for the governments, which, if implemented, may lead to an improvement in the conditions of cross-border workers. The recommendations maintain a multi-faceted approach and deal with the four major problems of cross-border work: social security, taxation, labour law and laws on the access and stay of foreigners in the country.

However, these four fundamental issues first require a *methodological* recommendation. This methodological premise recalls the importance of a quantitative and qualitative monitoring of these European workers. The systematic acquisition of reliable data makes it possible to have an effective and current understanding of the phenomenon, to monitor its evolution over time and to verify the factors that have an impact on its changes. In addition, these data may be considered a real benchmark for the measurement of the integration of the inter-regional labour market in the European border areas. The free movement of workers is one of the founding principles of the European Union and the flow of workers in border areas can be a useful tool to measure and monitor the potential and the limits of this space.

With regard to the recommendations related to social security, the major obstacles often come from the fact that the provision of benefits is subject to the residence criterion. Even though Article 7 of Regulation 883/2004 envisages the *"Waiver of the residence clauses: "Except for some provisions in the Regulation, the benefits payable under the legislation of one or more Member States or of this Regulation shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the beneficiaries or their family members reside in a Member State other than the one in which the debtor institution is"* there are still cases in which this rule is ignored by the relevant institutions, thus discriminating cross-border workers, who by definition do not have a residence in the country of employment. It is necessary to give priority to the elimination of the residence clause at all levels of the social security systems. It worth emphasizing that the institutions with the task of delivering services and benefits may be multiple and stratified at different levels of government, municipalities or Lander and states and other intermediate entities, such as provinces, departments and so on. Recommendations 1 and 2 refer to this theme.

The respect for the principle of equal treatment and, in particular, the abolition of the residence clauses for cross-border workers, is also essential for *labour law*, which in this investigation mainly

concerns cross-border workers, citizens of the European Union, who are employed in that capacity in some countries outside of the European Union (see, for example, the case of San Marino), whom we referred to in Recommendation 9.

The nature of the cross-border work is mainly regional. This is the reason why it is not the highlight in the national debate and the legislation in this field is very erratic. This is especially true in the field of taxation, where there is no coordination at the European level. In order to overcome this uncertainty, the national governments should introduce a clear and distinct definition of cross-border worker in their domestic tax laws. This issue is specified in Recommendation 8.

In addition, a definition of cross-border worker should be included in each bilateral agreement to avoid double taxation, signed between countries where there are possible instances of cross-border work, so that these workers are not discriminated and recognized from the political point of view. Finally, the conventions should identify an objective criterion to characterize cross-border work to reflect the empirical reality. In fact, the taxation uncertainty constitutes an obstacle to inter-European mobility. To this point, see the Recommendations 3. to 7.

In terms of *the legislation on the entry and stay of foreigners in the country* it is important for foreign workers to have the right to legal employment even without the residence in the country of employment, a condition that would deny the peculiarity of cross-border workers. Please refer to Recommendation 10.

In political terms, defining the identity of cross-border workers is a fundamental tool to allow these subjects to have their problems and peculiarities recognized, and to be more involved in a constructive and beneficial debate.

Here follow the recommendations

RECOMMENDATIONS TO BE SUBMITTED TO THE GOVERNMENTS OF THE COUNTRIES OF THE EUROPEAN UNION (OR THAT HAVE SIGNED AGREEMENTS ON THE FREE MOVEMENT WITH THE EUROPEAN UNION AND THE COUNTRIES THAT APPARTANENTI) FOR REGULATING FRONTIER WORK PHENOMENA OF WORKERS, PROVIDING THEM WITH A FULL COMPLIANCE WITH THE PRINCIPLE OF NON-DISCRIMINATION

Monitoring of the phenomenon

Systematic collection and analysis of data of the phenomenon, based on a detection system standardized at European level, given the current lack of reliable statistical data.

Social Security

1. as required by European Union law, apply the principle according to which cross-border workers are covered by the social security system of the country in which they work and not the one in which they reside, and this performance even for those existing at the

national level, which is not expressly provided for by Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, and yet are recognized and protected by the Rules on the free movement of workers (Regulation n.492/2011);

2. ensure that what is stated in sub 1. is respected not only by governments and institutions at national, but also by all agencies and institutions of intermediate territorial level (regional, municipal, etc..) that are qualified to provide social security benefits.

Direct taxation

3. subscribe bilaterally, at least with the governments of neighboring countries and from which phenomena are possible frontier work of workers, international treaties, including common rules for the avoidance of double taxation on income and on capital (eg, using models of the Conventions for the avoidance of double taxation developed by the OECD and the UN);
4. insert in the articles of the Treaties referred sub 3. governing the taxation of income from employment, a paragraph governing the specific case of frontier workers, while giving the latter a specific legal definition and therefore a recognition at the political level;
5. in reference to sub-paragraph 4., identify an objective criterion to delimit the phenomenon of frontier work of workers, which reflects the empirical reality. If this criterion should be that the identification of a portion of the territory of / the country / concerned / s, this should accurately reflect the area where they move to and from frontier workers;
6. provide that the tax revenue collected from the employment income of frontier workers is intended, at least in part, to the country of residence of the latter;
7. whatever the choice identified sub 6., predict that frontier workers, for the income they derive from their employment, must relate, among that country's work and that of the country of residence, with one tax authority;
8. in the event of failure to sign the international treaties to which sub 3., expect at least that the Governments concerned to the phenomena of frontier work should adopt in its domestic tax legislation of any specific legislation on cross-border workers, who provide a legal definition and recognizes the specificity in the taxation of labor income;

Labor legislation

9. ensure that the non-residence of frontier workers in the country of employment does not constitute reason not to provide for them the full application of the principles of equal treatment and of the "lex loci labor";



Legislation on access and residence of foreigners in Italy

10. ensure that the failure to satisfy the requirement to have a place to stay in the territory of the country of employment shall not constitute an impediment to the exercise of frontier work by foreign nationals.