



Comparative Report – Frontier workers in the EU

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Executive summary

Frontier workers constitute a particular group of EU citizens who engage in cross-border employment. Whilst residing in one Member State, frontier workers engage in employment in another Member State, with the distinction that the individuals concerned return to the Member State of residence on a daily or, alternatively, weekly basis. Legislative provisions and the Court of Justice of the European Union have consistently affirmed that, indeed, frontier workers are EU workers and are thus to be accorded the safeguards and rights encompassed in Article 45 TFEU pertaining to the free movement of workers. In addition, frontier workers are entitled to call upon the equal treatment provisions enshrined in Regulation (EU) No 492/2011 on the freedom of movement for workers within the Union when engaging in employment in a Member State other than the Member State of residence, in conjunction with the recently enacted Directive 2014/54/EU on measures facilitating the exercise of rights conferred to workers in the context of freedom of movement for workers and Regulation (EC) No 883/2004 on the coordination of social security systems. Despite the plethora of instruments available to frontier workers, however, a myriad of obstacles, albeit oftentimes indirect, nevertheless hinder the individuals concerned in their effective exercise of the right to free movement.

In clarifying the realm of legal ambiguity which characterises frontier work in the European Union, this report commences by contextualising frontier work in the EU and by shedding light on the various notions associated thereto. In particular, the legislative framework concerning cross-border work, including frontier work, is elucidated. As a supplement, further clarifications are given with respect to the notions of frontier work as understood in a European context, as well as the various notions of residence and stay, which are indispensable in comprehending frontier work and the difficulties it is associated with.

The second part of the report focuses on conducted studies and surveys which focus in particular on cross-border work, thus including frontier work. Whereas this report seeks to elucidate obstacles which frontier workers encounter in the exercise of their right to free movement as a result of (in-)direct residence requirements, the consulted studies and surveys approach frontier work generally, by focusing on general obstacles encountered when engaging in frontier work and thus not necessarily related to residence requirements. Notably – according to the consulted reports – lacking mutual recognition and acceptance of qualifications, varying social security and taxation regimes, and ambiguity as to the applicable legislative provisions render frontier work arduous to engage in. Additionally, discrepancies in national and regional legislation as well as lacking cooperation between administrations have solely augmented the difficulties experienced by frontier workers. In consulting the aforementioned reports and studies, a glance is subsequently cast upon the suggestions and recommendations postulated therein.

In providing a comprehensive overview of the framework and context within which frontier workers operate, an analysis of relevant judgments by the CJEU is indispensable. The third part of the report thus focuses on judgments by the CJEU which delineate the personal scope of the free movement provisions and subsequently the applicability thereof with respect to frontier workers. Equally so, an analysis ensues of pertinent case law pertaining to the *material* scope of the right to free movement of workers, and frontier workers in particular. Within this context, particular attention is paid to the notion of social advantages, and how the CJEU defines the latter, as oftentimes frontier workers are disadvantaged with respect to the entitlement and receipt of social advantages despite their contributions to the

Member State of employment as a result of their residence elsewhere. Furthermore, an analysis ensues pertaining to judgments by the CJEU with respect to tax advantages as an aspect of the material scope of the free movement provisions bestowed upon, amongst others, frontier workers. From the consulted case law conclusions are drawn pertaining to the particular situation and difficulties encountered by frontier workers.

The fourth section of the report embarks upon a comparative analysis of the situation of frontier workers in the respective Member States, with a particular focus on imposed residence requirements in the entitlement to various benefits. Within this context, notable experts in the respective Member States analysed the situation of frontier workers in their respective States, and compiled the findings within a national fiche, which subsequently served as the basis for the comparative analysis. The submissions by the Member States focus upon predefined inquiries relevant to frontier workers. In particular, the information sought focuses on the difficulties encountered by frontier workers in attaining assistance by employment offices in the Member State of employment, in accessing training in vocational schools and retraining centres, in partaking in trade unions, as well as difficulties encountered pertaining to the entitlement and receipt of social advantages. Furthermore, the fourth section of this report focuses on the difficulties encountered in equal treatment with respect to tax advantages, as well as the difficulties encountered by frontier workers in gaining access to housing advantages. Lastly, the report focuses on additional obstacles which frontier workers may face, pertaining specifically to residence requirements in the respective Member States that have not yet been mentioned.

Following the comparative analysis of the situation of frontier workers in the respective Member States, an analysis of the findings ensues. This section concentrates on the conclusions that can be drawn from the findings in the particular aforementioned specific areas of concern. Particularly, with respect to the right to access to assistance by employment offices, explicit residence requirements seemingly do not hinder frontier workers in the exercise of their right to free movement of workers. However, *de facto* obstacles do effectively act as a disincentive to engage in frontier work in various Member States. Similarly, no explicit residence requirements are imposed in gaining access to training in vocational schools and retraining centres, whilst *de facto* obstacles again do effectively hinder equal treatment of frontier workers. In gaining access to membership in trade unions, it appears that, generally, frontier workers are not confronted with residence requirements, and complaints in this respect are seemingly extremely limited. Furthermore, due to the broad scope of social advantages, much variation exists in their exportability. Within this context a distinction need be made between social advantages of a contributory nature and residence-based social advantages. Not inconceivably, frontier workers will experience difficulties in attaining entitlement to the latter category, which, however, may be warranted in view of the manner by which such advantages are financed. Pertaining to tax advantages, it need be noted that a vast majority of the Member States make tax advantages applicable to those individuals who exceed a given income threshold in the Member State concerned. This income threshold that frontier workers need to meet in order to acquire entitlement to tax advantages is oftentimes replaced or imposed in combination with a durational stay requirement, implying that the frontier worker is obliged to spend a certain amount of time in the territory of the Member State. Whilst this may not be deemed an explicit residence requirement which hinders frontier workers in the exercise of the rights bestowed upon them, it can nevertheless act as a *de facto* obstacle, as the lack of cooperation and coordination between Member States may give rise to double taxation of the individuals as well as refused entitlement to certain tax advantages. Lastly, with regard to access to housing advantages, it appears that a majority of Member States make a distinction between social housing

and other housing advantages and/or supplements. However, despite the distinction, not inconceivably, housing advantages are primarily subject to residence requirements.

Pursuant to the foregoing comparative analysis and findings, the report subsequently formulates certain recommendations based upon good practices and highlights remaining concerns vis-à-vis frontier workers with respect to residence requirements. Conclusively, the report contains individual country fiches for the respective Member States, encompassing the analysed information.

Introduction

The free movement of workers of Article 45 of the Treaty on the Functioning of the European Union (TFEU) is one of the fundamental principles of the European Union. It encompasses and bestows upon EU workers the right to move freely, void of any discrimination with respect to employment, remuneration or any other conditions related thereto. This right is furthermore elaborated upon and guaranteed by Regulation (EU) No 492/2011 on the freedom of movement for workers within the Union. Subsequent thereto, the recently enacted Directive 2014/54/EU on measures facilitating the exercise of rights conferred to workers in the context of freedom of movement for workers (hereinafter the Enforcement Directive) seeks to further solidify the rights for migrant workers enshrined in Article 45 TFEU and Regulation (EU) No 492/2011. Regulation (EC) No 883/2004 on the coordination of social security systems is additionally of particular relevance in safeguarding and facilitating the free movement of workers, albeit restricted in the field of social security. Labour migration, free movement of workers and safeguarding the rights of these workers have always been considered pillars upon which Europe was built.

Notwithstanding a history of more than 50 years of free movement of workers, it is undisputed that the migrant worker is still subjected to problems of integration and adaptation in social life. A significant distinction is easily perceived between the rights European citizens and workers can rely on in theory, and daily reality. Every day, migrant workers are confronted with problems and even discrimination when crossing borders. It is for this reason that the European Commission, aware of this friction and danger, has been very active the last years by adopting some of the above-mentioned instruments witnessing the remaining legal and administrative challenges. In particular frontier workers may be seen as one of the first victims of such challenges as they are the first to be confronted with the lack of coherence between national legislation and the legal consequences and problems resulting from the European integration process.

Further improving intra-EU mobility rights would constitute a major step towards the realisation of the single European labour market and make Europe more attractive. In this respect, the Committee of the Regions has called upon the European Commission to monitor on a regular basis the implementation of EU legislation on free movement of workers, non-discrimination and social security coordination in the EU Member States and to actively contribute to a better protection of social rights of workers in the EU.¹ This opinion of the Committee of the Regions, amongst others, suggested the elaboration of "a compendium of most urgent mobility obstacles and problems with possible ways of solution".

Although migrant workers and frontier workers are confronted with several obstacles, this report based on the mandate received from the European Commission will concentrate on the obstacles resulting from national legislation and practice that stem specifically from the fact that frontier workers work in a country different from the country where they reside. National legislation or practice that contains residence requirements concerning the different aspects of a worker's working life affects frontier workers more so than workers who work and reside within the same Member State.

¹ On 3 July 2013 the Committee of the Regions adopted the own initiative opinion entitled 'Frontier workers: Assessment of the situation after twenty years of the Internal Market: Problems and perspectives', CDR 246/2013.

After defining and describing the scope of the project (chapter 1), the report will start with a general analysis of obstacles frontier workers are confronted with and this based upon existing studies (chapter 2). This will be followed by an overview of the relevant case law by the Court of Justice of the European Union (CJEU) on frontier workers, highlighting the main problems encountered by the national referring courts and the replies provided by the CJEU in interpretation of EU law (chapter 3). In the next chapter (chapter 4) an overview and summary of the different residence requirements, will be given, as can be found in the different EU Member States and EFTA States. These are divided into a) rights to assistance by the employment offices; b) rights to training in vocational schools and retraining centres; c) rights to membership of trade unions and the rights attached to them; d) main social advantages (e.g. study grants for dependent children); e) tax advantages (e.g. tax incentives, rebate schemes, tax exemptions etc); f) rights and benefits in matters of housing. This chapter is followed by an analysis (chapter 5). In chapter 6 some general conclusions and recommendations will be drafted. The study will be completed with individual country fiches, giving an overview of residence requirements that can be found in the respective country legislation.

1 Free movement and frontier workers

1.1 Defining frontier workers

The aforementioned promulgated right to free movement of workers, in conjunction with the 2004 and 2007 enlargements, has resulted in a substantial increase of cross-border workers, as a distinct group of migrant workers in the EU. Cross-border workers, also known as frontier workers are, within this context, EU citizens who work in one EU Member State yet reside in another, and who return to the Member State of residence on a daily or weekly basis.² Frontier work thus encompasses a dual condition – employment in a Member State other than the State of residence, in conjunction with daily or weekly return to the State of residence. Frontier workers constitute a particular category of migrant workers, the latter being EU citizens who work *and* reside in a Member State other than the Member State of origin. Mindful of the foregoing definition, which is associated to social protection of frontier workers, it need be mentioned that the concerned term and the definition associated thereto may vary somewhat depending on the applicable field of law (e.g. tax law as opposed to social security coordination).³ Lastly, whilst the foregoing definition may conjure up the notion of traditional frontier workers who are employed in close territorial proximity of national borders, enhanced means of transportation, amongst others, has equally so facilitated an increase in the mobility of frontier workers. By means of an example, it suffices to note the existence of high-speed trains and low-budget airlines, which have enabled additional cross-border mobility, beyond the traditional implication of frontier work.

A lack of general statistical data renders it difficult to estimate the entirety of cross-border workers active in the EU.⁴ However, a study commissioned by the DG Employment and Social Affairs of the European Commission, published in 2009, held that frontier workers amounted to approximately 780,000 individuals in the EU in 2006.⁵ Conceivably, in view of the enlargements of the EU thereafter, the number of frontier workers commuting across internal borders was solely bound to increase. In a memo by the European Commission on labour mobility in the EU on 25 September 2014, the number of cross-border workers was estimated at 1.1 million individuals.⁶

Frontier workers in the EU are predominantly situated in North-Western Europe, and are equally so vastly employed in the Scandinavian countries.⁷ In addition, due to recently established internal borders, there has been an increase in frontier work between **Estonia** and **Finland**, as well as **Hungary** and **Austria**.⁸ Similarly, **Italy** is increasingly employing frontier workers from **Slovenia**.⁹

² Article 1(f) of Regulation (EC) No 883/2004 on the coordination of social security systems

³ http://ec.europa.eu/taxation_customs/taxation/personal_tax/crossborder_workers/index_en.htm.

⁴ Association of European Border Regions, 'Information services for cross-border workers in European border regions', October 2012, 41. http://www.aebr.eu/files/publications/121030_Final_Report_EN_clean.pdf, p. 1.

⁵ G. Nerb, F. Hitzelsberger, A. Woidich, S. Pommer, S. Hemmer & P. Heczko, 'Scientific Report on the Mobility of Cross-Border Workers within the EU-27/EEA/EFTA Countries', MKW Wirtschaftsforschung GmbH and Empirica Kft., January 2009, 86. <http://borderpeople.info/cross-border-mobility>, p. VII.

⁶ European Commission, 'Labour Mobility within the EU', Memo, Brussels, 25 September 2014.

⁷ G. Nerb, F. Hitzelsberger, A. Woidich, S. Pommer, S. Hemmer & P. Heczko, 'Scientific Report on the Mobility of Cross-Border Workers within the EU-27/EEA/EFTA Countries', MKW Wirtschaftsforschung GmbH and Empirica Kft., January 2009, 86. <http://borderpeople.info/cross-border-mobility>, p. VII.

⁸ Ibid.

⁹ Ibid.

States such as **Bulgaria, Cyprus, Greece and Malta**, however, are only marginally confronted with frontier workers coming from abroad. The latter is due to a variety of reasons, ranging from geographical locations rendering cross-border mobility difficult, to the economical welfare of the State which renders cross-border work unattractive to non-nationals (see *infra*, Country fiches – Additional observations).

1.2 Applicable legislation

1.2.1 Regulation (EU) No 492/2011

Regulation (EU) No 492/2011 has proven to be of irrefutable relevance in safeguarding the rights of migrant workers, and frontier workers specifically, as it imposes the obligation for Member States to implement and adhere to the principle of equal treatment in matters concerning cross-border work.¹⁰ The principle of equal treatment as promulgated in Article 7(2) of the above-mentioned Regulation ensures that migrant workers and their respective (dependent) family members are accorded equal treatment with respect to social and tax advantages, as would a national worker.¹¹ The foregoing is, equally so, applicable to frontier workers as confirmed by the 5th recital of the concerned Regulation, as well as article 1 which prescribes the free movement and equal treatment principles to be applicable “*irrespective of place of residence*”. In addition to the broad scope of Article 7(2) of Regulation (EU) No 492/2011, which will be discussed below, frontier workers may additionally, albeit in a limited manner, remain entitled to certain benefits despite the termination of an employment relationship.¹²

1.2.2 The Enforcement Directive

Supplementary to Regulation (EU) No 492/2011, Enforcement Directive 2014/54/EU,¹³ recently enacted, is equally so aimed at safeguarding the rights of frontier workers, as enunciated by the first and third recital thereof. Furthermore, it is to facilitate the exercise of rights conferred upon workers in the context of freedom of movement for workers, and the enforcement of the principle of equal treatment of mobile workers. Implementation of the Directive is foreseen by 21 May 2016, and seeks to ensure the rights of, amongst others, frontier workers, by means of independent legal assistance to migrant workers, the publishing of surveys, research and reports, as well as the dissemination of relevant information to national authorities pertaining to the EU legal provisions applicable to migrant workers. Pursuant to the facilitating of free movement and the protection of the right to equal treatment, the Enforcement Directive imposes upon national authorities the obligation to establish national institutions aimed at ensuring the concerned objectives. Amongst others, these bodies are established in order to act as contact points for similar bodies in other Member States, to facilitate the exchange of pertinent information in cross-border situations. Lastly, the Enforcement Directive provides for, amongst others, the adequate and sufficient dissemination of information of relevance to migrant workers,

¹⁰ The rules of equal treatment in respect of social advantages in now Regulation (EU) No 492/2011 apply to dependent workers only. However, the self-employed may invoke comparable rights by virtue of Article 49 TFEU despite the absence of secondary legislation.

¹¹ The fourth recital of the preamble of Regulation (EEC) No 1612/68 (predecessor to Regulation (EU) No 492/2011) states that the right of free movement must be enjoyed without discrimination by permanent, seasonal and frontier workers as well as by those who pursue their activities for the purpose of providing services.

¹² Case C-39/86, Lair.

¹³ OJ of 30 April 2014.

in order to safeguard access to the labour market and the social protection associated thereto. This Directive aims to safeguard that the rights workers were given 50 years ago are effectively applied and put into practice.

1.2.3 Regulation (EC) No 883/2004

Lastly, mention need be made of Regulation (EC) No 883/2004 as an additional means of protecting the (social security) rights of frontier workers. Despite the protective objective of this regulation, it cannot go unnoticed that its material scope is limited to the field of social security as exhaustively described in its Article 3, entailing that not all welfare benefits will be accorded protection under this Regulation. The latter solely solidifies the importance of Regulation (EU) No 492/2011, as its equal treatment provisions are not limited to the field of social security coordination, and can thus be invoked generally to contest residence requirements. Regulation (EC) No 883/2004 contains certain exceptions to the general principle of export of benefits. One exception are e.g. special non-contributory cash benefits – benefits between social security and social assistance for which a separate coordination mechanism has been set up in Article 70 of the Regulation based on residence in the country concerned. Another exception are unemployment benefits, which can, in accordance with Article 64, in principle not be exported unless for three months in order to look for a job.

Mindful of the foregoing, it can be held that Article 7(2) of Regulation (EU) No 492/2011 acts as a catch-all provision, in that entitlement to benefits will be justified thereupon insofar entitlement is not protected by the equal treatment provisions enshrined in Regulation (EC) No 883/2004. The principal function of Regulation (EU) No 492/2011 is to provide a general prohibition of discrimination with respect to benefits which do not qualify as ‘social security’ in the sense of the social security coordination Regulation. Furthermore, the material scope of legal arrangements covered by the Regulation on free movement of workers is not restricted to legislation as in Article 1(l) of Regulation (EC) No 883/2004.

Hence, in order to determine whether a benefit is effectively a social benefit within the scope of Regulation (EU) No 492/2011, it initially needs to be assessed whether this benefit has not yet been accorded protection under Article 3 of Regulation (EC) No 883/2004. However, despite the broad scope of Article 7(2) of Regulation (EU) No 492/2011, a welfare benefit will not automatically fall under this scope if it does not fall within the ambit of Regulation (EC) No 883/2004. In order to determine, however, whether a benefit falls within the scope of Regulation (EC) No 883/2004, in accordance with CJEU case law, regard must be had for *“the constituent elements of each benefit, in particular its purpose and the conditions for its grant, and not on whether it is classified as a social security benefit by national legislation”*.¹⁴

Contrary to the material scope, the personal scope of Regulation (EC) No 883/2004 is broader than the personal scope of Regulation (EU) No 492/2011. Whilst the latter is solely applicable to migrant workers and their respective (dependent) family members, Regulation (EC) No 883/2004 is applicable to not only workers, but equally so, to self-employed persons, economically inactive individuals. The CJEU has identified a worker as being an individual who undertakes genuine and effective work, under the direction of someone else, for which he or she is paid. This includes full-time workers, part-time workers (irrespective of the hours worked), working students and jobseekers. Despite the personal scope of Regulation (EU) No 492/2011 being more limited vis-à-vis Regulation (EC) No 883/2004, however, frontier workers are

¹⁴ See, amongst others, C-111/91, Commission v Luxembourg; C-66/92, Acciardi v Commissie beroepszaken administratieve geschillen in de provincie Noord-Holland.

considered (migrant) workers and thus are nevertheless accorded the protection enshrined therein.

1.3 Incentives and obstacles associated to frontier work

A variety of motives can be identified which have incentivised individuals to engage in frontier work. More specifically, differences between Member States with respect to wages as well as job opportunities and prospects are oftentimes deemed a motivating factor. Equally so fiscal advantages, social security advantages and enhanced cross-border mobility potential may increase cross-border mobility.¹⁵ Despite the increasing in and out-commuting by EU citizens from their respective Member States, substantial obstacles nevertheless persist, hindering frontier workers in their enjoyment of the right to free movement of workers.¹⁶ Linguistic differences, a lack of sufficient information and cooperation between competent authorities with respect to frontier work, cross-border infrastructure and transportation, as well as difficulties in mutual recognition of qualifications of workers, hamper cross-border mobility and frontier work.¹⁷

Within this context, the differences and lacking cooperation between applicable fiscal regimes vis-à-vis social security regimes are a particularly pertinent obstacle, which severely limits the potential for cross-border mobility.¹⁸ The lack of a uniform definition of cross-border work between the concerned regimes results in the applicability of differing provisions. This may, in turn, lead to unequal treatment, in violation of the right to free movement of workers in contravention of Regulation (EU) No 492/2011. Additionally, differing rates of direct taxation and social security contributions and varying degrees in which the concerned regimes are intertwined may place frontier workers at a substantial disadvantage. Furthermore, the lack of knowledge and information about the applicable regimes in the respective Member States render cooperation and equal treatment an extremely arduous task to achieve.

Conceivably, as frontier workers are oftentimes subject to legislation of varying Member States, they encounter first-hand the implications of new legislation and the repercussions thereof vis-à-vis legislation of other Member States. As a result, frontier workers may be subject to a vast amount of conditions and requirements, which incidentally hinder their right to free movement. Of the concerned obstacles imposed upon frontier workers, however, residence requirements are irrefutably relevant and

¹⁵ Y. Jorens. *Grensarbeid* (die Keure, Bruges, 1997).

¹⁶ G. Nerb, F. Hitzelsberger, A. Woidich, S. Pommer, S. Hemmer & P. Heczko, 'Scientific Report on the Mobility of Cross-Border Workers within the EU-27/EEA/EFTA Countries', MKW Wirtschaftsforschung GmbH and Empirica Kft., January 2009, 86. <http://borderpeople.info/cross-border-mobility>, p. 43; Association of European Border Regions, 'Information services for cross-border workers in European border regions', October 2012, 43. http://www.aebr.eu/files/publications/121030_Final_Report_EN_clean.pdf; p. 15.

¹⁷ Ibid.

¹⁸ Y. Jorens. *Grensarbeid* (die Keure, Bruges, 1997); G. Nerb, F. Hitzelsberger, A. Woidich, S. Pommer, S. Hemmer & P. Heczko, 'Scientific Report on the Mobility of Cross-Border Workers within the EU-27/EEA/EFTA Countries', MKW Wirtschaftsforschung GmbH and Empirica Kft., January 2009, 86. <http://borderpeople.info/cross-border-mobility>, p. 46; Association of European Border Regions, 'Information services for cross-border workers in European border regions', October 2012, 43. http://www.aebr.eu/files/publications/121030_Final_Report_EN_clean.pdf; p. 15; K. Groenendijk, E. Guild, R. Cholewinski, H. Oosterom-Staples & P. Minderhoud, 'Annual European Report on the Free Movement of Workers in Europe in 2010-2011', European Network on the Free Movement of Workers, January 2012, 148. <http://ec.europa.eu/social/main.jsp?catId=475>, p. 101; K. Groenendijk, E. Guild, R. Cholewinski, H. Oosterom-Staples, P. Minderhoud & S. Mantu, 'Annual European Report on the Free Movement of Workers in Europe in 2011-2012', European Network on the Free Movement of Workers, 2013, 123. <http://ec.europa.eu/social/main.jsp?catId=475>, p. 76.

may result in (in)direct discriminatory treatment vis-à-vis residents.¹⁹ The scope of this report will subsequently focus on the imposition of residence requirements across Member States, the potential legitimacy thereof as well as the potentially detrimental effect this has on the cross-border mobility of frontier workers in view of Regulation (EU) No 492/2011.

1.4 Defining residence and residence requirements

The Court of Justice of the European Union (CJEU) has consistently held that measures which are likely to hinder the enjoyment of the right to free movement, as enshrined in Article 45 TFEU as well as in the provisions pertaining to equal treatment of migrant workers in Regulation (EU) No 492/2011, cannot be deemed legitimate if they do not pursue a legitimate objective.²⁰ In particular a residence requirement is indirectly discriminatory as nationals are more likely to be resident in the national territory than non-nationals.²¹ In conjunction therewith, a measure which impedes free movement of workers must not go beyond what is necessary, entailing that it must be appropriate to pursue the said objective as well as proportionate.²² Article 45 TFEU as construed by the CJEU furthermore prohibits unjustified barriers to movement and barriers to market access.

Within this context, the CJEU has, on numerous occasions, explained that residence requirements in order to gain access to welfare benefits are to be deemed automatically suspicious and contrary to European provisions on free movement of workers when applied to migrant workers and frontier workers specifically.²³ In the *Hartmann* case, the Austrian spouse of a German national working in Germany who resided in Austria was excluded from receiving German child-raising allowance because she did not have either her permanent or ordinary residence in Germany. According to the CJEU such a provision must be regarded as indirectly discriminatory if it is intrinsically liable to affecting migrant workers more than national workers and if there is a consequent risk that it will place the former at a particular disadvantage.²⁴

Prior to an assessment of imposed residence requirements vis-à-vis frontier workers, however, a distinction need be made between the various forms of residence. Surprisingly, the concept of residence is not defined throughout all pertinent EU instruments. Habitual residence refers to the place where a person regularly resides. Oftentimes, habitual residence is equally associated to the place where an individual has the centre of his or her interests.²⁵ In addition, the CJEU has clarified that when defining the place of residence, regard should equally be had for "*the employed person's family situation; the reasons which have led him to move; the length and continuity of his residence; the fact (where this is the case) that he is in stable employment; and his intention as it appears from all the circumstances*"²⁶. In Regulation (EC) No 883/2004 residence refers to the place where the habitual centre

¹⁹ Case C-379/11, *Caves Krier Frères*, paragraph 53.

²⁰ See, amongst others, case C-20/12, *Giersch and others*, paragraph 37.

²¹ See, amongst others, case C-237/94, *O'Flynn*; case C-246/80, *Broekmeulen*.

²² See, amongst others, case C-20/12, *Giersch and others*, paragraph 37.

²³ Case C-379/11, *Caves Krier Frères*, paragraph 53.

²⁴ Case 212/05, *Hartmann*.

²⁵ European Commission, 'Practical guide on the applicable legislation in the European Union (EU), the European Economic Area (EEA) and in Switzerland', December 2013, 53. <http://ec.europa.eu/social/keyDocuments.jsp?advSearchKey=4944&mode=advancedSubmit&langId=en&policyArea=&type=0&country=0&year=0>, p. 40.

²⁶ Case C-90/97, *Swaddling*, paragraph 29.

of a person's interests is situated. A number of criteria are taken into account in order to establish whether this is the case. These include: the length and continuity of the person's presence on the territory of the State concerned; (where applicable) the fact that the person is in stable employment in the State to which he or she moved and the duration of any work contract; the person's family status and ties; the fact that the person carries out a non-remunerated activity; (in the case of students) the source of the person's income; the person's housing situation; the person's residence for fiscal purposes; and finally the person's intention and reasons which have led him or her to move.²⁷ The latter criterion is more important than the length of residence in the territory, which is not a decisive factor.

With respect to frontier workers, the place of habitual residence is generally considered to be the Member State of residence as opposed to the Member State of employment. Thus, when Member States make access to welfare benefits conditional upon habitual residence, frontier workers are placed at a substantial disadvantage as opposed to residents of the Member State of employment, despite the contribution frontier workers deliver to the State concerned.

Reference to the 'place of stay' need be distinguished from habitual residence, in that it refers to the place of temporary residence and, alternatively, any other form of presence in a Member State which is not defined as habitual residence.²⁸ The term 'stay' within this context entails that the physical presence of an individual is required in a Member State which is not the habitual place of residence of the individual, and entails that the individual returns to the place of residence when the purpose of the stay elsewhere is fulfilled. It is paramount to note that an individual, for the purpose of the legal provisions concerned, can only be deemed resident in one Member State.²⁹ Hence, with respect to frontier workers, the foregoing confirms that the Member State of employment is to be deemed the place of stay of the concerned worker, whereas the Member State of residence, as aforementioned, is to be deemed the place of habitual residence.

Having distinguished the various types of residence, it need be recalled that the CJEU has consistently held that residence requirements imposed upon a frontier worker in the State of employment in gaining access to welfare benefits will automatically be deemed suspicious and liable to infringe the right to free movement of workers. However, residence-related requirements imposed in the Member State of residence can equally so be regarded as potentially hindering the exercise by frontier workers of the right to free movement of workers. The latter is exemplified by the case of *S and G v Minister voor Immigratie, Integratie en Asiel*.³⁰ In this case the CJEU was held to assess the refusal by Dutch authorities to grant a right of residence to third-country family members of Dutch citizens who are employed in Belgium as frontier workers, yet reside in the Netherlands. The CJEU was asked to what extent the EU provisions on the freedom of movement confer upon third-country nationals a derived right of residence, if they are family members of the EU citizens, particularly in view of the fact that the Dutch citizens concerned are employed in Belgium as frontier workers, yet resident in the Netherlands. In this matter the CJEU confirmed, in accordance with consistent case law, that indeed the Dutch frontier workers fall within the scope of Regulation (EU) No 492/2011, and are thus accorded the protection afforded thereby,

²⁷ Article 11 of Regulation (EC) No 987/2009.

²⁸ European Commission, 'Practical guide on the applicable legislation in the European Union (EU), the European Economic Area (EEA) and in Switzerland', December 2013, 53. <http://ec.europa.eu/social/keyDocuments.jsp?advSearchKey=4944&mode=advancedSubmit&langId=en&policyArea=&type=0&country=0&year=0>, p. 41-42.

²⁹ Case C-589/10, Wencel, paragraph 43-51.

³⁰ Case C-457/12, S. and G..

as well as by Article 45 TFEU. Subsequently, the CJEU affirms that in order to guarantee the effectiveness of the above-mentioned right to freedom of movement, derived rights may be bestowed upon third-country national citizens who are family members of the frontier worker. However, in its reasoning the CJEU clarifies that this derived right of residence, which is subject to the discretion of national courts, is to be derived from Article 45 TFEU specifically, as opposed to Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The lack of recognition of the particular case of frontier workers and the notion of residence associated thereto is demonstrative of the potential for (in-)direct obstacles to the exercise of frontier workers' free movement of workers, particularly with respect to the impact this may have upon family members of frontier workers.

Mindful of the above-mentioned definitions, in the following sections an overview will be given of the pertinent studies and surveys, as well as of the relevant case law concerning residence requirements imposed upon frontier workers.

2 Analysis of pertinent studies and surveys

The obstacles frontier workers are confronted with have been the subject of several studies, often however encountering similar obstacles. It suffices here to refer to some of the most general studies.³¹

2.1 'Scientific Report on the Mobility of Cross-border Workers Within the EU-27/EEA/EFTA Countries'

Various studies have been conducted with respect to the obstacles encountered by frontier workers, amongst which the extensive study *'Scientific report on the mobility of cross-border workers within the EU-27/EEA/EFTA Countries'*, published by MKW Empirica as commissioned by DG Employment and Social Affairs.³² The objective of this study was to analyse new trends, practices and developments with respect to cross-border commuting, on a quantitative basis as well as on a qualitative basis. The study was particularly relevant because it embarked upon a detailed investigation with respect to the obstacles to cross-border mobility for each border region. As a result thereof, generally linguistic difficulties and a general lack of information about a plethora of matters concerning frontier workers were identified as the main obstacles to cross-border work in the EU.

In addition to the above-mentioned general obstacles, large discrepancies with respect to frontier workers were identified between the EU-15 and the EU-12 Member States. The most relevant obstacles in this regard are the restrictions on labour market regulations, such as working permits and transition periods. Furthermore, insufficient mutual recognition and acceptance of qualifications has proven to additionally impede cross-border mobility. Lastly, discrepancies between taxation and social security regimes of Member States were identified as a substantial obstacle for frontier workers.

The study elucidates the frictions between the older and newer Member States, and explains this divergence as the result of persisting structural differences in current social and legal regimes. Whereas the EU-15 were subject to consistent harmonisation, the EU-12 demonstrate similarities as a result of similar post-socialist structures.

Furthermore, the study expands upon labour market restrictions, which does not only hamper cross-border mobility of frontier workers, but equally so, in certain States acts as a catalyst for illegal employment.

Lastly, the study indicates that infrastructural problems with respect to transportation are comparable in all border regions. More specifically, in the regions concerned, it has been noted that frontier workers are disadvantaged due to inadequate and insufficient cross-border public transportation. Additionally, note has been made of high prices with respect to transportation, including amongst others high toll and border-crossing fees.

³¹ Also within the framework of *Interreg* several reports have been written, see e.g. Region Sonderjylland-Schleswig, http://www.region.de/fileadmin/Downloads/Pontifex/Mobilitaetsbericht_-_Lange_Version.pdf.

³² G. Nerb, F. Hitzelsberger, A. Woidich, S. Pommer, S. Hemmer & P. Heczko, 'Scientific Report on the Mobility of Cross-Border Workers within the EU-27/EEA/EFTA Countries', MKW Wirtschaftsforschung GmbH and Empirica Kft., January 2009, 86. <http://borderpeople.info/cross-border-mobility>.

2.2 'Information Services for Cross-border workers in European Border Regions'

A second study of particular relevance, namely, "*Information services for cross-border workers in European border regions*", was published in 2012 by the Association of European Border Regions.³³

This report acknowledged that the majority of obstacles to which frontier workers are subjected, are registered in those Member States which count the highest number of cross-border workers. Within the States concerned, a high demand for information by frontier workers can be observed, particularly with respect to the applicability of social security regimes and provisions, as well as the applicability and implications of differing regimes of taxation, which has proven to be particularly difficult with respect to frontier workers. The report confirms that the discrepancies with respect thereto detrimentally affect the mobility of frontier workers because the lack of knowledge invokes anxiety over being confronted with potentially unfavourable consequences by working abroad.

As indicated in the report, the lack of sufficient and adequate knowledge with respect to the applicable legislation to frontier workers and the implications thereof is not solely equated to the individual frontier workers. Despite individual knowledge of the applicable legislation and entitlements, insufficient awareness and knowledge nevertheless oftentimes permeates the relevant official bodies. The foregoing entails that the competent authorities may misapply and/or misinterpret the applicable legislation in view of national legislation. More often than not, national regulations in the sphere of social policy and allowances insufficiently deal with the situation of cross-border employees. Not inconceivably, it is subsequently difficult to reconcile the existing national legislation and applicable European provisions.

In addition to identifying obstacles common to frontier workers across the Member States, the report specified several recommendations in order to ameliorate the complex realities to which frontier workers are subjected.

Firstly, the report held that the organisation of work teams and task forces via the means of '*regional round tables*' may result in better comprehension and interpretation of the applicable European legislation and subsequently result in enhanced practical solutions to particular issues in border regions.

An enhanced systematic approach to cooperation between the competent authorities in the respective Member States is, equally so, paramount in reducing the complex nature of cross-border work. It need be noted that authorities and services which are not frequently called upon by frontier workers, need nevertheless be aware of the applicable provisions, particularly in view of increasing cross-border mobility.

The report furthermore recommends to organise joint initiatives and undertake educational initiatives to strengthen cross-border cooperation, as only immediate and direct communication by the relevant authorities will facilitate the promptness of administrative procedures, benefiting frontier workers.

³³ Association of European Border Regions, 'Information services for cross-border workers in European border regions', October 2012, 43.
http://www.aebr.eu/files/publications/121030_Final_Report_EN_clean.pdf.

Furthermore, it was recommended to hold regular training sessions and courses with respect to regulations at both a national as well as an EU level, which may help to dispel concerns about administrative errors.

Lastly, on a political level, cross-border cooperation with respect to frontier workers should not be negated, as this is an important forum to draw attention to the obstacles with which frontier workers are confronted. Establishing (bilateral) agreements with a specific focus on frontier workers could further protect and subsequently stimulate cross-border mobility.

2.3 Additional studies

A study by the Irish Centre for Cross Border studies, *'Measuring mobility in a changing island'* published in 2010,³⁴ reported that frontier workers commuting between Ireland and the UK encounter substantial difficulties in claiming welfare benefits.

*"Discussions with government departments and agencies in a quest to gather statistics suggest that cross-border mobility is still not catered for within the psyche of the public sector in either jurisdiction. The current public sector reforms do not provide for cross-border commuters It is prudent to suggest, given the experience of the Centre for Cross Border Studies, that these cross-border commuters and their extended families may have different cross-border needs than the general population. Currently, there is no centralised point addressing these needs within public administration on either side of the border."*³⁵

The Eurobarometer Qualitative Study 'Obstacles citizens face in the Internal Market', published in September 2011,³⁶ equally so provides examples of difficulties and barriers mentioned by citizens who consider employment in another Member State than the Member State of residence. Amongst these communicated issues are concerns that local labour force will be given preference over other, non-resident, EU nationals; the distrust of professional qualifications from certain Member States; and the risk that frontier workers would be paid less than resident employees. Additionally, conditions and administrative formalities that needed to be adhered to prior to employment such as, amongst others, the necessity of having a bank account or place of residence are equally so considered as potential obstacles which dissuade individuals from engaging in frontier work.³⁷

Lastly, some conclusions with respect to the obstacles encountered by frontier workers can equally be derived from publications by the former Network on Free Movement of Workers.³⁸ In one of its most recent annual publications, published in 2012 for 2010-2011, the concerned network identified three main categories of obstacles encountered by cross-border workers. The first category referred to the imposition of

³⁴ J. Shiels & A. O'Kane, 'Measuring Mobility in a Changing Island', EURES, May 2010, 35. <http://borderpeople.info/cross-border-mobility>.

³⁵ Ibid, p. 35.

³⁶ TNS Qual+, 'Obstacles citizens face in the internal market', EUROBAROMETER, September 2011, 91. http://ec.europa.eu/public_opinion/archives/quali_en.htm.

³⁷ Ibid, p. 64.

³⁸ K. Groenendijk, E. Guild, R. Cholewinski, H. Oosterom-Staples & P. Minderhoud, 'Annual European Report on the Free Movement of Workers in Europe in 2010-2011', European Network on the Free Movement of Workers, January 2012, 148. <http://ec.europa.eu/social/main.jsp?catId=475>; K. Groenendijk, E. Guild, R. Cholewinski, H. Oosterom-Staples, P. Minderhoud & S. Mantu, 'Annual European Report on the Free Movement of Workers in Europe in 2011-2012', European Network on the Free Movement of Workers, 2013, 123. <http://ec.europa.eu/social/main.jsp?catId=475>.

residence requirements and the difficulties in acquiring social benefits for themselves and family members. Secondly, it was noted that discrepancies between taxation regimes were particularly detrimental for frontier workers, specifically in absence of double taxation agreements. Lastly, additional obstacles were encountered with respect to, amongst others, access to education and with respect to the receipt of invalidity benefits. The last annual report by this network, referring to 2011-2012 and published in 2013, highlighted that despite the substantial efforts undertaken by Member States by means of double taxation agreements, tax-related issues nevertheless persisted with respect to frontier workers. Equally so, the report emphasised that much ambiguity persisted with respect to entitlement to and eligibility for social benefits. Furthermore, the report hinted that for the more recent Member States, the lack of specific mentioning of frontier workers in national legislation could potentially negatively affect their right to equal treatment.

2.4 Conclusion

The findings and conclusions derived from the foregoing reports and studies clearly demonstrate that the obstacles to which frontier workers are subjected are clearly concentrated on three distinct grounds. Firstly, it is clear that lacking sufficient information on behalf of all parties involved, with respect to the particular situation of frontier workers, as well as their entitlement, applicable national and European legislation, and the difficulties they encounter, is one of the most fundamental obstacles in their exercise of free movement as enshrined in Article 45 TFEU. Whilst lacking information and knowledge was initially not inconceivable due to limited cross-border movement, this no longer holds true. Secondly, the findings in the varying reports have continuously referred to discrepancies in taxation regimes as a substantial obstacle. Despite the double taxation agreements concluded between various Member States, frontier workers consistently communicate disadvantageous tax regimes as a source of scepticism for cross-border work. Lastly, discrepancies between entitlements to welfare benefits have a substantial deterrent effect on the free movement of frontier workers.

3 Analysis of relevant case law by the Court of Justice of the European Union

In determining and assessing the obstacles frontier workers are subjected to in the Member States concerned, it is of paramount importance to consult the relevant case law. The Court of Justice of the European Union (CJEU) has ruled, on numerous occasions, with respect to residence requirements vis-à-vis frontier workers, thus providing ample additional clarifications to the relevant legal provisions.

3.1 The personal scope of Regulation (EU) No 492/2011

In establishing the right to equal treatment for frontier workers, particularly with respect to social and tax advantages as prescribed by Article 7 of Regulation (EU) No 492/2011³⁹, which repealed and replaced Regulation (EEC) No 1612/68, it is undisputed that the *Meints* case is particularly relevant.⁴⁰

The concerned case involved an agricultural worker living in Germany who lost his job in the Netherlands following the setting aside of land belonging to his former employer. Within this context, Mr Meints was refused a special benefit for employees of such employers as a direct result of his residence in another Member State than that of his (former) employment. It was held by the Netherlands, that the benefit in question did not constitute an unemployment benefit for the purposes of Regulation (EEC) No 1408/71, thus excluding Mr Meints as a recipient thereof. The Dutch government equally so asserted that a frontier worker like Mr Meints could not rely on Article 7 of the former Regulation (EEC) No 1612/68, to claim these social advantages as this did not provide for the possibility of 'exporting' such advantages. The CJEU rejected the reasoning by simply referring to the fact that the preamble to Regulation (EEC) No 1612/68 expressly states that the freedom of movement must be enjoyed, "without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services". Lastly Article 7 of the aforementioned Regulation refers, without reservation, to a "worker who is a national of a Member State", thus entailing that frontier workers, as a specific category of migrant workers, indeed enjoy the right to equal treatment as enshrined in former Regulation (EEC) No 1612/68.

In matters pertaining to migrant workers and frontier workers specifically, as well as their subsequent entitlement to a variety of benefits, the CJEU has consistently distinguished between economically active individuals as opposed to the economically *inactive*. Generally, in accordance with Regulation (EU) No 492/2011, it can be held that the economically active, i.e. those who are employed, are automatically accorded access to welfare benefits due to the fact that the employment sufficiently

³⁹ Article 7 of Regulation (EU) No 492/2011

"1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

3. He shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres.

4. Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States."

⁴⁰ Case C-57/96, *H. Meints v Minister van Landbouw, Natuurbeheer en Visserij*.

demonstrates integration in the Member State of employment concerned. The latter is due to the fact that as an employee in the Member State concerned, the individual is subject to taxation and thus contributes to its general welfare. This stance taken by the CJEU solely reinforces the wording in Article 7 of Regulation (EU) No 492/2011, which prescribes equality of treatment with respect to social and tax advantages for migrant workers. Mindful of Article 7 of Regulation (EU) No 492/2011, and as has been confirmed in a plethora of CJEU judgments, obstacles via the means of, amongst others, residence requirements are automatically deemed inappropriate and are liable to raise discriminatory obstacles, with respect to cross-border workers.

The foregoing work-centric approach, warranting the receipt of welfare benefits cannot simply be transposed to the economically inactive, despite having been accorded European citizenship and the rights associated therewith. In reconciling the concerns Member States share with respect to unbridled access to welfare benefits by those who do not actively contribute to the economic welfare of a state, the CJEU has developed the *real link* test.⁴¹ The latter entails that, in order for economically inactive EU citizens to acquire access to welfare benefits, despite residing in another Member State, sufficient integration in the other Member State need be demonstrated. In other words, Member States may render the exportability and receipt of welfare and solidarity benefits by economically inactive individuals conditional upon a tangible and sufficient link with the State concerned.⁴² Within this context the CJEU has, on numerous occasions, adjudicated on the means by which the foregoing *real link* can be demonstrated. As such, the CJEU has held that sufficient integration can be demonstrated by, amongst others, (habitual) residence,⁴³ familial circumstances,⁴⁴ linguistic affiliation⁴⁵ and nationality.⁴⁶ It suffices to mention that the degree of integration required will be dependent upon the type of benefit that is sought.

It is paramount to note the particular situation of the family members of economically active individuals in a cross-border context. Family members of migrant workers, who are subject to equal treatment pursuant to Article 7 of Regulation (EC) No 492/2011, are not necessarily economically active, which begs the question as to entitlement to welfare benefits by the Member State of employment. Despite the wording of Article 7 of the foregoing Regulation, which stipulates that *workers* are entitled to equal treatment with respect to social and tax advantages, the CJEU has ruled that this provision is equally applicable to the (dependent) family members of the worker concerned. This was, amongst others, exemplified in the case *Commission v the Netherlands*,⁴⁷ which concerned the exportability of study grants. The Netherlands sought, *in casu*, to limit the export of study grants to those who had fulfilled a durational residence requirement. To this effect, the Netherlands claimed that Article 10 of Regulation (EU) No 492/2011, which imposes a residence requirement for dependent children who want to gain analogous access to educational facilities in the Member State of employment, demonstrates that the equal treatment prescribed in Article 7 of this same Regulation, is solely applicable to migrant workers, thus excluding the (non-resident) family members thereof. This reasoning was rejected by the CJEU, and has done so continuously. It held that Article 7 of Regulation (EU) No 492/2011 is equally applicable to the family members of migrant workers, irrespective of their employment.

⁴¹ Case C-224/98, D'Hoop.

⁴² Case C-209/03, Bidar; Case C-224/98, D'Hoop.

⁴³ Case C-209/03, Bidar; Case C-158/07, Förster.

⁴⁴ Case C-258/04, Ioannidis.

⁴⁵ Case C-523/11, Prinz and Seeberger.

⁴⁶ *Idem*.

⁴⁷ Case C-542/09, Commission v the Netherlands.

In making a distinction between the economically active vis-à-vis the inactive and the respective assessment of requisite integration in a Member State to ascertain entitlement to welfare benefits, the CJEU was held to define what constitutes migrant work in view of Regulation (EU) No 492/2011. As aforementioned, if an individual is engaged in migrant work, the latter, precisely due to his or her employment, initially received automatic access to welfare benefits. However, the CJEU has increasingly allowed Member States to impose certain additional conditions in order to demonstrate sufficient integration by workers, thus justifying equal treatment of social and tax advantages. Of particular relevance in this regard, is the *Geven* case.⁴⁸ Mrs Geven was a frontier worker in Germany who performed less than 15 hours a week in Germany, entailing that Mrs Geven was engaged in minor employment. Despite having an employment contract in Germany as a frontier worker, and irrespective of the fact that the entitlement thereof was extended to non-residents working in Germany, Mrs Geven was denied a German child-raising benefit. The CJEU accepted the stance by Germany that certain benefits can indeed be denied, notwithstanding the fact that an employment contract has been concluded, if sufficient integration has not been demonstrated. In other words, the status as a migrant worker no longer automatically suffices in demonstrating that a sufficient link has been established with the State of employment, in order to warrant unbridled access. With respect to the case of Mrs Geven, the fact that she was only bound by minor employment detrimentally affected the exportability of benefits in her favour. Consequently, the foregoing entails that the *real link* test, as had initially solely been applied to assess integration of economically non-active individuals, has now equally so, in a limited amount of cases, been applied to assess the entitlement of economically active individuals to welfare benefits in a Member State other than the Member State of residence.

3.2 The material scope of Article 7 of Regulation (EU) No 492/2011

In addition to defining the parameters for cross-border entitlement to welfare benefits, the CJEU has equally so been called upon on numerous occasions to determine the material scope of Article 7 of Regulation (EU) No 492/2011. As the exportability of social and tax advantages as such is possible for migrant workers and their dependent family members (see *supra*, 1.2 Applicable Legislation, 1.2.1 Regulation (EU) No 492/2011) who reside in Member States outside of the Member State of employment, the substance thereof is of particular relevance, and may have far-reaching implications for the Member State of employment.

3.2.1 Social advantages

3.2.1.1 Preliminary observations

The CJEU defines social advantages as being "*all advantages which, whether or not linked to a contract of employment, are generally granted to national workers because of their objective status as workers or by virtue of the mere fact of their residence on the national territory*".⁴⁹ The extension of the concept of 'social advantage' in the CJEU case law, which may include advantages as diverse as the right of a person to request that proceedings take place in a language other than that normally used,⁵⁰ or

⁴⁸ Case C-213/05, Geven.

⁴⁹ Case C-287/05, Hendrix.

⁵⁰ Case C-137/84, Mutsch.

the right of residence for the unmarried partner of a migrant worker,⁵¹ has been a central pivot in the development of migrant workers' rights.⁵²

Whilst the foregoing definition makes the distinction between employment related benefits and non-employment related benefits, it need be recalled that entitlement generally will not solely depend on the qualification of an individual as a worker in accordance with Regulation (EU) No 492/2011. Rather, dependent family members are equally accorded equal treatment in the access to social and tax advantages, and the economically inactive will be the recipients of such benefits if a sufficient degree of integration has been demonstrated. Mindful thereof, the CJEU has been called upon, on numerous occasions, to adjudicate on the legitimacy of residence requirements as conditions for the receipt of such aforementioned benefits.

Prior to an assessment of the various cases in which the CJEU adjudicated on the legitimacy of residence requirements in a particular circumstance, it need be noted, however, that residence requirements will not automatically be deemed contrary to Regulation (EU) No 492/2011 and subsequently the free movement of workers. The foregoing is explicitly stated in the *Hendrix* case.⁵³ This case concerned a Dutch frontier worker who worked and lived in the Netherlands. While continuing to work in the Netherlands, he transferred his residence to Belgium. Before his relocation he had been entitled to an invalidity benefit according to the Disablement Assistance Act for Handicapped Young Persons of 24 April 1997 (*Wajong*). The benefit concerned was deemed a non-exportable special non-contributory benefit, as listed in Annex II(a) of Regulation (EEC) No 1408/71. Subsequently, upon his relocation, the Dutch competent institution stopped paying the benefit. However, as Mr Hendrix continued to be active as a worker in the Netherlands, the CJEU was asked whether the withdrawal of the benefit was not contrary to Article 39 or Article 18 of the EC Treaty (now Article 45 and Article 21 TFEU, respectively). The CJEU stated that Article 39 TEC (now Article 45 TFEU) and Article 7 of Regulation (EEC) No 1612/68 must be interpreted as not precluding national legislation that imposes residence requirements, meaning that a special non-contributory benefit listed in Annex II(a) to Regulation (EEC) No 1408/71 may be granted only to persons who are resident in the national territory. However, a residence requirement upon which a benefit is conditioned can solely be imposed if it is objectively justified and proportionate to the objective pursued. The CJEU held that, *in casu*, the condition of residence was objectively justified. In relation to proportionality, however, the CJEU noted that the Dutch legislation provided that the condition might be waived if it led to an unacceptable degree of unfairness. In this context, it stated that, in interpreting this provision in conformity with the requirements of Community law, the national court had to be satisfied that the requirement of residence did not lead to such unfairness, taking into account the fact that the applicant had exercised rights to free movement as a worker and that he had maintained economic and social links to the Netherlands. Thus, despite the CJEU' highly sceptical regard with respect to residence requirements and the suspicion of discrimination it associates thereto, such requirements may nevertheless be warranted if additional conditions are met.

⁵¹ Case C-95/85, *Reed*.

⁵² The interpretation of social advantages has been established in respect of benefits such as railway discount cards for large families; case C-32/75, *Cristini*, childbirth loans; case C-65/81, *Reina*, invalidity benefits; case C-63/76, *Inzirillo*; and case C-310/91, *Schmid*, minimum means or subsistence; case C-261/83, *Castelli*; case C-249/83, *Hoeckx*; case C-122/84, *Scrivner*; case C-139/85, *Kempf*, financial support for students; case C-235/87, *Matteucci*; case C-308/89, *di Leo*; case C-3/90, *Bernini*, maternity benefits; case C-111/91, *Commission of the European Communities v Grand-Duchy of Luxembourg*, and family benefits; case C-185/96, *Commission of the European Communities v Hellenic Republic*, guaranteed social minimum for elderly persons; case C-157/84, *Frasco*; case C-261/83, *Castelli*.

⁵³ Case C-287/05, *Hendrix*.

Similarly in the case of *Giersch*,⁵⁴ which concerned the entitlement to study grants of dependent children of frontier workers who are engaged in employment in Luxembourg, the CJEU had to rule on the legitimacy of the refusal to grant (financial) aid to the children as a result of their residence elsewhere. The CJEU held that a residence condition as such constitutes indirect discrimination on grounds of nationality. However, prior to ascertaining the foregoing, the CJEU reiterated that certain residence conditions may be deemed justified. *In casu*, given the social objective envisaged by the Luxembourg authorities, the CJEU held that seeking to increase the number of Luxembourg residents who have enjoyed higher education is a legitimate, public interest objective, which may warrant seemingly indirect discriminatory behaviour. Within this context, the ruling explicitly stipulates that indeed for certain public interest objectives, it may be warranted to require a certain degree of integration by not only the frontier worker, but equally so the indirect recipients thereof, i.e. the dependent children. The foregoing entails that in contrast with earlier rulings the CJEU is increasingly applying a sufficient integration test not only with respect to economically inactive EU citizens, but equally so concerning economically active EU citizens (see *supra* 3.1 The personal scope of Regulation (EU) No 492/2011). The CJEU affirms this by noting that in pursuit of the accepted public interest objective, the Luxembourg authorities could have imposed a durational employment condition for the receipt of the study grants concerned, rather than the contested residence condition. Mindful of the foregoing, the CJEU thus held that the applied measure was too exclusive and subsequently contradictory to the free movement of workers, despite having envisaged a legitimate justification for the indirectly discriminatory measure.

3.2.1.2 Social advantages in judgments by the CJEU

Within the context of social advantages and the equal treatment provision encompassed in Article 7 of Regulation (EEC) No 1612/68, the case of *Sotgiu*⁵⁵ is of particular relevance. *In casu*, Mr Sotgiu – an Italian national – received a separation allowance for being employed in Germany whilst his family members remained residents in Italy. Following legislative amendments, the nominal value of the separation allowance was increased for individuals who worked abroad and whose family remained resident in Germany. However, the increased value of the separation allowances was not granted to individuals who were employed in Germany with family members who remained residents in another Member State, entailing that Mr Sotgiu received the same allowance as prior to the legislative amendment. Whilst not being explicitly related to frontier workers, the CJEU clarified a number of elements pertaining to the principle of equal treatment in view of free movement of workers as encompassed in Article 7 of Regulation (EEC) No 1612/68. Particularly, in the case concerned the CJEU was held to assess to what extent a separation allowance fell within the ambit of the equal treatment provision concerning social advantages as encompassed in Article 7 of Regulation (EEC) No 1612/68. Moreover, the CJEU was asked, amongst others, to what extent the equal treatment principle affected the legitimacy of residence conditions. In the case concerned, the CJEU ruled that, indeed, separation allowances are to be deemed conditions of employment in accordance with Article 7 of Regulation (EEC) No 1612/68 and are thus subject to the equal treatment test. Moreover, the CJEU confirmed that, insofar no legitimate justification can be found, residence requirements may indeed result in discrimination in direct contravention of the foregoing equal treatment provision.

⁵⁴ Case C- 20/12, *Giersch v Etat du Grand-Duché de Luxembourg*.

⁵⁵ Case C-152/73, *Giovanni Maria Sotgiu v Deutsche Bundespost*.

When dealing with activation measures, mention need be made of an interesting case, i.e. *ITC* (C-208/05). A German private sector recruitment agency, acting as a mediator and intermediary between those applying for and those offering positions of employment, was refused a fee in respect of a person's recruitment of an unemployed person, as this fee was conditional on the job found by the agency being subject to compulsory social security contributions in that Member State. The German interim agency, however, helped the unemployed person concerned to a contract of employment of the Netherlands. As by application of the coordination provisions, the person concerned and the employer became subject to compulsory social security contributions in the Netherlands and not in Germany, the fee was refused. The CJEU considered that this condition to be subject to the German social security for obtaining a fee was contrary to the provisions of the freedom for workers. The right of workers to take up an activity as an employed person within the territory of another Member State, without discrimination, must also entail as a corollary the right of intermediaries to assist them in finding employment in accordance with the rule governing the freedom of movement for workers. A measure which constitutes an obstacle to this freedom of movement can only be accepted if it pursues a legitimate aim compatible with the Treaty and is justified by pressing reasons of public interest. The German government had the following arguments. First, such a system represents a new instrument of the national employment policy, which aims to improve workers' recruitment and reduce unemployment. Second, its purpose is to protect the national social security system, which can be done only if contributions are paid on a national basis; contributions would be lost if persons seeking employment were to be recruited in other Member States. Thirdly, it seeks to protect the national labour market against the loss of qualified workers. These arguments were not accepted by the CJEU. The CJEU confirmed that it is true that the risk of seriously undermining the financial balance of the social security system may constitute an overriding reason in the general interest. However, this is not the case here. The contributions that the German social security system will lose, can be reduced. First, while a person seeking employment who is recruited in another Member State is no longer required to pay social security contributions in his or her Member State of origin, that State is no longer required to pay him or her unemployment benefits. Second, it is of the essence of the freedom of movement for workers that the departure of a worker to another Member State may be counterbalanced by the arrival of a worker from another Member State.

A second case relevant within the context of a residence requirement for entitlement to activation measures is the case *Caves Krier Frères*.⁵⁶ *In casu* the CJEU states that Article 45 TFEU precludes Luxembourg legislation which makes the grant to employers of a subsidy for the recruitment of an unemployed person aged over 45 years subject to the condition that the recruited unemployed person has been registered as a jobseeker in Luxembourg, if such registration is subject to a residence requirement.

With respect to family benefits and residence requirements attached thereto, the aforementioned *Geven*⁵⁷ case and the *Hartmann*⁵⁸ case are particularly relevant. *Hartmann* concerned the entitlement of frontier workers to receive child-raising allowance in the State of employment (Germany), rather than that of residence (Austria), as a social advantage under Article 7(2) of Regulation (EEC) No 1612/68.⁵⁹ The regime encompassed in Regulation (EEC) No 1408/71, allegedly did not apply, as the applicant was not employed and her husband, who was a civil servant, fell outside

⁵⁶ Case C-379/11, *Caves Krier Frères Sàrl v Directeur de l'Administration de l'emploi*.

⁵⁷ Case C-213/05, *Geven*.

⁵⁸ Case C-212/05, *Hartmann*.

⁵⁹ Case C-212/05, *Gertraud Hartmann v Freistaat Bayern*.

the scope thereof. The CJEU held that the fact that the husband had settled in Austria for reasons unconnected with his employment did not justify refusing him the status of migrant worker when he had made full use of his right to free movement of workers by going to Germany to work there. The CJEU equally so held that the allowance was a social advantage for the frontier worker, although it was in fact claimed by the wife, and that it could not be denied to him on the basis that he did not reside in Germany. In the *Hartmann* case the CJEU declared that a full-time employment legitimately demonstrates sufficient integration into the German society, entailing that equally so Mr Hartmann's children are entitled to German child-raising allowance.

Conceivably the most pertinent cases with respect to the rights to study grants – a particularly contentious issue with respect to frontier workers – are the *Meeusen* case, the case *Commission v the Netherlands*, and the aforementioned *Giersch* case.

The *Meeusen* case⁶⁰ concerned a Belgian couple residing in Belgium. The mother was considered a frontier worker as she worked in the Netherlands for two days during the week. As a result, the daughter applied for a Dutch study grant for studies undertaken in Belgium. The grant was refused, however, on the ground that the child was not a resident in the Netherlands. The CJEU decided that the dependent child of a national of one Member State who pursues an activity as an employed person in another Member State while maintaining his residence in the State of which he is a national can nevertheless rely on Article 7(2) of Regulation (EEC) No 1612/68 in order to obtain study financing under the same conditions as children of nationals of the State of employment. Particularly, the CJEU noted that children of frontier workers are entitled to claim such financial aid without any further requirement as to the child's place of residence. A residence requirement, as imposed by the national legislation at issue in the main proceedings was therefore not objectively justified and proportionate.⁶¹

A second case involving access to Dutch study grants is *European Commission v The Netherlands*,⁶² which pertained to the Dutch provision that entitlement to funding for higher educational studies abroad was conditional upon students having legally resided in the Netherlands for at least three out of the six years preceding the beginning of the course abroad. The CJEU held that by requiring migrant workers and dependent family members to comply with this durational residence requirement the Netherlands failed to fulfil its obligations under Article 45 TFEU and Article 7(2) of Regulation (EEC) No 1612/68 (now Regulation (EU) No 492/2011). In fact, the requirement concerned establishes inequality of treatment between Dutch workers

⁶⁰ Case C-337/97, C.P.M. Meeusen v Hoofddirectie van de Informatie Beheer Groep.

⁶¹ Currently a Dutch case is pending before the CJEU (case 359/13, Martens). This case concerns the possibility under EU law to terminate the right to receive study finance for education or training outside the EU of an adult dependent child of a frontier worker with Dutch nationality who lives in Belgium and works partly in the Netherlands and partly in Belgium. This termination concerns the point in time when the frontier work ceases and work is then performed exclusively in Belgium. The child may not meet the requirement to have lived in the Netherlands for at least three of the six years preceding the enrolment at the educational institution concerned. The Advocate General is of the opinion that Article 45 TFEU and Article 7(2) of Regulation (EEC) No 1612/68 preclude the Netherlands from denying study finance to the dependent child of a frontier worker holding the Dutch nationality on the basis of the three out of six years rule as long as he or she is a frontier worker. If that frontier worker ends his or her employment in the Netherlands and exercises his or her freedom of movement for workers in order to take up full-time employment in another Member State, and irrespective of his or her place of residence, Article 45 TFEU precludes the Netherlands from applying measures which, unless they can be objectively justified, have the effect of discouraging such a worker from exercising his or her rights under Article 45 TFEU and causing him or her to lose, as a consequence of the exercise of his free movement rights, social advantages guaranteed by Dutch legislation, such as portable study finance for his or her dependent child. (Opinion of the Advocate General of 24 September 2014, case C-359/13, B. Martens v Minister van Onderwijs, Cultuur en Wetenschap.

⁶²Case C-542/09, Commission v The Netherlands.

and migrant workers residing in the Netherlands or employed in that Member State as frontier workers.

Article 7 of Regulation (EEC) No 1612/68 requires the principle of equal treatment to be applied, amongst others, in cases of dismissal and advantages with respect thereto. Within this context the CJEU has been held to assess the compliance of the refusal to grant supplementary retirement points in the event of early retirement to frontier workers who had previously been employed in France whilst being resident in Belgium. The CJEU held, in the case of *Commission v the French Republic*,⁶³ that these compulsory French supplementary retirement points to be granted mindful of early retirement are not to be deemed a benefit within the ambit of Regulation (EEC) No 1408/71, entailing that compliance with Community provisions is to be assessed, within the present matter, solely upon the equal treatment provision enshrined in Article 7 of Regulation (EEC) No 1612/68. The CJEU subsequently held that the frontier workers residing in Belgium yet having previously been employed in France are placed at a distinct disadvantage, given the compulsory nature of the supplementary coverage, vis-à-vis individuals in the same position yet resident in France, as the former category is denied the supplements solely upon the ground of residence elsewhere. As France, throughout the proceedings, did not submit adequate grounds to justify the aforementioned distinction, the CJEU subsequently held that indeed, the provisions by which frontier workers residing in Belgium were denied the supplementary pension points in the event of early retirement contravenes the equal treatment provision enshrined in Article 7 of Regulation (EEC) No 1612/68.

3.2.2 Tax advantages

In the absence of unifying or harmonising measures at Union level, the Member States retain their competence. This does not mean, however, that Member States are entitled to impose measures that contravene the freedoms of movement guaranteed by the Treaty. A difference in treatment with respect to tax advantages between residents and non-residents may constitute discrimination where there is no objective difference between the situations which justify that differential treatment. Within this context, several distinct cases are noteworthy.

In the *Renneberg* case, direct tax law is discussed.⁶⁴ Mr Renneberg was a Dutch citizen who relocated to Belgium while continuing to work in the Netherlands where he generated more than 90% of his total income. At the time, a resident of the Netherlands was entitled to tax relief with respect to the ownership of immovable property. Insofar the property was situated in the Netherlands, a tax deduction was granted based on the difference between the rental value of the dwelling and interest paid on the mortgage, which was known as the negative income. If the property was situated outside the Netherlands, relief was still available, albeit far more limited. Mr Renneberg applied, unsuccessfully, for deduction of the negative income relating to his Belgian dwelling against his income arising in the Netherlands.

The CJEU responded by acknowledging the protection of Article 39 TEC (Article 45 TFEU) with respect to workers who became cross-border workers solely by moving their residence. As a result thereof, Mr Renneberg was disadvantaged with respect to the applicable tax advantages vis-à-vis resident workers. The CJEU was subsequently held to assess whether this unequal treatment was the legitimate result of the

⁶³ Case C-35/97, *Commission of the European Communities v French Republic*.

⁶⁴ Case C-527/06, *R.H.H. Renneberg v Staatssecretaris van Financiën*.

bilateral tax agreement between the Netherlands and Belgium. It responded negatively for two reasons. Firstly, it was held that the distribution of the taxing powers in the bilateral tax treaty does not preclude entitlement to tax relief for immovable property in Belgium. Secondly, the rules of the CJEU with respect to the taxation of cross-border work as derived from Article 39 TEC (new Article 45 TFEU) have precedence over the allocation of taxing powers as agreed by the Member State. That is, when there is no objective difference between residents and non-residents, the latter may not be denied the tax advantages available to residents. This is the case particularly when a non-resident taxpayer receives no significant income in his Member State of residence and derives the majority of his taxable income from an activity pursued in the Member State of employment. In a situation as such discrimination arises due to the fact that the personal circumstances of the taxpayer are not taken into account in the Member State of employment, nor in the Member State of residence.

The foregoing case reaffirms a judgment by the CJEU two years prior thereto. In the case concerned, *Ritter-Coulais*⁶⁵, Mr and Mrs Ritter had asked the German authorities, in determining their respective tax liability, to take into consideration the negative income derived from their residence in France. Substantiating its reasoning upon the bilateral taxation agreement with France, the authority concerned refused to do so, despite the individuals being employed in Germany and receiving no income in France. Construing their claim upon the notions of free movement of capital and freedom of establishment, the CJEU was ultimately asked by means of a preliminary ruling to what extent the provisions concerned preclude a distinction as such, albeit indirect, between residents and non-residents in the calculation of tax liability in Germany. The CJEU, in its ruling, negated the applicability of the provisions concerning freedom of establishment and free movement of capital, and asserted its competence to assess the compliance of the bilateral tax agreement between France and Germany with the provisions concerning the free movement of workers. Consequently, the CJEU held that indeed the provisions concerned, which indirectly target non-residents and prohibit negative income to be taken into regard in the calculation of tax liability in Germany, were not in conformity with the provisions on the free movement of workers. Moreover, the reasoning granted by the German state, i.e. the necessity of fiscal coherence to justify the indirect distinction between residents and non-residents, did not suffice to justify the indirect distinction.

In the case of *Ladebrink*⁶⁶ the CJEU becomes far more explicit in assessing a similar dispute. Mr and Mrs Ladebrink, exclusively employed in Luxembourg, yet resident in Germany, applied to the Luxembourg authorities, to have negative income resulting from two properties they own in Germany to be taken into consideration in the computation of the their tax liability. Distinct from the previous cases, it need be noted that the Mr and Mrs Ladebrink did not occupy the notified properties. Despite not being subject to taxation in Germany, Mr and Mrs Ladebrink were thus denied any means to rely on their negative income loss in the determination of their tax liability. Within this context the CJEU explicitly held that such legislation, resulting from a bilateral tax arrangement, was discriminatory vis-à-vis frontier workers, as it placed them at a substantial disadvantage in comparison to residents in Luxembourg, who do have the possibility of invoking their negative income derived from owned property in the determination of their tax liability in Luxembourg.

⁶⁵ Case C-152/03, *Ritter-Coulais v Finanzamt Germersheim*.

⁶⁶ Case C-182/06, *Etat du Grand-Duché de Luxembourg v Ladebrink*.

Another pertinent tax-related case is the matter of *Commission v Germany*.⁶⁷ In this case the CJEU declared that Germany failed to fulfil its obligations under Article 39 EC (45 TFEU) and Article 7(2) of Regulation (EEC) No 1612/68 (now Regulation (EU) No 492/2011) and Article 18 EC (Article 21 TFEU). The CJEU held that Germany was in violation of European legislation by having introduced and having maintained the provisions for entitlement to complementary pensions, which deny cross-border workers and their spouses the right to a savings pension bonus, unless they are fully liable to taxation in that Member State. Additionally, the German legislation concerned prohibited cross-border workers to use the subsidised capital for the acquisition or construction of an owner-occupied dwelling unless the property is situated in Germany. Lastly, the concerned provisions provide that the bonus received by frontier workers be reimbursed on termination of full liability to tax in that Member State.

The *Ettwein* case⁶⁸ is a pertinent case when assessing the stance taken by the CJEU on equal treatment with respect to tax advantages and imposed residence requirements. This case concerns the applicability of the German 'splitting' procedure. This is a tax advantage for spouses subject to income tax in Germany where the income received by one of them is substantially higher than that received by the other. This system was introduced to mitigate the progressive nature of the income tax scales. It consists in aggregating the total income of the spouses and then notionally attributing 50% of it to each of them and taxing it accordingly. If the income of one spouse is high and that of the other low, 'splitting' levels out their taxable amounts and palliates the progressive nature of the income tax scales. The system applies only if the spouses have their permanent or usual residence either in German territory or in the territory of another Member State of the European Union or a State to which the EEA Agreement applies. That agreement does not apply to the Swiss Confederation, where both spouses live. According to the CJEU Article 1(a) of 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, signed in Luxembourg on 21 June 1999, and Articles 9(2), 13(1) and 15(2) of Annex I to that Agreement must be interpreted as precluding legislation of a Member State which refuses the benefit of joint taxation with the use of the 'splitting' method, provided for by that legislation, to spouses who are nationals of that State and subject to income tax in that State on their entire taxable income, on the sole ground that their residence is situated in the territory of the Swiss Confederation.

A final case of relevance with respect to tax advantages is the *Merida* case.⁶⁹ *In casu* the CJEU was requested to pronounce upon the legitimacy and compliance of a provision pertaining to interim assistance and the calculation thereof with European provisions on the free movement of workers, by the Member State of employment. In particular, Mr Merida, residing in France and employed in Germany was subject to taxation in France as a result of an underlying bilateral agreement enacted in Germany and France. Pursuant to German legislation, Mr Merida was entitled to interim assistance following the cessation of his employment in Germany. However, the manner by which the interim assistance benefit was calculated, as alleged by Mr Merida, was contrary to European provisions on the free movement of workers, and placed frontier workers at a distinct disadvantage. In determining the basis of assessment of the interim assistance, the German authorities not only deducted the social security contributions, but equally so the wage tax and the unemployment benefits Mr Merida had received in France. Mr Merida held that the deduction of the wage tax in the determination of the basis of assessment of the interim assistance he

⁶⁷ Case C-269/07, *Commission v Germany*.

⁶⁸ Case C-425/11, *Katja Ettwein v Finanzamt Konstanz*.

⁶⁹ Case C-400/02, *Gerard Merida v Bundesrepublik Deutschland*.

was to receive, constituted prohibited double taxation. Not only was Mr Merida subject to the taxation regime in the Member State of residence as determined by the bilateral taxation agreement, he was equally so being subjected to the taxation regime in Germany as a result of the deduction of the wage tax in the determination of the entitled amount of interim assistance. If Mr Merida had been resident in Germany, he would not have been subject to this disadvantage. The CJEU held, accordingly, that interim assistance granted in the event of dismissal falls within the scope of Article 7 of Regulation (EEC) No 1612/18 and is thus subject to the principle of equal treatment. The CJEU furthermore found that, indeed, the provisions on free movement do preclude national legislation which determines that the wage tax should be deducted in order to determine the amount of interim assistance to be disbursed in the event of a dismissal, despite a bilateral agreement dictating that individuals will be subject to the taxation regime of the Member State of residence only.

3.3 Conclusion

The aforementioned cases with respect to frontier workers demonstrate the complex nature of cross-border work, as a result of residence in a Member State other than that of employment. Additionally, it demonstrates that residence requirements for access to social benefits and study grants, but also for tax related issues are under increasing pressure and are deemed to solely be in accordance with the free movement of workers under very strict circumstances. Indeed, whilst residence requirements are not absolutely prohibited, strong objective justifications have to exist in order to justify the inaccessibility to the benefits, advantages and other measures.

Aforementioned benefits can be employment-related, but can equally so be granted irrespective of employment. Indeed, with respect to the latter benefits, residence is a requisite criterion for entitlement. Residence-based benefits are primarily an expression of territorially organised solidarity, thus warranting the exclusion thereof to non-residents, as this could potentially jeopardise the implemented system of solidarity. Conceivably, residents retain a stronger link with the Member State of residence – in addition to having social and employment ties, residents are fully taxable in the concerned State and thus contribute to the financial welfare thereof. Hence, it is not unreasonable to take these factors into consideration when determining the eligibility for a residence-based benefit.

Rendering the particular situation of frontier workers more complex is the fact that Regulation (EU) 492/2011, unlike Regulation (EC) No 883/2004, does not assign exclusive applicable legislation. The latter entails that no provisions dictate the approach that should be employed in the event of overlapping benefits (or advantages). Additionally, it fails to protect a frontier worker if he or she is not eligible for certain benefits in both Member States concerned. This conceivably places frontier workers at a substantial disadvantage vis-à-vis resident workers, in direct contravention of the right to free movement of workers.

In casting a glance upon more recent disputes the CJEU has been confronted with in the realm of frontier work and equal treatment, it becomes apparent that, despite the foregoing steps that have been taken, in safeguarding the right to free movement of frontier workers, much ambiguity still remains. In the aforementioned case of *S. and G. v Minister voor Immigratie, Integratie en Asiel*,⁷⁰ the CJEU was held to assess the refusal by Dutch authorities to grant the right to residence to third-country family members of Dutch citizens, who are employed in Belgium as frontier workers, yet

⁷⁰ Case C-457/12, *S. and G.*

reside in the Netherlands. The CJEU, in its judgment, affirms that in order to guarantee the effectiveness of the above-mentioned right to freedom of movement, derived rights may be bestowed upon third-country national citizens who are family members of the frontier worker. The foregoing entails that national courts are accorded the discretion to decide whether the granting of a derived right, of residence *in casu*, is requisite for guaranteeing the free movement of workers. Whilst not specifically related to explicit residence conditions imposed upon frontier workers by the Member State of employment, this case is demonstrative of the potential danger for implicit residence requirements, equally so imposed by the Member State of residence, and the deterrent effect such measures are liable to have on frontier workers. The concerned case amongst others, demonstrates that indeed, despite the progression made in recognising the legal ambiguity frontier workers are oftentimes subjected to, much remains to be resolved in order to effectively safeguard the rights bestowed upon them by article 45 TFEU.

4 Comparative analysis of residence requirements in the legislations of the EU Member States and EFTA States

4.1 General

In reviewing access to welfare benefits by frontier workers across Member States, it is quickly perceived that much differentiation in legislation permeates the daily realities to which frontier workers are subjected. Equally so, residence requirements differ in the manner in which they are applied across the Member States, as well as with respect to the type of benefit sought.

Mindful of the foregoing, an assessment was made across Member States with respect to the difficulties frontier workers encounter in enjoying the right to assistance by employment offices, the right to training in vocational schools and retraining centres, the right to membership in trade unions, the right to social advantages, the right to tax advantages and lastly, the right to housing advantages.

4.2 The right to assistance by employment offices

Article 5 of Regulation (EU) No 492/2011

“A national of a Member State who seeks employment in the territory of another Member State shall receive the same assistance there as that afforded by the employment offices in that State to their own nationals seeking employment.”

Pursuant to the abovementioned provision EU citizens, as well as their respective family members are formally entitled to employment services, including assistance by employment agencies. Despite the formal recognition thereof, however, access to and assistance by employment offices remains problematic in certain Member States (**AT, BE, DK, EE, FI, FR, EL, LV, LU, MT, NO, PT, ES**) vis-à-vis frontier workers. By means of indirect and/or direct residence requirements upon which assistance by employment offices is conditioned, Member States inadvertently hinder the free movement of frontier workers.

In certain Member States (**HR, CY, IE, IT, LT, NL, PL, RO, SL, SE**), in accordance with Article 5 of Regulation (EU) No 492/2011, no residence requirements are imposed and EU/EEA and Swiss citizens are treated analogously to national citizens. However, within this context it need be noted that the right to assistance by an employment office is oftentimes conditioned upon other grounds. In **Lithuania** and **Romania** for example, previous employment as a foreign (frontier) worker in the respective Member States is required in order to gain access to the assistance provided by employment offices. Inadvertently this could affect the cross-border movement of frontier workers, as, depending on the services provided by the concerned offices, first-time (frontier) employees seemingly would not have any access to services provided by Lithuanian or Romanian employment offices. The latter could effectively detrimentally affect free movement of workers, as opposed to residents, due to the fact that the latter will undoubtedly be far more likely to have been engaged in former employment in the concerned States. In the **Czech Republic** on the other hand, it

suffices, amongst others, to communicate a place of stay, although it may nevertheless prove more arduous for frontier workers to gain access to assistance.

In **Germany** and **Hungary**, it appears that access to and assistance by employment offices is twofold. In **Germany** for example, two categories of claimants for assistance by employment offices can be identified, i.e. those who are able to support themselves, and those who are not in the position to support themselves. With respect to the first category of claimants, German legislation does not prescribe a residence requirement, in the assumption that the frontier worker had previously been employed or is employed in Germany, and was thus subject to contributory payments. The second category of claimants, however, receives benefits based upon taxation as opposed to contributory benefits and subsequently needs to adhere to a habitual residence requirement in order to be entitled thereto. It need be noted, however, that scholars and academics have challenged the constitutionality thereof.

Access to and assistance by an employment office in **Hungary** on the other hand depends on the qualification of the claimant, albeit in a different manner. According to Hungarian legislation, the claimant can either be categorised as a jobseeker or a person requesting services, the former providing an individual with a greater array of services and assistance by the employment office, to which the latter category of claimants are not entitled. Frontier workers are disadvantaged in this regard, due to the fact that registration as a jobseeker is limited to those individuals who reside in Hungary. The second category of claimants on the other hand solely have access to basic assistance by employment offices in Hungary, limited to information concerning the labour market, rehabilitation guidance and local job counselling. Hence, frontier workers cannot enjoy assistance via the means of, amongst others, placement or wage subsidies, and are disadvantaged in their ability to freely move and seek employment in Hungary.

Whereas in **France** and **Malta**, residence is requisite for registering at an employment office, in other Member States oftentimes such residence requirements are not explicitly imposed. In various Member States (**BE, AT, DK, EE, FI, EL, LU, PT** and **ES**), frontier workers have been known to encounter difficulties as a result of implicit residence requirements/de facto obstacles and de facto practicalities.

In **Austria** the calculation of cash unemployment benefits is burdensome, particularly if employment by a frontier worker was brief, and may encompass an indirect residence requirement. In addition, entitlement to such benefits is oftentimes conditioned upon availability for market reintegration techniques, which may be deemed particularly difficult due to the State of residence of a frontier worker being in another Member State.

Neither **Belgian** legislation nor practice imposes residence requirements when granting assistance to individuals by employment offices, thus entailing that frontier workers equally enjoy the right concerned. However, it has been noted that stringent linguistic formalities in order to partake in training initiatives may hinder frontier workers in receiving unbridled access thereto.

Denmark, albeit having reformed the legislation concerned in 2014, previously imposed the obligation to obtain a civil registration number in order to obtain assistance from employment offices via its digital platform. These in turn presupposed residency, ultimately excluding frontier workers therefrom. Having eliminated this obstacle with the aforementioned reform, Denmark has taken steps in ameliorating the position of frontier workers. It need be noted, however, that discrepancies still exist between the legal landscape and the practical reality faced by frontier workers in

Denmark, as it is believed that they have been subject to discrimination and refusal to assistance by employment offices due to lacking a Danish civil registration number, which presupposes residency.

Despite the good cooperation **Estonia** has with other Member States in matters concerning cross-border work, practical difficulties nevertheless persist with respect to frontier workers. Particularly with respect to the recognition of unemployment insurance forms in Estonia, problems have arisen. As a result, individuals are oftentimes subjected to extensive delays in the receipt of their benefits, despite their rightful entitlement thereto. Furthermore, although EU citizens do have access to labour market services in Estonia, void of any residence requirements, other conditions may nevertheless be required. For example, the concerned individual must have contributed to unemployment insurance for at least 12 months during the 36 months prior to the application for assistance.

Most services provided by employment offices in **Finland** are accessible irrespective of residency, hence equally accessible to frontier workers. However, access to certain, specific services is limited to those who have attained the status of jobseeker. Slightly problematic in this regard is the need for a Finnish social security number in order to attain the status of a jobseeker, which subsequently presents a problem for frontier workers due to the fact that this number cannot be attained from a distance. In order to attain a social security number, individuals need to travel to the employment offices, which may be burdensome in some regions due to the remoteness thereof, linguistic issues, and discrepancies with respect to, amongst others, opening hours. Whilst these particularities are borne by all those whom are in need of a social security number, this may be particularly burdensome for frontier workers, as this requires additional travel.

Whilst legislation in **Luxembourg** stipulates that national citizens as well as EU citizens can register as jobseekers, in practice this is somewhat problematic. Notwithstanding the fact that registration as such can be done online, when registering, the competent region in Luxembourg will need to be identified. As frontier workers do not reside in Luxembourg, it is not possible for them to identify the latter. This renders it impossible to register as a jobseeker, and thus demonstrates the existence of an implicit residence requirement. Moreover, concerning the reimbursement of certain social security contributions, as discussed in the case *Caves Krier*,⁷¹ it need be mentioned that the same problem persists. However, for other employment services, which are not of a financial nature, no residence requirement can be identified.

Similarly in **Portugal**, the relevant legislation provides for the accessibility to employment services for Portuguese citizens as well as EU citizens generally, via registration on the website of the Employment and Vocational Training Institute. However, the provisions concerned do not designate the competent regional offices responsible for providing the services, which may prove to be burdensome for frontier workers. In addressing this practicality, administrative practice demonstrates that ultimately the regional delegation of the place where the employment is situated will be responsible for the granting of such services. With exception of the foregoing matter, no other residence requirements can be identified.

Pursuant to the relevant legislation, including anti-discriminatory provisions, in **Spain**, frontier workers formally enjoy analogous access to employment services as Spanish citizens, void of residence requirements. Yet, in practice the latter does not hold true.

⁷¹ Case C-379/11, *Caves Krier Frères Sàrl v Directeur de l'Administration de l'emploi*.

Spanish employment offices solely enrol and register those individuals who have a residence in the respective competent area of the employment office, automatically excluding frontier workers from the provision of such services.

The **United Kingdom** utilises a particular approach in determining whether an individual has access to the vast array of employment services provided by the competent employment offices, by taking into account the passport benefit. The foregoing entails that entitlement to (some of) the services provided by employment offices are based upon entitlement to other benefits. In the event of unemployment benefits for example, Regulation (EC) No 883/2004 prescribes that the country of residence will be competent. If the country of residence is thus the UK, this will result in the provision of services to the individual concerned by an employment office. However, despite the provision of services depending upon the type of benefit an individual is in need of, it is clear that this could nevertheless negatively affect frontier workers, as oftentimes residence will be required in order to gain access to employment assistance. Alternatively, it need be mentioned, however, that with respect to assistance by means of information pertaining to available jobs and vacancies, note can be made of the cross-border advisors in Northern Ireland and the Republic of Ireland. These cross-border advisors have specific information at their disposal with respect to the concerned vacancies and available jobs, and thus are best suited to provide information with respect thereto.

4.3 Rights to training in vocational schools and retraining centres

Article 7 of Regulation (EU) No 492/2011

"1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

[...]

3. He shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres.

[...]"

The principle of equality of treatment enshrined in Regulation (EU) No 492/2011 guarantees, to workers from other Member States, conditions for access to training in vocational schools and retraining centres analogous to those guaranteed to nationals of that Member State. The latter formally imposes the obligation upon Member States to treat nationals of other Member States as they do their own and subject them to the same conditions as their respective nationals in providing access to vocational schools and retraining centres. Mindful of the principle of non-discrimination, it remains dubious as to whether a residence requirement in this context is automatically void of legitimacy (see *supra*, 1.4 Defining residence and residence requirements). If national citizens are equally subjected to a residence requirement in order to receive access to vocational training and retraining centres, this would, seemingly, given the wording of the aforementioned provision, not result in a breach by the Member State

of the said obligation vis-à-vis frontier workers. However, this does not entail that a residence requirement as such could not be found problematic by frontier workers generally.

Whilst refraining from imposing residence requirements *sensu stricto*, as is the case in several Member States (**MT**, **NO**), various Member States (**CY**, **EE**, **FR**, **LT**, **LU**, **PL**, **RO**) do make access to vocational schools and retraining centres subject to alternative conditions. Such conditions are oftentimes related to previous employment in the Member State concerned. The latter is the case for **Romania**, where previous employment and/or the gaining of income in the State concerned is required in order to gain access to vocational schools and retraining centres. However, insofar known, the foregoing is not subject to temporal conditions. Similarly, **Cyprus**, **France**, **Lithuania**, and **Luxembourg** impose conditions pertaining to previous and/or current employment in the respective Member States, with the one distinction that temporal conditions are imposed. In **Lithuania** for example, the last place of employment needs to have been in Lithuania in order to be entitled to access to vocational schools and retraining centres. In **Luxembourg** an individual is held by a three-tier condition: an individual needs to be affiliated by the Luxembourg social security system, be bound by a contract with a firm which is legally established in Luxembourg, and have his or her main activity in Luxembourg.

In **Belgium**, **Greece**, **Latvia**, **the Netherlands**, **Portugal** and **Slovenia**, no explicit residence requirements have been imposed and EU workers are accorded the same access to vocational schools and retraining centres as the respective national citizens. However, for some Member States it is unclear as to what other conditions, if any, are imposed on acquiring such rights. As demonstrated in **Belgium** and **Latvia** for example, the status as a jobseeker or unemployed is requisite for attaining access, yet in **Latvia** no mention is made of requirements in order to be deemed a jobseeker or unemployed. The foregoing demonstrates potential leeway for conditional access to vocational schools and retraining centres, which may amount to implied residence requirements, thus detrimentally affecting frontier workers.

In order to benefit access to vocational schooling and retraining in **Iceland**, an individual need be registered as a jobseeker, which, insofar known, is not conditioned upon residency in Iceland. Access, however, will only be granted if two additional conditions are adhered to. Firstly, the individual is required to be searching for employment in Iceland. Secondly, the individual must also be enjoying employment benefits in Iceland. In applying the relevant coordination rules enshrined in Regulation (EC) No 883/2004, however, it can be derived that the latter condition imposes upon individuals an implied residence condition. That is to say, the concerned coordination rules dictate that the unemployment benefits will be received in the State of residence, which in the case of frontier workers differ from the State in which vocational schooling and retraining is sought. Consequently, notwithstanding the lack of an explicit residence requirement, frontier workers are effectively confronted with a residence requirement when seeking vocational guidance in Iceland.

Likewise in **Ireland**, access to vocational training is not explicitly subject to residence requirements. However, it is subject to the receipt of certain social welfare payments, which in turn may be subject to a habitual residence requirement. Frontier workers, due to their residence, cannot be deemed to be habitual residents in Ireland and subsequently have little to no access to vocational schooling and/or training.

The necessity to register as a jobseeker in order to gain access to training is equally prevalent in **Spain**, which formally does not impose a residence requirement in order to benefit from the concerned rights. However, as can be recalled (see *supra*, 4.2 –

The right to assistance by employment offices), administrative practice indicates that frontier workers are denied the possibility of registering as a jobseeker due to their lack of Spanish residence. Hence, it appears that frontier workers are equally so denied rights due to their lacking residence in Spain. Contrary thereto, residence is required in order to register and subsequently receive access to vocational training in **Malta**.

In some Member States (**AT, CZ, DK, IS, IE, IT, ES, SE, UK**), frontier workers do encounter de facto residence requirements and related practicalities, notwithstanding the explicit lack thereof in legislation. In **Austria**, availability for the vocational training and retraining is requisite for enjoying the rights. Consequently, for frontier workers this may be experienced as somewhat burdensome because the place of residence is not in the same Member State of the vocational school and/or retraining.

Whilst frontier workers are formally granted the same access to vocational schooling and training in **Sweden** as national citizens, they may nevertheless encounter obstacles in exercising those rights. Whilst it suffices to demonstrate that the individual has Swedish or equivalent foreign qualifications, potential problems may nevertheless arise in the effective acknowledgement of foreign qualifications. Indeed this does not impose a residence requirement upon frontier workers in a direct manner; it may negatively affect frontier workers vis-à-vis Swedish nationals who obtained respective qualifications in the Member States concerned.

The **United Kingdom** does not impose residence requirements in order to grant access to vocational schooling and/or retraining. However, it has been demonstrated that frontier workers coming from Ireland and Northern Ireland will not be entitled to cash allowances and free equipment inherent to such training. Yet again, whilst not constituting an explicit residence requirement, it does place frontier workers at a disadvantage vis-à-vis nationals due to the differing residence and/or nationality.

Finland and **Germany** both apply a dual approach in granting access to vocational schools and retraining centres. **Finland** specifically allows access to certain types of training and benefits, void of any residence requirements.⁷² Notwithstanding the lack of residence requirements, however, access to such services and benefits may nevertheless be conditional upon other requirements, such as, amongst others, previous employment. As aforementioned, conditions as such may still constitute implicit residence requirements/de facto obstacles. **Germany** on the other hand makes the distinction between those claimants who are able to support themselves, as opposed to those individuals who are not able to do so. The former, in order to gain access to vocational schooling and retraining centres are not bound by a habitual residence requirement, whereas the latter are effectively bound by this obligation, of which the constitutionality has been challenged.

Similarly to the foregoing, **Hungary** makes a distinction between the types of claimants. Recalling the distinction made in Hungarian legislation between *jobseekers*, who are held to be Hungarian residents, as opposed to *other persons seeking services* (see supra), it need be noted that only jobseekers, entailing those who reside on Hungarian territory, have access to vocational training and retraining centres, thus constituting a particularly burdensome obstacle for frontier workers.

Within this context it is paramount to note that, notwithstanding the lack of an actual explicit residence requirement, the aforementioned access to vocational schools and retraining centres made conditional upon (previous) employment in the respective

⁷² Labour market training, job alteration benefits, rehabilitation in cross-border situations

Member States, may potentially affect frontier workers precisely due to their residence in another Member State. Whilst the foregoing stipulations do not pose a problem to frontier workers who had effectively been previously employed in that Member State other than the Member State of residence, they might negatively affect the free movement of frontier workers who are searching employment on a first-time basis in the respective aforementioned Member States. Mindful thereof, it is questionable, however, whether this would amount to a breach of Article 7 of Regulation (EU) No 492/2011 and effectively hinder cross-border movement by frontier workers in the said States.

4.5 Rights to membership of trade unions and the rights attached to them

Article 8 Regulation 492/2011

“A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, including the right to vote and to be eligible for the administration or management posts of a trade union. He may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law. Furthermore, he shall have the right of eligibility for workers’ representative bodies in the undertaking.

The first paragraph of this Article shall not affect laws or regulations in certain Member States, which grant more extensive rights to workers coming from the other Member States.”

In accordance with Article 8 of Regulation (EU) No 492/2011, a vast majority of the Member States (**AT, BE, BG, HR, CY, CZ, DK, EE, FI, FR, DE, EL, HU, IS, IE, IT, LV, LT, LU, MT, NL, NO, PL, PT, RO, SK, SI, ES, SE, UK**) accord frontier workers the same rights to membership of trade unions as the respective national citizens, void of any residence requirements. Rather, in most Member States membership of a trade union and the associated rights thereto is dependent upon current or past employment. Notwithstanding the general lack of residence requirements, however, certain particularities and observations can respectively be identified and made.

Firstly, whilst no explicit residence requirements are encompassed in the relevant legislation concerning trade unions, certain Member States, such as **Germany, Greece, and Ireland**, acknowledge that membership requirements form an aspect of the statutes of the individual trade unions. The latter entails that indeed certain membership requirements can be imposed which may or may not directly or indirectly detrimentally affect frontier workers as a result of their residence in another Member State. In addition, statutes may result in practicalities, which may render it hard for frontier workers to fully enjoy the rights accorded to them by means of their membership of trade unions. By means of an example, in **Germany** it has been indicated that linguistic differences may impede frontier workers from fully comprehending the rights bestowed upon them. However, in this regard it need be noted that this is not an obstacle to which frontier workers are objected due to their residence and not necessarily limited to trade union membership.

Furthermore, as aforementioned, membership of trade unions in many Member States (**HR, DK, EE, FR, IS, MT, RO, SI, UK**) is dependent upon previous or current employment. In order to further facilitate the right to membership of a trade union, trade unions in certain Member States, such as **Greece** and **Luxembourg**, have joined ETUC, which has resulted in the mutual recognition of rights attained in trade unions in different Member States. This is interesting to, amongst others, frontier workers, as this entails that seniority gained in a trade union of another Member State will be taken into regard in a new Member State, which in turn may facilitate the acquiring of certain rights or a specific position in a trade union.

Whilst **Latvia** does not impose residence requirements on according the right to membership of a trade union, it does acknowledge the difficulties that may arise for

frontier workers. The latter is due to the fact that trade unions in Latvia are currently not well organised and hence cannot necessarily provide adequate protection to frontier workers. However, this is not solely limited to frontier workers and thus does not constitute a residence requirement.

4.6 Main social advantages

Article 7 Regulation 492/2011

"1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

[...]"

Notwithstanding the unequivocal right to equal treatment in matters concerning social advantages conferred upon EU workers, as enshrined in Regulation (EU) No 492/2011, much discrepancy with respect thereto currently prevails across the Member States. Within this context it is paramount to note that social advantages, as described by the CJEU, are not to be interpreted restrictively.⁷³ Rather, social advantages should be interpreted as *"all advantages which, whether or not linked to a contract of employment, are generally granted to national workers because of their objective status as workers or by virtue of the mere fact of their residence on the national territory, and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community"*.⁷⁴ Demonstrative of the broad interpretation⁷⁵ employed by the CJEU to determine what constitutes a social advantage is the right of a person to request that proceedings take place in a foreign language other than accustomed to,⁷⁶ or alternatively, the right of residence accorded to unmarried partners of migrant workers.⁷⁷

⁷³ Case C-57/96, Meints v Minister van Landbouw, Natuurbeheer en Visserij.

⁷⁴ Case C-57/96, Meints v Minister van Landbouw, Natuurbeheer en Visserij, p. 39.

⁷⁵ See amongst others, for additional examples of the broad interpretation employed by the CJEU to assess social advantages: railway discount cards for large families; case C-32/75, Cristini, childbirth loans; case C-65/81, Reina, invalidity benefits; case C-63/76, Inzirillo and case C-310/91, Schmid, minimum means or subsistence; case C-261/83, Castelli; case C-249/83, Hoeckx; case C-122/84, Scrivner; case C-139/85, Kempf, financial support for students; case C-235/87, Matteucci; case C-308/89, di Leo; case C-3/90, Bernini, maternity benefits; case C-111/91, Commission of the European Communities v Grand-Dutchy of Luxembourg, and family benefits; case C-185/96, Commission of the European Communities v Hellenic Republic, guaranteed social minimum for elderly persons; case C-157/84, Frascogna; case C-261/83, Castelli. From this case law it appears that the principal function of Regulations (EEC) No 1612/68 and now (EU) No 492/2011 is to provide for a general prohibition of non-discrimination with respect to benefits which do not qualify as 'social security' in the sense of the social security coordination Regulations. Furthermore, the material scope of legal arrangements covered by the Regulation on free movement of workers is not restricted to legislation as in Article 1 (l) of Regulation (EC) No 883/2004.

⁷⁶ Case C-137/84, Mutsch.

⁷⁷ Case 95/85 Reed [1986] ECR 1283

Mindful of these aforementioned discrepancies and the vast array of potentially differing social advantages, the most prevalent clusters of social advantages will be assessed, focusing specifically on residence requirements applicable thereto.

4.6.1 Educational benefits and study grants

Having been the subject of ample case law by the CJEU, study grants and educational benefits are an undisputed social advantage according to Article 7 of Regulation (EU) No 492/2011.⁷⁸ These advantages can either benefit the frontier workers themselves, or, alternatively, the respective children thereof. Despite the clear stance taken by the CJEU, by which a genuine and effective link with the Member State of employment should suffice in warranting the exportability of study grants and various similar benefits, much divergence is nevertheless apparent amongst the Member States. Whilst in some Member States no issues have been reported (**BG, CZ, EL, IT, PL, RO, SK, SE**), certain Member States, such as **Austria, Belgium, Croatia, Cyprus, Hungary, Ireland, Latvia, Malta, Norway, Portugal** and **the United Kingdom** have imposed clear residence requirements. However, it need be noted that in **Austria, Finland**, and **Latvia** steps have been taken in order to reverse the concerned residence requirement with respect to frontier workers, and thus be compliant with European legislation. In **Austria** case law has indicated that the imposed residence requirement stands in contrast with European legislation. In **Finland** on the other hand, the residence requirement to receive study grants for foreign students has been the subject of a law proposal, which would render the residence requirement redundant if a sufficient link with the country of employment is demonstrated. The above-mentioned somewhat reflects the tendency by the CJEU to accord increasing weight to the sufficient integration test, also known as the real link test (see *supra*, 3.1 – The personal scope of Regulation (EU) No 492/2011).

Some Member States have opted for a dual approach in assessing eligibility for study grants and other related benefits. In **Denmark** for example, as an alternative to the initial residence condition, a durational employment condition has been added to demonstrate eligibility for such benefits. Similarly in **France** and **Luxembourg**, entitlement to certain related benefits can be demonstrated by a genuine and sufficient employment-related link and a durational employment link respectively. In **Iceland** and **Spain** entitlement may be demonstrated by means of employment if this establishes a sufficient degree of integration in the Member State of employment, entailing that no residence requirements are applied.

Pertaining to **Lithuania**, it need be noted that state subsidies for schooling in Lithuania are void of any residence requirements. However, additional compensation and/or benefits require the residence of at least one parent in Lithuania.

In **Germany** the distinction is made between frontier workers and the children thereof. Frontier workers themselves are entitled to grants and benefits, albeit solely insofar this is connected to their employment, whereas the respective children of the frontier workers cannot claim such rights.

Interestingly, benefits and grants in the realm of education in **Slovenia** are exclusively for citizens and Slovenian residents. However, a distinct exception has been made for frontier workers in this regard, rendering the residence requirement concerned inapplicable, thus according frontier workers the same rights as national citizens.

⁷⁸ See, amongst others: Judgment of 20 June 2013, Giersch and others (C-20/12) ECLI:EU:C:2013:411

Lastly, whilst the Netherlands does not impose residence requirements for access to educational benefits and study grants concerning education *in* the Netherlands, it does however, impose a temporal residence requirement upon claimants for such benefits intended for use *outside* of the Netherlands, unless the concerned claimant enjoys protection under article 45 TFEU. Indeed the foregoing would imply that frontier workers and the respective family members are accorded equal treatment, practice has demonstrated that the concerned individuals will not be granted benefits intended for the pursuit of educational activities outside of the Netherlands.

4.6.2 Family benefits

A second category of social advantages which have proven to be of great importance to frontier workers concern family benefits in the broad sense, encompassing amongst others child care benefits and parental benefits. Despite the fact that family benefits fall within the scope of Regulation (EC) No 883/2004, problems nevertheless arise with respect thereto.

In **Austria** family assistance was initially conditioned upon the fulfilling of a habitual residence requirement. Despite the fact that the latter is no longer deemed acceptable pursuant to the *Slanina* case,⁷⁹ it appears that problems nevertheless prevail with respect to overlapping benefits in differing Member States concerning frontier workers. Furthermore, Austrian legislation provides for family hardship compensation and family promotion allowance, both of which are based upon having received the above-mentioned family assistance and the (former) requirement of habitual residence. Lastly, within this context note must be made of child care cash benefits. In order to be entitled thereto, the same conditions for family assistance must be taken into regard. The foregoing implies that frontier workers are no longer bound by the legal obligation of residence in order to benefit from the advantage. However, it need be mentioned that the exportability of such benefits will only be accepted if the Member State of residence does not provide analogous benefits.

Equally so in **Croatia, Estonia, Poland, and Portugal** similar benefits are limited by similar residence requirements, thus hindering the accessibility thereto for frontier workers.

Germany, with respect to child benefits and youth welfare, however, has taken a very distinct stance vis-à-vis frontier workers. Generally, a residence requirement is imposed, yet with respect to frontier workers specifically this has been eliminated, thus granting frontier workers full accessibility void of any residence requirements.

4.6.3 Activation measures

Activation benefits in cash or in kind are oftentimes related to the receipt of other benefits, entailing that much discrepancy exists amongst Member States as to the imposition of a residence requirement for entitlement thereto.

In certain Member States (**FR, BE, IS, IE, NO**) residence requirements are clearly imposed in granting entitlement to activation measures. Interestingly however, in **France** and **Iceland** the award of activation measures are dependent upon having received minimum subsistence support and unemployment benefits respectively. Similarly in **Belgium**, a variety of activation measures are provided for. However, whilst these are not bound by formal residence requirements, it can nevertheless be

⁷⁹Case C-363/08, *Slanina*.

derived that frontier workers may encounter a variety of practical obstacles in order to enjoy the measures concerned, which take the form of benefits in cash and/or benefits in kind. By means of an example it suffices to refer to the allowance for individuals aged 55 or older who are returning to work, and employment allowance for long-term unemployed individuals aged 45 years or younger. In both scenarios the entitlement of such allowance is conditioned upon having received unemployment benefits in **Belgium**, which thus entails that the concerned individuals were resident in **Belgium**. Equally so, in **Ireland**, the right to activation measures is based upon the receipt of social welfare. Within this context it need be noted, however, that insofar activation measures are effectively linked to the receipt of unemployment benefits, this will in all likelihood result in indirect residence requirements as a result of the coordination of unemployment benefits by Regulation (EC) No 883/2004, which assigns the Member State of residence as the competent Member State.

In other Member States, such as **Slovenia** and the **Netherlands**, additional conditions are imposed in order to be the recipient of activation benefits, namely, one must register as a jobseeker in the respective Member States. However, registration as a jobseeker in Slovenia and the Netherlands presupposes residence, thus imposing an indirect residence requirement upon frontier workers.

Other Member States such as **Cyprus** and **Latvia** equally so impose the obligation to register in as a jobseeker with the competent authorities, albeit void of a residence requirement. Analogously **Sweden** does not condition access to activation measures upon residence in the concerned Member State.

Furthermore, it need be emphasised that whilst in certain Member States no explicit residence requirements are imposed upon frontier workers, they are nevertheless subjected to a vast array of de facto obstacles. In **Austria** and **Italy** for example, activation benefits are granted by local authorities in the territory of the Member State, which presupposes presence and/or attendance by the claimant in the concerned State. As frontier workers reside in another Member State, this may result in additional travel expenses, which residents are not confronted with in attaining access to activation measures. Additionally, lacking information amongst local authorities as to the obligations incumbent upon them pertaining to activation measures, persists as an obstacle for frontier workers in **Denmark**. Frontier workers in **Finland** are subjected to similar problems due to ambiguity amongst local authorities.

In **Lithuania**, access to activation measures presupposes employment in the concerned Member State, which could be detrimental to frontier workers vis-à-vis residents, as residents are far more likely to have been engaged in employment in *Lithuania* prior to the claim to activation measures.

Lastly, in certain Member States (**DE, HU, MT, NL**) two alternative approaches can be undertaken in order to gain access to activation measures. **Germany**, as aforementioned, distinguishes between two types of claimants, namely those who can support themselves and those who cannot. Whilst the former is not subjected to a residence requirement, the latter is effectively subjected thereto. It need be noted however, that due to concerns with respect to the conformity thereof with EU law and constitutional provisions, frontier workers are no longer subjected to residence requirements. Similarly, **Malta** and the **Netherlands** make distinctions between activation benefits as a result of contributory payments and activation benefits not based on contributory payments. Not inconceivably, frontier workers in the former category will not be held to adhere to a residence requirement, whereas the latter will be subjected thereto. In **Hungary** a similar distinction exists, albeit to the detriment

of frontier workers. As aforementioned, in order to register as a jobseeker in Hungary, residence is required, entailing that frontier workers cannot register as such. By contrast they will be deemed 'persons seeking services', a category of claimants which does not have access to activation measures.

4.6.4 Social assistance

Within the field of social assistance a number of different benefits and advantages can be identified, ranging from minimum income, to specific long-term care allowance. Conceivably due to the nature of these benefits, it can generally be noted that these are conditioned upon the fulfilment of a durational residence requirement.

In **Croatia**, social welfare is effectively solely accessible to residents and citizens. Similarly in **Latvia** municipalities are responsible for social advantages generally. Consequently, permanent residence in conjunction with a personal Latvian code is requisite for attaining the benefits enshrined therein. The law pertaining to social allowance regulates flat-rate allowances, which, with respect to family benefits are bestowed upon and accessible to frontier workers in accordance with Regulation (EC) No 883/2004. However, frontier workers are not automatically excluded from other flat-rate allowances (e.g. childbirth allowance) insofar that they can show that they have a centre of interests in Latvia. Problematic in this regard is the fact that a centre of interests is usually deemed to be in the State of residence. Hence, frontier workers have a very limited ability, if any at all, to access social advantages. It need be noted, however, that not a lot of information is available with respect to frontier workers in **Latvia**. Moreover, frontier workers in Latvia are predominantly Lithuanian, and as a result thereof receive analogous flat-rate allowances, entailing that frontier workers are not necessarily disadvantaged.

In **Germany** access to social assistance for frontier workers will depend primarily on the type of claimant they are and the type of assistance they are seeking. With the exception of unemployment benefits, two additional types of assistance can be identified, namely social assistance for jobseekers and social assistance generally. The former is applicable to those who are either not yet entitled or have surpassed their entitlement to unemployment benefits or workers of whom the wage is below the minimum subsistence level and who are unemployed but employable without sufficient financial resources. Entitlement in this case is based upon a habitual residence requirement. However, as this is contested due to constitutionality concerns, frontier workers are normally exempted from this exclusion. On the other hand the German Social Court has denied such a claim due to the fact that this type of assistance is tax-financed and not financed by contributions. The sole manner by which to circumvent this reasoning is by demonstrating an existent sufficient link with the German labour market. General social assistance on the other hand is granted to individuals who are not employable and is subsequently subject to residence in Germany. Equally so, specific social assistance exists for the elderly who are completely and permanently subjected to reduced earning capacity, which equally depends on a habitual residence requirement.

Pertaining to specific social advantages such as minimum income, it is interesting to note that **France** has implemented a residence requirement, albeit a relatively short 3-month period, for entitlement thereto. For long-term care **Spain** has conditioned entitlement to a durational residence requirement of five years prior to the receipt of the benefit, and two years following the initial receipt of the benefit.

Quite contrary to the foregoing, the **United Kingdom** provides tax credits to certain individuals. Tax credits are means-tested payments made to low paid individuals

and/or individuals with families and are divided in work tax credits and child tax credits. Whilst the former presupposes employment, the latter does not. It has been confirmed that frontier workers are effectively eligible to apply for both types of tax credits and thus not bound by formal residence requirements. However, a variety of difficulties have arisen in various stages of the application process for such tax credits, primarily due to lack of knowledge by all involved parties with respect to the rights bestowed upon frontier workers.

4.7 Tax advantages

Article 7 of Regulation (EU) No 492/2011

1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

[...]

The means by which taxation occurs varies tremendously in the concerned Member States, with the one exception that most Member States (**BE, BG, CY, CZ, DE, DK, EE, EL, FR, HU, IS, IE, IT, LV, LU, MT, NL, PL, RO, SI, SK**) apply the notion of tax residency. Tax residency can be attained in the varying aforementioned states, if either an income threshold in the concerned Member State has been surpassed and/or the concerned individual has been present in the said country for the duration of at least 183 days during the year. The foregoing notion of tax residency is widely accepted and not seemingly perceived as imposing a residence requirement, to the detriment of frontier workers.

In **France, Iceland, Luxembourg, Malta** and **Slovenia** frontier workers may be assimilated to national citizens if they effectively surpass an income threshold. Frontier workers in Belgium and France would have to generate 75% of their income in **Belgium** and **France** respectively in order to be accorded the same tax benefits as national citizens. In the event that one does not meet this threshold in France alternative means are provided for in order to nevertheless be granted the same status as national citizens. Hence, it is doubtful whether the foregoing conditions constitute residence requirements to the detriment of free movement of the frontier workers. Equally so, in **Iceland**, one can be accorded the same tax benefits as national residing citizens, if the generated income in Iceland surpasses 75%. In Luxembourg, however, the threshold for non-residents to be accorded a similar taxpayer status as residents is somewhat steeper, and requires the generated income to amount to 90% of the total income. Moreover, if the threshold is indeed met; the concerned non-resident will solely enjoy the tax benefits with respect to the income acquired in Luxembourg, as opposed to the worldwide income. Similarly, **Malta** and **Slovenia** impose a 90% threshold in order to be accorded a tax resident status with the subsequent benefits attached thereto. Additionally, it need be noted that although Slovenia has agreed upon various double taxation agreements, certain issues due to

lacking cooperation and a lack of knowledge still persist, potentially detrimentally affecting frontier workers.

In **Cyprus, Romania and Poland** frontier workers will acquire tax benefits analogous to those granted to residing nationals, if they have been physically present in the Member State for at least 183 days or, alternatively in Romania and Poland, if it can be demonstrated that the centre of interests of the concerned individuals is in the respective Member State.

Similarly, in **Estonia and Latvia** tax residency, and the subsequent entitlement to tax benefits, can be demonstrated by a combination of the aforementioned techniques. More specifically a frontier worker can demonstrate his or her status as a tax resident by means of exceeding a 75% income threshold or, alternatively, having been present in the respective Member State for the duration of at least 183 days in the concerned year. If the latter is demonstrated, frontier workers can thus enjoy tax benefits in Estonia and Latvia.

Interestingly, in **Finland** you are required to have lived in the concerned State for more than six months per year, in order to be entitled to a lower progressive tax and tax deductions. However, an income threshold of 75% of the total income is furthermore obliged, to have been generated in Finland. According to the Nordic Social Security Convention, however, frontier workers specifically are held to be taxed in their countries of residence. Notwithstanding the foregoing, not a lot of information exists with respect to the taxation of frontier workers.⁸⁰

Whilst seemingly the foregoing techniques to demonstrate tax residency are equally employed in **Greece and Hungary**, and thus are void of residence requirements which detrimentally affect frontier workers, a nuance must be made. In **Greece** it is held that frontier workers are not eligible to be deemed tax residents, as they do not fulfil the requirement of having been present in Greece for at least 183 days. Consequently, frontier workers are solely taxed upon the income generated in Greece and are not entitled to tax benefits. By maintaining this stance, Greek legislation and practice indicate that mere presence beyond 183 days in Greece does not suffice. Rather, it imposes on frontier workers, amongst others, the obligation to reside, as opposed to being physically present, in Greece in order to receive the same advantages as national citizens, in stark contrast to the obligation enshrined in Article 7 of Regulation (EU) No 492/2011. In **Hungary** on the other hand, note must be made of the fact that various grounds can be invoked to demonstrate the status as tax resident, of which two are of interest with respect to frontier workers. Frontier workers can qualify as a Hungarian tax resident if it is demonstrated that the centre of interests is effectively in Hungary or, alternatively, if the concerned individual does not have residence in **Hungary** at all and the centre of interests of the individual cannot be defined. However, in assessing whether the centre of interest of a frontier worker is effectively in Hungary, the place of the closest family and personal relationships as well as the closest economic ties are examined. Concerning frontier workers it is thus unclear what grounds would prevail in the concerned assessment, rendering their position potential precarious and disadvantageous due to the residence being in another Member State.

Interestingly, tax residency in the **United Kingdom** is approached differently than in the foregoing Member States. In order to determine whether an individual would be

⁸⁰ Additional obstacles are differences in exchange rates and additional work/formalities for the employer and employee. (In essence the foregoing entails that indeed a residence requirement is applicable for frontier workers).

deemed a tax resident, regard must be had for both the individual's domicile, as well as his or her residence. If the individual is domiciled and resident in the United Kingdom, he or she will be taxed upon the worldwide income. In the event that the individual is resident but not domiciled in the United Kingdom, however, he or she will have the choice as to whether the worldwide income is taxed or, alternatively, solely the income brought into the United Kingdom. As frontier workers are neither domiciled nor resident in the concerned Member State, they will not be taxed upon their worldwide income and subsequently be excluded from the tax advantages attached thereto.

In **Austria**, the receipt of certain tax benefits is dependent upon the eligibility to receive family assistance (see *supra*, 4.6.2 – Family benefits). Whilst indeed it has been found that the imposed residence requirement to receive family assistance is non-compliant with the concerned European provisions, it is conceivable that frontier workers face de facto difficulties with respect to the implementation thereof.

Attaining tax benefits as frontier workers in **Croatia, Lithuania, Norway, Portugal, and Spain** may prove to be somewhat more burdensome. In **Croatia** for example, tax benefits are only granted to a very specific group of residents, therefore automatically excluding frontier workers. In **Lithuania**, the tax advantage, which raises the non-taxable level of income per child, is limited to residents only, thereby excluding frontier workers. However, residence in Lithuania is formulated in a broad sense as having your main personal, social or economic interest in Lithuania as opposed to elsewhere abroad. This is reminiscent of the potential problems frontier workers may encounter in Hungary, as frontier workers will nevertheless be treated as non-residents due to the fact that they have their social centre abroad.

A taxation agreement between **Spain** and **Portugal** dictates that individuals will be taxed on their income in the country of residence, entailing that frontier workers do not benefit from the monthly salary retentions, as do national citizens. However, within this context it is interesting to note that the concerned agreement, which Spain equally concluded with France, encompasses a definition of frontier work, which does not adhere to the European definition. Within the concerned agreements, frontier workers are qualified as such if they return home, to the country of residence, on a daily basis and do not reside in the employing Member State for more than 183 days. In the event that this is not the case the individual will be taxed in the country where he or she is employed. In Spain the latter would entail that he or she would be considered as a non-resident and would thus be taxed accordingly. The only deduction that would subsequently be possible would be for donations, hence substantially limiting the access to tax benefits for those workers who do not adhere to the requirements to qualify as a frontier worker under the said taxation agreements.

Finally, **Sweden** provides frontier workers with a choice regarding the applicability of certain, albeit diverging, rules on taxation. A frontier worker residing elsewhere has limited tax liability and may choose to make special rules applicable (SINK), as opposed to the regular taxation rules. The specific taxation rules are beneficial for frontier workers as they allow for frontier workers to be taxed at a lower rate, albeit without any potential tax reductions.

4.9 Rights and benefits concerning housing

Article 9 of Regulation (EU) No 492/2011

1. A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the housing he needs.
2. A worker referred to in paragraph 1 may, with the same right as nationals, put his name down on the housing lists in the region in which he is employed, where such lists exist, and shall enjoy the resultant benefits and priorities.

If his family has remained in the country whence he came, they shall be considered for this purpose as residing in the said region, where national workers benefit from a similar presumption.

Article 9 of Regulation (EU) No 492/2011 irrefutably seeks to guarantee equal treatment for workers in matters concerning housing and housing benefits within the concerned Member States. Despite the foregoing, however, frontier workers are currently predominantly excluded from such benefits in a vast majority of Member States (**AT, BE, HR, CY, CZ, DK, EE, FI, FR, EL, DE, HU, IE, IT, LV, LT, LU, MT, NL, NO, PL, PT, RO, SI, ES, UK**). By conditioning access to certain benefits and allowances upon residency in the respective states, frontier workers are oftentimes disadvantaged, thus potentially affecting their ability to move freely in line with the spirit of Regulation (EU) No 492/2011.

In **Austria**, local authorities/municipalities are in charge of awarding housing benefits of all kinds, entailing that the rules and regulations with respect thereto may vary tremendously depending on the region in the Member State. However, it appears that, generally, frontier workers are disadvantaged, due to the fact that the benefits are predominantly awarded with respect to housing units in the specific states in Austria.

Belgian and **Croatian** legislation is extremely clear with respect to the fact that housing benefits such as social housing are to be awarded solely to Belgian and Croatian residents respectively. Not only does this requirement impose a past residence requirement, it equally imposes an obligation to reside in the concerned Member State for the future. Access to social housing is equally so, difficult in **Ireland**, where continuous residence for the duration of five years at any given time or, alternatively, employment within a 15 km distance from the establishment is initially required. In the event that frontier workers manage to adhere to one of these conditions, however, access to social housing would nevertheless remain arduous due to the fact that entitlement is equally so, means-tested.

In the **United Kingdom** a distinction is made between access to housing benefits as opposed to access to social housing specifically. Whilst access to housing benefits is clearly conditioned upon habitual residency requirement, access to social housing specifically may be available to frontier workers to a certain extent. Namely, if an EEA resident is a worker or self-employed or a family member thereof, he or she will have access to social housing. Despite the foregoing, however, steps have nevertheless been taken to reverse this situation and condition social housing upon more stringent residence requirements.

In **Spain** on the other hand, access to social housing falls within the scope of competence of municipalities/regions. Whilst in some regions, registering for social housing may require residence, in some others this might not be the case. The diverging potential stance with respect thereto may be disadvantageous to frontier workers.

Similarly, in order to acquire a subsidy for purchasing or building a residence in **Cyprus**, a frontier worker would have to be a permanent resident, as is equally the case for similar benefits in **Denmark, Germany, Latvia, Lithuania** and **Poland**.

In some Member States, such as **Finland, France, Hungary, Iceland**, and **Poland**, access to housing benefits of all sorts, is not (solely) conditioned upon residence of the individual. Rather, access will be granted, including to frontier workers, if the property is effectively within the respective territories of the Member States. Mindful of the fact that this does not act as a strict residence requirement, it is still questionable though, as to whether frontier workers are not substantially disadvantaged as a result thereof. Within this context, due to the Member State of residence being elsewhere, it is not inconceivable that frontier workers already have a residence and thus have no need for an additional establishment in the Member State of employment.

Additionally it need be mentioned that oftentimes the entitlement to housing benefits, such as housing allowance, is means-tested in conjunction with the aforementioned conditions, therefore rendering it even more burdensome for frontier workers to enjoy housing benefits. Within this context **Finland** awards housing allowance to those families whose establishment is in the concerned state and, whom do not exceed a given income threshold. Equally so, as aforementioned, social housing in **Ireland** is, amongst others, strictly means-tested.

Some Member States, such as **Romania** and **Slovenia** approach entitlement to housing benefits from a different perspective. Rather than imposing a past residence requirement, the concerned states make the receipt of such benefits conditional upon future residence in the concerned establishment.

Notwithstanding the lack of legal residence requirements for housing allowance in **Estonia, Poland** and **Portugal**, it need be noted that frontier workers may be subjected to de facto difficulties as a result of their residence in another Member State. In **Estonia**, access to housing benefits depends on entitlement to a general right to social welfare services. However, in order to be entitled thereto, an individual is effectively held to reside in **Estonia**, thus encompassing an implicit residence requirement, detrimental to frontier workers. In **Poland**, in order to benefit from housing allowance, an individual needs to be the holder of a legal title of the establishment. The latter requires extensive investment by frontier workers who are considered to be residing elsewhere already, vis-à-vis national citizens. In **Portugal**, residence requirements are not necessarily imposed formally, however, practice may differ in this regard. As state-subsidised housing is at the discretion of the municipalities, there has been a tendency to accord such entitlement to Portuguese citizens, thereby excluding frontier workers.

Interestingly, notwithstanding its qualification as a social advantage conform Regulation (EU) No 492/2011; housing allowance in **Sweden** presupposes residence in Sweden, thus excluding frontier workers. However, a supplement granted in addition to housing allowance, for families with children, is nevertheless qualified as a family benefit and is subsequently deemed exportable and thus accessible to frontier workers.

4.10 Additional obstacles

In providing a comprehensive overview of the situation to which frontier workers are currently subjected to in the respective Member States, note need be made of additional obstacles which hamper their right to free movement void of residence requirements.

In a vast amount of Member States (**BG, CY, CZ, ES, FR, IS, LT, LU, LV**) no additional obstacles were identified. In **Cyprus** and **Malta**, however, the most fundamental obstacle encountered by frontier workers is of a practical nature. Due to the geographical location of both States, frontier workers must inevitably incur air or sea travel expenses to commute to and from the respective States. This implies financial disadvantages in view of the relative costs involved. Additionally, the foregoing involves logistical problems as transportation is not necessarily tailored to the professional commitments of the frontier workers concerned, which conceivably creates an obstacle in the exercise of the right of free movement of workers.

The majority of additional obstacles noted, which are not necessarily directly the result of residence requirements, are highly similar to those aforementioned in previous reports (see *supra*). Namely, linguistic differences, as observed in particular in **Belgium** and **Germany**, constitute a substantial obstacle frontier workers need to overcome in order to fully enjoy the right to free movement. Additionally, as has been observed in various reports, the lack of information and knowledge pertaining to the legal status of frontier workers and the implications thereof, by all parties involved, persists as an impediment to the right to free movement in **Belgium, Denmark** and **Germany**. In **Denmark** particularly, note was made of the need for tailored information, which in an era of increased digitalisation is becoming increasingly difficult to acquire. The lack of sufficient information, and awareness, in conjunction with linguistic difficulties, places frontier workers in a legally ambiguous position, which has a deterrent effect on their desire to engage in cross-border employment.

In **Belgium, Germany** and **Greece**, the lack of mutual recognition of professional and academic qualifications has, again, been identified as a substantial hindrance to the free movement of frontier workers.

Furthermore, the lack of cooperation between competent authorities and administrations in the various Member States is still deemed an obstacle to cross-border mobility. As observed in **Germany** and **Greece**, delays in processing requests for certain welfare benefits, as well as discrepancies in the calculation of benefits by the various authorities, place frontier workers in a particularly precarious and disadvantageous position vis-à-vis residents and nationals. In **Finland**, this lack of cooperation is felt as a result of the different regulatory provision applicable to regulated professions. As regulated professions in **Finland** are not necessarily compatible with regulated professions in neighbouring Member States, this may cause some difficulties for frontier workers wishing to engage in such activities outside of **Finland**.

A particular issue deals with the receipt of a series of complaints by the European Commission in August 2013 about checks made by the Spanish authorities at the border with **Gibraltar**.⁸¹ After investigation the Commission did not find evidence to conclude that the checks on persons and goods as operated by the Spanish authorities at the crossing point of La Línea de la Concepción have infringed the relevant

⁸¹ OJ EU 2013 C 246/07.

provisions of Union law. The management of this crossing point is nevertheless challenging, in view of the heavy traffic volumes in a relatively confined space (some 35,000 persons crossing each day on entry and an equal number on exit, around 10,000 cars per day) and the increase in tobacco smuggling into Spain. In December 2013, the Commission invited Spain and the UK to consider a range of actions.⁸² In July 2014 it was announced that residents in Spain who work in Gibraltar, will soon be able to “jump the queue” by showing a special pass issued by the Spanish authorities. The pass will enable workers to use the red customs channel allowing them to bypass any delays on the green channel. The scheme will operate at the land border and is open to both pedestrians and vehicle users. Residents of Gibraltar who work in Spain will also be eligible to apply. The new arrangement is a response to the European Commission recommendations.⁸³ According to the document, the proposal is designed to make the most of the limited space available to improve frontier flow.

Lastly, certain Member States, such as **Bulgaria** and **Croatia** do not have pertinent information with respect to frontier workers at their disposal. Whilst in **Croatia** this is due to the fact that frontier workers are not legislatively protected as a distinct group, **Bulgaria** is hardly confronted with frontier workers commuting in, therefore rendering it extremely difficult to acquire information relevant thereto.

82 OJ EU 2013 C 357/07.

83 Further details of the proposal can be viewed on this link:
<http://www.boe.es/boe/dias/2014/07/29/pdfs/BOE-A-2014-8059.pdf>.

5 Analysis of the findings

On a preliminary note, it needs to be mentioned that various Member States due to a variety of reasons, do not have substantial data and information available at their disposal with respect to cross-border workers. Conceivably this renders insight and comprehension with respect to the complex and challenging reality frontier workers are confronted with particularly difficult. The lack of sufficient information is due to a variety of reasons. Whereas some States do not host many frontier workers due to, for example, geographical location and/or general economic welfare, other States merely do not identify frontier workers as a particular group of migrant workers in need of specific protection. The lack of consistent statistical and analytical data however, acts as a general obstacle in the guaranteeing of the right to free movement to frontier workers as bestowed upon them pursuant to Article 45 TFEU.

With respect to the right to assistance by employment offices, it can be held that generally, explicit legal residence requirements are not imposed, entailing that in principle frontier workers have access thereto in compliance with Regulation (EU) No 492/2011. However, in assessing the *de facto* adherence to equal treatment with respect to the right to assistance by employment offices, it becomes abundantly clear that frontier workers precisely due to their residence encounter a vast amount of hindrances, which detrimentally affect their right to free movement. Oftentimes Member States impose the fulfilment of durational employment conditions in the concerned State. Whilst this does not constitute an explicit residence requirement, it is uncontested that a condition as such is easier to fulfil for residents as opposed to non-residents, which conform CJEU case law, indicates potential indirect discrimination based upon nationality and/or residence (see *supra* 3.2 – The material scope of Article 7 of Regulation (EU) No 492/2011, 3.2.1 – Social advantages).⁸⁴ In addition thereto, various practical obstacles have been identified, due to residence elsewhere, rendering employment by frontier workers arduous. Small practical obstacles such as the inability to register as a jobseeker online (see *supra* 4.2 The right to assistance by employment offices – Denmark), as required in order to gain access to employment services in certain Member States, are solely exacerbated by the lacking cooperation between competent employment offices in the Member States and the substantial delays experienced pursuant thereto. Tools such as EURES, could play an instrumental role in facilitating the coordination of access for frontier workers to assistance by employment offices, particularly via the dissemination of information to all parties concerned.

Similarly to the right to assistance by employment offices, the right to training in vocational schools and retraining centres is generally not subject to explicit residence requirements. However, *de facto* issues equally so deter frontier workers from engaging in cross-border work. Durational past and future employment conditions are oftentimes imposed as conditions in order to gain access to vocational schools and retraining centres, in direct contravention of consistent CJEU case law.⁸⁵

Membership of trade unions and the rights associated thereto, as a constitutionally protected right in most Member States, is not subject to residence requirements, and is guaranteed both legally and in practice to frontier workers. Whilst indeed statutes of individual trade unions may impose conditions in order to attain certain positions within trade unions, these conditions are primarily focused on past and/or current

⁸⁴ Case C-379/11, *Caves Krier Frères Sarl v Directeur de l'Administration de l'emploi*, paragraph 45-47; Case C-138/02, *Brian Francis Collins v Secretary of State for Work and Pensions*, paragraph 45.

⁸⁵ Case C-39/86, *Lair v Universität Hannover*, paragraph 42; case C-197/86, *Brown v Secretary of State for Scotland*, paragraph 22.

employment, as opposed to residence requirements. Consequently, frontier workers generally will not experience obstacles in exercising their right to membership of a trade union as a result of their residence in a Member State other than the Member State of employment. The sole difficulties that have been observed are of a pure practical nature, such as, by means of an example, linguistic difficulties. Furthermore, it need be noted that cooperation amongst trade unions in differing Member States via ETUC has been facilitated to a certain extent, ultimately benefiting frontier workers in effectively enjoying the right to membership in a trade union.

Due to the broad scope envisaged by Article 7 of Regulation (EU) No 492/2011 with respect to social advantages, large discrepancies exist amongst Member States as to the exportability thereof. Although Article 7 of the above-mentioned Regulation seeks equal treatment for migrant workers, thus including frontier workers, Member States interpret this to imply that residence conditions may be legitimate if these conditions are equally applied with respect to national citizens. Additionally, due to the fact that virtually all welfare benefits are social advantages under Article 7 of the said Regulation, a distinction need be made between contributory benefits as opposed to benefits granted from a perspective of solidarity, as well as between employment benefits and residence-based benefits. Depending on the type of benefit sought, a frontier worker will be more or less likely to encounter residence requirements, which in turn, depending on the type of benefit, will be more or less justifiable. By means of example it suffices to refer to minimum subsistence support by Member States. In this context it isn't inconceivable that Member States limit the entitlement thereto to individuals residing in the concerned State or alternatively, who are equated to residents due to the fact that they demonstrate sufficient integration in the concerned State. The limited entitlement to such benefits is to be ascribed to the fact that these benefits are the result of taxation as opposed to contributions by the concerned workers. Insofar unlimited access were to be tolerated in this regard, it is not inconceivable that the envisaged solidarity regime would be jeopardized.

Generally, tax residency is implemented as a means to distinguish between workers in a Member State, which is predominantly assessed based on an income threshold and/or effective presence in a Member State, which exceeds the duration of 183 days in a given year. Whilst the latter clearly does not pose an explicit residence requirement, it could be held that it is far more feasible for residents to adhere to the notion of tax residency and thus be entitled to advantages. However, it remains questionable as to whether a frontier worker is effectively disadvantaged due to the fact that he or she is not deemed a tax resident in a specific Member State. Particularly due to the fact that the implications of not being deemed a tax resident, merely implies that an individual is taxed solely on the income generated in the concerned State as opposed to his or her worldwide income. Within this context it need be noted that a multitude of bilateral double taxation treaties have been concluded by Member States in order to avoid the double taxation of migrant workers. Despite the efforts taken however, it has been observed that the persistent lack of cooperation nevertheless renders the taxation of frontier workers a complex and oftentimes disadvantageous matter, potentially deterrent for the exercise of the right to free movement. Furthermore, it need be noted that the concerned treaties do not necessarily provide for equal access to tax advantages as envisaged by Article 7 of Regulation (EU) No 492/2011.

Lastly with respect to housing benefits a distinction must be made between the access to social housing as opposed to benefits such as housing allowances and supplements. Generally, it can be held that social housing and additional financial benefits – not inconceivable due to the aforementioned notion of solidarity – are subject to a residence requirement. Interestingly, residence requirements with respect to housing

advantages vary somewhat in their application, in that they are primarily durational residence requirements. Whilst in some Member States a past residence requirement need be adhered to, in other Member States housing benefits are conditioned upon the fulfilment of future residence in the concerned establishment. Additionally, in certain Member States, housing benefits are conditional upon the receipt of other benefits. In any event however, it is clear that generally, frontier workers are not entitled to such benefits and thus find themselves in a disadvantaged position vis-à-vis resident. The question poses itself however, as to the legitimacy thereof, given the specific nature of housing benefits.

As aforementioned, many of the additional obstacles encountered by frontier workers, not necessarily related to residence requirements, have been noted in previous reports and relate to matters such as, amongst others, linguistic differences, lacking information with respect to the legal status of frontier workers, by all parties involved, and local administrations in particular. Additionally, a prevalent issue is the lacking recognition of professional and academic qualifications, which renders the right to free movement of frontier workers difficult. Lastly, lacking cooperation between the various administrations in Member States makes frontier work particularly burdensome. Within this context, it is interesting to note the solutions that have been proposed in facilitating frontier work, as a result of the recommendations given by the European Commission in view of the practical problems between Gibraltar and Spain (see *supra* 4.10 Additional obstacles).

6 Some recommendations

Frontier workers are oftentimes the guinea pigs of European integration. They are on the frontline with respect to the practical and legal challenges that the free movement of workers implies. Due to a lack of coherence between the different legal systems of Member States, frontier workers are often, in the first place, confronted with possible obstacles when exercising their right to free movement.

Residence requirements are undoubtedly a clear and distinct conceptualisation of the obstacles experienced by frontier workers in the exercise of free movement. Analysis of national legislation across Member States is demonstrative of not only the persistent use of direct residence requirements, but also of the persistence of indirect residence requirements and *de facto* obstacles, which equally so hinder frontier workers in receiving the equal treatment to which they are entitled. It suffices to reference, amongst others, the durational employment conditions, and electronic registration requirements, to elucidate that void of any express residence conditions, frontier workers will nevertheless be disadvantaged, to a certain extent, as a result of their residence elsewhere.

Member States are often of the opinion that such residence requirements are necessary criteria for the entitlement to certain social rights and have to be perceived as an expression of territorially organised solidarity. Awarding them also to persons who are not deemed to be residents could, from this perspective, be seen as jeopardising the system. However, it is irrefutable that frontier workers do have some particular characteristics, as often they have stronger links with the Member State in question than ordinary non-residents do. They work in the host Member State and may very well be fully taxable there. They contribute to the economy and may have strong social ties with the Member State of employment. Looking to the importance the CJEU pays to the closest link theory, according to which a new solidarity arises and a worker/European citizen should be identified with the State in which one is mostly integrated, it is not unreasonable to take these factors into consideration when determining the eligibility for benefits. Although residence is perhaps the most logical criterion to take into account when defining where one is mostly integrated, it is just one of the many elements that can be taken into account. Mindful of the foregoing, however, it need be noted that the CJEU has equally so held that certain residence requirements can nevertheless be deemed justified. Hence, whilst on the surface the legal framework *vis-à-vis* frontier workers may seem clear, it is apparent that its practical application to concrete situations concerning frontier workers is far more complex concerning residence requirements, as illustrated precisely by such judgments by the CJEU.

Whilst indeed justifications may exist for the imposition of residence requirements in certain scenarios, the CJEU rightfully so approaches the matter with trepidation and caution as this could, very easily, transform in unjustified direct or indirect discrimination, as prohibited by the provisions governing free movement of workers, which are equally applicable to frontier workers. Moreover, given the added value the free movement of workers, and frontier workers in particular, provide, it is of the utmost importance that sufficient political focus and weight is given to the matter. As a preliminary step thereto, it is irrefutable that contemporary and up-to-date data be acquired with respect to frontier workers in the EU. As has been repeatedly mentioned by Member State submissions, the lacking statistical information with respect to frontier workers in the respective States, as well as in Europe generally, render it difficult to grasp the magnitude of the problem. As has been mentioned above, lacking uniformity in the determination of who constitutes a frontier worker renders the

acquisition of such data particularly arduous. Conclusively, the requisite measures to be taken in safeguarding the rights of frontier workers cannot be ascertained if ambiguity remains amongst Member States as to who constitutes a frontier worker and the segment they represent on the national and the European labour market.

Initiatives that could be employed to advance and safeguard the rights of equal treatment bestowed upon frontier workers as a result of the right to free movement, need be assessed on two distinct levels. On the one hand, Europe can undertake initiatives to shed light on and ameliorate the potentially discriminatory situations frontier workers are confronted with. On the other hand, however, the responsibility of national administrations in adhering to frontier workers' free movement rights cannot be negated, as they are pivotal with respect thereto.

Indeed, initiatives, projects and organisations on a European level, such as, amongst others, EURES, ETUC, SOLVIT and the Enterprise Europe Network cannot be underestimated, as they have proven to be extremely resourceful in facilitating coordination and disseminating information about the rights and obligations bestowed upon all parties within the context of frontier work. The organisations and tools concerned have shed light, and continue to do so, on the particular situation of frontier workers in the EU, on the difficulties and (in-)direct discrimination experienced thereby, and have served as a means of aggregating the myriad of complaints and concerns. Hence continued use should be made thereof in safeguarding the rights of frontier workers.

Furthermore, from a European perspective, legislative provisions which recognise the distinct situation of frontier workers contribute to the ameliorated safeguarding of their rights. Within this context the recently adopted Enforcement Directive not only includes distinct references to frontier workers and their family members in the first and third recital of the preamble, but equally so provides for national measures that are aimed at facilitating free movement of workers, and the safeguarding of rights associated thereto. Within this context, it is irrefutably of relevance that the directive imposes the obligation on Member States to assign distinct bodies aimed at "*...the promotion, analysis, monitoring and support of equal treatment of Union workers and members of their family without discrimination on grounds of nationality, unjustified restrictions or obstacles to their right to free movement and shall make the necessary arrangements for the proper functioning of such bodies.*"⁸⁶ The envisaged bodies are thus intended to deal with a lot of the concerns which permeate across Member States with respect to frontier workers. Moreover, in its respective Articles 5 and 6, the Enforcement Directive directly acknowledges the need for enhanced and detailed information concerning the practical application of the provisions on the free movement of workers. Consequently, from a European perspective, a close follow-up of the implementation is requisite in furthering the safeguarding of the right to equal treatment enjoyed by frontier workers.

Notwithstanding the initiatives taken from a European perspective, however, the foregoing findings are demonstrative of the enhanced role national administrations have and must have in protecting the rights of frontier workers. Oftentimes, as demonstrated by the foregoing, indirect discrimination and *de facto* obstacles are the result of lacking knowledge and discrepancies in the application of free movement provisions by local administrations. The free movement bodies envisaged by the Enforcement Directive could as neutral institutions be irrefutably instrumental in

⁸⁶ Article 4 of Directive 2014/54/EC of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

facilitating coordination and cooperation between the varying institutions within Member States.

In addition thereto, from a transnational perspective, national Member States could attempt to engage in negotiations in order to adopt bilateral agreements with a particular focus on frontier workers. Mindful of the fact that only a limited amount of Member States are effectively confronted with a large influx of frontier workers, this alternative may be somewhat more tailored to the contemporary labour market concerning frontier workers.

Residence requirements can certainly be considered as one of the main and often most obvious obstacles. Analysing different national legislation, it can be noticed that residence requirements are still frequently provided for but that equally so, in cases where Member States do not impose requirements of residence, the *de facto* situation remains complex, as frontier workers often encounter difficulties due to other requirements (such as the fulfilment of a durational employment condition, registration ...). Within this context, enhanced attention need be paid to whether an obstacle, such as a residence requirement, is always to be deemed an impediment to the rights of free movement bestowed upon frontier workers. Whilst initially it appeared that the CJEU was highly sceptical of obstacles such as residence requirements, recent judgments have indicated that the CJEU has taken preference to the real-link/sufficient integration test to determine whether indeed a frontier worker and his or her dependent family members are entitled to welfare benefits. The foregoing is not inconceivable in view of the fact that Member States are often of the opinion that such residence requirements are necessary criteria for the entitlement to certain social rights and have to be perceived as an expression of territorially organised solidarity. Awarding them also to persons who are not deemed to be residents, or alternatively not sufficiently integrated, could from this perspective be seen as jeopardising the system.

Particularly, in view of frontier workers and the distinction between various types of advantages as well as recent case law by the CJEU, a clearer distinction between what constitutes a legitimate condition in accessing welfare benefits is requisite. In elucidating the extent and limits of the real-link/sufficient integration test, legal ambiguity will be less prevalent, thus beneficially affecting not only frontier workers, but equally so the administrations dealing with cases of frontier work.

Annex: Country fiches/fact sheets



AUSTRIA – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: If an individual is employed, no implicit residence requirements/<i>de facto</i> obstacles have been observed. However, if an individual is unemployed, an indirect residence requirement may exist with respect to the calculation of cash benefits, especially if a former frontier worker had only been employed for a brief period of time in Austria, but long enough to fulfil the requirements for unemployment cash benefits according to national law. Some institutions calculate the benefits in such cases in reference to Article 62 of Regulation (EC) No 883/2004, based on the previously earned income in Austria, whereas other institutions base themselves on Austrian national legislation and refer to the income of the penultimate year, as is the case in exclusively national cases even if the person concerned had been employed in another Member State in this period of time as well. The Austrian Administrative Court, however, has recently (<i>cf</i> 10/9/2014, 2012/08/0239) explicitly stated that the unemployment cash benefit must be calculated in such cases exclusively on the basis of the income of last employment. Otherwise this would cause an obstacle for free movement of persons. Additionally, entitlement to cash benefits may be conditioned upon availability for reintegration in the labour market, which may prove to be more difficult for a frontier worker residing elsewhere. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: An implicit residence requirement arises due to the requisite availability of the frontier worker for the schooling and/or retraining concerned. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: Mobility study grants (<i>Mobilitätsstipendien</i>) are provided to claimants who are studying at an approved foreign university. The claimant must, however, have been a resident for the past 5 years or must have had his/her centre of interests in Austria. Implicit residence requirements/de facto obstacles: Study grants for studies in Austria are solely disbursed to socially disadvantaged individuals, based upon the Austrian income tax, whereas for others, the income is estimated. Additionally, some mobility allowance may be granted to those who are receiving <i>family assistance</i>, which is conditioned upon residency. Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: The receipt of family assistance (<i>Familienbeihilfe</i>), family hardship compensation (<i>Familienhärteausgleich</i>) and family promotion allowance provided by the federal states (<i>Familienförderungsleistungen der Länder</i>) is conditioned upon a habitual residence requirement. Nevertheless, according to the jurisdiction of the Austrian Administrative Court (<i>Verwaltungsgerichtshof</i>) the competent Austrian administrative bodies are obliged to export these family benefits into other Member States on the basis of Regulation (EC) No 883/2004. That applies also to child care cash benefits (<i>Kinderbetreuungsgeld</i>) even if the entitlement is conditioned upon the receipt of family assistance, which is conditioned respectively on a residence requirement. Implicit residence requirements/de facto obstacles: No issues reported</p>

	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: The entitlement to activation measures, such as vocational trainings, requires adherence to the requirements for the entitlement to cash benefits. The foregoing applies to activation measures provided by unemployment insurance as well as to activation measures provided by health care or pension insurance. Hence, the entitlement to such measures is not subject to residence in Austria. Nevertheless, activation measures like vocational trainings are <i>de facto</i> only provided by institutions located in the territory of Austria. That does not exclude that a claimant, residing in another Member State, could attend such a vocational training. Nevertheless, it might be experienced as an obstacle for frontier workers, e.g. due to the costs of transfer. Alternative conditions/observations: No issues reported</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: Minimum subsistence support is provided, due to constitutional reasons, by the federal states of Austria. Therefore, every federal state has its own regulations. Nevertheless, a treaty between the state of Austria and the federal states has been concluded in order to achieve a uniform legal basis for social minimum subsistence support. This so-called Art-15a-treaty (BGBl I 2010/96) provides that only persons who habitually reside in Austria are entitled to social minimum subsistence support. That applies to EU citizens as well. Furthermore, EU citizens are only entitled to social minimum subsistence support if a claim would not result in a withdrawal of the right of residence (cf Article 4 (3) of the Art-15a-treaty). In fact, Austrian residence law provides that economically inactive EU citizens are entitled to reside in Austria for a period longer than three months only if they have sufficient means, so that they are not dependent on minimum subsistence support or supplement (pension) benefits. Hence, a claim for minimum subsistence support might result in the withdrawal of the right to reside, if the person concerned is economically inactive and has already exceeded the three-month period. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Other</p>	<p>Explicit residence requirements: An <i>additional pension supplement</i> is granted, if an individual is legally and habitually residing in order to guarantee a minimum level of income. Individuals, who are in need of care (and receive a pension), are entitled to federal care allowance (<i>Bundespflegegeld</i>) provided that they are habitually residing in Austria. Nevertheless, since the rulings of the CJEU in the <i>Jauch</i> (C-215/99, <i>Jauch</i>, ECLI:EU:C:2001:139) and <i>Hosse</i> case (C-286/03, <i>Hosse</i>, ECLI:EU:C:2006:125) the competent Austrian administrative bodies are obliged to export federal care allowance also into other Member States on the basis of Regulation (EC) No 883/2004. Implicit residence requirements/de facto obstacles: Additionally to the foregoing supplement, an individual may be entitled to federal care allowance, which was initially granted exclusively to residents, yet is now deemed exportable. Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>		<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Individuals who are recipients of family assistance are entitled to deduct a given amount from the respective income taxes (<i>Kinderabsetzbetrag</i>). Even if the entitlement to family assistance requires habitual residence in Austria, the Austrian Administrative Court has stated, as aforementioned, that family assistance must be exported into other Member States. In fact Austrian tax law explicitly provides for an exception to the obligation to export <i>Kinderabsetzbetrag</i> just for children who are permanently staying in a State which is not a member of the EU, the EEA or Switzerland. Alternative conditions/observations: No issues reported</p>
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>		<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: The award of housing benefits is regulated by local authorities, entailing potential discrepancies. Generally, however, housing benefits are</p>

	predominantly awarded with respect to establishments in Austria, thus excluding frontier workers.
ADDITIONAL OBSERVATIONS	<p>An additional issue arises with respect to social benefits linked to a social plan. A social plan can be established pursuant to structural changes in a company by the employer and the employees' representatives, with the main objective being the provision of certain services such as, amongst others, vocational training, for the employees. In this context also special agreements with the competent labour market institution can be concluded to support the employees with special vocational trainings to facilitate reintegration into the labour market (so-called <i>Arbeitsstiftung</i>). These special vocational trainings are provided and administered by the competent labour market institutions. The financial burden for these trainings is carried by the respective employer and the labour market institution jointly. However, in order to be a recipient of such benefits of an <i>Arbeitsstiftung</i>, the (former) employee needs to receive unemployment benefits in Austria. In accordance with Regulation (EC) No 883/2004, the latter entails that frontier workers would not be awarded such benefits.</p>



BELGIUM – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Neither in legislation nor practice are frontier workers excluded from entitlement and receipt of assistance by employment offices, in cash or in kind. Frontier workers thus have access to, amongst others, training, career vouchers, training vouchers, and an employment premium. However, it has been noted that due to particularly stringent linguistic requirements in order to partake in training, frontier workers may be slightly disadvantaged and may thus experience the foregoing as an obstacle. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Depending on the type of training and/or support, varying conditions will apply. It need be noted, however, that stringent residence requirements are not imposed if the individual concerned is an EEA Member State resident.</p> <ul style="list-style-type: none"> - A training allowance for a jobseeker not entitled to unemployment benefits is granted if the individual is registered as a jobseeker at the regional employment office. The latter, as aforementioned, does not require residency in Belgium. - A traineeship allowance for young workers is conditioned upon registration as a jobseeker in the regional employment offices. - Vouchers for transferable skills are granted to those who are employed in Flanders, the Brussels-Capital Region and who are resident in Flanders, Brussels, an EEA Member State or (if they have exercised their right to free movement of workers or freedom of establishment) in the Walloon Region. - Vouchers for career counselling are granted to employed or self-employed individuals who are residing in Flanders, the Brussels-Capital Region, an EEA Member State, or (if they have exercised their right to free movement of workers or freedom of establishment) the Walloon Region. - Training vouchers for the Walloon Region are granted to those individuals who either have EU Member State nationality or, alternatively, effectively reside in the French Community in Belgium. 	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: Study grants for tertiary education are generally intended for Belgian citizens. However, the nationality requirement concerned is waived with respect to individuals who have fulfilled a (temporal) residence requirement, or with respect to individuals who are deemed political refugees and are residing in Belgium. Implicit residence requirements/de facto obstacles: For the Flemish Community, study grants generally require the fulfilment of a durational employment condition, with respect to EEA nationals. Thus, in order to be entitled to financial support in this context, a frontier worker must have been employed or self-employed for a set duration in Belgium. Whilst the latter does not impose explicit residence conditions, it is conceivable that the foregoing could be experienced as an obstacle for frontier workers. For the French Community study finance is primarily reserved for Belgian nationals, thus implying an implicit residence requirement. The nationality condition is waived in respect of:</p> <ul style="list-style-type: none"> - the children of Union nationals who can rely on Article 12 of Regulation (EEC) No 1612/68, i.e. the children of a national of a Member State who is or has been employed in Belgium, if such children are residing there; - political refugees residing in Belgium for at least a year; - persons residing in Belgium with their family and studying there for at least 5 years – in some cases there is an additional condition that Belgian nationals have the same right in their home country. <p>Portable study finance is granted to:</p>

	<ul style="list-style-type: none"> - Belgian nationals residing outside the EU; - Belgian nationals domiciled in Belgium and the children residing in Belgium of EU nationals who can rely on Article 12 of Regulation (EEC) No 1612/68 when they either pursue studies abroad which have no equivalent in Belgium or when they are domiciled in the German-speaking Community and seek to pursue their tertiary education in German; - Belgians enrolled at Belgian schools in Germany. <p>Alternative conditions/observations: No issues reported</p>
Family Support	<p>Explicit residence requirements: A prior, temporal condition is imposed in order to be the recipient of child benefits.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
Activation Benefits	<p>Explicit residence requirements: The allowance for individuals returning to work aged 55 or older is conditioned upon having received unemployment benefits in Belgium, in addition to a past and current residence requirement. Moreover, periods of work abroad are only considered for the purpose of completing the waiting period when followed by employment in Belgium. The allowance is granted to persons finding work abroad only if they qualify as frontier workers within the meaning of Regulation (EC) No 883/2004.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles:</p> <ul style="list-style-type: none"> - Vouchers for the performance of certain local services are granted to individuals, void of any residence requirement. However, due to the fact that the vouchers are granted for the performance of local services, it is conceivable that this could contain an obstacle for frontier workers. - Employment allowance for the long-term unemployed individuals is granted to individuals who have been the recipient of Belgian unemployment benefits. The foregoing entails that the receipt of the employment allowance is conditioned upon a residence requirement prior to the commencement of the employment. Moreover, the employer must have a primary or secondary establishment in Belgium. <p>Alternative conditions/observations:</p> <ul style="list-style-type: none"> - A hiring premium is granted to employers that hire someone who is aged 50 or older under an open-ended employment contract. The foregoing is not conditioned upon residence requirements with respect to the employee. However, the employer must have a primary or secondary establishment in the Flemish region prior to the hiring of the frontier worker concerned. - A wage-premium is granted to (certain specified) employers who hire long-term unemployed individuals. The latter is primarily reserved for non-commercial employers in Belgium.
Social (minimum subsistence) Support	<p>Explicit residence requirements: Eligibility for societal integration is confined to persons having their actual place of residence in Belgium.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
Other	<p>Explicit residence requirements: The <i>tideover allowance</i> is granted to young unemployed individuals searching for a first job. In order to be a recipient of an allowance as such, an individual must undergo a waiting period of 310 days, which can in principle only be fulfilled while residing in Belgium. Whilst a wide variety of various alternative factors to determine entitlement have been established, in essence an individual will solely be entitled on one of two grounds. Entitlement will be established, mindful of the waiting period which must be completed, for those who enjoyed Belgian education. Alternatively, children of migrant workers who reside in Belgium are equally so entitled to an allowance as such. However, the foregoing, as it is clearly conditioned upon a residence requirement, detrimentally affects frontier workers.⁸⁷</p>

⁸⁷ The practice and legislation concerned has been continuously discussed in a vast array of cases brought before the CJEU, and found to be in violation of European legislation.

		<p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: If a frontier worker is residing in Belgium or, alternatively, generates 75% of his/her worldwide income in Belgium, he/she will be assimilated to Belgian citizens for tax purposes. Thus, the latter entails that if one of the two foregoing conditions have been met, a frontier worker will enjoy tax reductions analogous to Belgian citizens.</p> <p>Alternative conditions/observations: No issues reported</p>
RIGHTS AND BENEFITS CONCERNING HOUSING		<p>Explicit residence requirements: Rent allowance, which is income-tested, is solely granted if a past and current residence requirement is fulfilled. Namely, only if the claimant initially resided in the Flemish Region, and seeks to reside in the Flemish Region in the future, will the allowance be granted. Furthermore, an allowance is granted to applicant-tenants who have been registered as such, in the Flemish Region, for four years, and seek to rent an establishment in this same Region.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
ADDITIONAL OBSERVATIONS		<p>Linguistic issues and lacking or insufficient information complicate the access of frontier workers and their respective family members to social advantages. Equally so, mutual recognition of competences and qualifications is limited, and professional experience acquired abroad is oftentimes not (adequately) valorised.</p>



BULGARIA – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Despite the lack of explicit residence requirements in gaining access to employment services, it appears that frontier workers will nevertheless encounter <i>de facto</i> difficulties in gaining access to employment services. Firstly, a current or permanent address must be given in order to be registered at an employment office. Additionally, the lack of acknowledgement of frontier work in legislation renders focus thereupon difficult. Lastly, the lack of monitoring in this regard renders it difficult to acquire specific information with respect to the effective obstacles they encounter. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Despite the lack of explicit residence requirements, practice demonstrates that frontier workers may, as aforementioned, nevertheless encounter <i>de facto</i> difficulties in exercising the right to training in vocational schools and retraining centres. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: It must be noted that the two largest trade unions in Bulgaria (CITUB and Podkrepa) are both part of ETUC, entailing mutual recognition of trade union membership. No issues can be identified.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Children of employed frontier workers equally enjoy access to Bulgarian educational facilities as do Bulgarian nationals.</p>
	<p>Family Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Ambiguity persists with respect to entitlement by frontier workers to activation benefits. Whilst frontier workers are principally accorded the right to activation benefits, registration is nevertheless requisite in attaining the latter, which presupposes a permanent or current address. Administrative practice may thus differ from the equality provided for in legislation. Alternative conditions/observations: No issues reported</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Social assistance is solely granted to a set of pre-defined individuals (foreigners with permanent residence, individuals who have a refugee or humanitarian status, foreigners with a temporarily protected status, persons included in a treaty by which Bulgaria is bound), which excludes frontier workers.</p>
	<p>Other</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: A distinction is made between tax residents as opposed to non-tax residents. The latter category is taxed solely with</p>	

	<p>respect to the income generated in Bulgaria, whereas tax residents will be taxed upon the worldwide income and enjoy the tax relief associated thereto.</p> <p>Alternative conditions/observations:</p>
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: There is insufficient available housing, which may result in discriminatory behaviour to frontier workers by the competent municipalities with regard to the relevant housing and related rights and allowances.</p> <p>Alternative conditions/observations: No issues reported</p>
<p>ADDITIONAL OBSERVATIONS</p>	<p>It need be noted that due to the lack of (policy) focus on frontier workers in Bulgaria, information with respect thereto is extremely scarce. Additionally, it must be emphasised that Bulgaria does not attract high numbers of frontier workers due to the prevalent low wages in conjunction with the low standard of living.</p>



CROATIA – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: Individuals who are temporary residents enjoy rights comparable to those of Croatian citizens with respect to training in vocational schools and retraining centres. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: Insofar as frontier workers are effectively employed, irrespective of the profession, the individuals concerned enjoy the right to membership of a trade union as well as the rights attached thereto.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: The receipt of study grants for dependent children, irrespective of the type, is conditioned upon a residence requirement. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Additional information pending Implicit residence requirements/<i>de facto</i> obstacles: No identified issues Alternative conditions/observations: No identified issues</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: Additional information pending Implicit residence requirements/<i>de facto</i> obstacles: Alternative conditions/observations:</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: Social welfare is restricted to Croatian citizens and permanent residents. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Other</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: Tax advantages are solely applicable to certain categories of residents, which do not include non-residents, hence excluding frontier workers as a result of residence elsewhere. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: Social housing is accessible solely to those individuals who have fulfilled a past residence requirement and will fulfil a future residence requirement. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	

ADDITIONAL OBSERVATIONS	Due to the lack of information about frontier workers in Croatia, it is extremely difficult to draw conclusions concerning the obstacles they face as a result of residence requirements.
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CYPRUS – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: Solely an employment condition is imposed, as opposed to a residence requirement. Hence, frontier workers are entitled to state-approved and financed training so long as they are employed by a Cypriot undertaking in the territories governed by the Republic of Cyprus. For unemployed persons, see activation benefits below.</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: Study grants are means-tested and are awarded to families who have habitual residence in the territories controlled by Cyprus and who have children in Cyprus or studying abroad at the graduate or postgraduate level. The habitual residence requirement is defined as 30 months within a three-year period directly preceding the request, and concerning either the person requesting the grant or his/her family. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: The receipt of child benefits is in principle, subject to a residence criterion (at least three consecutive years). Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: With respect to frontier workers, the residence criterion is likely to be put aside under certain conditions. However, the latter will depend on varying administrative practice and may vary depending upon individual circumstances.</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: Entitlement to activation benefits in the form of cash benefits and benefits in kind facilitating the return to work, the stay at work or the finding of the first employment requires registration at the Public Service of Employment.</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: To be the recipient of a guaranteed minimum social income, which is not related to social insurance contributions, a five-year consecutive stay residence condition must be fulfilled. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: Temporary absences from the territories governed by the Republic of Cyprus are tolerated when they are less than a month per year or due to health-related reasons.</p>

	Other	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: In order to be deemed a tax resident, an individual needs to have spent more than 183 days in Cyprus. Insofar that this is the case, the individual will be taxed upon the worldwide income they have in accordance with Cypriot taxation. Certain specific types of income can equally be taxed in Cyprus without being deemed a tax resident.</p> <p>Alternative conditions/observations: No issues reported</p>
RIGHTS AND BENEFITS CONCERNING HOUSING		<p>Explicit residence requirements: The subsidy scheme for purchasing or building a residence is solely for those who are permanent residents in Cyprus and is intended for the purchasing of one's first and primary residence.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
ADDITIONAL OBSERVATIONS		<p>Geographical location hinders the movement of frontier workers to Cyprus. Not much information can thus be gathered with respect to the obstacles they face.</p>



CZECH REPUBLIC – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: In order to gain access to employment offices, a residence address needs to be communicated, irrespective of whether this residence is permanent or short-term. If an individual is not resident, he/she can nevertheless gain access by communicating his/her place of stay. The latter entails that frontier workers who are not resident, yet have a place of stay, will be granted assistance by employment offices. It appears that frontier workers who return home on a daily basis may encounter difficulties in receiving assistance from employment offices. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Although no explicit residence requirements exist with respect to the right to retraining, it need be noted that the regional labour office of the place of residence is competent to provide benefits in cash and in kind. Thus, given that a frontier worker is not a resident, it appears they will encounter difficulties. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: In order to enjoy the right to membership of a trade union, an individual solely needs to be employed. However, with respect to the rights associated to membership of a trade union, it need be noted that the specific trade unions prescribe the applicable rights with respect thereto in their respective statutes.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Foster care allowance, which includes three types of distinct allowances, is granted solely if authorisation for long-term residence has been granted, or if the individual concerned receives his/her rights directly from Regulation (EU) No 492/2011. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Social (minimum subsistence) Support</p>	<p>Explicit residence requirements: Living allowance and special immediate aid is subject to a residence requirement. Additional various social services are equally subject to a residence requirement exceeding three months, unless the individual concerned derives his/her rights directly from Regulation (EU) No 492/2011 Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: It need be noted that residence can be demonstrated insofar that a sufficient proof of a connection with the Czech Republic is demonstrated.</p>
	<p>Other</p>	<p>Explicit residence requirements: A mobility allowance and an allowance for special aid for individuals with disabilities are subject to a residence exceeding three months in the Czech Republic, if the individual concerned does not derive his/her rights directly from Regulation 492/2011. Implicit residence requirements/de facto obstacles: No issues reported</p>

		Alternative conditions/observations: No issues reported
TAX ADVANTAGES	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: Tax advantages are granted to individuals who generate at least 90% of their income in the Czech Republic, which may prove to be a high threshold for various frontier workers to attain.</p> <p>Alternative conditions/observations: No issues reported</p>	
RIGHTS AND BENEFITS CONCERNING HOUSING	<p>Explicit residence requirements: Housing allowance and housing supplements are subject to a residence requirement.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: As is generally the case with social advantages, the imposed residence requirement can alternatively be deemed fulfilled if the individual concerned can demonstrate that he/she is sufficiently connected to the Czech Republic. Additionally, it need be noted that individuals are entitled if they receive their rights directly from Regulation (EU) No 492/2011.</p>	
ADDITIONAL OBSERVATIONS	No additional observations	



DENMARK – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Prior to 2014, a civil registration number, which is conditioned upon residency in Denmark, was needed in order to register for assistance on the digital platform of employment offices. The competent authority has instructed, however, to amend this <i>de facto</i> obstacle. Nevertheless, It appears that EU citizens, including amongst others frontier workers, have been subject to discrimination in this regard (i.e. refused assistance). A distinction need be made between the Law on Active Social Policy and the Law on Active Employment. The latter does not impose residence requirements, whilst the former does, creating additional ambiguity with respect to frontier workers. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: As aforementioned, the Active Social Policy Law imposes residence requirements, whereas the Law on Active Employment does not, creating ambiguity with respect to the applicable rules for frontier workers. Whilst the residence requirements are not to be enforced if they are deemed in contravention of EU requirements, it cannot be excluded that local officials are oftentimes unaware of how to apply the provisions concerned, entailing that frontier workers can, nevertheless, be disadvantaged due to their residence being located elsewhere. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Employment is requisite in order to enjoy the right to membership of a trade union and the rights attached thereto.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Initially, a temporary residence requirement was imposed in order to receive a study grant. However, frontier workers can now circumvent this obligation if a sufficient link with Denmark is demonstrated. The former residence requirement has been replaced by a five-year durational employment condition for children and other family members of frontier workers.⁸⁸ Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: In 2010, the Danish law on child benefits was amended so that a parent would have to have worked <i>or</i> resided in Denmark for two years out of the last 10 years in order to be entitled to the full amount of child benefit. Whilst the concerned provision was deemed in contravention of EU law, the Danish government could not must sufficient parliamentary support to amend the foregoing provision. The latter resulted in a delicate situation by which administrative practice is in compliance with EU law, but as it has not been able to establish a majority for changing the Danish law, this new administrative practice is against the Danish law. Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: The aforementioned law on active social policy imposes legal residence as a condition for entitlement. Implicit residence requirements/de facto obstacles: The law pertaining to sickness benefits also operates with a residence requirement. However, the residence requirement is waived with reference to Regulation (EC) No 883/2004. For frontier workers active labour market policy appears to create problems in general, as local administrations are often unclear about where the unemployed frontier</p>

⁸⁸ The Danish provisions concerned have recently been amended to be compliant with recent case law by the CJEU such as, amongst others, case C-20/12, Giersch and others.

		<p>worker is to be activated. Administrative ambiguities increase if the frontier worker becomes sick for a longer period.</p> <p>Alternative conditions/observations: No issues reported</p>
	Social (Minimum Subsistence) Support	<p>Explicit residence requirements: The law on active social policy lays down legal residence as an eligibility criterion. To receive Danish social assistance benefits, the concerned individual has to reside in Denmark.⁸⁹</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
	Other	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES		<p>Explicit residence requirements: Residents are subject to tax on their worldwide income. Non-residents are subject to tax on income generated in Denmark and deductions are limited to deductions relating to this income. Non-residents can, however, opt for taxation as residents if they derive at least 75% of their global income in a tax year from employment income, including pension income or business income in Denmark. In the latter case their tax is calculated in the same way and with the same tax deductions as for residents.</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p>
RIGHTS AND BENEFITS CONCERNING HOUSING		<p>Explicit residence requirements: Housing benefits are not exportable and thus subject to residence requirements.</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
ADDITIONAL OBSERVATIONS		<p>It has been noted that the increased digitalisation of information poses a problem to frontier workers, who might need personalised assistance in order to fully comprehend the applicable legislation, rights and obligations.</p>

⁸⁹ It need be noted, however, that this is deemed compliant with EU specifications as elaborated upon in case C-406/04, De Cuyper.



ESTONIA – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: It has been noted that despite general good cooperation with Member States, issues have arisen with respect to the receipt of foreign unemployment insurance forms when an individual is applying for benefits or services in Estonia. As a result, individuals are oftentimes confronted with extensive delays, despite entitlement, in receiving unemployment benefits. Alternative conditions/observations: Amongst others, EU citizens who are staying in Estonia have access to labour market services and benefits. In order to gain access to unemployment insurance benefits, it suffices that the individual concerned has contributed to his/her unemployment insurance for at least 12 months during the 36 months prior to his/her registration as being unemployed. To receive unemployment allowance, a person, in general, has to have been employed or engaged in work or an activity equal to work for at least 180 days during the 12 months prior to registration as unemployed. The income must additionally have been less than the 31-fold daily unemployment allowance rate. For services to be received from employment offices, there are in general no requirements for the length of previous employment.</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: It suffices to be employed in Estonia to be granted the right to obtain training and additional education. In addition thereto, if the training is work-related, the individual concerned may benefit from paid leave to complete the studying.</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: In order to enjoy the right to membership of a trade union, it suffices to be employed in Estonia.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No significant benefits concerning underage children are apparent. Some local municipalities grant school benefits at the beginning of the school year. Similar to social assistance, residence requirements will apply in order to be entitled to such benefits. Additionally, some municipalities condition entitlement thereof upon the fulfilment of a durational residence requirement exceeding one year. Study allowances for vocational schooling and university students is granted solely with respect to individuals who are temporary or permanent residents in Estonia, and registered in the Estonian population register. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Most significant family benefits in Estonia are coordinated under Regulation (EC) No 883/2004. Some local municipalities provide additional family benefits. If such benefits are related to social support, residence requirements apply. Additionally, some municipalities give rise to benefits only after a person has resided in a municipality for more than one year. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Similarly to the right to assistance by employment offices, issues have arisen with respect to the receipt of foreign unemployment insurance forms. A frontier worker, when applying for benefits/services in Estonia is oftentimes confronted with extensive delays, despite entitlement, in receiving unemployment benefits, such as, amongst others, activation benefits. Alternative conditions/observations: No issues reported</p>

	<p>Social (minimum subsistence) Support</p>	<p>Explicit residence requirements: Entitlement to minimum subsistence benefits is conditioned upon entitlement to a general right of social welfare services. In order to be entitled to the foregoing, an individual is effectively required to reside (temporarily or permanently) in Estonia. Individuals who are staying in Estonia, as opposed to residing, will be entitled to emergency social assistance, but are excluded from receiving social welfare generally and as a result thereof, minimum subsistence benefits. For residence in Estonia, one must be registered in the Estonian population register.</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
	<p>Other</p>	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/de facto obstacles: A frontier worker will be equated to an Estonian resident if he/she has been in Estonia for 183 days or more the past 12 consecutive months. If a frontier worker is effectively deemed a tax resident, he/she will be entitled to the following tax deductions: annual basic income tax exemption, additional annual basic income tax exemption conditioned upon the maintenance of a child, income tax deduction concerning housing loan interest, income tax deductions concerning training expenses. Hence, it is possible that these conditions to be deemed a tax resident render it difficult for frontier workers who return home on a daily basis to enjoy the benefits concerned.</p> <p>Alternative conditions/observations: If an individual is not deemed an Estonian tax resident, he/she may nevertheless still enjoy the aforementioned tax benefits, if he/she is a tax resident of another Member State or, alternatively, of an EEA State and if 75% of the income is earned in Estonia, albeit solely with respect to the income earned in Estonia as opposed to the worldwide income. In the event that a frontier worker who is deemed a tax resident elsewhere, in the Member States or the EEA States, does not meet the 75% threshold, he/she may still enjoy the deduction encompassed in the annual basic income tax exemption. Furthermore, Estonia has concluded a series of double taxation avoidance treaties with a vast majority of Member States and the EEA States.</p>	
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: Entitlement to housing benefits is conditioned upon entitlement to a general right to social welfare services. In order to be entitled to the foregoing, an individual is effectively required to reside in Estonia. Individuals who are staying in Estonia, as opposed to residing, will be entitled to emergency social assistance, but are excluded from receiving social welfare generally and, as a result thereof, housing benefits. Additionally, for residence in Estonia one has to be registered in the Estonian population register.</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>	
<p>ADDITIONAL OBSERVATIONS</p>	<p>Additionally, problems have been noted with respect to the completing of a driving exam, which requires residence in Estonia. Lastly, it appears that in order to benefit from a vast array of online services in Estonia, an individual must have acquired an Estonian identification card. The latter is solely possible insofar that the individual concerned is registered in the Estonian Population Register, which may prove to be difficult for frontier workers.</p>	



FINLAND – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Most public employment services are available for individual clients irrespective of their residence. However, certain services are solely granted to jobseekers (who can be foreigners). However, practical problems arise when an individual is not in possession of a Finnish social security number. In order to attain the number concerned, an individual must go to an actual employment office (as opposed to being able to register online). Effectively going to the employment office may be burdensome in some regions (due to practical obstacles such as, amongst others, opening hours, linguistic issues), which may negatively affect frontier workers. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Job alteration benefits require a ten-year period of employment to have been completed, irrespective of nationality and residence.</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Although no reports of obstacles with regard to the right to trade union membership exist, there is insufficient cooperation with respect to unemployment benefits. If frontier workers have only briefly been employed in Finland and subsequently been made redundant, it has happened that the unemployment authorities concerned rejected applications both in the Member State of residence and the Member State of (former) employment. An additional example of obstacles: Norway does not have unemployment funds such as in Finland; hence the requisite unemployment forms are not sent to Norway. Alternative conditions/observations: No issues reported</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: A foreign student may receive a study grant for studies abroad as long as it corresponds to Finnish education. However, the latter is conditioned upon a temporal residence requirement (residence for two years, in the five years preceding the application for a study grant).⁹⁰ Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: The benefits concerned are deemed social advantages in accordance with Regulation (EU) No 492/2011 and respectively social security benefits with Regulation (EC) No 883/2004 and are granted to frontier workers irrespective of residence in Finland.</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: The receipt and access to activation benefits is to be addressed by the Nordic Social Security Convention, which stipulates that the contracting parties should cooperate in order to facilitate rehabilitation and return to employment. The enhanced cooperation is aimed at better protecting and supporting frontier workers. In practice, however, it is sometimes difficult to decipher who/which State will be financially held to provide for rehabilitation measures, thus being potentially detrimental to frontier workers. Alternative conditions/observations: No issues reported</p>

⁹⁰ A law proposal has been composed in order to provide alternative means to demonstrate entitlement to study grants. More specifically, the residence requirement would be negated if the individual concerned has his centre of interests in Finland.

	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Minimum subsistence is not subject to an explicit nor permanent residence requirement. Municipalities are responsible for the implementation of the minimum subsistence and according to the Act on Social Assistance, individuals who are not permanently residing in Finland have access to necessary urgent income support. Analogous provisions apply for family support as a means of social support.</p>
	<p>Other</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: According to the Nordic Social Security Convention, frontier workers are taxed in the Member State of residence. Implicit residence requirements/de facto obstacles: Furthermore, other frontier workers need to have lived in Finland for six months per year, and need have generated 75% of their income in Finland, in order to enjoy tax advantages analogously to Finnish residents. Alternative conditions/observations: No issues reported</p>	
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: The general housing allowance is means-tested and granted to residents living in an apartment or house situated in Finland to lower the housing costs. Alternative conditions/observations: The income threshold to attain the foregoing allowance is low, entailing that only individuals with low income are entitled thereto.</p>	
<p>ADDITIONAL OBSERVATIONS</p>	<p>No additional observations</p>	



FRANCE – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: In order to register at an employment office, an address is required. This could prove to be a <i>de facto</i> obstacle for frontier workers, as they are not residents in France. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: Concerning university education, frontier workers are assimilated with French citizens. However, throughout the duration of the university studies, it is expected that the individuals concerned reside in France, which may potentially detrimentally affect frontier workers. Alternative conditions/observations: A temporal employment condition is imposed upon, amongst others, frontier workers, in order to enjoy vocational training.</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: The sole condition in order to enjoy the right to membership of a trade union concerns prior or current employment.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues identified Implicit residence requirements/<i>de facto</i> obstacles: Study grants are awarded due to social criteria and/or merit and/or in view of fostering international mobility. The award of a study grant due to social criteria is conditional upon one of the following conditions: the individual must have worked in France (genuinely and effectively) or demonstrate that his/her parents/legal guardians have received revenues in France. However, the foregoing conditions do not apply to students who themselves can show sufficient integration in France. For the latter a degree of residency – one year – is taken into consideration. The second and third types of study grants do not impose indirect residence requirements. Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Family benefits are categorised in 8 types of social advantages. All these benefits are conditioned upon residence in France. In addition, dependent children equally so need to reside in France to be considered for the granting of family benefits. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: Activation benefits correspond to the social minimum, which is now adjusted to take into account the situation of persons who have a limited professional activity (they can continue to benefit from social assistance, under certain conditions). These benefits depend on residence in France. Residence within this context is understood as stable and effective residence, entailing no more than three months abroad. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: The minimum income is dependent upon a residence permit as well as residence for the past three months, with an exception for individuals who are on sick leave. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>

	Other	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: In order to receive tax advantages, the frontier worker must generate 75% of the annual income in France, and cannot sufficiently enjoy similar tax advantages in the Member State of residence.</p> <p>Alternative conditions/observations: If the 75% income threshold cannot be reached, the following conditions may be fulfilled in order to nevertheless be equated to French citizens:</p> <ol style="list-style-type: none"> 1. The French revenue constitutes more than 50% of the global tax income. 2. The individual cannot benefit from any mechanism allowing a reduction of taxes in the country of residence based on its personal and family situation in his country of residence. 	
RIGHTS AND BENEFITS CONCERNING HOUSING	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: Personal housing benefits, family housing benefits and social housing benefits are awarded depending upon family and individual resources, as well as accommodation on French territory. The latter implies that a frontier worker would need to have the property located in France, which could possibly act as an indirect discriminatory practice based upon residence.</p> <p>Alternative conditions/observations: No issues reported</p>	
ADDITIONAL OBSERVATIONS	No additional observations	



GERMANY – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: Claimants seeking assistance who cannot provide for themselves are granted assistance solely if they fulfil a habitual residence requirement.⁹¹ Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Claimants who are able to provide for themselves are entitled to assistance if they have been or are employed in Germany and thus have been subject to contributory payments.</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: Claimants seeking assistance who are not able to provide for themselves are granted assistance solely if they fulfil a habitual residence requirement. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Claimants who are able to provide for themselves are entitled to assistance if they have been or are employed in Germany and thus have been subject to contributory payments.</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Whilst trade unions have their own respective statutes regarding membership requirements and requirements for the rights derived from membership, the sole common requisite condition concerns employment. Frontier workers have been monitored in varying positions within trade unions and are not hindered by residence requirements.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No explicit residence requirement Implicit residence requirements/de facto obstacles: Children of frontier workers will usually not be entitled to educational benefits because they do not fulfil the criteria of § 8 BAföG: § 8 para. 1 no. 3 BAföG entitling children of EU workers does not apply in the case of frontier workers since their children did not move with them to Germany. The same is true for § 8 para. 1 no. 2 BAföG since neither the frontier worker nor her/his family will have acquired a permanent right of residence in Germany (usually five year of continuous residence in Germany required). Neither does § 8 para. 3 no. 2 BAföG apply. For, not only does it require that, during a period of six years prior to her/his child(ren) taking up studies, the frontier worker worked in Germany for a period of three years, but also that he resided there. The frontier worker her/himself may be entitled to study grants if having been employed in Germany before taking up studies and the latter are connected with the former employment.</p> <p>In addition to the limited access <i>ratione personae</i>, one has to take account of the fact that only students residing permanently in Germany have access to grants for studies in another country (§ 5 para. 2 BAföG). Finally, in exceptional cases, only German nationals permanently residing in other countries than Germany are entitled to grants for studying abroad (§ 6 BAföG). In view of requirements of EU law, it has to be noted, though, that an (unconditional) residence requirement for children of frontier workers has been questioned notably by the CJEU's judgment of 20 June 2013 (Giersch et al). Alternative conditions/observations: On 20 August 2014, the German government proposed an amendment of the BAföG pursuing inter alia the goal of adapting it to the requirements of EU law. It remains to be seen and examined whether all issues will have been settled.</p>
	<p>Family Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: German family benefits fall</p>

⁹¹ However, the potential unconstitutionality thereof has been raised as an issue within this context.

		within the scope of Regulation (EC) No 883/2004.
	Activation Benefits	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: Regarding entitlement, two categories of possible claimants have to be distinguished, namely persons falling under book II of the German Social Security code and those covered by book III. Residence requirements provided for by national social law are held inapplicable in view of EU law and constitutional law requirements.</p>
	Social (Minimum Subsistence) Support	<p>Explicit residence requirements: Social assistance for jobseekers is granted to those who are either not yet entitled or have surpassed their entitlement to unemployment benefits or workers of whom the wage is below the minimum subsistence level and who are unemployed but employable without sufficient financial resources. In order to receive the latter, a habitual residence requirement must be fulfilled. However, as this is contested due to constitutionality concerns, frontier workers are normally exempted from this exclusion. General social assistance is granted to individuals who are not employable and is subsequently subject to residence in Germany.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
	Other	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: Individuals have access to cash subsidies for private pension schemes, which is equally applicable to civil servants and individuals falling under the compulsory German pension insurance scheme, including frontier workers. All obstacles which may render access to such benefits detrimental to EU migrant workers have been eliminated as a result of the case C-269/07.⁹²</p>
RIGHTS AND BENEFITS CONCERNING HOUSING		<p>Explicit residence requirements: Entitlement to housing benefits only exists if an individual is factually and legally residing in Germany. Hence, frontier workers are excluded. Regarding entitlement, two categories of possible claimants have to be distinguished, namely persons falling under book II of the German Social Security code and those covered by book III. Residence requirements provided for by national social law are held inapplicable in view of EU law and constitutional law requirements.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
ADDITIONAL OBSERVATIONS		Additional difficulties encountered by frontier workers are linguistic problems, educational discrepancies, lack of knowledge pertaining to the qualification as a frontier worker, time-consuming cooperation, lack of mutual recognition of professional and academic qualifications, and complex legislation and practice.

⁹² Case C-269/07, Commission v Germany.



GREECE – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Private employment offices are authorised to mediate between employers and citizens of the European Union or citizens of third countries legally residing in Greece who seek employment, subject to the condition that there are no special legal provisions with respect to certain professions. These offices are obliged to provide information regarding the potential labour post and the objectives related to his/her profession, to describe the terms of his/her potential employment contract and evaluate his/her capabilities and expertise. In this context, the above mentioned provision provides access to private employment offices for EU citizens and third-country nationals legally residing in Greece. However, no reference is made to EU nationals who reside outside of Greece. This omission may pose an obstacle to frontier workers who reside in other EU Member States and wish to seek employment in Greece through a private employment office. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: The statutes/charters of individual trade unions may impose additional requirements for membership of the respective trade unions and the rights attached thereto.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Family allowances are accorded in proportion to the family size and presuppose completion of a durational employment requirement. The child for whom the allowance is claimed, must, however, adhere to numerous requirements, amongst which residency in Greece <i>or</i> a member of the European Union.</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Greece foresees a variety of activation measures, ranging from benefits via the means of business grants for unemployed individuals to invalidity measures. Whilst no explicit residence requirements appear to arise, it seems frontier workers may be confronted with <i>de facto</i> obstacles, such as the necessity for the frontier worker to have previously been locally insured to gain access to certain activation measures. Alternative conditions/observations: No issues reported</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: The granting of such benefits will begin late 2014 and falls within the competence of the individual municipalities. Consequently, the benefit will be granted to the permanent residents of the municipalities involved. It appears that permanent and legal residency for at least six months prior to the claim will be required for EU nationals in order to be deemed eligible for subsistence support. Alternative conditions/observations: No issues reported</p>

	Other	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: Greek legislation applies the tax residency condition, entailing that an individual must have been present for 183 days in order to be assimilated to a Greek resident, thus entitled to the enjoyment of tax advantages. Additionally, a frontier worker would have to generate 90% of his/her income in Greece and prove that the taxable income received is sufficiently low to warrant reductions. Within this context frontier workers cannot be deemed to be tax residents, entailing that they are taxed solely on the income generated in Greece, and are subsequently excluded from tax deductions.</p> <p>Alternative conditions/observations: No issues reported</p>
RIGHTS AND BENEFITS CONCERNING HOUSING		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: In order to receive housing allowance, Greek residents are held to complete less insured days of labour vis-à-vis frontier workers (1000 days as opposed to 1400 days). The latter thus encompasses an obstacle to equal treatment with respect to housing benefits for frontier workers.</p> <p>Alternative conditions/observations: No issues reported</p>
ADDITIONAL OBSERVATIONS		<p>Additional difficulties are encountered by frontier workers with respect to differing pension schemes as well as non-adequate implementation of successive insurance and health coverage rules. Additionally, the lack of information with respect to mutual recognition of professional competences remains problematic.</p>



HUNGARY – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: In order to be registered as a jobseeker, in addition to all the additional requirements, and thus gain access to the totality of potential assistance by employment offices, it appears that an address in Hungary is effectively necessitated. Implicit residence requirements/de facto obstacles: In order to be registered as a person seeking services, there is no need to be unemployed, nor is an individual obliged to be resident in Hungary. However, such services are limited, and jobseekers' allowances and job assistance subsidies are automatically excluded therefrom. The sole services to which such individuals do have access (as do jobseekers) are: information dissemination, work, career, job seeking, and rehabilitation guidance as well as local job counselling. Placement or wage subsidies are limited to jobseekers that effectively reside in Hungary. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: Access to vocational schooling and retraining is limited to jobseekers, which, as aforementioned, presupposes residence in Hungary. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: Access to all pre-school, primary, general and/or vocational school is conditioned upon having acquired an EU registration certificate, which in turn is conditioned upon registration. Equally so, access to higher education as well as the access to study grants and loans for frontier workers or their respective children is, equally so, conditioned upon the acquiring of an EU registration certificate, which similarly presupposes residence in Hungary. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: No issue reported Implicit residence requirements/de facto obstacles: The Act on Family Support, which covers a multitude of family benefits as governed by Regulation (EC) No 883/2004, is applicable to all those whom are residence-based in Hungary, including those whom fall within the scope of Regulation (EC) No 883/2004 with residence. Within this context, an exception has been made with respect to frontier workers, entailing that frontier workers do not have to have residence in Hungary. However, a problem nevertheless arises for frontier workers due to the fact that a distinction is made between the initial 3 months criterion, during which the frontier worker is free to stay in Hungary and the period thereafter. After the initial 3 months, the frontier worker is effectively obliged to obtain an EU registration card and subsequently reside in Hungary. Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: Similarly to the right to assistance by employment offices, as well as the right to training in vocational schools, access to activation benefits is dependent upon the distinction between jobseekers and other persons seeking services. Whilst the former does have access to activation benefits, the latter do not, entailing that frontier workers will be denied activation benefits, given that the status as jobseeker presupposes residence in Hungary. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>

	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: Social allowance/assistance is means-tested and falls within the ambit of municipality competence. Within this context, municipalities maintain a register in order to decide upon the eligibility for social assistance/allowance, which in turn requires a registered address in Hungary to be given. <i>De facto</i> this entails that frontier workers have little, if any, access to social allowances. Alternative conditions/observations: No issues reported</p>
	<p>Other</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: A distinction is made between resident tax payers, also known as resident private individuals and non-resident private individuals. The former are fully tax liable in Hungary. It need be noted however, that residence, in order to be accorded the status of a resident tax payer, can equally be demonstrated by frontier workers who stay in Hungary for a period exceeding 183 days per year, or alternatively, who have their centre of interests in Hungary, which may be demonstrated by a variety of means. Insofar the centre of interest cannot be decided upon, it will suffice that the individual has his place of stay in Hungary. A frontier worker who is accorded the status of a resident tax payer is entitled to the same advantages as Hungarian nationals and/or residents.</p>	
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: Housing allowances are only available to those who legally reside in an establishment in Hungary, thus entailing a residence requirement to the detriment of frontier workers. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>ADDITIONAL OBSERVATIONS</p>	<p>No additional observations</p>	



ICELAND – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: Every individual entitled to work unconditionally in Iceland may register him/herself in a register for jobseekers. Registration therein subsequently guarantees the right to assistance in a job search, which is not conditioned upon a residence requirement. However, job relocation support is granted solely if the individual is registered as a (future) resident in Iceland. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Assistance by the Directorate of Labour may be asked for measures such as vocational schooling and retraining, if an individual is registered as being unemployed. Such assistance is furthermore subjected to two conditions, i.e.: the individual must be seeking employment in Iceland and must be receiving unemployment benefits in Iceland. The latter condition presupposes residence in Iceland due to the social security coordination rules enshrined in Regulation (EC) No 883/2004., thus entailing a residence requirement vis-à-vis frontier workers. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: In order to enjoy the right to membership of a trade union and the rights associated thereto, an individual needs to be (/have been) employed. For additional rights associated to trade union membership, other conditions may be imposed pertaining specifically to the duration of the said employment and the payment of certain contributions.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Student loans for maintenance and for school fees can be accorded to students who are wage earners or EEA workers who are studying in relation to the job they are exercising. Aside from such conditions no other conditions are imposed and no residence requirements are found. Family members have similar, albeit more limited rights. Applicants may however be requested to demonstrate a link with Icelandic society or the labour market.</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Family benefits, such as, amongst others, single parent's allowance, child pensions, home care allowance, spouse's benefits and home-care benefits, are subject to residence requirements. Additionally certain family benefits, such as rehabilitation pensions, are subject to temporal residence requirements. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: Similarly to the right to training in vocational schools and retraining centres, activation benefits are subject to residence requirements. The claimant must be seeking employment in Iceland and receiving unemployment benefits in Iceland. If applicant is seeking employment in other EEA state he may still receive unemployment benefit for a certain period but is considered to be subject to labour market measures under the legislation of the other state where he is seeking employment. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: According to the Act with respect to social assistance, each municipality only provides services and support to persons that are legally resident in that municipality. By means of example, Reykjavik only provides assistance to residents in the city of</p>

		<p>Reykjavík. If a person is in dire need assistance may be provided in another municipality in Iceland.</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
	Other	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/de facto obstacles: Residents and other persons with unlimited tax liability are fully taxed in Iceland and enjoy exemptions and deductions. Residents and individuals whom have stayed in Iceland for a duration exceeding 183 days throughout 12 months are fully tax liable. In addition thereto, amongst others, individuals who have generated 75% of their income in Iceland will acquire the status as a tax resident and thus fully enjoy the available deductions and exemptions.</p> <p>Alternative conditions/observations: No issues reported</p>
RIGHTS AND BENEFITS CONCERNING HOUSING		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/de facto obstacles: General housing loans and additional housing loans are conditioned upon residential property being situated in Iceland. Whilst no explicit residence requirements are imposed, it need be noted that the in the interest of maintaining the manageability of housing loans, administrative practice may be cautious in granting such loans to individuals not resident in Iceland.</p> <p>Alternative conditions/observations: No issues reported</p>
ADDITIONAL OBSERVATIONS		No additional observations



IRELAND – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: employment services can be requested, void of any residence requirements, from the Department of Social Protection as well as local employment services.</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Access to training in vocational schools and retraining centres may be dependent upon the receipt of social welfare payments, which may in turn be subject to a habitual residence requirement, which has been upheld in Irish courts thus far. As frontier workers are not habitually resident in Ireland, it would seem they are excluded from access thereto. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Membership of a trade union is made conditional upon the rules set up by the respective trade unions.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: The study grant scheme covers maintenance grants, fee grants, and postgraduate contribution. Entitlement is subject to three conditions, i.e. nationality and immigration status, ordinary residence, and means. Ordinary residence is defined as being legally resident for three of the five previous years in order to qualify for a maintenance grant, thus clearly imposing a residence requirement for frontier workers. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Family support benefits, which would be categorised as social advantages, and are not yet governed by Regulation (EC) No 883/2004, are linked to a social welfare payment which is conditioned upon habitual residency. For example, the Back to School Clothing and Footwear Allowance helps towards the cost of uniforms and footwear for school children. In order to qualify, a person (and the qualifying child(ren)) must be living in the State and taking part in approved employment schemes or training courses or receiving a social assistance payment. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: There are a number of schemes which might be described as 'activation benefits'. For example, the back to work enterprise allowance is intended to encourage the long-term unemployed to take up self-employment opportunities by allowing them to retain a reducing proportion of their social welfare payment plus secondary benefits over two years. It is payable to individuals who have been the recipient of various social welfare payments which are generally, in turn, subject to a 'habitual residence' condition. Similarly, the back to education allowance (payable to older persons who attend second and third-level education) is subject to prior receipt of various welfare payments which are subject to the habitual residence requirement. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>

	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: Supplementary welfare allowance is generally subject to the habitual residence condition with an exception for once-off exceptional and urgent needs payments. However, the current operational guidelines of DSP state that “In accordance with Art 7 of Regulation EU 1612/68 (former Regulation 492/2011, migrant workers are entitled to the same tax and social advantages as workers from the host State”. The guidelines also state that “for the purposes of any claim to Supplementary Welfare Allowance (SWA) an EEA national who is engaged in genuine and effective employment in Ireland is regarded as a migrant worker under EC law and does not need to satisfy the habitual residence condition”. Therefore, it would appear that EU migrant workers – including frontier workers – are not subjected to the habitual residence condition.</p> <p>Implicit residence requirements/ de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
	<p>Other</p>	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/ de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/ de facto obstacles: A distinction is made between resident and domiciled individuals, which presupposes permanent residency, as opposed to individuals who are (ordinarily) resident but not domiciled. The first category is subjected to an income tax on the global income, whereas the latter will only be taxed on the foreign income if it is effectively transferred to Ireland. Despite the applicable rules concerned and double taxation treaties, problems nevertheless arise, creating potential problems for frontier workers.</p> <p>Alternative conditions/observations: No issues reported</p>	
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: Assistance with rent in private dwellings also known as a rent supplement is subject to a habitual residency requirement and is not payable to those who are in full-time employment. Hence, due to the residence requirement, frontier workers are excluded from this supplement.</p> <p>Implicit residence requirements/ de facto obstacles: Certain conditions need be met for entitlement to public housing, as is to be assessed by the housing authority in the area concerned. An individual needs to fulfil the requirement of a continuous residence for five years of any member of the family at any given point <i>or</i> the condition of having employment within 15 kilometres of the unit. Whilst indeed a frontier worker could prove this, it is nevertheless extremely difficult to access it due to income checks and waiting lists.</p> <p>Alternative conditions/observations: No issues reported</p>	
<p>ADDITIONAL OBSERVATIONS</p>	<p>One of the prevalent difficulties faced by frontier workers concerns the necessity to abide by a habitual residence requirement in order to gain access to social welfare, which encompasses, amongst others, training.</p> <p>Additionally, frontier workers may encounter issues concerning access to information and advice as well as with respect to the non-alignment of varying Member State regimes.</p>	



ITALY – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: National legislation with respect to the labour market, which equally regulates access to private employment agencies, does not impose formal residence requirements in order to enrol in public employment services. However, with respect to specific services addressed to those who are unemployed, see “Activation benefits”. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: Much discrepancy exists with respect to applicable regional legislation regulating the issue of vocational training and retraining. In order to provide a common framework a Protocol was signed on 19 June 2003 by the Conference of regions. In this Protocol, as well as in national legislation, no mention whatsoever is made of the status of non-nationals, thus entailing ambiguity with respect to frontier workers. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No residence or nationality requirements are imposed in order to enjoy the right to membership of a trade union.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: If family benefits are not governed by Regulation (EC) No 883/2004, prior authorisation will be requisite for non-nationals by the National Social Security Institute Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: Activation services, in case of unemployment are conditioned upon residence in Italy. Implicit residence requirements/<i>de facto</i> obstacles: It need be noted that public employment offices might propose an agreement to the unemployed individual by which the unemployed person is obliged to declared himself ‘available’ for the proposed measures. The latter entails that he/she must be present whenever the public employment office requires so. Conceivably, such agreements might detrimentally affect frontier workers as they might not necessarily reside near the place of employment. Alternative conditions/observations: No issues reported</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: Regional legislation, aimed at regulating social assistance benefits, does increasingly demand prolonged residence requirements. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Other</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: Tax advantages and exemptions are usually related to the employment (or self-employment) status and do not usually refer</p>	

	<p>to residence requirements. Of particular interest is the substantial tax exemption in Italy related to the purchase of a 'first' house, which is conditioned upon residency by the claimant in the establishment concerned.</p> <p>Alternative conditions/observations: No issues reported</p>
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: Granting of housing benefits is a regional competence, which has resulted in substantial legislation which conditions access to social benefits, amongst which housing benefits, to (durational) residence requirements. Public housing in this regard is subject to an individual having resided in Italy for at least 36 months.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
<p>ADDITIONAL OBSERVATIONS</p>	<p>It need be noted that Italy is not subjected to a substantial influx of frontier workers. Rather, a considerable outflow of frontier workers from Italy to Switzerland, France, Austria and Monaco can be identified. It is thus primarily the north-eastern part of the country which is confronted with frontier work and the difficulties associated thereto.</p>



LATVIA – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: Employment services are available to all who are EU citizens, including the respective family members, if they are legally staying in Latvia.⁹³ Implicit residence requirements/de facto obstacles: Another issue in this regard is the strict requirement of knowledge of the Latvian language, which could amount to an indirect residence requirement, as it is far more difficult for frontier workers who reside elsewhere to learn a language as opposed to those residing in the country. To amend this, the provision of basic Latvian language courses is provided, however. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: With the exception of linguistic difficulties, which are addressed by the aforementioned language courses, no issues are reported. Alternative conditions/observations: No issues are reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Trade unions are not well-organised in Latvia. Hence, the ability to provide support and protection to frontier workers, as well as others, is limited, albeit not necessarily as a residence requirement. Alternative conditions/observations: No issues reported</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: The Education Law is an umbrella law for all education in Latvia. The right to education is applicable to all EU citizens without the necessity of a residence permit. The law on institutions of higher education, a special law which regulates access to higher education, dictates that EU citizens are entitled if they have a residency permit. The latter is contrary to the umbrella law. However, the applicability of European and international legislation is emphasised, entailing that EU provisions prevail. Unfortunately, this is difficult to apply. <i>De facto</i> it appears that a residence requirement is thus incorporated in the law, albeit implicit. The same problem arises with respect to study grants. Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Certain municipalities grant additional childbirth allowances in addition to the state-regulated childbirth allowance. However, this supplementary allowance is granted solely if an individual is resident in the municipality concerned. Implicit residence requirements/de facto obstacles: Generally, family benefits are granted in accordance with Regulation (EC) No 883/2004. Childbirth allowance, which does not fall within the scope of the foregoing regulation, is subject to residence. However, the residence requirement is deemed fulfilled insofar an individual demonstrates close ties with Latvia, which frontier workers conceivably have. Alternative conditions/observations: Parental allowance is contribution-based and thus is void of any residence requirements.</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: Entitlement to the activation benefits is directly conditional upon the status of unemployed or jobseeker. If an individual has obtained a status as unemployed or jobseeker he/she is entitled to all activation benefits. Neither the law nor the State Employment Agency requires a registration card for the purposes of the award of a status of unemployed or jobseeker. Implicit residence requirements/de facto obstacles: As</p>

⁹³ 'Legally staying', is formally and in practice understood as being compliant with immigration law. It entails that if an EU citizen has a right to reside in Latvia up to three months without registration at the immigration office he/she is to be considered as 'legally staying'. The same thus applies to frontier workers who do not have to obtain a registration card if they return home at least once in a week.

		<p>aforementioned, linguistic discrepancies may prove to be a complicating factor for frontier workers seeking activation benefits, in gaining access to activation benefits.</p> <p>Alternative conditions/observations: No issues reported</p>
	Social (Minimum Subsistence) Support	<p>Explicit residence requirements: The law on social assistance and support encompasses the minimum subsistence allowances and the housing allowances. However, as the municipalities are competent in this context, and one of the conditions is permanent residence, frontier workers will not be entitled to the foregoing (i.e. a dual cumulative condition – permanent residency and a personal Latvian code).</p> <p>Implicit residence requirements/de facto obstacles: The law concerning state social allowances regulates flat-rate allowances which presuppose the foregoing dual cumulative condition. However, in practice this is not followed strictly. EU citizens are not automatically excluded from all state flat-rate allowances due to the foregoing residence requirement. Rather, the permanency of residence can equally be assessed based upon the real ties an individual has with Latvia, which entails a reference to the centre of interests. However, the centre of interests is often defined as being the place of residence. Hence, frontier workers can hardly, if at all, prove that the centre of their interests is effectively Latvia.⁹⁴</p> <p>Alternative conditions/observations: No issues reported</p>
	Other	<p>Explicit residence requirements: The law pertaining to medical treatment does not impose residence requirements. The law dictates that those, whom are present in Latvia, as well as the respective family members, are entitled to state-subsidised health care. The condition of being present is not equated with the notion of residency – it suffices that one is employed in Latvia. In addition thereto, such treatment can be given conjointly with health care granted in other States.</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/de facto obstacles: If a frontier worker is in Latvia for 183 days and generates a Latvian income exceeding a threshold of 75% of the total income, the individual will be deemed a tax resident and subsequently be granted tax advantages analogous to an economically active resident.</p> <p>Alternative conditions/observations: No issues reported</p>
RIGHTS AND BENEFITS CONCERNING HOUSING		<p>Explicit residence requirements: The granting of housing benefits falls within the competence of the municipalities, which require a residence address in Latvia in order to demonstrate entitlement to housing benefits. Hence, the foregoing entails a residence requirement vis-à-vis frontier workers.</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
ADDITIONAL OBSERVATIONS		No additional observations

⁹⁴ However, some nuance is necessary. Notwithstanding the administrative practice, problems in this regard are low due to the fact that the number of frontier workers is rather limited, and frontier workers that are employed in Latvia are predominantly from Lithuania and Estonia, which have the same or similar flat rate state allowances.



LIECHTENSTEIN – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: Additional information pending Implicit residence requirements/<i>de facto</i> obstacles: Alternative conditions/observations:</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: Implicit residence requirements/<i>de facto</i> obstacles: Alternative conditions/observations:</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: Implicit residence requirements/<i>de facto</i> obstacles: Alternative conditions/observations:</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: Implicit residence requirements/<i>de facto</i> obstacles: Alternative conditions/observations:</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Implicit residence requirements/<i>de facto</i> obstacles: Alternative conditions/observations:</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: Implicit residence requirements/<i>de facto</i> obstacles: Alternative conditions/observations:</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: Implicit residence requirements/<i>de facto</i> obstacles: Alternative conditions/observations:</p>
	<p>Other</p>	<p>Explicit residence requirements: Implicit residence requirements/<i>de facto</i> obstacles: Alternative conditions/observations:</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: Implicit residence requirements/<i>de facto</i> obstacles: Alternative conditions/observations:</p>	
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: Implicit residence requirements/<i>de facto</i> obstacles: Alternative conditions/observations:</p>	
<p>ADDITIONAL OBSERVATIONS</p>		



LITHUANIA – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: As of September 2014 the law concerning support of employment, which defines, amongst others, the right to assistance by employment offices, is applicable to Lithuanian citizens as well as EU and EFTA members if the last place of employment was in an enterprise permanently situated in Lithuania. This could be deemed an indirect obstacle to frontier workers, as individuals living in Lithuania will be more likely to have had their last employment in Lithuania vis-à-vis frontier workers. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: The aforementioned applicable law on support for employment defines not only the rights to assistance by employment offices, but equally so the rights to vocational training, which is deemed applicable to all EU/EFTA citizens as of September 2014. Frontier workers are not identified as a special category which merit special rights; hence, no residence requirement can be identified. Access is, however, conditioned upon the last employment having been in Lithuania, which may prove more difficult for frontier workers. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: In order to enjoy the right to membership of a trade union and the associated rights thereto, an individual needs to be legally employed in Lithuania.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: Right to feeding of schoolchildren at school and financial help to buy equipment is restricted to the extent that at least one parent must be resident in Lithuania, thus imposing a residence requirement upon frontier workers. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: State subsidized studies in Lithuanian universities are available to frontier workers insofar the requisite qualifications are held by the person in question. Frontier workers can compete for a place, irrespective of the place of residence of the parents⁹⁵.</p>
	<p>Family Support</p>	<p>Explicit residence requirements: If distinct family support is not governed by Regulation (EC) No 883/2004, a resident requirement with respect to at least one parent is imposed. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: As of September 2014, the law concerning support of employment is applicable to Lithuanian citizens as well as EU and EFTA members if the last place of employment was in an enterprise permanently situated in Lithuania. This could be deemed an indirect obstacle to frontier workers as individuals living in Lithuania will be more likely to have had their last employment in Lithuania vis-à-vis frontier workers. Alternative conditions/observations: No issues reported</p>

⁹⁵ Validation of the certificate of education is requested in Lithuania. Special rules for this validation are approved by Government on 29 February 2012. Foreign qualification is recognized as equivalent to Lithuanian if "there are no essential differences between general Lithuanian and foreign requirements" (art.6). If foreign certificate is validated, then state subsidized higher education is available for a person with no discrepancy. However, this validation is not requested for persons who graduated schools covered by Convention defining the statute of the European schools (Official Journal L 212, 17/08/1994 p. 0003 – 0014) and who have achieved the European baccalaureate defined in this Convention.

	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: Means-tested benefits are available to Lithuanian nationals, to foreign nationals who have Lithuanian permission to reside permanently in the EU, as well as to EU citizens and their family members who have resided in Lithuania for at least three months. Additionally, special non-contributory cash benefits are not means-tested, yet do impose a residence requirement. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Other</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: The tax advantage whereby the non-taxable level of income is raised per child constitutes an advantage the enjoyment of which is limited to residents. However, residence is formulated in a broad manner, allowing residence to be demonstrated by having your main personal, social or economic interest in Lithuania as opposed to elsewhere abroad. Nevertheless, frontier workers are treated as non-residents due to the fact that they have their social centre abroad. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: State support in this regard is limited to those who are permanent residents in Lithuania. No exceptions are provided for. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>ADDITIONAL OBSERVATIONS</p>	<p>No additional observations</p>	



LUXEMBOURG – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Legislation provides that Luxembourg and EU citizens are entitled to register as a jobseeker. However, when attempting to register as a jobseeker, one of eight competent regional agencies in Luxembourg need be identified, in a drop-down menu on the internet. The foregoing entails that an individual with residence outside of Luxembourg will have difficulty to register. Concerning the reimbursement of social security contributions to certain categories of individuals, the same type of problem appears.⁹⁶ For other employment measures, no legal residence requirements are applied. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Three conditions to gain access to vocational schools and retraining centres are imposed upon frontier workers. Firstly, the frontier worker must be affiliated to the Luxembourg social security system. Secondly, the frontier worker must be bound by a labour contract with a firm which is legally established in Luxembourg. Lastly, the frontier worker must be exercising his/her main activity in Luxembourg.</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No residence requirements are imposed in order to enjoy the right to membership of a trade union. However, some of the derived rights are conditioned upon seniority. Frontier workers do not experience differences in treatment vis-à-vis resident workers. Additionally, trade unions in Luxembourg oftentimes take membership of a trade union in other Member States into regard in order to calculate seniority, as a result of participation in ETUC.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Financial aid for students is divided in five categories of which entitlement to four categories is conditioned upon residence. The fifth category encompasses and is applicable to EU citizens/EEA/Luxembourg nationals who do not reside in Luxembourg but are employed in Luxembourg when they apply for financial aid. Equally so, the fifth category is applicable to children of the foregoing if the following conditions are met. Firstly, the frontier workers must maintain the participation in sustaining the students. Secondly, they must have been employed in Luxembourg for at least five years in a period of seven years. In the case of retirement and/or quitting of employment, the condition needs to already have been met. This creates an indirect obstacle for frontier workers as the conditions are stringent, and can be far more easily met by residents. Alternative conditions/observations: No issues reported.</p>
	<p>Family Support</p>	<p>Explicit residence requirements: The receipt of child care benefits is conditioned upon residence in Luxembourg. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Legislation foresees that Luxembourg and EU citizens are entitled to register as a jobseeker. However, when attempting to register as a jobseeker, one of eight competent regional agencies in Luxembourg need be identified, in a drop down menu on the internet. The foregoing entails that an individual with residence outside of Luxembourg will have difficulty to register. Hence, access to activation measures are limited for frontier workers.</p>

⁹⁶ This was furthermore discussed in Case C-379/11, Caves Krier Frères Sarl v Directeur de l'Administration de l'emploi.

		Alternative conditions/observations: No issues reported
	Social (Minimum Subsistence) Support	Explicit residence requirements: In order to enjoy social minimum subsistence support, an individual must receive the Guaranteed Minimum Income (RMG), which presupposes residence in Luxembourg. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported
	Other	Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported
TAX ADVANTAGES	Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Non-resident tax payers may opt for tax advantages that are usually limited to residents, if 90% of their professional income results from an employment or an activity in Luxembourg. However, contrary to residents, these advantages are solely with respect to the income generated in Luxembourg, which is not necessarily the same as the worldwide income. Due to the high income threshold as well as the applicability of the tax advantages to the Luxembourg income as opposed to the worldwide income, frontier workers are disadvantaged indirectly. Alternative conditions/observations: No issues reported	
RIGHTS AND BENEFITS CONCERNING HOUSING	Explicit residence requirements: Individual aid linked to accommodation in Luxembourg and individual financial aid for people residing in Luxembourg presupposes that the accommodation is located in Luxembourg and therefore that permanent residence is in Luxembourg, thus excluding frontier workers. Hence, frontier workers will not have access to, amongst others, moderate rent accommodation, public financial aid concerning a locative guarantee, subsidies for construction and rent subsidies. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported	
ADDITIONAL OBSERVATIONS	No additional observations	



MALTA – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: In order to benefit from assistance by employment offices, which in Malta is the Employment and Training Corporation (<i>hereinafter</i> ETC), proof must be given of residence.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: In addition to the foregoing, it need be noted that upon registration with the employment office, an individual advisor is appointed to the jobseeker. Within the context of receiving personalised support, the jobseeker is required to meet the advisor regularly. Given the geographical location of Malta and the subsequent commute this would entail for frontier workers that access to such services is rendered fairly difficult.</p> <p>Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: In order to gain access to training, an individual need be registered in the ETC, which again, requires residence.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: Further compounding the matter is the fact that such courses and training are given on a daily basis. Due to Malta's geographical location, frontier workers are yet again placed at a disadvantage vis-à-vis residents in Malta.</p> <p>Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: In order to enjoy the right to membership of a trade union, it suffices to be employed in Malta – no additional residence requirements are imposed.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: Concerning compulsory state education it need be noted that proof of residence is requisite. Furthermore, with respect to study grants, a temporal residence requirement of five years is equally imposed. Lastly, there are no means by which a study grant can be deemed exportable.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Family benefits are subject to a residence requirement. However, this is negated with respect to cross-border work as a result of Regulation (EC) No 883/2004. The latter entails that family members of frontier workers, and subsequently not resident in Malta, may nevertheless enjoy family benefits by the Maltese competent authorities.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: Despite the formal access by frontier workers and their respective family members to family benefits, substantial coordination between the competent authorities of the Member State of employment and the Member State of residence is required. Conceivably this may be a lengthy process during which frontier workers and their families may be somewhat disadvantaged.</p> <p>Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: Activation measures are mainly related to unemployment benefits (contributory) and unemployment assistance (non-contributory). The national legislation which provides for unemployment benefits/assistance imposes a residence requirement for entitlement. However, in the case of the contributory unemployment benefit, such requirement is waived in situations which fall within the scope of Regulation (EC) No 883/2004. For the non-contributory unemployment assistance, residence is a mandatory requirement.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: Unemployed individuals are required to register for employment once a week at the local social security office. Moreover, the ETC provides various activation measures for persons in receipt of unemployment benefit/assistance, such as, amongst others, employability programmes, community work</p>

		<p>schemes, apprenticeships. In order to be entitled to unemployment benefits and assistance, participation in the foregoing measures is mandatory. However, participation is waived for unemployed persons receiving contributory unemployment benefits who are resident in another State and thus seek to export the benefit. The latter are not possible recipients of non-contributory unemployment assistance.</p> <p>Alternative conditions/observations: No issues reported</p>
	Social (Minimum Subsistence) Support	<p>Explicit residence requirements: Social assistance is a non-contributory, means-tested benefit which is conditioned upon residence in Malta.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
	Other	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: Non-residents, such as amongst others frontier workers, can be assimilated to residents in Malta for tax purposes, if 90% of the worldwide income is effectively generated in Malta. If this threshold is not met, frontier workers will be held to non-resident tax rates, which are considerably higher than resident tax rates.</p> <p>Alternative conditions/observations: No issues reported</p>
RIGHTS AND BENEFITS CONCERNING HOUSING		<p>Explicit residence requirements: Most housing benefits are conditioned upon residence in Malta, thus entailing that frontier workers are generally excluded from such benefits.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: In addition to the residence requirements upon which the entitlement to housing benefits is conditioned, additional requirements are equally imposed which may detrimentally affect access thereto for frontier workers. For example, oftentimes entitlement will equally depend upon the condition that the claimant does not have residence elsewhere.</p> <p>Alternative conditions/observations: No issues reported</p>
ADDITIONAL OBSERVATIONS		<p>Due to, in particular, the geographical location of Malta vis-à-vis other states, frontier workers are less inclined to seek employment in Malta. The incurred air and travel expenses render Malta unattractive for frontier workers. As a result information with respect thereto is scarce.</p>



THE NETHERLANDS – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: If an individual falls within the ambit of Regulation (EU) No 492/2011, no residence requirements are imposed.</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: Whilst no explicit nor implicit obligations are imposed to enjoy the right to membership of a trade union, it has been noted that for the rights associated to membership of a trade union, additional conditions may be encompassed in the specific statutes governing the trade unions concerned. By means of example, it suffices to refer to the fact that in some trade unions, to hold certain posts, it is obligatory to live within a given driving distance from the place where the work is to be performed.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: If the claimant is either a (frontier) worker, or a family member thereof, no residence requirements apply for loans and/or grants for higher education in the Netherlands. However, in order to be the recipient of grants/loans for higher education outside of the Netherlands, a student must have resided in the Netherlands for three years in the six years prior to the claim concerned, unless the claimant falls within the scope of Article 45 TFEU.⁹⁷ However, despite the fact that frontier workers fall within the ambit of the provision concerned, practice demonstrates that frontier workers are still excluded from access to the benefits concerned as a result thereof. Alternative conditions/observations: Compensation and/or benefits for tuition and costs in secondary education are not conditioned upon residence requirements, and thus equally applicable to frontier workers.</p>
	<p>Family Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: Residence is solely required for childcare support if the latter is the result of residence-based social benefits. The right to childcare support not founded on residence-based social benefits is void of any residence requirements. Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: A distinction can be made between two types of activation measures, namely, activation measures intended for the recipients of unemployment benefits, incapacity for work benefits or incapacity benefits for young disabled persons as opposed to activation measures for social assistance recipients and recipients of a survivor's benefit. These activation measures range from additional education to the conditional placement as well as incentives granted to employers. However, despite the variety of measures, activation measures are conditioned upon residence in the Netherlands. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>

⁹⁷ The CJEU ruled in case C-542/09, Commission v the Netherlands, that the three years out of six years rule concerned is not in accordance with European legislation insofar as it concerns frontier workers. See C-542/09, Commission v Netherlands.

	Social (Minimum Subsistence) Support	<p>Explicit residence requirements: In order to be recipient of social assistance, one needs to be a resident, entailing that frontier workers are excluded therefrom. Similarly, residence is required for income support and incapacity for work benefits, minimum subsistence benefits for unemployed workers who are elderly or partially incapable for work, various benefits for those in need of care, and supplements to wage compensation benefits insofar this is below the minimum subsistence level.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
	Other	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: A distinction is made based upon residency. If an individual is a resident, he/she will be taxed upon the entire worldwide income, whereas non-residents will solely be taxed upon the income generated in the Netherlands. Frontier workers can choose to be assimilated to Dutch residents, although it need be noted that this choice will no longer exist as of 1 January 2015. The tax deductions enjoyed by (tax) residents is far more comprehensive vis-à-vis the tax reductions enjoyed by non-residents. Furthermore, the lack of sufficient and adequate information in this regard disadvantages frontier workers, as they are unaware of the rights they have. Lastly, the 30% regulation is applicable to frontier workers. The latter entails that if an employer has recruited an employee from abroad, he/she may offer the employee 30% of the salary tax free, in order to compensate the additional costs. However, in order to be eligible for the benefit concerned, the individual must have lived 150 kilometres away from the border. The foregoing provision is, however, currently pending before the CJEU.⁹⁸</p> <p>Alternative conditions/observations: No issues reported</p>	
RIGHTS AND BENEFITS CONCERNING HOUSING	<p>Explicit residence requirements: In order to acquire a rent subsidy, residence is required.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>	
ADDITIONAL OBSERVATIONS	No additional observations	

⁹⁸ Pending case C-512/13, Sopora.



NORWAY – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: In order to attain access to assistance by employment offices, an individual must be resident in Norway. If an individual is unemployed as the result of a temporary lay-off, this residence requirement is waived, however. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: According to the Norwegian Labour and Welfare Administration, there may be some variation in the manner local employment offices apply the foregoing rules. However, the general rule nevertheless imposes a residence requirement.</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: In order to gain access to vocational schools and retraining centres, residence is effectively required. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: As aforementioned, according to the Norwegian Labour and Welfare Administration, there may be some variation in the manner local employment offices apply the foregoing rules. However, the general rule nevertheless imposes a residence requirement.</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: The right to membership of a trade union and the rights associated thereto are regulated in the respective statutes of the trade unions. Membership, however, is conditional upon the type of employment and in some cases, qualifications. Residence requirements, however, do not apply.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: In order to receive financial assistance for education, a residence requirement is imposed. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: According to Regulation (EC) No 883/2004, if you are a national of an EEA country and are working in Norway, whereas your family is resident in the Member State of residence, and if the child's other parent is <i>not</i> employed in the home country and does not receive unemployment benefits, one is entitled to child benefits and cash-for-care benefits from Norway. If the child's other parent is working in the Member State of residence, either as a wage earner or as a self-employed person, and has the right to the same type of benefit there, the benefit in the home country will be taken into account when the Norwegian benefit is assessed. The same will apply if the other of the child's parents receives unemployment benefits in the home country. If the benefit in the home country is less than the Norwegian benefit, child benefits and cash-for-care benefits in Norway will be paid by that amount which exceeds the benefit in the home country. Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: Residence conditions apply to be the recipient of activation benefits, but similarly with respect to assistance by employment offices, an exception is provided for temporary lay-offs. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: In order to receive social assistance/support, residence requirements are imposed. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Individuals who are not Norwegian nationals and who are not residents in Norway are not entitled to individual services with the exception of the receipt of information, advice and guidance. If individuals are not able to support themselves</p>

		they are entitled to acute relief, i.e. financial support and assistance in finding temporary accommodation until they can be expected to receive assistance from sources in their Member State of residence.
	Other	Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported
TAX ADVANTAGES		Explicit residence requirements: Residence is required in order to be the recipient of tax advantages. However, frontier workers may receive tax advantages with respect to the extra costs incurred in relation to their travel as a result of their employment in another State than the Member State of employment. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: Specific regulations are applicable to Swedish and Finnish workers.
RIGHTS AND BENEFITS CONCERNING HOUSING		Explicit residence requirements: In order to receive housing allowances and/or supplements, an individual need be resident in Norway. Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported
ADDITIONAL OBSERVATIONS		No additional observations



POLAND – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Access to assistance from employment offices is granted to Polish citizens and EU citizens if they have acquired the status of unemployed pursuant to Polish legislation. Additionally, in order to receive the foregoing assistance as an unemployed individual, registration in a labour office in the place of residence in Poland is required, and in the absence of a place of residence in Poland, the place of stay in Poland.</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Access to such training is dependent upon the status as an unemployed individual pursuant to Polish legislation. The labour office competent to afford the status of an unemployed individual is determined by the residence or stay in Poland.</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: In order to enjoy the right to membership of a trade union, the frontier worker need be employed based on a labour contract.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No residence requirements are imposed for students applying for the educational benefits. Students are entitled (after fulfilling certain requirements) to the following benefits: - social scholarship; - special scholarship for disabled; - scholarship for the best students; - minister's scholarship for outstanding achievement; - special assistance. In order to receive additional financial support from local authorities, additional conditions may apply.</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Receipt of family support benefits in conformity with the social security coordination rules in Regulation (EC) No 883/2004 is dependent upon residency in Poland. An application for such benefits must be submitted to the local office in the municipality of residence. The benefits concerned include family allowance and supplements, attendance benefits, and a single birth grant. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: The Law on Social Assistance provides social benefits (in cash and in kind), which can be granted to Polish citizens residing and staying on the territory of Poland as well as to foreigners residing and staying on the territory of Poland. It provides, amongst others,: - a permanent benefit; - a periodical benefit (which can be considered as a minimum subsistence benefit); - a purpose benefit (together with a special purpose benefit). Alternative conditions/observations: No issues reported</p>

	Other	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: A distinction is made between residents and those who are considered tax residents vis-à-vis non-residents. The latter category is solely taxed upon the income generated in Poland, as opposed to the worldwide income.</p> <p>Alternative conditions/observations: No issues reported</p>
RIGHTS AND BENEFITS CONCERNING HOUSING		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: In order to receive purpose benefits as well as housing allowance, obstacles can be encountered with respect to frontier workers. The receipt of purpose benefits requires residence or stay on Polish territory. In order to receive housing allowance, an individual will be required to hold a legal title for the establishment, which may prove to be more burdensome for frontier workers vis-à-vis Polish residents.</p> <p>Alternative conditions/observations: No issues reported</p>
ADDITIONAL OBSERVATIONS		<p>The foregoing demonstrates that Polish legislation does not subject frontier workers to disadvantageous circumstances.</p>



PORTUGAL – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Frontier workers can register on the website of the Employment and Vocational Training Institute, which entitles them to assistance. What does seem to be problematic, however, is the fact that the regional delegation and responsibility for such assistance is not explicitly regulated. Whilst the latter could be troublesome for frontier workers, administrative practice indicates that it is ultimately the regional delegation of employment which is deemed competent. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: Entitlement to adult study grants for studies abroad is conditioned upon nationality and/or permanent residency. Similarly, higher education study grants for dependent children are conditioned upon residency. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Family support benefits as well as funeral benefits are dependent upon residency in Portugal. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: Additional information pending Implicit residence requirements/de facto obstacles: Alternative conditions/observations:</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: In order to gain access to minimum subsistence in Portugal, residence is effectively required. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Other</p>	<p>Explicit residence requirements: Registration in public local health facilities is subject to residence. Solely via the means of registration can an individual access a family doctor and basic medical health care. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: A convention between Spain and Portugal dictates that individuals will be taxed in the Member State of residence, thus imposing a residence requirement upon frontier workers. Implicit residence requirements/de facto obstacles: Frontier workers who have education expenses outside of Portugal are entitled to reductions thereof, if the education</p>	

	<p>concerned is in Portuguese institutions or institutions recognised by Portugal. In practice, however, such institutions outside of Portugal are not recognised, entailing that frontier workers cannot effectively enjoy the reductions concerned. Alternative conditions/observations: No issues reported</p>
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Granting state-subsidized housing falls within the area of competence of individual municipalities. Practice shows that certain municipalities may exclude frontier workers from gaining access to state-subsidised housing despite the lack of legislation warranting an approach as such. Alternative conditions/observations: No issues reported</p>
<p>ADDITIONAL OBSERVATIONS</p>	<p>Frontier workers experience difficulties with respect to accessing bank credit. Additionally, cross-border transportation is scarce. Lastly, cross-border mobile communications are still subjected to substantial roaming costs.</p>



ROMANIA – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: In order to receive assistance by employment offices in Romania, the law stipulates that an individual needs to have previously been employed or have generated income in Romania. However, in order to effectively register and gain access to an employment office, registration at the immigration office is required, which will provide the individual with a personal identification number. Upon receipt of the personal identification number concerned, the individual will have access to the employment offices and subsequently its services.</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Training services are generally provided free of charge to those workers who, amongst others, have previously been employed or have generated income in Romania.</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: In order to enjoy the right to membership of a trade union, an individual need be bound by an individual employment contract.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: The children of migrant workers have free of charge access to the compulsory educational system (kindergarten and grades I-X).</p>
	<p>Family Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: State allowance for children is granted solely to residents in Romania. However, the provisions with respect thereto in Regulation (EC) No 883/2004 are applied accordingly, entailing that frontier workers equally have access to such benefits. Alternative conditions/observations: Concerning an indemnity for raising a child, it need be noted that entitlement is conditioned upon having received income 12 months prior to the birth of the child, entailing that no residence requirement is imposed.</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: To receive assistance, counselling or guidance by employment offices in Romania it is necessary for the frontier worker to have residence or stay in Romania and to have been employed or gained income in Romania. Nevertheless, the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 are applied accordingly.</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: All nationals of EU Member States, the European Economic Area, nationals of Switzerland, foreigners and stateless persons who have their residence in Romania are entitled to social assistance, under Romanian law and the EU regulations and the agreements and treaties to which Romania is a party. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>

	Other	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: A frontier worker can be assimilated to a Romanian resident for tax purposes if the frontier worker is present in Romania for at least 183 days or, alternatively, has his/her centre of interests in Romania. If a frontier worker is not deemed a Romanian tax resident, he/she will not enjoy tax advantages analogous to those enjoyed by Romanian citizens.</p> <p>Alternative conditions/observations: No issues reported</p>
RIGHTS AND BENEFITS CONCERNING HOUSING		<p>Explicit residence requirements: Grants of land and/or loans are solely granted to those who are residing or, alternatively, seek to reside in Romania, thus excluding frontier workers.</p> <p>Implicit residence requirements/<i>de facto</i> obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
ADDITIONAL OBSERVATIONS		No additional observations



SLOVAKIA – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: Despite the existence of apparent explicit residence requirements, it need be noted that very few counselling opportunities exist for cross-border workers. Additionally, it need be mentioned that frontier workers are bound to encounter many <i>de facto</i> obstacles, ranging from low and inadequate local cross-border transport to insufficiently developed cross-border cooperation. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: Despite the apparent lack of explicit residence requirements, frontier workers will encounter a variety of obstacles in gaining access to vocational schooling and access to retraining centres. Namely, inflexibility with respect to access to educational services remains a persistent issue in a cross-border context. In addition, the aforementioned obstacles pertaining to cross-border transport, and lacking cross-border cooperation need be taken into account. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: Similarly to access to vocational schools and retraining centres, frontier workers are bound to encounter difficulties due to the inflexibility of educational services in a cross-border context, as well as due to the aforementioned <i>de facto</i> obstacles. Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: Similarly to the foregoing, no effective issues have been reported. Mention can solely be made of the lacking cross-border cooperation. Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: Equally so, pertaining to activation benefits, frontier workers will be subjected to <i>de facto</i> obstacles as a result of insufficient cross-border cooperation. Alternative conditions/observations: No issues reported</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: Lacking cross-border cooperation hinders access to social support for frontier workers. Alternative conditions/observations: No issues reported</p>
	<p>Other</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: As a result of lacking cross-border cooperation in conjunction with inadequate knowledge of applicable legislation, cross-border workers are liable to be disadvantaged with respect to tax advantages. Alternative conditions/observations: No issues reported</p>	

RIGHTS AND BENEFITS CONCERNING HOUSING	Explicit residence requirements: No issues reported Implicit residence requirements/<i>de facto</i> obstacles: As has been repeatedly held, <i>de facto</i> obstacles are prevalent with respect to frontier workers in gaining access to benefits, including housing benefits. Alternative conditions/observations: No issues reported
ADDITIONAL OBSERVATIONS	In addition to the aforementioned <i>de facto</i> obstacles which plague cross-border mobility in Slovakia, it need be mentioned that low salaries and general structural problems with respect to the labour market highly disincentive cross-border work, resulting in a very limited amount of frontier workers in Slovakia. Consequently, data with respect to frontier work is very scarce.



SLOVENIA – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Reportedly, frontier workers residing in Slovenia and working in another Member State oftentimes encounter <i>de facto</i> obstacles. For example, insufficient coordination and dissemination of information by some Austrian employment offices, place Slovenian frontier workers in a particularly vulnerable position. Equally so, with respect to Slovenian frontier workers employed in Italy, it need be noted that obtaining an unemployment insurance form might be particularly difficult and may take a substantial amount of time, during which period unemployment benefit may not be recognized in Slovenia. Conversely, no difficulties are reported for assistance to frontier workers by the Slovenian employment offices. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No residence conditions are imposed in Slovenia. However, concerning Slovenian employees in Austria, it appears that entitlement to training is denied if the frontier workers do not have mandatory health insurance, which is seemingly related to residence in Austria. As a result thereof, Slovenian frontier workers cannot enjoy the benefits pertaining to vocational education in Austria. Concerning Slovenian workers in Italy it need be noted that no exact information is available as to how to attain recognition of education and of regulated professions. Additionally, procedures to facilitate the latter have been known to be fairly lengthy. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No residence requirements are imposed in order to enjoy the right to membership of a trade union. In addition to employees, albeit in certain circumstances, pensioners, unemployed individuals and self-employed individuals may join trade unions.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: In order to receive a scholarship in Slovenia, two general conditions are imposed, namely, EU citizenship in conjunction with residence in Slovenia. EU citizens must have been resident for 5 uninterrupted years in order to qualify for such scholarships. However, frontier workers are denoted as a distinct category and are accorded an immediate right to a scholarship (including for their family members). Additional conditions do apply for various distinct scholarships. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: With respect to distinct scholarships, additional conditions may apply.</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Permanent residence as well as effective residence in Slovenia is required in order to acquire parental benefits, birth grants, large family supplements, care supplements and partial compensation for lost income. For child benefits registered residence (next to actual living) in Slovenia suffices. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: Every foreigner who has free access to the Slovenian labour market and who legally resides in Slovenia, (i.e. has a valid residence permit) may register as a job-seeker in Slovenia. EU, EEA or Swiss citizens, whose employment is at risk, may have the possibility to be included in certain activation measure in Slovenia (job-placement, lifelong career consultancy and also inclusion in the active employment measures) even before becoming unemployed, insofar they are registered as job-seekers. This is the case, even if he/she would (later</p>

		<p>on) not be entitled to unemployment benefit in Slovenia (e.g. frontier worker with centre of his/her interests in the neighbouring country) or would only reside in Slovenia (but would be employed in another MS). The rights of disabled persons with remaining working capacity are linked to the labour market in Slovenia and the Slovenian labour legislation. It means that such benefits could only be granted to beneficiaries permanently residing in Slovenia and/or those who are at the time of claiming the financial benefits, insurance insured in Slovenia (on the grounds of their labour status).</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
	Social (Minimum Subsistence) Support	<p>Explicit residence requirements: Permanent residents of Slovenia (Slovenian citizens and foreigners with permanent residence permit) are entitled to social assistance. Others may be entitled on the grounds of international agreements, which according to a somewhat broader interpretation this includes EU law. Hence workers, EU nationals (if meeting other conditions) should be entitled to social assistance, even if they have not established permanent residence (after five years uninterrupted residence) in Slovenia yet. Nevertheless, (temporary) residence in Slovenia is required, as social assistance is not exported to other Member States.</p> <p>Family assistance (regulated in social assistance law) can only be granted to an individual who has the same permanent residence as the person with disabilities who requires assistance.</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
	Other	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/de facto obstacles: In order to be deemed a tax resident in Slovenia and thus be accorded the same tax advantages as Slovenian citizens, a frontier worker would have to generate 90% of his/her total income in Slovenia. Additionally, despite the various double taxation treaties that Slovenia has concluded, it is undisputed that issues nevertheless arise due to a lack of knowledge concerning these tax avoidance/double taxation treaties.</p> <p>Alternative conditions/observations: No issues reported</p>
RIGHTS AND BENEFITS CONCERNING HOUSING		<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/de facto obstacles: Whilst no residence requirements are imposed in order to be entitled to subsidised rental or for-profit housing, it need be noted that if accorded the subsidies, the claimant will be required to (temporarily) reside in the establishment concerned.</p> <p>Alternative conditions/observations: No issues reported</p>
ADDITIONAL OBSERVATIONS		No additional observations



SPAIN – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Whilst legislation does not impose residence requirements, in practice, regional competent employment offices do impose such requirements. Employment offices will solely allow the registration of residents in the specific regions/specific areas of competence of the respective offices. It is possible that the latter is done based upon internal instructions, specifically with respect to urgent measures to improve employability. As a result, frontier workers hardly have access, if any, to assistance. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Registration as a jobseeker in an employment office is requisite for attaining free access to training. However, it need be noted, as aforementioned, that in order to register in (most of) the employment offices, residency is required. As frontier workers are not deemed residents and thus cannot register, they are excluded from most of the services provided, including free training. Alternative conditions/observations: No issues reported</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Study grants and scholarships are granted to dependent children of frontier workers with EU nationality. Access to study grants and scholarships is granted under the same conditions as those applicable to Spanish individuals, namely the existence of a requisite link of employment in Spain. Furthermore, if the children concerned are aged younger than 18, irrespective of nationality, they enjoy the same rights with respect to education, grants and scholarships as a Spanish national citizen.</p>
	<p>Family Support</p>	<p>Explicit residence requirements: In order to receive non-contributory family benefits, an individual is bound to fulfil a residence requirement in Spain. On the other hand, frontier workers could receive contributory benefits irrespective of their residence. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: There are two types of family support benefits, i.e. contributory benefits and non-contributory benefits.</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Registration as a jobseeker in an employment office is requisite in accessing activation benefits. It need be noted, as aforementioned, that in order to register in (most of) the employment offices, residency is required. As frontier workers are not deemed residents and thus cannot register, they do not have the right to activation benefits. Alternative conditions/observations: Activation benefits are solely granted to unemployed individuals who have exhausted entitlement to contributory unemployment benefits, and who fulfil certain additional requirements.</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: In order to receive social (minimum subsistence) support, an individual is bound to fulfil a residence requirement in Spain. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: The Spanish</p>

		integration minimum income is granted by the local authorities according to the regional legislation, residence being a general requirement.
	Other	<p>Explicit residence requirements: No issues reported</p> <p>Implicit residence requirements/de facto obstacles: In order for disabled individuals to obtain a disability card, the individual concerned must, at one point (current or past), have resided in Spain. Regional governments are responsible and no specific rules exist for individuals not residing in but working in Spain. With respect to long-term care, it need be noted that only those who, at the time of application, reside in Spain, who have resided for the two years immediately preceding the application and who have resided in Spain for a total of at least five years are eligible for long-term care.</p> <p>Alternative conditions/observations: No issues reported</p>
TAX ADVANTAGES		<p>Explicit residence requirements: Double taxation treaties with Portugal and France prescribe that Spanish frontier workers will be taxed in the Member State of residence. However, it need be noted that the definition of a frontier worker in these double taxation treaties differs from the European definition, to the extent that a frontier worker is deemed to return to his Member State of residence on a daily basis and thus does not stay in the employing Member State for more than 183 days. If an individual does not reside in Spain and is not deemed a frontier worker, he/she will be taxed according to the income tax law for non-residents. The only tax advantage that subsequently remains available to non-residents, is the deduction for donations.</p> <p>Implicit residence requirements/de facto obstacles: No issues reported</p> <p>Alternative conditions/observations: No issues reported.</p>
RIGHTS AND BENEFITS CONCERNING HOUSING		<p>Explicit residence requirements: In order to receive rental support, an individual is bound to fulfil a residence requirement in Spain.</p> <p>Implicit residence requirements/de facto obstacles: Access to social housing falls within the area of competence of local authorities. In order to be entitled to social housing, individuals need to register with the local authorities. Whereas some do not impose a residence requirement, certain local authorities will indeed impose a requirement as such, thus disadvantaging frontier workers.</p> <p>Alternative conditions/observations: No issues reported</p>
ADDITIONAL OBSERVATIONS		<p>The management of the crossing to Gibraltar is challenging, in view of the heavy traffic volumes in a relatively confined space (some 35,000 persons crossing each day on entry and an equal number on exit, around 10,000 cars per day) and the increase in tobacco smuggling into Spain. In December 2013, the Commission invited Spain and the UK to consider a range of actions.⁹⁹ In July 2014 it was announced that residents in Spain who work in Gibraltar, will soon be able to “jump the queue” by showing a special pass issued by the Spanish authorities. The pass will enable workers to use the red customs channel allowing them to bypass any delays on the green channel. The scheme will operate at the land border and is open to both pedestrians and vehicle users. Residents of Gibraltar who work in Spain will also be eligible to apply. The new arrangement is a response to the recommendations made by the European Commission.¹⁰⁰ According to the document, the proposal is designed to make the most of the limited space available to improve frontier flow.</p>

99 OJ EU 2013 C 357/07.

100 Further details of the proposal can be viewed on this link: <http://www.boe.es/boe/dias/2014/07/29/pdfs/BOE-A-2014-8059.pdf>.



SWEDEN – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: The Public Employment Service is accessible to anyone who is entitled to look for employment in Sweden. On its website specifically, it is possible register a CV and find information about employment positions. Additionally, all services are free of charge.</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: A residence requirement is imposed with respect to free Swedish lessons for migrant workers as provided for by the municipalities. However, Finnish residents close to the border are equally entitled to these lessons, whereas those who speak Norwegian and Danish are not allowed to participate, entailing that a certain category of frontier workers may be disadvantaged. Implicit residence requirements/de facto obstacles: With respect to vocational training, it suffices to hold Swedish or equivalent foreign qualifications. It is unclear, however, to what extent the equivalence of foreign qualifications can be demonstrated, and whether, if at all, this does or does not negatively affect frontier workers. Alternative conditions/observations: University studies are available to all EU/EEA citizens, void of residence requirements. One of the applicable conditions, however, is English proficiency.</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Frontier workers may encounter certain difficulties with respect to certain rights, such as the right to unemployment benefits. In order to receive unemployment benefits in Sweden, an individual needs to have been registered in an unemployment fund for 12 continuous months prior thereto. With respect to frontier workers, issues have arisen with respect to registering for an unemployment fund in the event of unemployment in the Member State of employment. Additionally, the levels and practicalities of unemployment benefits may differ depending on the implicated Member States. Lastly, frontier workers may equally encounter difficulties with respect to the recognition of the attained professional qualifications. Alternative conditions/observations: No issues reported.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Study grants may be granted to EU citizens who are employed in Sweden, as well as their respective children if they have not reached the age of 21, unless economic dependency can be demonstrated.</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Generally, family support benefits are granted to Swedish residents. However, the residence requirement concerned, in conformity with Regulation (EC) No 883/2004, is not upheld with respect to frontier workers. Implicit residence requirements/de facto obstacles: Issues may arise with respect to information exchange between Swedish and other Member State authorities with respect to family support benefits. Equally so, discrepancies may arise with respect to the calculation of parental benefits between the implicated Member States. Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: Activation benefits are connected with the labour market measures, which are handled by the Public Employment Service. No residence requirements are imposed with respect thereto.</p>

	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: The Social Services Act states that the municipalities are competent for those staying within its territory with respect to non-contributory social assistance. Despite the lack of an explicit residence requirement, this could be disadvantageous for frontier workers. However, within this competence individuals who do not have a right to stay in Sweden may be granted support in emergency situations (money for food, travel costs). For those working in Sweden and residing in another Member State, the principle on equal treatment applies in accordance with Regulation (EU) No 492/2011. Alternative conditions/observations: No issues reported</p>
	<p>Other</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Information exchange with respect to pension benefits has proven to be difficult. Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: A frontier worker residing elsewhere but employed in Sweden has limited tax liability and may choose to make special rules applicable (SINK). The rules concerned entail that the individual concerned will be taxed at a lower rate but will not enjoy tax reductions.</p>	
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: Housing allowance requires residence in Sweden. Although it constitutes a social advantage in accordance with Regulation (EU) No 492/2011, the allowance will solely be granted with respect to establishments situated in Sweden, thus excluding frontier workers. The special housing allowance supplement for a family with children, however, is considered a family benefit in accordance with Regulation (EC) No 883/2004 and is thus deemed exportable. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>	
<p>ADDITIONAL OBSERVATIONS</p>	<p>A personal identity number is necessary to access various public and private services. However, a number as such can only be granted if the individual has the right to register in Sweden, which in turn requires the individual to be planning on staying for the duration of at least one year. Individuals who do not fulfil these conditions can obtain a coordination number. However, it is unclear if the latter facilitates the same access to services as does the personal identification number.</p>	



SWITZERLAND – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported. Implicit residence requirement/de facto obstacles: No issues reported. Alternative conditions/observations: The EU-CH Bilateral Agreement on free movement foresees in equal treatment of cross-border EU workers seeking employment in Switzerland. Insofar EU citizens are effectively seeking employment they will be accorded the same treatment as Swiss nationals by employment offices. However, it need be noted that the concerned agreement does not encompass provisions pertaining specifically to frontier workers. Hence an assessment of obstacles within this context, is difficult to ascertain.</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements : No issues reported Implicit residence requirement/de facto obstacles: No issues reported Alternative conditions/observations: According to the principle of equal treatment provided for in the EU-CH Bilateral Agreement, "An employed person who is a national of a Contracting Party may not, by reason of his nationality, be treated differently in the territory of the other Contracting Party from national employed persons as regards conditions of employment and working conditions, especially as regards pay, dismissal, or reinstatement or re-employment if he becomes unemployed". Therefore, an employed person shall also be entitled on the same basis and on the same terms as national employed persons to education in vocational training establishments and in vocational retraining and occupational rehabilitation centres. The same provision applies for self-employed persons. No special regime in that regard is foreseen for employed or self-employed frontier workers.</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirement/de facto obstacles: No issues reported Alternative conditions/observations: By virtue of the EU-CH Bilateral Agreement, an employed person who is a EU citizen and is employed in Switzerland shall enjoy equal treatment in terms of membership of trade union organizations and exercise of union rights, including the right to vote and right of access to executive or managerial positions within a trade union organization. The EU citizen may, however, be precluded from involvement in the management of public law bodies and from holding an office governed by public law. He/she shall, moreover, have the right to be eligible for election to bodies representing employees in an undertaking. Again, no specific regime is provided for frontier workers.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirement/de facto obstacles: According to the EU-CH Bilateral Agreement, an employed person and the members of his/her family shall enjoy the same tax concessions and welfare benefits as nationals and in conformity with the case-law of the CJEU in the matter. Consequently, there should be no difference as far as Swiss and EU citizens are concerned, in particular if these are employed or self-employed frontier workers. However, at the cantonal level, for example in Geneva, the rule provides that in order to benefit from a study grant, the beneficiary must have its residence or to be a taxpayer in the Canton of Geneva, which is in principle the case of a frontier worker, thus signifying potential <i>de facto</i> obstacles and/or residence requirements. Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirement/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirement/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>

	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: To receive Swiss social assistance benefits at the cantonal level, the concerned individual has to reside in Switzerland. Implicit residence requirement/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Other</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirement/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirement/de facto obstacles: Frontier workers may be entitled to tax deductions of actual costs, yet only insofar specific conditions are met, amongst which, the requirement of attaining 90% of the household income in Switzerland. Alternative conditions/observations: Taxes and taxation in Switzerland are complex as the applicable rules depend on the type of permit (frontier worker or resident) and on the canton of work.</p>	
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirement/de facto obstacles: According to the EU-CH Bilateral Agreement, the general rule provides that an employed person who is an EU citizen and is employed in Switzerland shall enjoy all the rights and all the advantages accorded to nationals in terms of housing, including ownership of the housing he/she needs. However, the foregoing is nevertheless linked to a “residence” requirement. Alternative conditions/observations: Concerning the purchase of immoveable property however, a frontier worker enjoys the same rights as a national insofar the purchase of immoveable property is for his/her economic activity and as a secondary residence.</p>	
<p>ADDITIONAL OBSERVATIONS</p>	<p>The EU-CH Bilateral Agreement is in force since June 1, 2002. It has been implemented at the federal, cantonal and sometimes municipal levels. This federal structure brings complexity and makes it more difficult to determine the precise content of the rules at the different levels, and in the different cantons depending on the issues at stake (for example the taxation regimes of employed and self-employed frontier workers are different from one canton to another). Due to these elements of differentiation, the present fiche takes only into consideration the main rules and principles.</p>	



UNITED KINGDOM – NATIONAL FICHE

<p>RIGHT TO ASSISTANCE BY EMPLOYMENT OFFICES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Employment offices in the UK provide a plethora of services and job interventions. Entitlement is based upon entitlement to other benefits, known as 'passporting benefits'. With respect to unemployment benefits, Regulation (EC) No 883/2004 prescribes that the country of residence will be competent. Where the country of residence is the UK, this will trigger the provision of services to the concerned individual by an employment office (Jobcentre Plus). However, Income-based Jobseeker's Allowance is controlled by the Habitual Residence Test and the Right to Reside Test, which could negatively affect frontier workers. Alternative conditions/observations: Information about jobs advertised in jobcentres in Northern Ireland and the Republic of Ireland is available through cross border advisors in each jurisdiction to people who are resident in both countries. Cross border advisors in employment offices in the Republic of Ireland have online access to all jobs advertised in jobcentres in Northern Ireland and vice versa. For more specific information about particular jobs, advisors in the Republic of Ireland can put jobseekers in direct contact with advisors in Northern Ireland employment offices and vice versa.</p>	
<p>RIGHT TO TRAINING IN VOCATIONAL SCHOOLS AND RETRAINING CENTRES</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Individuals from the Republic of Ireland have access to some but not all training courses in Northern Ireland. They do have access to apprentice training. However, it should be noted that they are nevertheless disadvantaged due to the fact that the individuals concerned will not receive cash allowances or free equipment, whereas UK citizens are entitled to these. Alternative conditions/observations: Very little demand for cross-border training exists.</p>	
<p>RIGHT TO MEMBERSHIP OF TRADE UNIONS</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: In order to enjoy the right to membership of trade unions, it suffices to take into consideration the place of work and the employment contract. If these are UK-based, the frontier worker will not experience any difficulties in attaining membership. No residence or nationality requirements are imposed.</p>	
<p>MAIN SOCIAL ADVANTAGES</p>	<p>Educational Benefits</p>	<p>Explicit residence requirements: Within this context a distinction must be made between home (UK or EU) citizens as opposed to international students. Whilst international students may not claim education support, the former category can. In order to qualify as a home student (UK or EU), however, a habitual residence requirement (three continuous years preceding the application) are imposed, thus negatively affecting (the children of) frontier workers. Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
	<p>Family Support</p>	<p>Explicit residence requirements: Under EU regulations, family benefits are usually payable in the country where the person is employed. However, if a worker does not live in their country of employment they could be entitled to benefits in more than one country. The situation can be complex for frontier workers depending on family makeup and which side of the border members of the family live and work. Implicit residence requirements/de facto obstacles: Long delays in administering cross-border family benefits are reported. Alternative conditions/observations: No issues reported</p>
	<p>Activation Benefits</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: There are implicit residence requirements attached to 'activation benefits' as the conditions of entitlement to these services are those of the 'passporting benefits'. The 'Work Programme' is the UK's main activation programme to support people into work. As the route onto the Work Programme is via Jobseeker's Allowance, the basic entitlement conditions are those of</p>

		<p>Jobseeker's Allowance itself. There are two types of Jobseeker's Allowance: Contributory Jobseeker's Allowance and Income-based Jobseeker's Allowance. Entitlement to Contributory Jobseeker's Allowance requires that a person meets the contributions conditions. There are no residence conditions. With respect to unemployment benefits for frontier workers, Regulation (EC) No 883/2004 prescribes that the country of residence will be competent. Entitlement to Income-based Jobseeker's Allowance is means-tested and requires satisfaction of the Habitual Residence Test and the Right to Reside Test. To claim Income-based Jobseeker's Allowance a person must reside in the UK and therefore the tests apply.</p> <p>Alternative conditions/observations: No issues reported</p>
	<p>Social (Minimum Subsistence) Support</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: Tax credits are means-tested payments made to low paid individuals and/or individuals with families and is divided in work tax credits and child tax credit. Whilst the former presupposes employment the latter does not. It has been confirmed that frontier workers are eligible to apply for both types of tax credits. However, a variety of difficulties have arisen in various stages of the application process for such tax credits, primarily due to lack of knowledge by all involved parties with respect to the rights bestowed upon frontier workers.</p> <p>Alternative conditions/observations: No issues reported</p>
	<p>Other</p>	<p>Explicit residence requirements: No issues reported Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: No issues reported</p>
<p>TAX ADVANTAGES</p>	<p>Explicit residence requirements: Depending on an individual's domicile and residence, he/she will be taxed upon the worldwide income in the UK. More specifically, if an individual is domiciled and resident in the UK, he/she will be taxed upon the worldwide income, thus including accessibility to relevant tax advantages. If an individual is resident but not domiciled in the UK, the individual will be given the choice between taxation upon the worldwide income or solely the income brought into the UK. As frontier workers are neither domiciled nor residents in the UK, they will not be entitled to tax advantages.</p> <p>Implicit residence requirements/de facto obstacles: No issues reported Alternative conditions/observations: A double taxation agreement has been concluded with the Republic of Ireland and measures such as cross-border tax relief and trans-border tax relief have been established. Nevertheless, problems still arise due to the complexity of the imposed means of taxation.</p>	
<p>RIGHTS AND BENEFITS CONCERNING HOUSING</p>	<p>Explicit residence requirements: In order to receive housing benefits, a habitual residence requirement is imposed.</p> <p>Implicit residence requirements/de facto obstacles: Social housing will solely be granted to EEA nationals, despite the fact that they are not habitually resident, if they are workers, self-employed or family members thereof. Various other categories of EEA citizens are excluded from social housing because, amongst others, they are not habitually resident and/or have not fulfilled a past residence requirement of three years in the UK.</p> <p>Alternative conditions/observations: With respect to social housing, the intention has been made clear to apply stricter residence conditions to determine entitlement thereto.</p>	
<p>ADDITIONAL OBSERVATIONS</p>	<p>Despite the taken initiatives to facilitate cross-border work and the free movement of frontier workers, issues nevertheless remain due to excessive delays, a lack of information and misinformation, in conjunction with a lack of understanding by the parties involved.</p>	