

TRANSNATIONAL MOVEMENT OF EMPLOYEES

SUMMARY

1. Premise: the «Covid-19» epidemiological emergency	1
2. The limitations to transnational movements	2
2.1. Entry in Italy for proven work needs	2
2.1.1. <i>The applicable rules until 2 June 2020</i>	<i>2</i>
2.1.2. <i>The applicable rules from 3 June 2020</i>	<i>4</i>
2.2. Short-term stay in Italy for proven work needs	5
2.2.1. <i>The applicable rules until 2 June 2020</i>	<i>5</i>
2.2.2. <i>The rules applicable from 3 June 2020</i>	<i>6</i>
2.3. Travels abroad for proven work needs	6
3. Indications regarding the coordination of social security systems	7

1. Premise: the «Covid-19» epidemiological emergency

The «Covid-19»¹ epidemiological emergency currently affecting our Country has important repercussions on employment relationships and on the business lifecycle.

¹ This is the acronym that identifies the respiratory disease caused by the new coronavirus, representing the synthesis of “COrona”, “VIRus”, “Disease” and “2019” as year of identification. The virus was instead called “Respiratory syndrome acute severe coronavirus 2” or “SARS-CoV-2”. More information can be found on the website of the Ministry of health: <http://www.salute.gov.it>



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From a regulatory point of view, the situation is particularly fluid and constantly evolving: it is therefore necessary to keep it continuously monitored, since the provisions that are valid today, may no longer be in force tomorrow.

The information indicated below is updated to 26 May 2020 and therefore takes into account, *inter alia*, the **Prime Ministerial Decree of 17 May 2020**, which contains “*implementing measures of the Law Decree 25 March 2020 no. 19, providing for urgent measures aimed at facing the Covid-19 epidemiological emergency, as well as of the Law Decree of 16 May 2020 no. 33, containing additional urgent measures aimed at dealing with the Covid-19 epidemiological emergency*”, the provisions of which are intended to produce effect until 14 June 2020, without prejudice to the different terms concerning the single measures provided herein.

Please note that, in addition to the measures adopted at a national level – which are addressed in this document – it is necessary to pay attention to the provisions of the Regions, Prefects and Municipalities, the relevance of which is limited to their respective territories and which cannot be taken into consideration here below.²

2. The limitations to transnational movements

Specific provisions have been introduced by the Prime Ministerial Decree of 10 April 2020 – and confirmed by the Prime Ministerial Decree of 26 April 2020 – in order to regulate the entry and short-term stay in Italy, both through line transportation and private means of transport.

Law Decree no. 33 of 16 May 2020 has introduced new provisions limiting travels to and from the national territory, which have been implemented by the Prime Ministerial Decree of 17 May 2020 at articles 4, 5 and 6, titled, respectively, as “provisions on entry into Italy”, “transits and short-term stays in Italy”, and “further provisions regarding travel to and from abroad”.

2.1. Entry in Italy for proven work needs

2.1.1. The applicable rules until 2 June 2020

Pursuant to Article 4 of the Prime Ministerial Decree of 17 May 2020, without prejudice to the provisions regarding short-term stays (see below), entry into Italy for **proven**

² For example, specific restrictive measures for dealing with the emergency have been issued by the Lombardy Region (see orders no. 514, no. 515 and no. 517 dated 21, 22 and 23 March 2020, which have been enacted pending the entry into force of Law Decree no. 19 of 25 March 2020, orders no. 521, no. 522, no. 528, no. 537 and no. 538 dated 4, 6, 11 and 30 April 2020 and orders no. 539, 541 and 547 dated 3, 7 and 17 May 2020).

work needs – the only one allowed in addition to one justified by situations of extreme urgency or health reasons (without prejudice, in any case, to the return at the own domicile, home or residence)³ –is *inter alia* subject to the fulfilment of specific communication obligations, to the subjection to health surveillance and fiduciary isolation.

Regardless of the means of transport used (and, therefore, even in case of use of a private vehicle), the person concerned must:

- immediately **communicate** his or her entry to the prevention department of the competent healthcare agency;
- undergo **health surveillance and fiduciary isolation** for a period of 14 days;
- promptly report any Covid19 symptoms to the health authority.

Furthermore, in case of entry by air, sea, lake, rail or land **passenger transportation services**:

- a) the individual is required to hand over to the carrier, when boarding, a **declaration** made pursuant to Articles 46 and 47 of Presidential Decree no. 445/2000 stating clearly and in detail: (i) the reasons of the trip, in compliance with the reasons justifying the entry in the national territory; (ii) the complete address of the home or residence in Italy in which the period of health surveillance and fiduciary isolation will be carried out, as well as the private means of transport that will be used to reach it; (iii) the telephone number for receiving communications during the period of health surveillance and fiduciary isolation;
- b) carriers and ship-owners, in compliance with the provisions set forth by the “*share Protocol governing the containment of the spread of Covid-19 in the transport and logistics sector*” signed on 20 March 2020,⁴ as well as with the “*Guidelines for information in favour of users and the organizational modalities for the containment of the spread of Covid-19*”,⁵ attached to the Prime Ministerial Decree of 17 May 2020 as «Annex 14» and «Annex 15» respectively, shall: (i) measure the temperature of passengers, prohibiting their boarding in case of fever (or if they do not

³ These are the same reasons which justify the interregional movements (see Focus «THE SO-CALLED «PHASE 2». THE GRADUAL RESUMPTION OF ACTIVITIES»).

⁴ This specific Protocol provided certain measures aimed at tackling and containing the spread of the SARS-CoV-2 virus, additional to those already contained in the Protocol signed by the Social Partners on 14 March 2020 and updated on 24 April 2020, concerning all production sectors (see Focus «THE SO-CALLED «PHASE 2». THE GRADUAL RESUMPTION OF ACTIVITIES»). The documents provides for certain fulfilments with respect to each specific sector of the transport field, including the relevant supply chain of contracts for services as well as the additional and support activities related thereto.

⁵ Such guidelines establish the modalities for providing information in favour of users as well as the organizational measures to be carried out in stations, airports and ports, in order to enable to transition to the following phase of containment of the contagion, the so-called “phase 2”, which provides for the staggered opening of industrial and commercial activities as well as of the free movement of goods and people (see Focus «THE SO-CALLED «PHASE 2». THE GRADUAL RESUMPTION OF ACTIVITIES»).

deliver the aforementioned declaration or deliver an incomplete declaration); (ii) ensure an interpersonal distance of at least one meter; (iii) provide individual protection devices, upon boarding, for passengers who are not equipped with them.

By express provision of the law, the above measures do not apply, *inter alia*:

- to **citizens** and **residents** of the **European Union**, of the States that are part of the **Schengen** agreement, of **Andorra**, the Principality of **Monaco**, the Republic of **San Marino**, the **Vatican** City State and the **United Kingdom**, who enter in Italy for proven **work reasons**;
- to movements from the Republic of San Marino or from the Vatican City State;
- to personnel of companies with **headquarters** or branch offices in **Italy** for travels **abroad** due to proven work needs of a duration not **exceeding 72 hours**, without prejudice to a proven extension to further 48 hours due to specific needs;
- to **cross-border** workers entering or exiting the national territory for proven work reasons and for the consequent return to their own residence, home or dwelling;
- to healthcare personnel arriving in Italy for the performance of professional healthcare qualifications;
- to the crew of means of transport;
- to crew members.

2.1.2. The applicable rules from 3 June 2020

Pursuant to Article 6 of the Prime Ministerial Decree of 17 May 2020, starting from 3 June 2020:

- a) no limitation is provided with respect to movements from States of the **European Union**, States that are part of the **Schengen** agreement, **Andorra**, the Principality of **Monaco**, the Republic of **San Marino**, the **Vatican** City State as well as from the United Kingdom (without prejudice to the limitations provided for specific areas of the national territory or if coming from specific States or territories);
- b) the restrictive regulation under Article 4 of the Prime Ministerial Decree of 17 May 2020 continues to apply to the entry in Italy from States or **different territories** from the ones indicated under the preceding letter a) or from subjects that have stayed there in the 14 days preceding the entry in Italy, with the consequent need, *inter alia*, of the existence – at least until 15 June 2020 – of one of the reasons justifying the transnational movements indicated above.

2.2. Short-term stay in Italy for proven work needs

2.2.1. The applicable rules until 2 June 2020

The Prime Ministerial Decree of 10 April 2020 provided for specific rules applicable to short-term stays due to work needs, which have been transposed into the following Prime Ministerial Decree of 26 April 2020 and partially amended by Article 5 of the Prime Ministerial Decree of 17 May 2020, currently in force.

In particular, by way of derogation from the provisions of Article 4 of the Prime Ministerial Decree of 17 May 2020 governing, in general terms, the entry into the national territory for work needs (see above), those who travel to Italy for proven work needs or for cases of extreme urgency or due to health reasons for a period **not exceeding 72 hours** (which can be extended for an additional period of 48 hours if specific needs exist):

- are **not** subject to the obligation to undergo **health surveillance and fiduciary isolation**;
- must immediately **communicate** their entry to the prevention Department of the competent healthcare agency;
- must make a **statement** pursuant to Articles 46 and 47 of Presidential Decree no. 445/2000, indicating clearly and in detail: (i) the proven working needs; (ii) the duration of the stay in Italy; (iii) the complete address of the home or place of stay in Italy; (iv) the telephone number for receiving communications while staying in Italy;
- must immediately **leave the national territory** upon expiry of the declared period of stay or, failing that, begin the period of **health surveillance and fiduciary isolation** for a period of fourteen days;
- promptly report any Covid-19 symptoms to the health authority.

In the case of entry through transport means other than a private ones, the abovementioned provisions regarding entry through air, sea, lake, rail or land **passenger transportation services** (see above) apply.

Specific provisions are set forth by the Prime Ministerial Decree of 17 May 2020 in case of **transit** through Italy for reaching other States, both EU and non-EU, or for travels with final destination in a location other than the national territory.

By express provision of the law, also the measures at issue do not apply:

- to **citizens and residents** of the **European Union**, of the States that are part of the **Schengen** agreement, of **Andorra**, the Principality of **Monaco**, the Republic of **San Marino**, the **Vatican City State** and the **United Kingdom**, who enter in Italy for proven **work reasons**;
- to movements from the Republic of San Marino or from the Vatican City State;

- to personnel of companies with **headquarters** or branch offices in **Italy** for travels from abroad due to proven work needs of a duration **not exceeding 72 hours**, without prejudice to a proven extension of further 48 hours due to specific needs;
- to **cross-border** workers entering or exiting the national territory for proven work reasons and for the consequent return to their own residence, home or dwelling;
- to healthcare personnel arriving in Italy for the performance of professional healthcare qualifications;
- to the crew of means of transport;
- to crew members.

2.2.2. The rules applicable from 3 June 2020

Pursuant to Article 6 of the Prime Ministerial Decree of 17 May 2020, starting from 3 June 2020, also the restrictive provisions under Article 5 of the Prime Ministerial Decree of 17 May 2020 (similarly to those under Article 4: see above) continue to apply only with respect to the entry in Italy from **different territories** than the ones of the **European Union**, from the States that are part of the **Schengen** agreement, **Andorra**, the Principality of **Monaco**, the Republic of **San Marino**, the **Vatican City State** as well as from the **United Kingdom**, or from subjects that have stayed there in the 14 days preceding the entry in Italy.

2.3. Travels abroad for proven work needs

Pursuant to Article 1, paragraph 4, Law Decree 16 May 2020 no. 33, until 2 June 2020, travels abroad, both through public and private means of transport, are prohibited, with the exception of:

- travels justified by **proven work needs**, extreme urgency or health reasons;
- the **return** at one's own domicile, home or residence;
- travels towards the **Vatican City State** or the Republic of **San Marino** from the Italian regions confining with them.

Starting from 3 June 2020:

- a) no restriction is provided with respect to travels towards the States of the **European Union**, the States that are part of the **Schengen** agreement, **Andorra**, the Principality of **Monaco**, the Republic of **San Marino**, the **Vatican City State** and the **United Kingdom** (without prejudice to any restrictions provided for specific areas of the national territory or when coming from specific States or territories);
- b) until 15 June 2020, travels towards States or **territories** different from the ones indicated under letter a) continue to be prohibited, with the exception of:
 - travels justified by proven work needs, extreme urgency or health reasons;
 - return at one's own domicile, home or residence;

- travels towards the **Vatican** City State or the Republic of **San Marino** from the Italian regions confining with them.

3. Indications regarding the coordination of social security systems

The emergency legislation has led to restrictions to the free movement of workers, which are likely to impact, among other things, the coordination of social security systems in Countries belonging to the European Economic Area.

With message no. 1633 of 15 April 2020, INPS provided clarifications regarding the determination of the applicable legislation and the validity of the “**A1**” certifications issued pursuant to **Regulation (EC) no. 883/2004**.

According to the indications contained in such message:

- as to the A1 forms issued pursuant to Articles 11 and 12 of Regulation (EC) no. 883/2004 expiring in the period between 31 January and 31 July 2020, if seconded workers are forced to remain in the hosting Country, the validity of such forms must be considered as extended until the end of the state of emergency (*i.e.* 31 July 2020), and this even in the absence of the explicit request for derogation provided under Article 18 of Regulation (EC) no. 987/2009 in application of Article 16 of Regulation (EC) no. 883/2004;
- as to the A1 forms issued pursuant to Article 13 of Regulation (EC) no. 883/2004 – which are applicable, as known, to workers who work in two or more States, for whom the applicable legislation is determined on the basis of the concept of “prevaling activity”, which significantly depends on the evaluation of the activity carried out in the State of residence, which must be equal to least 25% of the overall activity carried out by such workers – such forms must be considered valid regardless of any changes in the percentage threshold of the overall activity that are due to the restrictions to cross-border mobility. This provision is aimed at avoid that such workers be subjected, due to the restrictions, to a modification of the parameters of assessment of their working activity, which could lead to the application of the social security legislation of the foreign State.

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