

(English version)

**Question for written answer E-001836/24
to the Commission
Pascal Arimont (PPE)
(26 September 2024)**

Subject: Unequal treatment of non-resident and resident workers as regards the possibility to telework

In accordance with its service agreement, a German health insurance fund with an office near the German-Belgian border allows all its employees, upon request, to telework part-time on a regular basis — provided that they meet certain criteria, which include residing in Germany.

As the health insurance fund only allows regular part-time teleworking from homes in Germany, one employee, a cross-border worker who is a Belgian national and resident, has had her teleworking request denied.

Although, as the employer, the health insurance fund acknowledges this unequal treatment of its employees, it justifies its decision by saying that the burden of the red tape and checks involved in connection with the possibly applicable legal provisions in force abroad — as well as the associated costs — would be disproportionate to the potentially small number of teleworking employees residing abroad.

1. Is this form of discrimination between resident and non-resident workers compatible with the principle of equal treatment in the workplace?
2. In the Commission's view, does such discrimination against the cross-border workers of a health insurance fund constitute indirect discrimination on the grounds of nationality by that fund as the employer, given that cross-border workers are usually not from the local area?

Submitted: 26.9.2024

**Answer given by Mr Schmit on behalf of the European Commission
(22 November 2024)**

According to Article 45 of the Treaty on the Functioning of the European Union (TFEU), EU citizens are entitled to work in another Member State and enjoy equal treatment with nationals in access to employment, remuneration, working conditions (such as telework), dismissal and all other social and tax advantages.

Article 45 TFEU and Regulation (EU) No 492/2011 ⁽¹⁾ on the freedom of movement for workers within the EU is directly applicable in the Member States.

The Commission does not have competence to decide on individual cases for which solely national authorities and courts are competent.

If an employer provides for the possibility to telework for a certain category of its employees, such a right should apply to this category of employees regardless of the residence of these employees unless the difference in treatment can be justified according to the criteria established by the Court of Justice of the European Union.

The Commission does not know all the details of the case to fully assess the situation which is referred to by the Honourable Member.

⁽¹⁾ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:141:0001:0012:EN:PDF>