

The legal questions

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The dispute raises three legal questions that will occupy the authorities and possibly the courts. The first is the characterization of the levy. If it is a tax on income, it falls within the scope of the agreement and of the double taxation convention, so that its application to old cross-border workers whose income Italy has renounced taxing would be a breach. If it is a contribution to the financing of the health service, comparable to a social security contribution, the analysis is different. The coordination of social security between Switzerland and the European Union under Regulation (EC) No 883/2004, applicable through Annex II of the free movement agreement, determines which State may levy contributions for health care. A cross-border worker who has chosen Italian health insurance under the option right described in the next section is covered by the Italian national health service as an Italian resident. Whether Italy may levy a special contribution on this group, calculated on its Swiss salary, is a question of Union law and of the agreement on free movement as much as of the tax agreement.¹

The second question concerns the cantonal power to withhold payments. The obligation to pay the compensation is an obligation of Switzerland under international law, which the cantons perform. Foreign relations being a federal matter (Art. 54 Cst.), the cantons must respect international law in the exercise of their powers.² Under general international law a State may take countermeasures against a prior breach by another State, but whether a prior breach exists is precisely what is disputed. In any case the decision to take countermeasures belongs to the State as a whole and lies outside the powers of its constituent units. The Federal Council's position that the levy is "not in force" implies that, in its view, there is not yet a breach to which Switzerland could respond. The third question is political. Because the compensation for the old cross-border workers ends in 2033, Ticino's leverage diminishes every year. Italy, for its part, has an interest in collecting revenue from a group of residents whose number will decline

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only slowly and whose incomes are among the highest in the border provinces. The dispute is therefore likely to be resolved, if at all, in the framework of the regular meetings of the joint commission foreseen by the agreement, possibly together with other open questions between the two States, from the treatment of telework to market access for financial services (Chapter E.IV).

For the practitioner. Advisers to old cross-border workers should follow the Italian levy closely without assuming that it will be collected in its announced form. - Check whether the client is an old cross-border worker under Art. 9 of the agreement and keep documents proving employment between 31 December 2018 and 17 July 2023. - Record whether the client opted for Italian or Swiss health insurance, because the legal analysis of the levy depends on it. - Keep evidence of the regional rules and of any registration portal, and consider reserving rights if the levy is collected. - Do not treat the levy as creditable against Swiss tax at source, since Swiss law provides no such credit.

1 Notes

1. The analysis is the author's. Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.4.2004, p. 1, applies in relations with Switzerland as part of Annex II AFMP: SECO, "Il regolamento 883/2004 (UE)", https://www.arbeit.swiss/secoalv/it/home/menue/institutionen-medien/projekte-massnahmen/revision_eu_verordnung_883_2004.html; AFMP, Annex II, Art. 1, <https://www.droit-bilingue.ch/de-it/0.1/0.14/0.142.112.681-annexII-lvlu1-1-63.html>. ↩
2. Federal Constitution, Art. 54 para. 1 ("Foreign relations are the responsibility of the Confederation"), <https://www.droit-bilingue.ch/en-it/1/10/101-54-62.html>, and Art. 5 para. 4 ("The Confederation and the Cantons shall respect international law"), <https://www.droit-bilingue.ch/en-it/1/10/101-5-8.html>. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

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