

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## COMMUNICATION FROM THE COMMISSION

on the living and working conditions of Community citizens  
resident in frontier regions, with special  
reference to frontier workers

I. GENERAL CONSIDERATIONS

1. The living and working conditions of frontier workers have been the subject of a steady flow of studies and reports from the Economic and Social Committee, the European Parliament and the European Commission. Following the recommendation made at the European Council in Fontainebleau for a "People's Europe", the European Commission took a fresh look at the subject as a whole and, in October 1985, presented a Communication to the Council, the European Parliament and the Member States on the question of frontier populations (COM/85/529 final), analysing the various problems and stating the European Commission's position on possible courses of action.

In the meantime, the Economic and Social Committee (1) and the European Parliament (2) have also re-addressed themselves to the subject. In 1989, eleven of the Member States adopted the Community Charter of the Fundamental Social Rights of Workers, which lists freedom of movement as one of these rights, (paragraph 3), implying : "... improvement of the living and working conditions of frontier workers" .

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- (1) Opinion on cross-frontier labour market problems; 88/C95/06, OJ C 95 of 11.4.1988.
  - (2) Resolution on transfrontier cooperation at the internal borders of the Community. Part-session of 12 March 1987; EP 112.804; report on the problems of cross-frontier workers in the Community; Doc. A 2/227/88 adopted on 16.12.1988.

As a result, the Commission provided, in its action program relating to the implementation of the Charter, and more precisely in its programme of work for 1990, for an initiative in the form of a new Communication to the Council on the living and working conditions of Community citizens residing in frontier regions and of frontier workers in particular. This initiative is all the more important given the likelihood, on completion of the internal market, of a growing number of people who will make use of their right to freedom of movement in the Community's many frontier regions, not to mention in quite extensive geographical zones on either side of the frontiers.

The decision to draw up a Communication may seem somewhat surprising at a time when the Community's internal frontiers are about to become redundant and plans are being laid to set up an Economic and Monetary Union. However, while these events are bound to have a major effect on the lives of people and workers in frontier regions, a lot of the current differences on either side of such frontiers are likely to remain part and parcel of everyday life for some time yet. National and regional administrations will remain distinct; social security systems will still differ, as will education, vocational training, infrastructure and housing policies, etc. For all these reasons, the kind of rethink proposed in this Communication is needed despite the fact that the internal frontiers are about to disappear.

Nor should it be forgotten that frontier workers will be more affected than most by any delays in achieving the European Community's objectives.

In considering future policy, it is important to distinguish between the kind of problem which is common to all people in the Community and those which are specific to frontier workers and/or people living in frontier regions. It is the situation specific to frontier workers, and not to other Community citizens, which gave rise to this Communication.

The Communication first sets out the concepts of frontier region and frontier worker and then various statistics. Then the Communication deals with populations resident in frontier regions and frontier workers. It reviews the measures already carried out and measures in hand and provides food for thought as regards areas where progress might be made in the future.

The Annexe to the Communication describes the problems in greater detail, distinguishing between populations resident in frontier regions (Part I) and frontier workers (Part II).

2. Frontier regions within the meaning of this communication are those regions situated on either side of a frontier between Member States, although reference will also be made to regions straddling frontiers between a Member State and a non-member country (e.g. Switzerland or Austria). The population in question may or may not be Community citizens. The concept of "frontier region" tends to be more variable and wider than that of "frontier zone" as used in certain Community texts, e.g. on transport or tax and duty-free allowances. With modern communications being what they are, frontier regions might even at a pinch comprise a whole country (especially in the smaller Member States). In practical terms, the area covered by a frontier region will depend on local or regional government areas and the subject in question.

It might be possible to deal with the problems facing people living in frontier regions by working out various forms of cooperation between the said regions - not necessarily with a view to harmonizing living conditions; on the contrary, there are forms of cooperation which retain and confirm these multicultural regional differences.

On the other hand, the policy of encouraging greater economic and social cohesion implies a more open and pragmatic use of economic and social infrastructures in border areas, with access to all manner of services in these areas.

While it is not up to the Community to solve all the problems of frontier populations, the Commission feels that a good deal of thought needs to be given to problems which are common to a large number of people and workers in the Community. These people are particularly affected by the creation of the internal market and the disappearance of internal borders, and account needs to be taken of progress made since the last Communication by the Commission to the Council in 1985.

Part 1 of the annexe on populations resident in frontier regions considers the Community's regional policy and such matters as employment development, health services, transport, tax and duty-free allowances, education, vocational training, the role of the social partners in the frontier regions and cooperation between regional and local authorities.

A frontier worker is taken to be one who works in one Member State and lives in another to which he returns at least once a week, as defined in a number of Community texts<sup>(1)</sup>. We are talking here exclusively about Community nationals, although the general problems of Community workers in a non-member country will be touched on wherever necessary.

In that regard, we should recall the Commission's position set out in the 1985 Communication: It was not advisable to establish a specific status for frontier workers. The completion of the single market and the attainment of European union should solve the problems of frontier workers, although practical solutions could be found for some problems at bilateral, Community and even international level.

Part II of the annexe on frontier workers discusses such major topics as the right of residence, the cross-border job market, social security and tax schemes, monetary questions, vocational training, housing, information in general and the special problems of frontier workers employed in non-member countries.

### 3. Statistics and cross-border flows

It is difficult to obtain precise figures on cross-border flows, which tend to be calculated differently from one country to another (e.g. in terms of reference dates and the national definition of "frontier workers"). They tend to be no more than by-products of more general administrative activities (e.g. social security, employment register, etc).

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(1) Article 8 (1.b) of Directive 68/360 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.

Article 1 (b) of Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community.

Using the statistics available<sup>(1)</sup>, it is possible to put the number of frontier workers living in one Member State and working in another in 1987 (i.e. purely intra-Community flows) at between 110 000 and 120 000. Adding on frontier workers living in a Community country but working in a non-member country (excepting flows, from Denmark to Sweden, from Greece to neighbouring countries and from Italy to Yugoslavia), we get a figure of between 240 000 and 260 000.

In terms of purely Intra-Community flows, the biggest movements are between France and Germany (some 35 000), followed by flows from France, Belgium and the Federal Republic of Germany to Luxembourg (between 20 000 and 25 000 in all), between Belgium and the Netherlands (some 20 000), between Belgium and France (almost 15 000) and from the Netherlands to the FRG (more than 10 000). These account for something like 90% of all Intra-Community movements.

Along one and the same border, movements may vary from one labour catchment area to another. The degree of economic development, natural frontiers and the absence of means of communication are all obstacles which may be restricted to one part of a frontier region.

Cross-border movements tend to be asymmetrical, depending mainly on job opportunities, higher wages and social and tax advantages on one side of a border. For instance, gross wages and salaries tend to be higher in the Federal Republic of Germany and stoppages lower in the Grand Duchy of Luxembourg.

Cross-border worker flows are often indicative of structural or economic disparities. To facilitate analysis it would be useful to have reliable tools supplying statistics based on specific criteria such as firms' areas of activity, occupation and age of workers, frontier zones, labour catchment area, etc. To this end, it would be a good idea to have access to social security data on frontier workers so that statistics could be drawn up on the basis of predetermined criteria which were common to all Member States.

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(1) Source : Beatson Study (Doc. V/466/89).

The 1992 Community Labour Force Survey will include questions on the worker's place of residence and place of work. This will yield uniform information on sex and age of worker, qualifications, occupation and sector of activity at "NUTS II" level from 1993, although the current sampling rate will restrict the reliability of the results for frontier regions, unless the sampling rate in those regions is increased.

Work on the creation of an infra-regional databank will yield information on both workers and businesses in frontier regions.

## II. CONSIDERATIONS CONCERNING THE LIVING AND WORKING CONDITIONS OF COMMUNITY CITIZENS RESIDENT IN FRONTIER REGIONS WITH SPECIAL REFERENCE TO FRONTIER WORKERS

### 1. Regional Policy

There is a longstanding and increasing need for data and statistics to help us better understand and develop effective policies. In relation to cross-border flows, mention has already been made of the fact that the creation of an infra-regional databank, the Community Labour Force Survey and improved utilization of national social data could help to make good the shortage of reliable data.

The provision of specific data and information is also of special interest in the context of regional policy. To work out an appropriate regional policy it is necessary first of all to analyse and examine the potential, the complementary features and the requirements of the regions concerned.

In frontier regions the European Community has helped to finance studies and pilot projects with view to the creation of databanks, the analysis of economic structures, etc. With the same aim it is backing the establishment of an observatory on cross-border cooperation in the Community.

The Commission believes that regional policy can make a substantial contribution to improving the living and working conditions of Community citizens inhabiting frontier regions.

It supports transfrontier cooperation, particularly in the form of partnerships between the parties concerned. To that end the Commission has developed a Community Initiative, INTERREG, which covers a large range of fields, and funded cooperation, information and contacts between frontier regions. As part of the observatory on cross-border cooperation, it is also planned to set up a Community network of border regions, and to give them technical assistance.

It is envisaged that these measures should be pursued and intensified with a view to developing the interconnections and integration between neighbouring regions. The aim is to arrive at a situation where economic activity within Europe is not impeded by man-made frontiers.

## 2. Training and vocational guidance

Training and vocational guidance are one of the key items in frontier workers' demands. It goes without saying that training plays a decisive role both as regards the mobility of the labour force and the economic and sociocultural integration of cross-border regions. In that connection, we must mention first of all that frontier workers benefit, under Community legislation, from the principle of non-discrimination on grounds of nationality in regard to vocational training in the country of employment. The Commission considers that the frontier worker must not be penalized because he is resident in a country which is not his country of employment. This flows from the principle of freedom of movement for workers within the Community enshrined in the Treaty of Rome.

Nevertheless, this area is not without difficulties: matching training and employment requirements on different sides of a border, access to education channels in neighbouring countries, recognition of diplomas and occupational qualifications, linguistic differences.

The Community has made major advances here. The Community's structural Funds provide active support for transfrontier measures regarded as priorities (see by way of example the INTERREG programme and the ESF Guidelines).

The Commission also takes cross-border aspects into consideration in its training and vocational guidance programmes. Programmes such as FORCE, TRANSITION and PETRA establish cooperative links in this field between frontier regions. The Commission is encouraging the preparation of a handbook on guidance centres in the Member States on the basis of case studies on cooperation between guidance services in frontier regions.

In view of the linguistic problems encountered, the Commission has launched the LINGUA programme and is to take specific measures as part of the INTERREG programme.

As far as rules and regulations are concerned, mention must be made of the significant progress achieved on the recognition of diplomas (Directive 89/48/EC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration). A second complementary directive concerning vocational training of less than three years' duration is now on the Council table. The Commission is also pursuing its work on the equivalence of vocational training qualifications of special interest to frontier workers.

Aside from the European Community, significant measures are also being undertaken in relation to education and vocational training at regional level. Indeed, education and training is one of the most important fields of cross-border cooperation.

The Commission encourages measures, which take good account of regional structures, dynamics and requirements in a number of areas (employment, training, technology, the economy).

### 3. Employment

The abolition of frontiers within the Community opens up new prospects in the field of employment, particularly for transfrontier regions.

It is forecast that establishment of the single market will increase workers' mobility within the Community. To facilitate such mobility, the Commission has started reorganizing the SEDOC system, no longer adapted to the current state of the European labour market. In that context the Commission has given its support to the setting-up of a specific border-area-oriented instrument, JET, which provides for the exchange of job vacancies and applications between the public employment services on either side of the border in the Dutch/German EUREGIO. For the same purpose the Commission has also organized meetings and seminars with placement agencies located in frontier regions.

The Community's structural Funds also give top priority to cross-border schemes designed to create jobs. The Commission intends to pursue its measures in this field and to generalize them if they prove valid.

However, it is believed that the abolition of the internal frontiers will have a short-term negative impact on employment (for example, in customs offices and in services directly or indirectly connected therewith). The Community has taken account of possible job losses resulting from attainment of the internal market in preparing some of its programmes (INTERREG, for example).

A number of temporary employment businesses operate on the cross-border labour market. The current situation here has revealed the need for Community rules.

For that purpose the Commission's action programme provides for the adoption of a directive on part-time, fixed-term and temporary employment relationships and for a Community instrument on working conditions applicable to workers from another State performing work in the host country in the framework of the free movement of services. On the first point it should be noted that the Commission proposed recently to the Council three directives.

#### 4. Social protection

Under the regulations on social security for migrant workers, frontier workers enjoy certain benefits which do not apply to other migrant workers. This is true of sickness insurance, for frontier workers may claim benefits in kind in the country of residence or in the country of employment.

This does not apply to members of their families (save in the case of bilateral agreements), nor to retired frontier workers. This gap in coverage is resented above all by the latter who, during their working lives, acquired certain habits in their country of employment. It would be advisable to examine whether pensioners could continue to enjoy health care in their former country of employment.

Moreover, residents in frontier regions, like residents of any other region, can receive health care in another Member State only in an emergency, or with the authorization of their sickness fund. Steps might be taken to do away with prior authorization for frontier residents, for example by means of agreements between the competent institutions, as has already occurred in certain regions (Belgium-France, Netherlands-Belgium, Spain-France).

Not only would that be beneficial to the persons concerned, it would also encourage optimum use of health care resources on both sides of the frontier.

Some frontier workers experience difficulties when they qualify for early retirement under agreements or statutory provisions. Early retirement schemes fall beyond the scope of Community regulations. The Council should adopt without delay the proposal for a regulation which the Commission sent in 1980.

Further problems encountered by frontier workers result from the differences in the laws of the country of employment and those of the country of residence. Convergence of the objectives of social security systems, as provided for in the Commission's action programme implementing the Charter of Fundamental Rights, could relieve these problems in the long term.

Lastly, special attention should be paid to the situation of frontier workers employed in non-Community countries.

5. Legal status of frontier workers under European law

Frontier workers are migrant workers. They are accordingly covered by the Community legislation on freedom of movement for workers within the Community. They have the right of residence in the country of employment and must be treated on an equal footing with workers of that country.

The advances made towards a "People's Europe" should help to solve a number of problems. A Community citizen who was not a national of his Member State of residence did not have a right of residence in that Member State if he exercised an economic activity in another Member state or in a non-Community country. The directive of 28 June 1990 on the right of residence covers, in principle, that situation; its entry into force, however, is set only for 30 June 1992.

The Community rules on the right to remain make specific provision for frontier workers. Consideration could be given to easing the conditions for granting this right to frontier workers.

The Community has also taken the specific situation of frontier workers into account in other fields, provided that different treatment was warranted on objective grounds. This applies for example, to social security and taxation, duty and tax-free allowances.

6. Direct taxation

Taxation is one of the major problems facing frontier workers.

It is now governed by bilateral agreements between the Member States or with non-member countries aimed at preventing double taxation of income. These agreements are based on the principle that taxation must be payable either in the country of work or in the country of residence. Nevertheless, frontier workers quite often feel that the current tax rules discriminate against them.

As early as 1979, the Commission attempted to find a satisfactory solution to the problems arising in this connection. The proposal for a directive it presented is still stuck in the Council. Considering that adoption of the text as it now stands is unlikely in the near future, the Commission is now looking into how the proposal could be remodelled. At the same time, the Commission intends to continue with measures to eliminate discrimination under certain national tax rules detrimental to frontier workers.

7. Monetary questions

A further problem that frontier workers encounter is connected with monetary matters (transfers of income, bank accounts in the country of employment, exchange rates, and so on). These questions were examined in depth in the Commission's first communication on frontier workers. Since then considerable progress has been made towards economic and monetary integration within the Community, as evidenced by the Community rules on the progressive liberalization of capital movements and the European Council's decision of May 1990 to establish Economic and Monetary Union by stages.

These problems should accordingly be solved in that context. Difficulties will, however, remain for frontier workers employed in non-Community countries. Although the creation of the European Economic Space might bring solutions to these problems, specific rules will be required to deal with the situation of Community frontier workers employed in neighbouring Eastern European countries.

8. Transport

Transport is a sector of vital importance both in the frontier resident's daily life and to the integration of cross-border regions.

Aside from the establishment of the necessary infrastructure, which is within the context of regional policy, the Commission believes that the liberalization of the provision of services in the cross-border transport sector will be of obvious interest for people living in frontier regions. The Commission has submitted to the Council proposals for such liberalization.

In addition to those measures, progress should be made towards improved coordination of national and regional transport services (time tables, connections, tickets, etc.). This could be achieved through greater cooperation between the competent transport authorities.

Other Community action in the field of transport will facilitate daily life for people living in frontier regions. One initiative concerns use in one Member State of means of transport registered in another Member state.

Adoption of the proposal amending the directive on driving licences should definitively settle the problems of interpretation arising under the current rules and dispense Community citizens from the obligation to exchange their driving licences when transferring their place of residence to another Member State.

9. Information

Frontier workers are tied in both to the country of residence and the country of employment and are accordingly covered by two different systems and sets of rules. Neither the abolition of frontiers, nor the establishment of the single market will do away with all the problems they have to face, for harmonization at Community level of national rules in various fields (for example social security, taxation, etc.) has not yet been achieved and it would seem that this is unlikely in the near future.

Because of the diversity and complexity of the national rules frontier workers require accurate information on their rights and duties. Moreover, frontier workers have to face various practical problems (accommodation, transport, etc.) on the other side of the border; they find themselves in a different environment with a different standard of living, organization, etc. Frontier workers have to accept such differences; it is certainly up to them to weigh the advantages of finding work, often relatively better paid, and the possible pros and cons of different national systems. However, in order to enable cross-border workers to choose between the alternatives with full knowledge of the facts, better information is required on a wide range of topics.

The European Community has taken account of this requirement in the measures in hand to revise the SEDOC system. The proposed introduction of Euro-Counsellors should also be of considerable help in attaining this aim.

Alongside the Community action, information can also be disseminated efficiently by means of increased cooperation between national authorities at various levels and in the context of a cross-border partnership bringing together the various players on the scene such as the two sides of industry, social and occupational organizations, the associations concerned, etc. The Commission is actively encouraging such initiatives (for example the proposed establishment within the PACTE (Nord-Pas-de-Calais - Hainaut Euroregion) of an instrument providing information and assistance for frontier workers). Furthermore, the Commission considers that trade union delegates are well placed to play an important role in providing information for frontier workers and that they should receive suitable training for this purpose.

#### 10. Cross-border cooperation

It is clearly demonstrated in the preceding sections concerning specific areas that increased cross-border cooperation could to a large extent improve the living and working conditions of persons resident in frontier regions. In fact, such cooperation could be regarded as the positive counterpart to the abolition of frontiers enshrined in the Single European Act. In line with that approach, the frontier regions would not only act as telltales of the state of play in the construction of Europe, but also as testbeds for European integration.

Cross-border cooperation can be organized in various ways.

A first possibility would be information and consultation procedures for persons living in frontier regions in relation to each decision or measure taken at national, regional or local level that could have repercussions on the other side of the border. Various fields could be covered, for example, town and country planning, the environment, the setting-up of social and health infrastructure, and so on. Prior consultation should help to prevent any duplication of local community facilities, to achieve coordination of measures undertaken between regions, etc.

A closer form of cooperation would be joint study and planning. Such cooperation could cover such areas as training, transport, utilities, etc.

Cross-border cooperation could be organized by way of a partnership grouping together various socio-economic operators, public services, private associations, the two sides of industry, etc. Moreover, interregional trade union committees have been set up; they aim to strengthen cooperation between trade unionists in frontier regions.

The Commission encourages and actively supports these initiatives. To that end it gives priority to measures having a transfrontier dimension.

In the context of INTERREG the Commission is backing the institutionalization of transfrontier cooperation by giving priority to projects concerning the setting up or development of joint institutional or administrative structures.

In addition, in 1988 the Commission established the Consultative Council of Regional and Local Authorities to advise on the development and implementation of Community policies from the local and regional perspective.

The Commission is now looking into the advisability of introducing a Community legislative instrument to facilitate the conclusion of cooperation agreements between regional and local authorities.

This examination must be viewed in the light of the abovementioned developments.

Under that approach, the frontier regions will be testing grounds for the development of cooperation networks between neighbouring countries. The next stage would be to use these pilot schemes to put such networks in contact with other Community networks as a next large step towards completion of the internal market.

### III. Conclusion

In the light of the foregoing it may be said that much progress has been made since the Commission's first communication concerning the residents of frontier regions. Many new Community measures are also under way. In addition, the Commission is taking the appropriate steps to ensure the proper application of the Community rules in force whenever necessary. Without casting any doubt on the conclusion reached in the 1985 communication, i.e. that there was no need for a specific status for frontier workers, and pending the completion of the Internal market and Economic and Monetary Union, the Commission takes a view that further advances could be made in certain areas.

In addition to Community measures in the field of legislation, the Commission will continue to focus on cross-border aspects in the development of its various policies (vocational training, regional policy, etc.). The Commission feels that emphasis should be placed on proximity (physical, economic, social and cultural), so that borders are no longer seen as lines dividing regions and systems, but rather as points of contact and cooperation between these regions and the people living there. To this end it is fostering cooperation between the parties involved and at various levels. It is encouraging meetings between national and regional authorities specifically to discuss employment, training, taxation and social matters. The Commission believes that many of the problems faced by frontier workers could be solved if adequate information were available, and it is to continue its efforts to obtain the requisite technical and human resources. It also believes it would be useful to have a sort of ombudsman to provide information, find solutions to specific cases and identify problems which the introduction of national or bilateral regulations could resolve.

In forwarding this communication giving its views on the living and working conditions of the residents of frontier regions and frontier workers, the Commission hopes to stimulate constructive discussion on the subject aimed at drawing up new Community measures.

**Basic report  
on the living and working conditions of Community citizens  
resident in frontier regions, with special  
reference to frontier workers**

**(Annex to the communication)**

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## I. POPULATIONS RESIDENT IN FRONTIER REGIONS

### I.1 Regional policy

The fundamental aim of the Community in pursuing the objective of a single internal market is to achieve a situation where economic activity within Europe is not distorted by man-made borders. It has been recognized that, while the single market process will bring benefits to all regions of the Community, border regions have particular problems which require special assistance.

These regions have been seriously affected in the past by distortions arising from the fact that economic and physical planning has traditionally been undertaken in a national context. Infrastructure networks and public services in border regions have therefore been developed with little regard for what existed on the other side of national frontiers. A special effort is therefore needed to facilitate the linking of infrastructure networks across borders, to encourage joint economic and physical planning and to establish commercial patterns that reflect the natural economy of border regions irrespective of national borders.

People living in frontier regions have a number of problems and aspirations in which regional policy can play a part. Over recent years, the regions have taken on more and more importance as the appropriate place for studying, evaluating, and solving problems of the frontier populations more efficiently than at national level. The fact is that there are a lot of frontier regions with similar problems which can be tackled more effectively by fostering a sense of co-operation. At Community level, the Commission gives its backing to this kind of regional approach involving multi-disciplinary cooperation between public authorities, firms and private associations.

In this respect, the Commission is engaged in three main activities directly related to the promotion of cross-border cooperation and to assisting internal and external border areas of the Community. These are based on the Council Regulations governing the structural funds, which make special mention of border regions.

- (1) The preparation of INTERREG - a Community Initiative in favour of border areas within the meaning of Article 11 of Regulation (EEC) No 4253/88 and Article 3.2 of Regulation (EEC) No 4254/88.
- (2) The implementation of pilot projects and studies to promote and facilitate cross-border co-operation, partly financed by the Community under Article 10 of the ERDF Regulation (EEC) No 4254/88.
- (3) The establishment of a European Observatory on cross-border cooperation.

#### INTERREG

The Commission decided on 13 March 1990 to set up a Community initiative to assist border areas and encourage cross-border co-operation as part of the movement towards a single market by 1992. The aims of the initiative are:

- to assist both internal and external border areas of the Community in overcoming the special development problems arising from their relative isolation within national economies and within the Community as a whole, in the interests of the local population and in a manner compatible with the protection of the environment;
- to promote the creation and development of networks of co-operation across internal borders, and, where relevant, the linking of these networks to wider Community networks, in the context of the completion of the internal market of 1992;
- to assist the adjustment of external border areas to their new role as border areas of a single integrated market.

In providing Community assistance under the INTERREG initiative, the Commission will accord priority to proposals which include the establishment or development of shared institutional or administrative structures intended to widen and deepen cross-border cooperation between public agencies, private organizations and voluntary bodies.

Measures assisted under the initiative will be designed to have their main development impact on the population of the border areas eligible under this initiative. Particular attention will be given to creating alternative employment opportunities in areas where significant job losses may arise due to changes in customs and other border-related activities following the completion of the internal market.

As regards measures to promote cooperation between internal border areas of the Community, the following actions may be assisted: studies treating border areas as an integrated geographical unit; aid to SMEs with special reference to the development of cross-border networks; provision of local water, gas and electricity supplies and local telecommunications; common development of infrastructures; improved communications; environmental protection; cooperation in education and vocational training; the protection of the environment, the establishment of organizations and bodies to facilitate cross-border contact as well as language training for this purpose, actions with a cross-border dimension in the field of tourism, agriculture, employment, etc.

The INTERREG programme also provides for Community assistance for certain actions with regard to Community external borders.

#### PILOT PROJECTS AND STUDIES UNDER ARTICLE 10 OF THE ERDF REGULATION

Article 10 of the ERDF Regulation (EEC) No 4254/88 states that Community assistance may be provided to pilot projects to encourage the pooling of experience and development cooperation between different Community regions, especially border regions. In addition, line 5412 of the Community budget provides for funding for measures to promote cooperation and the exchange of information and contact between the regions of the Community.

Under these provisions a series of pilot projects and studies was launched with Community support in 1989 (relating to such regions as the Spanish-Portuguese border and a large number of pilot schemes in the Ems-Dollart region (D/NL), the Euregio Meuse-Rhine (NL/B/D), the Euregio (D/NL), Saar-Lor-Lux-Trier/Western Palatinate (D/F/L), the Wallonia-Nord Pas-de Calais region (B/F) and many others.

#### OBSERVATORY ON CROSS-BORDER COOPERATION IN THE EUROPEAN COMMUNITY

The European Commission has recently reached agreement with the Association of European Border Regions (AEBR) on setting up an observatory on cross-border cooperation in Europe which will be partly funded under Article 10 of the ERDF regulation. The project will begin in the second half of 1990 for an initial period of 3 years.

In order to achieve its objectives the observatory will organize a wide range of activities such as technical assistance to border regions, a Community data base on cross-border cooperation, a Community-wide network of border regions, and a publicity and information programme.

The observatory will be managed on behalf of participating regions and the European Commission by the Association of European Border Regions.

## 1.2 Employment development

Developing and creating employment is one of the Community's most important objectives. The Community structural funds - in particular the Social Fund and the Regional Fund - accord high priority to projects of a cross-border nature. One specific example of this is the "Pôle Européen de Développement" (PED) covering the region Athus (B), Longwy (F) and Rodange (L). The PED was set up in 1986 with the principal aim of redeveloping the economy and creating 8 000 jobs in the region over a 10-year period from 1986 to 1995. Currently, upwards of 2 800 jobs have been created, plus a further 1 200 jobs which received no ERDF aid.

Other projects are in progress or have been completed, e.g.

- Rhône Alpes-Piedmont;
- the Franco-Belgian European transfrontier action programmes (PACTE: Nord-Pas de Calais-Hainault; ARDENNES: French Ardennes-Wallonia).

The cooperative effort involving Kent in the UK and Nord-Pas de Calais in France centring on the Channel Tunnel infrastructure is founded not only on Community structural funds but also on new cultural and linguistic relations which tended to be conspicuous by their absence before.

The development of cooperation between public authorities, trade unions, employers and professional organizations, etc. at both intra- and inter-regional levels in a variety of fields (e.g. training, information and SMEs) and sectors (e.g. tourism, agriculture and technology) will have positive effects on the employment market. The abolition of frontiers in the European Community opens up new perspectives, especially for cross-border regions. Cooperation on a wide front would seem the best way to minimize risks and successfully meet the challenge.

Completion of the internal market in 1992 will bring with it shifts in the structure of employment by sectors and regions. As internal frontiers are done away with, the employment structure in frontier areas is expected to be affected. At the moment, it is difficult to say what changes might occur, which is why the Commission has indicated in its action programme accompanying the implementation of the Community Charter of the Fundamental Social Rights of Workers that its annual employment report will cover the development of employment in the Community, including detailed analysis of specific aspects, in which the frontier regions will obviously feature. This report is supplemented by the "System" Bulletin, which comes out four times a year and features additional information and documentation on employment issues in the Community.

One immediate consequence of getting rid of internal frontiers is a loss of jobs in customs offices and - directly or indirectly - in related services.

Customs and/or fiscal operations are not carried on only at the internal or external frontiers of the Community, since these operations could equally well be done in Customs Bureaux anywhere on Community territory. The fact remains, though, that customs offices do tend to be in frontier regions and the effect of the advent of the single market will be job losses and/or retraining for customs professionals.

Estimates in the sector put the number of customs and administrative staff thus affected at some 85 000 for the Community as a whole as at 31 December 1992. A substantial proportion of these jobs will be in frontier regions. A number of spin-off activities will suffer from the closure of customs offices at internal frontiers, e.g. cafés and restaurants, business services, etc.

The situation of customs agents is difficult to determine, despite discussions with their representatives, because of the specific structure of the sector. The Community structural Funds could usefully be used, via the national authorities, to identify problems and seek solutions; specific studies on the situation of customs agents would also be helpful.

The Community has taken into consideration the anticipated job losses as a result of the internal market, and some of its programmes (e.g. INTERREG, FORCE) give priority to projects designed to assist persons directly or indirectly affected by the cessation of economic activities related to transfrontier movements.

### 1.3 Access to health services

At Community level, health care protection and access to health services depends on the status of the individual in the frontier population. Coverage is provided for workers, members of their families, pensioners or other non-active persons, or frontier workers and their families. In most cases, other members of the resident population enjoy no such cover.

This unequal spread derives from the fact that the Community regulations on social security<sup>(1)</sup>, based on Article 51 of the Treaty, seek to coordinate the various national schemes in terms of freedom of movement of workers and not of persons (cf. III.3).

However, with a view to implementation of the social dimension of the internal market and the creation of a "People's Europe", the Commission is currently drawing up proposals for extending the scope of these regulations - especially as regards sickness and maternity - to all insured persons in a Member State.

At the moment, residents (workers or their families) insured in a Member State whose health condition requires immediate treatment while he or she is on the territory of another Member State has a right to the benefits in kind provided by the institution in that place.

There is also a declaration in the Council minutes providing for Member States to adopt measures to ensure that persons other than employed and self-employed persons are covered by these provisions. More particularly, and as a temporary measure bearing in mind the urgent need for social protection on the part of students covered by the "Erasmus" programme, such students may, if insured in a Member State, and despite not being classed as workers or members of a worker's family, use form E111<sup>(2)</sup>.

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(1) Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and the Implementing Regulation (EEC) No 574/72.

(2) This form gives access to emergency health care in a Member State other than that in which the person is insured.

In the light of a Recommendation by the Council of Ministers, form E111 may eventually be replaced by a European emergency health care card.

The residents (workers or their families) may go to a different Member State to the one in which they are insured to receive treatment appropriate to their condition, on condition that they have been authorized to do so by the competent institution. Authorization may be refused if the competent Member State's legislation does not provide for the said treatment or if the treatment can be obtained within a normal period in the competent Member State.

This highly restrictive clause has been subject to a great deal of criticism both from patients and from health care establishments.

It must be borne in mind, though, that frontier workers and - in most cases - members of their families may obtain treatment either in the country of residence or in the country of employment (cf. 11.3).

Consideration could therefore also be given to revising the provisions in the sense of getting rid of the need for authorization, but adding a ceiling for the value of health services, which would not be allowed to exceed the amount provided for in the Member State of employment. This would eliminate the financial risk from the point of view of the competent institution.

A change along these lines would enable people living in frontier regions and working and living in one and the same Member State (i.e. not frontier workers as such) and members of their families to choose to seek health care in any Member State. It would also be applicable to frontier workers working in Member State A and living in Member State B close to the border to Member State C where, under current regulations, they may not seek health care.

Initially, exercising this right might be subject to geographical restrictions and be applicable only to frontier populations. Eventually, though, it might allow any person insured in a Member State to have free access to health care services in any other Member State.

An alternative, more modest solution would be to have the competent institution issue the requisite authorization for renewable periods to any person covered by the Regulation's scope and living in a frontier region. The present situation is that authorizations have to be requested on an ad hoc basis.

At any event, this is a highly delicate matter, given its financial and social implications. It will need to be examined very carefully

Some frontier zones are subject to bilateral agreements or provisions specific to each Member State and included in the legislation on sickness insurance<sup>(1)</sup> allowing people to benefit from health care on the other side of the border. Normally, these provisions concern populations living in zones within some 20 km of the border.

To take a few examples:

- In Belgium, the sickness insurance scheme allows people living in frontier regions to seek health care within a radius of up to 25 km from their home provided that there is no similar establishment in Belgium which is closer.
- Under a French agreement of 1961, insured persons from the French Moselle are authorized to undertake cure treatment in the spa town of Mondorf-les-Bains in Luxembourg. Again in France, an agreement dating from 1976 with a child guidance centre in St. Mard in the Belgian province of Luxembourg provides for facilities to be made available to handicapped children, with priority to children from the frontier regions of Ardenne, Meuse, Meurthe and Moselle. The Tourcoing medical insurance fund will pay the accommodation expenses for patients from Hallouin (France) at the maternity section of the Menin hospital in Belgium, as well as Belgian surgeons' fees in the event of complications during childbirth.

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(1) Study on access to health care and social protection provisions in frontier zones, 1990 - Association Internationale de la Mutualité, Geneva.

- In the Netherlands, the General Sickness Insurance Fund for Western Brabant and Zeeland Flanders authorizes persons living in the Zeeland part of Flanders to obtain health care in two Belgian hospitals (the University Hospital of Ghent and the St. Jean General Hospital in Bruges).
- In Spain, there is an agreement between Vialla Hospital and a French hospital for the transfer of patients in cases where the Spanish hospital does not have the requisite facilities.

These examples show that there are ways and means at national, regional and local levels to facilitate access to health care for the people of frontier regions and that these could undoubtedly be extended to other regions.

#### 1.4 Transport (including indirect taxation - driving licences)

A sector of vital importance for the population living in frontier regions and for the integration of cross-border regions is that of transport.

With regard to persons, the geographic proximity of frontier regions creates a strong need for trans-frontier mobility for reasons of an economic, educational, cultural and tourist nature.

Trans-frontier transport services, being international in nature, are regulated by Community legislation and by bilateral agreements. In accordance with the Community regulations on the international carriage of passengers by road, most occasional (tourist) services are not subject to prior authorisation, while shuttle and regular services are. In the case of regular services, which is the sector of most relevance to persons living in frontier regions, authorisation to run a service cannot always be obtained. The Commission submitted a proposal to the Council in 1987 to introduce the freedom to provide services in the coach sector. This proposal would facilitate the establishing of services and so be of special interest to persons in frontier areas. Unfortunately, the Council has not yet decided on it.

Besides this action, significant progress could also be made through the common organization and better coordination of national or regional transport services (timetables, connections, tickets, etc.). For this it is important to establish close cooperation between the competent authorities at local, regional, and national levels.

International road freight is governed by Community legislation and by bilateral agreements. An EEC directive of 1962<sup>(1)</sup> takes into consideration the cross-border dimension by exempting from authorisation and from quota systems certain frontier transport operations.

There are also exemptions from Community Regulations N°. 3820/85<sup>(2)</sup> and 3821/85<sup>(3)</sup>, on working and rest periods of the drivers of goods and passenger vehicles and their use of tachographs, which may be useful for frontier workers travelling short distances.

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(1) O.J. N°. L 70 of 6.8.1962, p. 2005

(2) O.J. N° L 370 of 31.12.1985, p. 1

(3) O.J. N°. L 370 of 31.12.1985, p. 8

### Indirect taxation and transport

Another area where action could be taken to facilitate the living conditions of Community nationals and especially of people in frontier regions while promoting European integration, concerns the use in one Member State of private means of transport registered in another Member State.

The Commission (Com(90)182 final) has proposed that during a transitional period 1993 to 1996 - the sales of new passenger vehicles should be taxed in respect of their acquisition in the Member State of use, where the first registration on a permanent basis takes place.

Thus, during this period at least the need will still exist for rules allowing a citizen of a Member State to drive, in his country of residence, a passenger vehicle which has been temporarily imported and which is registered in another Member State of the Community. For this reason, the Commission has proposed that Directive 83/182/EEC on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another shall only cease to have effect on 31 December 1996.

However, considering that the current rules governing temporary admission are too restrictive, in 1987, the Commission put forward a proposal to liberalize Directive 83/182/EEC. The main areas of liberalization are related to the re-hire of private-vehicles, the extension of the professional ties in another Member State, the extension of the exemption to persons other than the one who has temporarily imported the vehicle, the use of company cars, the use by students, the immobilization abroad and short term hire.

In accordance with EEC Regulation No 4060/89 concerning the elimination of technical barriers to trade, about a dozen controls (based on either Community or national legislation) no longer need to be carried out at the frontier itself.

Unfortunately even after the Ledoux Judgement<sup>(1)</sup> (Case 127/86) the Council was unable to adopt these changes. However eight Member States have declared that these changes will be introduced into their national legislation under an Article in the Directive that allows for more liberal treatment. The Commission has announced that it will, according to its responsibility, see to the correct application by the Member States of the principles laid down by Community Law.

In addition, passenger-carrying taxis and coaches can currently be stopped at Intra-Community borders to pay VAT on the journey within the Member State to be crossed. These difficulties arise from the fact that, according to the 6th VAT directive, transport is taxed according to distance covered in each Member State. The fact that some Member States do not apply the VAT is due only to a temporary waiver which will be annulled (art. 28, para. 5 of the above directive).

Aware of the difficulties faced by taxis and coaches arising from fiscal frontiers, and the territorial rules applying to VAT on transport, the Commission in 1987 proposed that all passenger transport be taxed only in the Member State where the journey began. Thus neither taxis nor coaches would be halted at borders. This proposal falls within the definitive rules on taxation and should enter into force as of 1.1.93.

The Commission additionally recognises the social importance of passenger transport for which it proposes a reduced VAT rate of between 4 % and 9 %.

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(1) In this case the EC Court of Justice held that Community law denies the levy of VAT by a Member State when a motorvehicle is used by a frontier worker in the said Member State within his work contract to do his work, and by extension, for leisure purposes also when the said vehicle belongs to an employer established in another Member State where the VAT has been paid.

### Driving Licences

One matter which may seem somewhat specific, but which is of great importance to the everyday lives of people in frontier regions, concerns the recognition in neighbouring countries of a driving licence issued by a Member State. This matter is regulated at Community level by the Directive on the Introduction of a Community driving licence<sup>(2)</sup>. This provides for the mutual recognition by the Member States of national driving licences and the exchange of driving licences by holders transferring their normal place of residence from one Member State to another within a maximum of one year from the actual move.

How the normal place of residence is defined is particularly important, especially in the case of frontier workers, but also for students and other persons (e.g. retired people) spending a certain period of the year in a different Member State. The question is where these people have their normal place of residence. According to the Commission, their place of residence is in the Member State in which they have their personal ties, which means that a frontier worker does not have to ask for his driving licence to be exchanged for one issued by the country in which he is employed.

It is worth mentioning here the new proposal for a Directive on the driving licence<sup>(3)</sup>, which should give a definitive ruling in all cases. The Directive defines what is meant by "normal residence" and abolishes the need for people to exchange their driving licence when they transfer their place of residence to another Member State.

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(2) Directive 80/1263/EEC of 4.12.1980

(3) COM (88) 705 final of 13.1.1989, OJ C 48 of 27.2.1989

### 1.5 Tax and duty-free allowances

The removal on 1.1.93 of the limitations on tax-paid purchase in all Member States by Community travellers will have a considerable impact on the free movement of people within the Community. Indeed, as from that day the tax on all purchases - with the exception of new private cars - will be established by the vendor, at the rate and under the conditions of the country where the goods originated. This liberalisation will be preceded by a progressive increase in the current allowances, i.e. according to the Commission proposal, by doubling quantitative limits currently in force for goods subject to excise and VAT such as alcohol and tobacco etc., and quadrupling the limits in force on goods subject to VAT. A similar liberalisation is also planned for the reduced allowances for people residing in zones bordering another Member State.

For those residents in frontier-zones with third countries, tax and duty-free allowances for purchases in those countries are also planned, albeit on a more modest scale.

In addition, residents of border regions with third countries or other Member States already benefit from various dispositions of the general system of tax and duty-free allowances applicable to normal imports, and some of which indeed have been specially adopted with them in view.<sup>(1)</sup>

These dispositions will evidently be affected by any general liberalisation and simplifications proposed for tax and duty-free allowances on normal imports planned for the medium term.

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(1) For example, tax and duty-free allowances for seeds, fertilizers etc. imported or exported by agricultural producers to be used on land immediately beside borders.

#### 1.6 Education, and vocational training and guidance

One of the areas of vital importance for the population living in frontier regions is training and vocational guidance, which not only contribute greatly to the development of human resources and regional development but also facilitate the cross-border mobility of workers. Taking advantage of centers of employment on either side of borders presupposes knowing the needs of the frontier regions and, consequently, coordinating and planning educational and vocational training structures and programmes. Furthermore, it is important for people living in the frontier regions to have access to education and training structures in neighbouring countries.

A number of initiatives have been taken on a bilateral basis to establish cooperation between cross-border authorities. Frontier programmes of this type in the Hainault Nord-Pas de Calais region have stressed the importance of fostering cooperation on a sectoral level, bringing together the various parties (i.e. employment, training, education, and social partners) with a view to gearing educational and training programmes to the technological development needs of regional job-providers.

A project developed in the Meuse-Rhine Euregio underlined the need for a "joint vocational training center" to "contribute to improving the flow of information on new technological developments to teaching centers to enable them to keep adapting to requirements".

Other activities concern the creation of a "training observatory" and a "transfrontier educational space" (Pacte), the creation of joint diplomas and an interregional students' card (Regio), the setting-up of a supra-regional training institute (Euregio) and the organization of a three-year training course for persons responsible for vocational training and employment (Rhône Alpes - Piedmont).

Action programmes have also brought out the need for developing language exchanges and for intensive language courses for workers in transfrontier companies (e.g. Nord-Pas de Calais - Kent and Rhône Alpes - Baden-Württemberg).

It is worth noting that the European Economic Community provides support - under the structural funds in particular - for this type of cooperation in the field of education and vocational training.

Under the European Social Fund guidelines defining the main thrust of training and employment policy for objectives 3 and 4, transnational activities - mainly at cross-border level - are to be treated as a priority issue. These are activities engaged on in common by training organizations from two or more Member States, or recognized at Community level, involving exchange schemes for training programmes, instructors and trainees and having a multiplier function at Community level (Commission Communication on the ESF guidelines, 89/C 45/04, see Chapter V, point 6).

In this context it should also be noted that the INTERREG programme is aimed at, among other things, the promotion of vocational training and gives priority to projects with a cross-border dimension.

At Community level, the EEC has also undertaken several important actions in the field of education and vocational training. European Community programmes pay special attention to the Community dimension provided by transnational partnerships, exchanges, joint programmes, possibilities of transferring academic credits, academic recognition of diplomas and study periods abroad, Community language learning, etc. Nevertheless such programmes do not contain specific measures or priorities in relation to cooperation in cross-border areas.

A particular focus on transfrontier alliances has been proposed by the Commission for the FORCE programme on the development of continuing vocational training. In this programme it is planned to establish regional consortia with particular reference to frontier workers and to promote schemes for the staff of small businesses to develop a partnership strategy within cross-border alliances.

With a view to promoting worker mobility in Europe, the Commission has also made an effort to improve the provision of vocational guidance, reflected on the one hand in the Commission's support of a number of studies relating to vocational guidance and on the other in certain programmes (TRANSITION, PETRA) establishing cooperative links in this field in border areas.

The Commission has taken steps to promote the production of a handbook providing key information on guidance services throughout the Community. This initiative forms part of the wider Commission proposal to establish a European network of national contact points or centres to develop and update data for use by guidance services in all Member States. In addition, a number of case studies have recently been carried out, under the aegis of CEDEFOP, on the cooperation of guidance services in frontier regions.

### 1.7 The social partners in the frontier regions

Generally speaking, the trade unions and the employers' organizations hold regular talks on the problems facing frontier workers, or at least take part in them.

In July 1990, as part of the social dialogue at Community level, the social partners drew up a joint opinion on the prospects for a European labour market. This is devoted to the creation of a "European space" for vocational and geographical mobility and to improvements in the way the European job market operates. The social partners pay special attention to questions affecting frontier regions and agree that the "labour market" working party should devote more attention to the modernization of existing structures and the way public employment agencies work, with special reference to transfrontier regions. To this end, they are prepared to take a part in trying out the guidelines expressed in their joint opinion, calling for a transfrontier approach which will bring out such regions' needs and potential in terms of jobs and qualifications.

Improved cross-border cooperation between the social partners is likely to be very helpful in solving the problems encountered by frontier workers. It is worth noting here that the European Trade Union Confederation set up inter-regional councils (the C.S.I) in 1976 to strengthen cooperation between trade unions in border regions. The first such committee was for the Saar-Lorraine-Luxembourg region and was followed by ten or so more.

The prime task of these committees remains that of looking into the problems of frontier workers. The C.S.I. have at the same time volunteered to take up the whole question of the economic and social development of the regions concerned.

Thus, the inter-regional committee for Nord-Pas-de-Calais-Hainaut-Western Flanders organized a seminar on the economic and social repercussions of the Channel Tunnel, while the PED inter-regional council has concentrated on the Pôle Européen de Développement (PED), set up in 1985 to assist in the economic restructuring of the old steel and mining areas.

#### 1.8 Cooperation between regional and local authorities

With Community support, cooperation between regional and local authorities across national borders has been steadily increasing during the past decade or so.

Agreement on frameworks for cooperation between border regions has been encouraged through joint studies financed by the European Community. Such frameworks have been established for areas along the borders of Germany-Netherlands, Netherlands-Belgium, Belgium-France, France-Luxembourg-Germany and France-Spain. In some cases the creation of frameworks has been followed by the adoption of joint development programmes between local and regional authorities such as Ems Dollart (N-G), Euregio (N-G), Regio Rhein-Waal (N-G), Euregio Maas-Rhein (N-G-B), Saar-Lorraine-Luxembourg (F-G-L), Pyrenees (F-Sp) and COTRAO (F-Sw-It). In general the frameworks and joint programmes are the subject of informal agreements between the regional and local authorities on either side of the frontier.

In 1981 the Council of Europe adopted a framework convention for cross-border cooperation between regional and local authorities. Member States have been slow to introduce formal legal agreements within this framework. In some cases this has been an impediment to the further development of practical cooperation at local and regional level.

In 1988 the Commission established the Consultative Council of Regional and Local Authorities to advise on the development and implementation of Community policies from the local and regional perspective. This Council has expressed strong support for the idea of introducing a Community legal instrument to facilitate cooperation agreements between regional and local authorities, not only in border areas but throughout the Community. The Commission is currently examining this issue and may consider putting forward proposals once its examination of the political, legal and administrative issues has been completed.

## II. FRONTIER WORKERS

### II.1. Right of residence

Community law - in the form of the Treaty establishing the European Economic Community - grants the right of residence to nationals of Member States pursuing activities as employed or self-employed persons in the territory of another Member State. Exercise of an economic activity necessarily brings with it the right of residence in the Member State where the work is performed. This principle applies, of course, to frontier workers too.

Secondary Community legislation<sup>(1)</sup> contains a number of specific provisions in this respect. In principle, employed and self-employed persons must ask the authorities in the Member State in which they are working for a residence permit.

However, as far as employed frontier workers are concerned, Article 8 (1) of Directive 68/360 says that: "Member States shall, without issuing a residence permit, recognize the right of residence in their territory of: ... (b) a worker who, while having his residence in the territory of a Member State to which he returns as a rule, each day or at least once a week, is employed in the territory of another Member State. The competent authority of the State where he is employed may issue such worker with a special permit valid for five years and automatically renewable". No such provision is made for self-employed frontier workers, who have to apply for a normal residence permit to cover their presence on the territory during the exercise of their self-employed activity although their normal residence remains in another Member State.

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(1) Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on the movement and residence within the Community of workers of Member States and their families (OJ L 257 of 19.10.1968, p. 13).

Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on the movement and residence of nationals of Member States within the Community with regard to settlement and provision of services (OJ L 172 of 28.6.1973, p. 14).

Article 2 of Commission Regulation (EEC) 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State<sup>(2)</sup>, stipulates in para 1 c):

1. The following shall have the right to remain permanently in the territory of a Member State:
  - c) a worker who, after three years' continuous employment and residence in the territory of that State, works as an employed person in the territory of another Member State, while retaining his residence in the territory of the first State, to which he returns, as a rule, each day or at least once a week.

Here, consideration might be given to reducing the employment and residence duration conditions and extending the field of application to workers in paid employment in the territory of a non-member country.

However, it has to be stressed that, given the present state of Community law, a national of one Member State may not settle with his family in a frontier zone of a second Member State with the intention of taking up an employed activity in a third Member State or in a non-member country. Current legal texts on freedom of movement do not provide for a right of residence in the second Member State in such cases.

What might at first sight seem to be an unsatisfactory situation has now found a solution in that, on 28 June 1990, the Council approved proposals for directives on the right of residence, whereby the worker merely has to comply with the income and social insurance conditions laid down in the said texts. It has to be pointed out, though, that the Member States have been given until 30 June 1992 to transpose these directives into national law.

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(2) OJ L 142 of 30.6.1970

11.2 Job market - SEDOC - temporary workers

Workers' information on the state of the job market is based on job vacancies and applications in the press, in the other media, at public employment agencies and at private recruitment and temporary staff bureaux.

Frontier workers are poorly served by these information sources and it must be said that there is a need for other information channels. Chapter II of Regulation 1612/68/EEC provides for the creation of a European System for the International Clearing of Vacancies and Applications for Employment (SEDOC).

This system was set up in the 1970s, but is no longer suited to the current situation on the European job market, and the Commission set about reorganizing it. A specific border-area-oriented instrument known as JET (Job Euro Transfer) was studied with a view to facilitating the exchange of job vacancies and applications between the public employment services in border regions.

This project was set up at the initiative of the Federal German Labour Agency and the Dutch Ministry of Social Affairs and Employment, with the backing of the Commission. It provides a link between five local employment agencies on either side of the Dutch-German border in the Euregio.

The main functions of the computerized system are:

- recording of job vacancies and applications
- information updating
- multi-criteria search
- matching of vacancies with applications
- useful information printouts for operators, job-seekers and employers
- automatic transfer of files
- alignment of job descriptions.

In more general terms, the Commission has organized a number of seminars and meetings with employment agencies in frontier regions, generating greatly improved cooperation between the Member States' frontier employment services. Local agencies are increasingly receiving requests from employers or colleagues on the other side of national borders for details of job vacancies and applications. However, the scale of these activities depends very much on personal contacts between officials working at the agencies.

Given the temporary or seasonal nature of a number of frontier jobs, there are several temporary staff agencies operating at present in border areas. There are doubts as to the legal status of this kind of transfrontier activity in the light of some countries' national legislation and of Community law, not to mention doubts as to the legislation governing the employment relationship for workers employed by such agencies. The Court of Justice of the EC has already ruled on certain aspects here (cf. judgment of 3.2.1982, SECO, case 62-63/81, Rep. 1982 p. 223; judgment of 17.12.1981, WEB, case 279.80, Rep. 1981, p. 3304).

The Commission, mindful of the need for Community rules and regulations on this matter, has included two Community initiatives in its action programme for the Charter of Fundamental Social Rights for Workers:

- 1) Proposal for a Directive on contracts and employment relationships other than full-time and open-ended contracts. It is worth mentioning that the Commission has recently proposed three directives to the Council<sup>(1)</sup>.
- 2) Plans for a Community instrument to regulate the working conditions applicable to workers from another Member State performing work in the host country in the framework of the freedom to provide services. This would include workers employed by a temporary staff agency.

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(1) COM(90)228 - SYN 280, SYN 281 of 13.6.1990

### 11.3 Social security and social benefits

#### Social security

Community regulations on social security<sup>(1)</sup> are addressed primarily to frontier workers, with both specific and general provisions (depending on the coordination principles: equal treatment, abolition of residence qualifications, uniformity of legislation and aggregation of all migrant workers).

The specific provisions are as follows:

#### 1) Sickness insurance

- Generally speaking, a worker resident in a Member State other than the country of employment - which by definition covers frontier workers - receives medical care in his country of residence. The same goes for members of his family.
- Unlike other categories of workers, frontier workers may opt for medical care in the Member State of employment. In this case, benefits are obtained from the competent institution according to the legislation of the Member State in question, as if the person concerned lived there.
- Members of his family may also obtain benefits in the territory of the Member State of employment; however, enjoyment of these benefits (other than in urgent cases) is conditional on agreement between the two Member States concerned or between the competent authorities of those States or - failing that - on prior authorization from the competent institution.

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(1) Regulations 1408/71 and 574/72, of 11.3.

- One way of providing fuller social protection for members of a frontier worker's family might be to do away with this latter condition, with the result that families would have a free choice as to which Member State they wanted to receive the benefits in (i.e. country of residence or country of employment).
- Unlike active frontier workers, pensioners in frontier zones and members of their families may not - except in cases of immediate need - enjoy benefits in any other than the country of residence. This is because, in most cases, pensioners have no occasion to return to their former country of employment and are consequently treated the same as all pensioners who have been employed in more than one Member State.

However, pensioners may have retained links with their former country of employment, in which case they ought to be allowed to seek health care in that country. A similar provision to that planned for active workers could be introduced here.

2) Unemployment Insurance<sup>(1)</sup>:

The Regulation provides for specific provisions for unemployed frontier workers. Where such workers are partially or intermittently unemployed, unemployment benefit is payable in accordance with the legislative provisions of the host country as if the worker concerned were resident in the territory of that Member State (benefits being payable by the competent institution). Those who are wholly unemployed, on the other hand, receive benefits under the legislation of their Member State of residence, as if they had been subject to the said legislation during their last period of employment (benefit being payable here by the institution of the place of residence). In this latter instance, according to the judgment of the Court of Justice of the EC in case No 67/79 (Fellingner), the amount payable should be calculated on the basis of the actual wage or salary received by the worker in his or her last job (and not by reference to a notional wage or salary determined according to the legislation in force in the country of residence).

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(1) Article 71 of Regulation 1408/71

### Coordination problems

Over the years, and as Community co-ordination of Member States' social security has developed, a number of difficulties have cropped up - either of application or interpretation of Community legislation, or due to loopholes and gaps in that legislation.

- A first category of basic problems which frequently crop up concern the consequences of disparities between Member States' laws. Frontier workers are primarily affected here, but the problems extend to other migrant workers too. For instance, the amount of benefit payable under one Member State's legislation may be paltry compared with benefits available in a neighbouring country.

The inequalities on either side of a national border can be quite glaring. Other problems concern pensionable age, which for instance is 65 years in Belgium but 60 years in France. As far as pensions are concerned, Community regulations provide for amounts to be calculated pro rata to periods of activity in the various Member States. In cases where a worker has spent virtually all his career in Belgium, with a final spell in France, he will, under Community law, be entitled for five years to no more than a paltry pro rata French pension, which is not sufficient to live on.

These problems have already been given plenty of airing and are directly connected to the absence of harmonized national legislation. Current regulations merely coordinate Member States' bodies of legislation.

Even a partial element of convergence could alleviate such situations. A recommendation on the convergence of objectives for social security systems is provided for under the Commission's action programme on the implementation of the Community Charter of the Fundamental Social Rights of Workers.

- Another factor is that some schemes are currently excluded from the field of application of Regulation (EEC) 1408/71, especially the contractual schemes. What this means, for instance, is that very often a person who has taken early retirement cannot settle in a Member State other than the one which pays his pension, if the pension is not "exportable" under national law and comes under a contractual scheme.

This is a particularly deplorable state of affairs for pensioners in frontier regions, who have to transfer their place of residence to the territory of the paying country (unless that country has legislation or there is a bilateral agreement enabling the pension rights to be exported), although they have long been resident in a different Member State.

There is a proposal for a Regulation on unemployment and early retirement<sup>(1)</sup> which aims specifically to deal with cases of persons taking early retirement and living in frontier regions. This has been before the Council since 1980 and has never been adopted because the requisite unanimity has not been achieved. A study on the extent of the problem has been launched and this could result in a new, updated proposal for a Regulation.

- Finally, thought has to be given to the legal significance of bilateral agreements between Member States and non-member countries, since such agreements are particularly relevant to a large number of frontier workers.

The European Commission feels that bilateral agreements should be regarded as part of a Member State's body of legislation, within the meaning of Regulation 1408/71. This means that the Member State which is party to the agreement must apply the principle of equal treatment to nationals of other Member States legally residing in that country's territory. The Commission will initiate infringement proceedings against Member States which do not apply the Regulation as required.

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(1) OJ C 169 of 9.7.1980.

#### 11.4 Direct taxation

Taxation is still one of the major problems facing frontier workers. At the moment, it is still governed by a wide range of bilateral agreements between Member States or with non-member countries aimed at overcoming the double taxation problem, i.e. tax on income from work levied on frontier workers must be payable either in the country of residence or in the country of employment.

At Community level, the proposal for a Directive<sup>(1)</sup> presented by the Commission to the Council on 21 December 1979 seeks to find a solution to this problem. According to Article 4, frontier workers would only be taxable in their country of residence. Should the country of employment levy tax at source, this would be credited against the tax payable in the country of residence and, if it exceeded the tax payable in the country of residence, the excess would be refunded.

However, this proposal has been blocked in the Council since 1986, mainly because the great majority of Member States feel that the problem of tax payable by frontier workers should be dealt with bilaterally between the Member States concerned and not by way of a Community Directive. Member States' view is that each bilateral relationship is different and solutions should be geared to specific situations. Hence, one and the same Member State might, depending on circumstances, apply the principle of taxation in the country of residence in one case and taxation in the country of employment in another.

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(1) OJ C21 of 26.1.1980, p.6

Another point is that, despite the generally favourable reception from all parties of the Economic and Social Committee and despite the support of trade unions at Community level, the proposed Directive has, for political reasons, met with opposition from certain regional federations representing the interests of a substantial number of frontier workers. Their fear is that applying the principle of taxation in the country of residence would in certain situations - and especially that of Belgium/Luxembourg and Germany/Denmark - make frontier workers liable to more tax than at present.

Judging by discussions in the Council, there would seem to be no prospect of breaking the deadlock without altering the approach adopted in the proposal for a Directive.

The Commission will be taking a look at the various possibilities and will be reporting back in the near future.

With the lack of progress in the Council and in the light of the complaints it has received, the Commission has introduced infringement proceedings against Member States on the grounds of discriminatory treatment of non-residents as against residents.

The fact is that several Member States have legislation making the application of certain tax provisions or the granting of certain tax advantages conditional upon residence (e.g. tax deductions, certain allowances, e.g. for handicapped persons and children in care, tax treatment of non-residents regarded as single persons regardless of their actual situation).

Of course, the principle of non-discrimination between Community and national workers applies to frontier workers too. Under Article 7 (2) of Regulation 1612/68, frontier workers from a Member State of the Community enjoy the same social and tax advantages as workers who are nationals of the country of employment. Judgments handed down by the Court of Justice of the European Communities establish that the equal treatment rules prohibit not only open discrimination based on nationality, but also any concealed form of discrimination having the same result by applying other distinction criteria, e.g. place of origin or domicile. This is highly important from the point of view of frontier workers who, by definition, are resident in a different Member State from the one in which they are employed. The principle of equal treatment can thus be a central element in dealing with certain problems encountered by frontier workers in terms of tax.

The Court of Justice of the EC has recently handed down a judgment<sup>(1)</sup> which states that the principle of equal treatment is also applicable to income tax. It is therefore contrary to Community law to make reimbursement of an overpayment of income tax dependent on permanent residence in the national territory.

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(1) Judgment of 8 May 1990, case 175/88

#### 11.5 Monetary questions

The frontier worker lives in two monetary zones. He earns his pay in the currency of the country of employment and he spends it, for the most part, in his country of residence. In so doing, he incurs additional expenses, which may be of a monetary nature resulting from exchange rate fluctuations (which may or may not arise from currency realignments) or may take the form of bank charges on monetary transactions. Another supplementary expense might arise from a divergent trend between the level of pay in the country of employment and the level of prices in the country of residence.

Most cross-border movements are into monetary zones regarded as relatively more stable. For instance, the number of frontier workers entering the Federal Republic of Germany from France is put at 35 000, compared with only 1 000 in the opposite direction. Similarly, in 1987 an estimated 4 000 people travelled from the Netherlands to Belgium to work, compared with 16 000 in the opposite direction.

This does not mean to say, however, that monetary movements will work to the advantage of most frontier workers. The fact is that a change in the exchange rate can often be seen as a corrective mechanism for divergent price trends in the country of employment and the country of residence. Even in cases where a worker's purchasing power increases either as a result of devaluation in the country of residence or revaluation in the country of employment, it is important to remember that this may result from prices rising faster in the country of residence or levels of pay rising more slowly in the country of employment.

Generally speaking, very little government effort has gone into compensating frontier workers for this type of risk, although some steps have been taken in certain countries. One example is the compensatory allowance introduced by the Belgian government in 1978 and payable to Belgian workers with jobs in France. Payment of this allowance is due to cease on 31 March 1991.

In terms of attracting frontier workers, the level of pay is a more important factor than the exchange cost and risk. Interestingly, there were inter-frontier agreements in the 1980s between French employers and Belgian trade unions in a number of sectors (e.g. textiles, steel, metalworking, building, etc), whereby an adjustment coefficient was applied up to 31 December 1989. This can be seen as an example of a solution reached at inter-regional level by the social partners in particular industries.

With exchange rates settling down from the mid-1980s within the European Monetary System snake, specific crossborder measures have tended to die out. Economic and monetary union, which is to be established in stages under a European Council decision taken in May 1990, will solve the monetary problems of frontier workers once and for all.

It is only by introducing fixed rates of exchange between the Community Member States - culminating in a European currency - that frontier workers will be rid of these problems, and this will in turn constitute a major psychological and real boost to crossborder mobility.

Another problem with which frontier workers have to contend is that of bank accounts and transfers of funds. This problem has so far been dealt with under bilateral agreements between the Member States concerned, but a partial solution should come with the free movement of capital. For most Member States restrictions on capital movements were eliminated by Directive 88/361/EEC of 24 June 1988. However, there may still be cash-flow problems, particularly with the high cost of transferring funds. The Commission has already started work on tackling these problems, as outlined in its Communication of 26 September 1990 (COM(90)447 fin.), but some are sure to persist along the Community's external borders.

11.6. Housing in frontier zones

With the liberalization of capital movements under the Single Market, housing purchase or rental should no longer present a problem in terms of transferring money to service rent or mortgage repayments, nor should there be any difficulty in obtaining a mortgage in either currency on either side of the border. This will not apply, of course, to transfers of funds on the part of Community citizens working in an adjoining non-member country. The solution to this problem might be the European Economic Space (EEC-EFTA) project for the free movement of capital.

In another sector whose importance is obvious, that of subsidized housing, it seems there are no problems. Governments grant some kind of subsidy and make the housing available to residents under certain conditions.

Regulation 1612/68 provides for equal treatment between workers in a Member State. Article 9 says that "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". However, these provisions do not cover a worker whose country of residence is not the country of employment.

Where a frontier worker is liable to income tax in his country of employment, the country of residence, which has to provide the infrastructure, loses out. This is why, to take an example, the regional authorities in Geneva Canton and the two French départements of Ain and Haute Savoie have reached an agreement whereby almost a half of the income tax levied on the wages and salaries of French workers in Switzerland is transferred to the French authorities to finance infrastructure work, including housing.

This example shows that, in specific situations, solutions can be found to specific problems, and these could serve as a model for the other frontier regions. It might be useful to draw up an inventory of national, regional and local agreements of this kind to help frontier regions to find solutions to their particular problems.

11.7 Vocational training and recognition of diplomas and qualifications

Vocational training is one of the central elements of problems and grievances raised by frontier workers, given that an inadequate level of vocational training will leave such workers vulnerable to the effects of changes in the economic cycle. Community legislation enshrines the principle of non-discrimination on the grounds of nationality between nationals of a Member State and those of other Member States working on the territory. This applies to vocational integration and redeployment and to training in vocational schools and retraining centres.

At any event, frontier workers can take advantage of any activities undertaken in this field for the benefit of residents of cross-border regions, in the form of cooperation between these regions (cf. Part 1.6).

Another problem facing frontier workers concerns recognition of their diplomas and vocational qualifications in the country of employment.

This problem mainly concerns "regulated" professional activities, the exercise of which is subject to certain conditions, notably as to workers' qualifications. Exercising such activities has been considerably eased by the large number of Directives providing for the recognition of vocational qualifications, the latest in the series being the Council Directive of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration<sup>(1)</sup>.

It is also worth mentioning the progress made in the equivalence of vocational training qualifications between Community Member States. This should foster labour mobility for all the occupations studied as part of this survey by ensuring that appropriate information is available on the qualifications of the workers concerned.

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(1) Directive 89/48/EEC, OJ L 19 of 24 January 1989.

One final point is that, in addition to work undertaken by the Commission of the European Communities, some Member States have set up programmes for the equivalence of vocational training courses in neighbouring countries.

For instance, a pilot scheme in the Dutch-German border area enables persons undergoing vocational training to achieve equivalent levels of training as certified by frontier training organizations in the textile and metal industries.

11.8. Information

Information requirements in frontier zones cover not only the employment market, type of company activity and job openings, but also associated factors such as education and vocational training, equivalence of diplomas and vocational training qualifications, and the type of people employers are looking for and the general quality of life.

There is a substantial information need as regards means of communication and transport, social security and taxation.

Much of this information will be available from the information section of the SEDOC system, which is about to undergo major reorganization. In the part dealing specifically with border issues, the JET system (cf. 111.2) can easily incorporate information on a variety of fields in addition to job information proper.

The reexamination of the SEDOC system has also highlighted the lack of a "human interface". Although the counselling and guidance function is recognized in national placement and recruitment systems, not much has been done on this score (with a few exceptions) in Community terms. Training of "Euro-Counsellors" for employment agencies in all Member States is indispensable. These should be capable not just of matching job vacancies and job applications in the Community, but also of giving information and guidance to job-seekers and employers in fields requiring mobility like these mentioned above.

Other organisations apart from the Community are active at various levels in informing frontier workers. The European Commission supports these, and believes that increasing co-operation - between public national, regional, and local administrations, plus concerned socio-professional organisations and trade-unions- could play an important part in the process.

In this respect it is interesting to note that the Pact (Euro-region "Nord-Pas de Calais - Hainaut) planning is underway to set up information and help facilities for frontier workers. These facilities would have many spheres of activity and would be based on a broad partnership between public and private bodies, social partners etc.

Trade-unions also can play an important part in informing frontier workers. Since the passing on of correct information implies specific training, the European Commission agrees with the C.E.S. that it is necessary to train trade union delegates properly.

11.9. Special problems of persons resident in Community border areas and working in non-member countries

The legal situation of Community frontier residents working in third countries differs from that of those working within the E.E.C. Community regulations on the free movement of persons in principle concerns those working on Community territory.

A number of problems encountered by Community frontier workers employed in neighbouring non-member countries have been broached in previous chapters (e.g. right of residence, social security, etc).

Solutions to most of the problems facing such workers are to be found mainly at bilateral level, i.e. by agreement between the authorities of the two countries concerned.

Mention must also be made, though, of the projected European Economic Space (EEC-EFTA), which might provide a suitable framework for dealing with some of these problems.

However, even if this covers a large number of the workers concerned (v. Community workers in Switzerland) the situation of Community frontier workers in Poland or Yugoslavia for example would not be covered, and therefore specific regulations would be required.

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