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DOCUMENT 1-679/81

Report

drawn up on behalf of the Committee on Social Affairs and Employment

on the proposal from the Commission of the European Communities to the Council (Doc. 1-694/79) for a directive concerning the harmonization of income taxation provisions with respect to freedom of movement for workers within the Community

Rapporteur: Mr J. OEHLER

On 12 November 1979 the President of the European Parliament, pursuant to Rule 25 of the Rules of Procedure, referred the motion for a resolution on an economic and social policy for the benefit of frontier workers (Doc. 1-494/79/rev.) to the Committee on Social Affairs and Employment as the committee responsible and to the Committee on Regional Policy and Regional Planning and the Committee on Economic and Monetary Affairs for their opinions.

At its meeting of 18 December 1979 the Committee on Social Affairs and Employment appointed Mr Oehler rapporteur.

By letter of 18 January 1980 the Council requested the European Parliament to deliver an opinion on the proposal from the Commission for a directive concerning the harmonization of income taxation provisions with respect to freedom of movement for workers within the Community (Doc. 1-694/79). On 7 February 1980 the President of the European Parliament referred this proposal for a directive to the Committee on Social Affairs and Employment as the committee responsible and to the Committee on Economic and Monetary Affairs for an opinion.

At its meeting of 24 April 1980 the Committee on Social Affairs and Employment decided to combine the report on this proposal for a directive with the report on the above motion for a resolution and confirmed its decision of 18 December 1979 appointing Mr Oehler rapporteur.

The committee discussed the above documents at its meetings of 29 May 1980, 24 and 25 June 1980, 30 September 1980, 22 September 1981, and 20 and 21 October 1981.

At its meeting of 20 October 1981 the committee adopted the amendments to the draft directive and the directive itself unanimously and adopted the motion for a resolution, apart from paragraphs 27 (a) and 34, unanimously with one abstention.

Present : Mr Van der Gun, chairman, Mr Peters and Mr Frischmann, vice-chairmen, Mr Oehler, rapporteur, Mrs Baduel Glorioso, Mr Barbagli, Mr Boyes, Mr Brok, Mrs Cassanmagnago Cerretti, Mr Ceravolo, Ms Clwyd, Mr Eisma, Mr Estgen, Mr Ghergo (deputizing for Mr McCartin), Mrs Maij-Weggen (deputizing for Mr Vandewiele), Mr Van Minnen, Mrs Nielsen, Mr Patterson, Mr Prag, Mr Salisch, Mr Spencer and Mr Tuckman.

At the meeting of 21 October 1981 the committee adopted paragraphs 27(a) and 34 and the draft report as a whole unanimously with two abstentions.

Present : Mr Van der Gun, chairman, Mr Peters, vice-chairman, Mr Barbagli, Mr Brok, Mrs Cassanmagnago Cerretti, Mrs Maij-Weggen (deputizing for Mr Vandewiele), Mr Van Minnen, Mrs Nielsen and Mr Patterson.

The opinions of the Committee on Economic and Monetary Affairs are attached. The opinion of the Committee on Regional Policy and Regional Planning is to be included in Mrs Boot's report on trans-frontier cooperation.

The rapporteur will present the explanatory statement orally in the chamber.

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The Committee on Social Affairs and Employment hereby submits to the European Parliament the following amendments together with the motion for a resolution:

AMENDMENT N° 1

tabled by the Committee on Social Affairs and Employment

Commission proposal Doc. 1-694/79

for a directive concerning the harmonization of income taxation provisions with respect to freedom of movement for workers within the Community

Proposal for a directive

Article 3, paragraph (3): Insert the words 'or at least once a week' after the word 'daily'.

AMENDMENT N° 2

tabled by the Committee on Social Affairs and Employment

Commission proposal Doc. 1-694/79

for a directive concerning the harmonization of income taxation provisions
with respect to freedom of movement for workers within the Community

Proposal for a directive

Article 4(3): Insert the word 'directly' after the words 'The tax which has
been levied in accordance with paragraph 2 shall be credited'.

AMENDMENT N° 3

tabled by the Committee on Social Affairs and Employment

Commission proposal Doc. 1-694/79

for a directive concerning the harmonization of income taxation provisions
with respect to freedom of movement for workers within the Community

Proposal for a directive

Part III - Taxation of employed persons other than frontier workers

In the French version the word 'salariées' should be amended to read 'salariés'.

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive concerning the harmonization of income taxation provisions with respect to freedom of movement for workers within the Community

The European Parliament,

- having regard to the proposal from the Commission to the Council¹,
- having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 1-694/79),
- having regard to the motion for a resolution tabled by Mr Oehler and others on an economic and social policy for the benefit of frontier workers (Doc. 1-494/79/rev.),
- having regard to the report by the Committee on Social Affairs and Employment and the opinions of the Committee on Economic and Monetary Affairs (Doc. 1-679/81),
- having regard to the opinion of the Committee on Economic and Monetary Affairs on the same proposal for a directive (PE 64.867/fin.),
- having regard to the outcome of the hearing of representatives of frontier workers' organizations and representatives of the European Trade Union Confederation which was held in Strasbourg on 19 and 20 January 1981,
- considering that trans-frontier exchanges of labour are a positive factor insofar as they contribute to strengthening human, cultural, economic and political links between Member States,
- noting that the trans-frontier migration of Community workers is not restricted to the internal frontiers of the Community but concerns more generally all the interstate frontiers of western Europe,
- whereas the problems of frontier regions and workers cannot be resolved purely at national level and an overall policy should be pursued at regional, national, Community and even international level, necessarily entailing the strengthening of the Community instruments currently in force or the drawing up of international conventions with third countries aimed at protecting the interests of Community frontier workers working in third countries or of workers from these third countries employed in the frontier regions of the Community,
- whereas trans-frontier migrations are characterized by a one-way flow between one or several regions of low-level employment and another with a higher level of employment and tend to change in direction or scale depending on the economic and social development of each of the frontier regions concerned,
- concerned at the extent of frontier migration at regional level, which in some cases is as high as 30-40% of the working population of the area supplying the labour,
- whereas frontier workers are currently suffering more than other workers from the imperfections and inadequacies of European integration,

¹OJ N° C 21 of 26.1.1980, p. 6

- whereas this phenomenon involves both the specific problems of the frontier regions and the problems of frontier workers whose legal status ought to reconcile the established principle of equality at the work place with that of equality of treatment at their place of residence,

A. With regard to the economic and social problems of the frontier regions

1. Wishes to alert both the Commission and the Member States to the economic and social problems of the frontier regions, which must be assessed not only on the basis of such indicators as regional GDP and rates of unemployment (well above the national average), but also in terms of inter-regional dependence, the size of migratory flows, the development of levels of investment, the size of undertakings, the degree of specialization particularly in the rapid-growth sectors, and so on;
2. Calls on the Commission to take account of these indicators when considering applications for Community aid;
3. Insists that only a genuine Community regional policy, coordinating regional and national activities and designed to create employment regions or catchment areas, can make a valid contribution to ending the economic imbalances between neighbouring frontier regions on the one hand, and between these and the regions situated in the interior of the countries concerned on the other;
4. Recalls that the frontier regions which supply labour are all peripheral regions as regards the general economic activity of their country and that their economic growth is jeopardized still further by the fact that an inter-state frontier bars their access to the general economic activity of the Community and prevents them from taking full advantage of their geographical situation, which in European terms is often central;
5. Calls on the Commission to promote a regional policy of coherent economic areas on both sides of inter-state frontiers, involving on the one hand measures designed to resolve the economic problems of the frontier regions which supply labour and on the other the strengthening of trans-frontier relations between neighbouring regions;
6. Stresses, more specifically, the advantage to Member States of an inter-regional coordination of investments in economic and social infrastructure in frontier regions, which, by avoiding duplication, could lead to a more efficient use of public money and even to considerable savings;
7. Stresses also the desirability of an inter-regional coordination of productive investment to ensure the best possible use of the natural resources of the inter-region, taking full account of the needs of the protection of the environment and the quality of life;
8. Suggests that, when neighbouring regions on both sides of the frontier are facing similar sectoral economic problems, the Community and the Member States concerned should establish the necessary mechanisms to ensure the greatest possible number of jobs in both parts of the inter-region, possibly with the help of Community aid;

9. Notes that frontier workers have to undergo daily customs checks which considerably lengthen their working day and calls on the Member States to provide the necessary facilities at frontiers and even, in some cases, to create special checkpoints for frontier workers;
10. Urges on the Commission and the governments of the Member States the necessity of creating or developing, on a reciprocal basis, an institutional framework for inter-regional cooperation and consultation with the collaboration of representatives of local authorities, employment agencies and tax authorities, the social partners and chambers of commerce, as well as the social security and professional training institutions of the regions concerned;
11. Calls on the Commission to examine in good time the possibilities offered in these fields by the Council of Europe convention on trans-frontier cooperation between local authorities and, if appropriate, to consider the possibility of the European Community signing this framework convention;

B. With regard to the problems of frontier workers

(a) Statistics

12. Insists on the need for a better understanding of the process of frontier migration with the help of statistical data, for comparison at Community level, on demographic and socio-professional indicators such as the age, sex, place of residence and work, level of professional training, sectors of activity and socio-professional categories of the frontier workers, in addition to an analysis of the medium-term development of jobs available and jobs wanted, enabling employment forecasts to be made;
13. Calls on the Commission to continue its regional analysis of the trends in the supply and demand for labour, particularly in the frontier regions of the Community;

(b) Employment and professional training

14. Deplores the fact that frontier workers are treated as an occasional source of labour, which makes them more vulnerable to fluctuations in the job market than permanently-employed workers and insists that they should be guaranteed the same job security as other national workers and migrants;
15. Believes that, to this end, it is essential to facilitate for the benefit of the frontier worker:
 - access to employment by means of institutionalized cooperation between employment agencies on both sides of the frontier,
 - access to continuing education or retraining courses in the country of employment or residence, at the discretion of the frontier worker,
 - the recognition of diplomas or certificates obtained from these courses;

16. Insists on the need to adapt professional training to the requirements of the main centres of economic activity in the inter-regions and the mutual recognition of professional certificates and diplomas and calls on the Commission to launch pilot projects in this field, following the example of the measures already taken in some European inter-regions both within and outside the Community;
17. Calls on the regional authorities in places where frontier workers are employed to ensure that the latter are informed of professional training possibilities at their place of work;
18. Stresses the importance of the teaching of the languages used in the inter-region to give workers every possible opportunity of professional and social advancement;
19. Believes that the action taken in this area by the Member States has been inadequate and calls on the Commission to promote new national initiatives;
20. Notes that the activities of temporary employment agencies, particularly in the frontier regions, are exposing workers to specific economic and social risks;
21. Calls on the Commission to submit without delay proposals aimed at granting any worker whose situation is that of a frontier worker recognition of the rights provided for by Community regulations;

(c) Unemployment

22. Urges the Commission to draw up proposals forthwith pursuant to its resolution¹ of 17 September 1981 on the creation of a European employment agency and, in the interests of frontier workers, to create opportunities for inter-regional cooperation between employment agencies in frontier areas;
23. Notes that frontier workers are more vulnerable in terms of job security than workers living in their country of employment;
24. Considers, moreover, that the present system of full unemployment insurance, to be paid entirely by the country of residence, frees the country of employment from the responsibility of attempting to maintain the jobs of frontier workers and, at the same time, provides no incentive for the country of employment to encourage frontier workers to take part in professional retraining or re-adaptation courses held on their territory;
25. Considers that this situation unfairly penalizes frontier workers, who pay national insurance contributions while working in the country of employment but are unable to obtain the benefits from them when they become unemployed;
26. Calls on the Commission to propose an amendment to Regulation No. 1408/71 enabling the unemployed frontier worker to receive benefits according to the provisions of the national law of the Member State of his choice, to be issued by the institution in his place of residence and paid for by the two States concerned, the country where he last worked and the country of residence;
27. Insists on the need for a Community definition of the concept of 'suitable work', as a logical consequence of the amendment called for;

¹ OJ N° C 260 of 12.10.1981

- d) Other aspects of social security
28. Considers that the provisions of Regulation N° 1408/71 on the whole provide an adequate basis for the application within the Community of social security schemes to Community frontier workers; points out, however, that in order to solve the problems relating to the free movement of workers in the Community, more extensive harmonization of the social security systems will be necessary irrespective of whether frontier workers, migrant workers or seasonal workers are involved;
 29. Points, however, to the need to standardize the system of paying family allowances to members of the family residing in a Member State other than the country of employment in order to ensure that the family allowances of the country of employment are paid irrespective of the Member State in which the worker is employed;
 30. Notes that, although contributing to the social security scheme of his country of employment, the frontier worker has to collect benefits which are paid by the social security scheme of his country of residence in accordance with its own criteria. The differences between the two national systems expose frontier workers to social risks and specific administrative difficulties;
 31. Calls on the Commission to make special efforts to simplify and speed up procedures through closer cooperation between the bodies responsible for processing dossiers and paying out benefits; in this connection, wishes to see the completion of the work on the exchange and utilization of the computerized data necessary in particular for pension settlements (old-age and invalidity);
 32. Considers, moreover, that, when the social security, sickness and maternity benefits provided by the scheme in the country of residence are inferior to those of the scheme to which the frontier worker belongs, he and his family should be entitled to a supplementary allowance bringing the benefits up to the level of those payable by the social security scheme to which he belongs and calls on the Commission to submit a proposal amending Regulation No. 1408/71 to this effect;
 33. Wishes to see the establishment of an old-age and invalidity pension system, in accordance with the case law of the European Court of Justice, granting without restriction to those concerned all the benefits to which they are entitled under national laws; calls on the Commission, with a view to setting up a 'European system for the compensation of pensions', to promote the idea that old-age and invalidity insurance benefits should be expressed in ECU to safeguard the purchasing power of the recipients, who are often severely affected by fluctuations in exchange rates;
 34. Calls on the Commission, in this Year of the Disabled, to submit the necessary proposals to achieve a common definition of the criteria for disability in the Community, to be based as far as possible on the criteria used in the most favourable legislation on the subject;

35. Reminds the Council of the urgency of adopting the Commission's proposal for a regulation amending, for the benefit of unemployed workers, Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons and their families moving within the Community¹, and stresses the great importance of this proposal for frontier workers who have been made unemployed or forced into pre-retirement in those regions which have been particularly affected by industrial restructuring;
36. Considers that, taking account of the disparity between national laws and in conformity with the principles and spirit of Regulation No. 1408/71, there is a need for closer cooperation between states by means of the bilateral conventions provided for in Article 8 of Regulation No. 1408/71, to remedy in particular the problems caused by:
- the influence of variations in exchange rates between the Member States on cash benefits, in anticipation of a final solution to the problem through the establishment of more stable exchange rates deriving from genuine economic convergence between the Member States of the Community,
 - the differences in the levels of social and family allowances between the country of employment and the country of residence;
37. Calls on the Commission and the Member States, with regard to migratory flows at the external frontiers of the Community, to foster the drawing up of bilateral agreements with the third countries concerned, ensuring as comprehensive a cover as possible for the various risks as well as the aggregation of periods of insurance, taking account of the standards of the ILO and the regulations in force in the Community and its Member States;
- (e) Taxation
38. Notes first of all that the present system for taxing the income of frontier workers is in many cases incompatible with the principle of the free movement of workers within the Community;
39. Expresses satisfaction at the initiative taken by the Commission with a view to harmonizing income taxation provisions relating to workers living in a country other than their country of employment, which mainly concerns frontier workers but also affects other non-resident employees, and the taxation of certain payments;
40. Shares the Commission's opinion that it is appropriate to reduce the differences that exist in the taxation of the employment income of resident and non-resident workers in the country of employment in order to ensure greater freedom of movement for workers, a fundamental objective of the Treaty;
41. Supports the principle of a Community definition of the frontier worker, a concept that has previously been defined very differently by the bilateral conventions drawn up between the Member States;

¹ Doc. 1-552/80 and resolution of the European Parliament of 19 December 1980 (OJ C 346 of 31 December 1980)

42. Considers that the Commission is justified in abandoning the former criterion of the frontier zone which is no longer consistent with present-day means of transport and the trends in the job market in the inter-regions;
43. Considers it illogical that one and the same person can be regarded as a frontier worker for the purposes of some provisions but not for the purposes of others, due to the introduction of the criterion of the frequency of passage at the frontier, which may provoke conflicts between tax-payers and tax authorities;
44. Calls on the Commission to define the frontier worker in an identical manner for the purposes of both taxation and social security legislation;
45. Approves the Commission's initiative in making the taxation of frontier workers in their country of residence a Community principle, insofar as income tax represents only a part of the whole tax charge, the remainder consisting of other direct and indirect taxes and parafiscal charges payable in the country of residence; notes that the Commission has provided for the possibility of a Member State levying a tax on income in the form of a withholding tax; considers that the Commission's proposed mechanism for rendering the size of this tax comparable to that which a frontier worker would have had to pay in his country of residence, ~~should prevent~~ frontier workers being subject to two advance taxation schemes on their wages and other earnings;
46. Commends to the Commission, the governments of the Member States and the responsible regional authorities the advantage of closer cooperation between tax authorities in frontier areas in applying this directive in order to
 - prevent tax evasion
 - possibly encourage the particularly interesting experiments currently in progress between two Member States and certain Swiss cantons;
47. Calls on the Member States concerned, when apportioning tax receipts and amounts refunded amongst themselves, to take account of the interests of cross-frontier regions, in particular, the communities in which frontier workers are domiciled, and to ensure that part of the net tax receipts is paid directly to the local authorities of the country of residence so that they can fund social, cultural and economic infrastructure measures, the financing of which is threatened because some of their residents work in another country;
48. Approves the Commission's proposal subject to the above reservations.

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The opinions of the Committee on Economic and Monetary Affairs are attached. The opinion of the Committee on Regional Policy and Regional Planning is to be included in Mrs Boot's report on trans-frontier cooperation.

The rapporteur will present the explanatory statement orally in the chamber.

Rapporteur : Mr W.J. HOPPER

On 21 February 1980 the Committee on Economic and Monetary Affairs appointed Mr W. J. HOPPER draftsman.

It considered the draft opinion at its meetings of 28 May and 15 July 1980 and adopted the opinion with five abstentions at the latter meeting.

Present: Mr Macario, acting chairman; Mr Deleau, vice-chairman; Mr Hopper, draftsman; Mr Balfour, Mr Beazley, Mr Beumer, Mr von Bismarck, Mr Bonaccini, Mr Brok (deputizing for Prince Sayn-Wittgenstein-Berleburg), Mr Carossino (deputizing for Mr Fernandez), Mr Delorozoy, Miss Forster, Mr de Goede, Mr Herman, Mr Leonardi, Mr Moreau, Mr Piquet, Mr Purvis (deputizing for Sir Brandon Rhys Williams), Mr Schinzel, Mr Schnitker and Mr von Wogau.

Introduction

1. The Commission's objective is, by means of changes to the Member States' income tax rules, to encourage the free movement of workers and the free exchange of services within the Community. Therefore, while the means fall within the purview of the Committee on Economic and Monetary Affairs, the objective falls partly within that of the Committee on Social Affairs; the latter is therefore the committee responsible.

2. The progressive nature of income taxes normally benefits those taxpayers who can apportion their incomes for purposes of taxation between several countries. The authorities are aware of this, and certain Member States have therefore introduced much simplified rules on the allowances that non-resident taxpayers may claim to arrive at their taxable income. To be taxed as a non-resident on part of one's income therefore has both advantages and disadvantages.

However, wage-earners normally have only one source of income; they are therefore frequently at a disadvantage in respect of allowances, without being able to reap much benefit from dividing up their income for taxation in more than one Member State.

The most important consequence of the Commission proposal (Article 6-8) is to oblige the Member States to guarantee non-resident workers the same deductions in respect of their taxable incomes as they grant to residents.

3. The Commission does, however, propose special provisions (Articles 4 and 5) for the taxation of non-resident workers returning daily to their country of residence ('the frontier workers', of whom there are 150-200,000 within the Community).

4. To encourage the free exchange of services, the Commission also proposes in Article 9 that any deduction from the base permitted by the Member States for certain payments (such as certain interest payments and insurance premiums) shall apply whether or not these payments are made to recipients within the country of taxation or not. This provision applies to all taxpayers, not just to wage earners.

5. Consideration should be given to whether the Commission's objectives could not be attained, wholly or in part, in some other way than by the issue of a directive, for example by means of a decision or a recommendation (see the definitions in Articles 189-191 of the EEC Treaty)

some points worth considering are listed below:

- a. Income tax rules for non-residents etc. are laid down in double taxation agreements. Being bilateral, these agreements differ from one pair of Member States to another.

Double taxation agreements normally lay down which country is entitled to collect tax from which forms of income (tax in country of residence or tax in country of employment) but rarely include rules on the calculation of the tax base.

- b. Is the Commission's proposal to be seen as a restriction of the Member States' right to determine their own fiscal policies?

This line of argument would amount to refusing to implement the EEC provision on migrant workers¹ in the context of social and employment policy, on the grounds that it would interfere with the Member States' right to formulate their own social and employment policies.

The Commission would reply that the present proposal is not an attempt to limit Member States' autonomy in respect of fiscal policy. It seeks, however, to remove those provisions in their fiscal legislation which amount to discrimination on the basis of nationality (Articles 4-5 in the Commission's proposal excepted).

- c. The proposal for a directive establishes principles, not details; it therefore differs from a 'recommendation' only in that a directive legally obliges the Member States to put into practice a decision they themselves voted for in the Council.

Ban on fiscal discrimination against non-resident workers

6. Leaving aside the question of frontier workers (see below), a common principle running through all the double taxation agreements concluded between Member States of the Community is that non-resident workers shall be taxed in the country of employment. The Commission's proposal in no way alters this.

It does, however, propose the adoption of Community rules, enjoining tax authorities not to treat resident workers more favourably than non-resident workers (see Articles 6-8 in the Commission's proposal); this subject is rarely covered by double taxation agreements.

¹Article 48(2) and (3) a:

- abolishes 'any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment',
- guarantees the right to 'stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;'

7. The Committee on Economic and Monetary Affairs agrees with the Commission on the desirability of encouraging the free movement of workers by abolishing fiscal discrimination between residents and non-residents. The three-year period of grace proposed by the Commission for the Member States to adopt legislation seems adequate.

8. The Commission's proposal does not in fact alter those cases where existing double taxation agreements provide for the taxation of certain types of income in the country of residence; at least one Member State normally applies the principle that pensions are taxed where the taxpayer lives. The Committee on Economic and Monetary Affairs agrees it is not appropriate to forbid this possibility.

9. On the other hand, it would be inappropriate to accommodate Member States wishing to use such exemptions to retain existing tax arrangements for non-resident workers which treat them less favourably than resident workers.

Frontier workers

10. While all existing bilateral double taxation agreements within the Community provide that non-resident workers are normally to be taxed in the country of employment, differing principles govern non-resident workers who live near the frontier in one country and travel to and fro across the frontier to work in another country.

11. For example:

- a. frontier workers working in Belgium are taxed
 - in the country of residence if they live in the Netherlands, Germany or France;
 - in Belgium, if they live in Luxembourg;
- b. frontier workers working in Germany are taxed
 - in their country of residence, if they live in Belgium or France;
 - in Germany, if they live in the Netherlands, Luxembourg or Denmark;
- c. Frontier workers working in France are taxed
 - in their country of residence, if they live in Belgium or Germany;
 - in France, if they live in Luxembourg or Italy.

12. The Commission proposes (Article 4 and 5)

- a common definition of 'frontier workers', the criterion being whether they return daily to their country of residence¹
- the common principle that frontier workers be taxed in the country of residence ; primarily because, in equity, they ought to pay direct and indirect taxes in the same Member State.

13. The Commission proposal will now be assessed in the light of the following questions:

- A. Is there any need for uniformity of tax arrangements in all frontier areas.
- B. Should frontier workers pay income tax in their country of residence or their country of employment.
- C. Will the free movement of workers be encouraged.
- D. changes in the pattern of revenue as between the Member States.

ad A: Uniformity?

14. Although the picture of the current state of affairs outlined in point 11 may seem confused, the situation is much clearer for an individual worker living in one country and seeking employment in another. He can obtain information about his tax position with relative ease.

The Community's greatest concern is to ensure that Member States do not, through their tax systems, artificially distort the movement of labour, and to achieve fair tax arrangements for frontier workers having regard to the various circumstances. A uniform system throughout the Community can only be a secondary consideration.

15. On the other hand the confusion would appear to be greatest in those parts of the Community where there are by far the largest number of frontier workers, i.e. Holland, Belgium, Luxembourg, Germany and France. The tax question would be clearer for both tax authorities and frontier workers if, after a transitional period, the countries involved applied more or less uniform principles.

The problems are far smaller in the more peripheral frontier regions: Denmark-Germany, France-Italy and Ireland-Northern Ireland, where frontier workers in each direction can be numbered in mere thousands.

¹ Existing double taxation agreements usually define frontier workers as persons employed in one country and living in a specific geographical frontier area in a second.

16. This leads to the conclusion that:

- while there may be a need for common principles in the central areas of the Community, these need not necessarily be applied in the more peripheral frontier regions, should local circumstances dictate the other solutions.

17. Although the Commission claims to have proposed a single common system, this is not in fact the case.

Article 4(2) allows the country of employment to charge income tax at source (to be refunded to the taxpayer by the tax authorities in his country of residence).

Thus, even if the Commission's proposal is accepted, different arrangements may exist side by side; in some cases - but not in others - withholding tax will have to be paid in the country of employment.

ad B: Taxation in the country of residence or the country of employment?

18. In its opinion of 24 January 1979 on the problems of frontier workers¹, the Economic and Social Committee does not say whether a joint system should be based on taxation in the country of residence or the country of employment, but this Committee gave considerable support to the criterion of residence.

The Commission adduces two reasons for its choice of the criterion of residence:

- frontier workers and their families are, in all essential respects, subject to the level of indirect taxation in their country of residence, and should therefore also be subject to direct taxation at the level prevailing in the same country;
- simplification of the tax position;

¹ OJ No. C 128, 21.5.1979

19. The Commission's first argument is the more relevant.

Example 1:

Two neighbouring countries have completely different tax structures; country A has relatively high indirect taxes and relatively low direct taxes; country B the reverse.

If income tax is paid in the country of employment, workers in both countries will tend to take employment in country A; the economic benefits for those living in country B may, however, be reduced or completely eliminated, depending, amongst other things, on the extent to which frontier workers lose their deductions from the tax base.

If income tax is paid in the country of residence, residents of country B will no longer have any tax incentive to seek employment in country A; residents in country A will no longer be discouraged for tax reasons from taking employment in country B.

Example 2:

Two neighbouring countries have roughly similar tax structures; especially where incomes are taxed in the country of employment, the rules on deductions from the tax base will weigh relatively heavier than in example 1.

Assuming that workers do not shift place of residence easily, the Commission's proposal to tax income in the country of residence may be assumed to be neutral; in general, it would remove any tax advantages or disadvantages arising from taking employment in neighbouring countries. In other words, it is removing an artificial distortion and allowing more scope for natural factors (job opportunities in frontier regions, etc.) to influence the flow of labour across borders.

20. But a transition from one system to another will affect the present situation, and the Commission in its proposal does not say whether in certain circumstances, regional and social policy reasons might not make it desirable to maintain an artificial distortion, especially where both countries are in agreement on the matter.

21. On the other hand the principle of taxation in the country of residence may encourage inhabitants of frontier areas to move to the country with the lower direct taxation; the result could, under certain circumstances, be a new 'distortion', but this time in respect of the choice of country of residence.

22. As for the Commission's second argument, namely that of simplification of the tax position, there are arguments for and against.

Undoubtedly the procedure by which the taxable base is assessed will be simplified whether the country of employment collects withholding taxes or not.

Complexities will nevertheless remain in the overall fiscal administration and may even be increased, if the country of employment collects withholding taxes. Although the Commission believes the tax-payer will have contact only with the fiscal administration in one Member State, the Committee on Economic and Monetary Affairs is convinced that this will not always be so; in any case, there would be an increased exchange of information among the fiscal administrations of the countries involved.

The simplification of the tax position from the cross-frontier worker's point of view will therefore often result in more administrative complexities from the point of view of the fiscal authorities.

23. The Commission is in fact in a dilemma.

The Treaty provides that there shall be no discrimination on grounds of nationality. This is generally interpreted as meaning that workers from the other Member States employed in any one Member State should be subject to the same tax regime and other conditions of employment as residents are. Articles 6-9 of the draft directive support this point of view for employed persons in general; however, the proposed rules for cross-frontier workers apply a totally opposed principle. Application of this opposed principle could lead to an extremely unfortunate psychological situation in the industrial country where the cross-frontier worker is employed. Where it was previously the cross-frontier worker, now it may be the resident who feels himself discriminated against. This is why the Commission permits the country of employment to levy a withholding tax.

This 'both-and' solution is not calculated to simplify administration.

24. If the provisions governing frontier workers and those governing non-resident workers in general are compared, we find another possible source of conflict.

The criterion for deciding whether taxation should be determined by the country of residence or the country of employment will be the frequency with which the border is crossed. From a legal point of view this would be an awkward criterion to work with.

25. As mentioned above, especially in points 21 and 24, the system offers the worker several choices (i.e. whether he changes his country of residence and how often he crosses the border), which might give rise to ambiguities and disputes between taxpayers and authorities.

The Commission therefore included a provision in its proposed directive concerning fraud and abuse (Article 10). However, its wording is very general; it leaves open the question which of the two tax authorities affected may decide the matter, and it does not specify the taxpayer's rights of appeal.

Clearly, in such a complicated system as the one under consideration, a provision on abuse must be put in general terms; the national tax authorities would be most unlikely to accept detailed instructions from the Community on this matter.

On the other hand, some provisions must be laid down to reflect the fact that, under this system, the taxpayer is in an even more difficult situation than is normally the case in his relations with the tax authorities. For he is subject to the decisions of two tax authorities, and the interests of these latter will not always coincide. Unless the provisions compel the tax authorities themselves to settle their differences, situations will arise which can only be solved by forcing the taxpayer to take the matter to court; he might thus in fact find himself tossed endlessly back and forth between the authorities of two Member States.

26. Nor is the distinction between abuse and non-abuse adequately clear, for which the vagueness of the Commission's objectives are partly to blame.

Example: A wage-earner decides, in view of the new criteria on residence, to move to a neighbouring country. According to the Commission's explanatory memorandum (Article 10), the tax authorities could then raise the question of abuse. But how is a court to decide such a case? The declared objective of the directive is to remove tax obstacles to the free movement of workers, while its provisions in this case would have the opposite effect.

ad C: Will the free movement of labour be encouraged?

27. It emerges from the foregoing (points 19 and 21) that the criterion of residence is more neutral than that of employment, in the sense that the former removes any tax advantages and disadvantages associated with taking employment in a neighbouring country. On the other hand there could arise some distortion in the choice of domicile.

The Commission proposal also tries to make the tax consequences of taking a job in a neighbouring country clearer, which in general must be assumed to encourage free movement.

28. The transition from the employment to the residence criterion may, however, not only affect the direction of flow of labour, but probably its quantity as well. How much this will be so depends not only on the importance of tax considerations in present conditions, but on a number of local conditions, including of course supply and demand on the labour market in the frontier area. The implications will therefore vary as between the different frontier regions in the Community. General conclusions are therefore limited in value.

29. However, it can be stated that the implications will not be particularly great at the borders between Belgium on the one hand and Germany, France or Holland on the other hand, and between France and Germany. Workers crossing these frontiers (about 80,000 in total) are already taxed in the country of residence.

The situation will be changed to a greater degree at the border between Germany and Holland (about 22,000 workers) and for the 12,000 French, Belgian and German frontier workers employed in Luxembourg who have hitherto been taxed in their country of employment.

30. The Commission's rather wider definition of the term 'frontier worker' than that normally found in double taxation agreements does, however, taken in isolation, constitute a step towards greater freedom of movement for workers.

ad D: Implications as regards revenue

31. Expenditure on infrastructure etc. directly or indirectly necessitated by frontier workers is incurred mainly by the country of residence. The Committee on Economic and Monetary Affairs feels that the country of residence has a moral claim to a substantial proportion of the income tax revenue from the frontier workers concerned, whether the tax is paid in the country of residence or the country of employment.

Another point is that receipts are normally allocated between the Member States via the central authorities. There is therefore no guarantee that tax collected in the country of employment and returned to the country of residence would benefit the region where the frontier worker in question actually lives.

Taxation of frontier workers in their country of residence would probably be the easiest way of ensuring a reasonable distribution of tax revenue between the Member States and the frontier regions.

32. Two factors in connection with the taxation of frontier workers will, according to the Commission's proposal, necessitate apportionment of revenues between Member States:

- tax on frontier workers to be based on the tax levels in the country of residence does not necessarily mean that tax revenue is to be reserved exclusively for the country of residence;
- tax may be collected at source by the country of employment, which is to be set off against income tax in the country of residence;

The Commission proposal contains only one provision on this point (Article 5), according to which Member States are to settle this question between themselves; in the absence of any agreement the said receipts shall continue to be apportioned in the same way as the apportionment which would result from the application of existing double taxation agreements.

33. The Commission is probably right to leave such apportionment to be decided by bilateral agreement, but it is hardly appropriate to leave the problem to be solved by existing double taxation agreements until such time as the new agreement is reached; that could make for negotiations on very unequal terms, as under the Commission's proposals some Member States could find themselves with substantial net expenditure in connection with frontier workers resident in their territory.

The directive should therefore not enter into force before the Member States have agreed on how apportionment is to take place.

Services, etc.

34. Article 9 of the proposal for a directive has to be seen in the light of the provisions in the Treaty concerning the freedom to provide services, and there is no direct connection with the rest of the proposal; it is to apply to all taxpayers, whether employees or self-employed, nationals or foreigners.

The reasoning behind this proposal is that where Member States' legislation provides that bank interest, insurance premiums, etc. may be deducted only if the recipient is situated in that Member State, competition is distorted in the common market for services. The Commission's proposal is thus a natural consequence of the objectives of the EEC Treaty.

35. However, the proposal will probably encounter some degree of resistance in the Member States; perhaps not so much from a desire to retain a competitive advantage for national enterprises providing services, but because the authorities there doubt the feasibility of carrying out normal checks.

Implementation of this proposal will therefore probably require more detailed provisions on companies' registration and their obligation to disclose information; Article 9(2) is not very detailed at all.

36. However, it should be pointed out that the Council has managed to agree on a directive concerning mutual assistance between tax authorities and that that directive could make an important contribution to resolving these administrative problems.

Adoption of the proposals currently under consideration for directives on banking and insurance would also make a significant contribution.

CONCLUSIONS

Non-resident workers in general

- (a) The principle of uniform treatment for resident and non-resident workers (see Articles 6-8) is right, and should be implemented by means of a Community directive; only then will workers be able to invoke this Community decision in the courts.
- (b) The Committee deplores the fact that the directive only concerns employees and not also the self-employed.

Frontier workers

- (c) Both taxation in the country of residence and taxation in the country of employment have their advantages and disadvantages; the Committee supports the long-term objective of taxing frontier workers in the country of residence, but emphasises that the most important argument against this principle is that it will be difficult to use the frequency with which non-resident workers cross the frontier as a criterion for deciding whether they should be taxed in the country of residence or in the country of employment.
- (d) The Commission admittedly proposes to apply uniform principles, but the fact that the country of employment may levy a withholding tax means that as a result of the Commission's proposal different systems will continue to exist in the different frontier regions.
- (e) Taxation is only one of the factors that has an effect on the frontier worker's economic situation; differences in the Member States' social security and pension arrangements for instance are likely to play quite as great a role as differences in taxation.
- (f) The Commission's arguments have not convinced the Committee that the same principles should be applied in all frontier regions of the Community; the Member States should maintain the possibility of influencing regional and social policy development in the different frontier regions through bilateral double taxation agreements; further the Committee doubts whether there is a need to lay down provisions in this connection in the form of a directive.
- (g) The Committee on Economic and Monetary Affairs therefore would prefer to delete Article 3(2) and Articles 4 and 5 in the draft directive and to amend Article 6 in such a way that this part of the directive also covers those cross-frontier workers who are taxed in the country of employment.

- (h) If the Commission insists on maintaining special provisions for cross-frontier workers in the form of a directive, it should:
- be left to the Member States to decide whether cross-frontier workers are to be taxed in the country of residence or in the country of employment;
 - Article 5 should include some joint guidelines on apportionment of revenues between the Member States;
 - the provisions on fraud and abuse (Article 10) must be made more specific (see points 25 and 26).

Deduction for certain payments

- (i) The Commission's proposal is a natural corollary to the objective of the EEC Treaty; it will help to suppress distortions of competition in the common market in the provision of services, not least in the insurance sector.
- (j) Article 9(2) is insufficiently detailed as regards companies' registration and their obligation to disclose information.

Letter from the President of the Commission to Mr Van Der GUN, chairman of the Committee on Social Affairs and Employment

Dear Mr Chairman,

At its meeting of 24 January 1980¹ the Committee on Economic and Monetary Affairs considered the motion for a resolution on the setting up of an ad hoc parliamentary committee 'on frontier regions and frontier workers' (Doc. 1-494/79).

One of the main objects of the Community is to remove obstacles to the free movement of persons, and in particular workers. The free movement of goods, services, persons and capital is one of the aims which the Committee on Economic and Monetary Affairs has always vigorously pursued. The EEC Treaty provides that freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest. However, some difficulties still remain, especially for frontier workers, and these difficulties lie behind the tabling of the motion for a resolution to which this opinion refers. The motion for a resolution is largely concerned with problems relating to social security and the need to resolve them, as laid down in Article 51 of the EEC Treaty. That aspect of the problem does not however fall within the terms of reference of the Committee on Economic and Monetary Affairs.

The motion for a resolution covers two matters which more properly come within the Committee's terms of reference, namely risks of fluctuations in exchange rates and risks of fiscal discrimination.

As regards fluctuations in exchange rates affecting frontier workers, only the creation of more stable exchange rates based on real economic convergence can correct this situation. Here again, the committee cannot overstress the importance of economic and monetary union. As for the risk of fiscal discrimination, double taxation is plainly unacceptable and as long as it continues the free movement of workers will not be achieved.

The Commission has a duty to take the initiative and make representations to the national authorities concerned with a view to removing any inconsistency between national laws which might result in a person being liable to double taxation or escaping taxation altogether in relation to income tax, vehicle road tax, etc.

Even though in the case of certain areas of taxation harmonization at Community level is not in question, the various national fiscal systems should be made consistent to exclude situations where a person may be liable to double taxation or may escape taxation altogether. Where necessary, the Council should assume responsibility and put an end to unacceptable situations of this sort by taking an early decision on a proposal from the Commission and after receiving the opinion of Parliament.

Please consider this letter as the opinion of the Committee on Economic and Monetary Affairs.

Yours sincerely,

(sgd) Jacques DELORS

¹ Present: Mr Delors, chairman; Mr Beazley (deputizing for Mr Balfour), Mr Beumer, Mr von Bismarck, Mr Bonaccini, Mr Damseaux, Mr Leonardi, Sir David Nicholson, Mr Petronio, Sir Brandon Rhys Williams, Prince Sayn-Wittgenstein-Berleburg Mr Schinzel and Mr von Wogau.

ANNEX

MOTION FOR A RESOLUTION (DOCUMENT 1-494/79/rev.)
tabled by Mr OEHLER, Mr SCHIELER, Mr DIDO',
Mrs VAYSSADE, Mr ALBERS, Mr JOSSELIN,
Mrs KROUWEL-VLAAM, Mr LINKOHR, Mr SARRE,
Mrs LIZIN, Mr PETERS, Mr PELIKAN, Mr SCHINZEL,
Mr WAGNER and Mr WOLTJER

on behalf of the Socialist Group

pursuant to Rule 25 of the Rules of Procedure

on an economic and social policy for the benefit of
frontier workers

The European Parliament

- anxious to see the harmonious development of frontier regions,
- concerned by the scale of one-way emigration at certain frontiers, reflecting the extent of economic and monetary imbalances between countries and neighbouring frontier regions,
- conscious of the possible risk to Europe if those structural and economic imbalances persist,
- considering that trans-frontier exchanges of labour are a positive factor insofar as they contribute to strengthening human, cultural, economic and political links between Member States,
- concerned, however, by the economic, social and legal situation of frontier workers which is a frequent source of discrimination and relegates them to the sidelines of professional, social and political life,
- mindful of the wish expressed on numerous occasions by these workers to see the European Institutions take up their problems,
- welcoming the Commission's initiative in making a comprehensive study of these problems (see Doc. XVI/221 78-FR 'Frontier workers of Europe') and the opinion of the ESC (see OJ No. C 128 of 21.5.1979),
- whereas the problem of frontier regions and workers cannot be resolved purely at national level and an overall policy should be pursued at regional, national, Community and even international level, necessarily entailing the drawing up of Community instruments one of which might be a European Statute for frontier workers

has decided to refer this motion for a resolution to the Committee on Social Affairs and Employment as the committee responsible and to ask the Committee on Economic and Monetary Affairs and the Committee on Regional Policy and Regional Planning for an opinion,

The aim of the report requested from the committee is to work out and submit to Parliament proposals to:

- promote a regional policy for coherent economic areas on either side of State frontiers, including measures to resolve the economic problems of frontier regions supplying labour as well as the development of trans-frontier relations between neighbouring regions,
- ensure better economic, social and legal protection for frontier workers:
 - by eliminating the specific economic risks which they encounter: as they do not enjoy as much job security as nationals in their country of employment, frontier workers must be protected from the tendency of employers to consider them as casual labour in the light of the economic situation. Although the unemployed represented slightly more than 5% of the working population in EEC countries in 1976, it is estimated that between 1974 and 1977 up to 20% of frontier workers were affected by unemployment. Because they vary so widely, the unemployment benefit schemes in the various countries often penalize frontier workers. Furthermore, these workers are the first to suffer from non-equivalence of diplomas and professional qualifications and find it difficult to gain access to initial and advanced professional training.
 - by eliminating the social risks specific to frontier workers: variations in the exchange rate of European currencies directly affect the purchasing power of the salaries and pensions and social security payments they receive. Even if there can be no hope of a radical solution to this problem, which goes to the root of the European monetary system, a Community mechanism must be sought which offers frontier workers guaranteed purchasing power. Furthermore, the differences between national social security systems (health insurance, maternity benefit, old age pensions) mean that the payments to which these workers are entitled form such a mixed bag that they often lose out as a result. The committee should therefore consider how useful and effective it would be to lay down general Community rules, e.g. that social security payments to frontier workers should be charged entirely to the country of employment on the grounds that the basis for such payments is the work performed.
 - by eliminating the risks of tax discrimination to which frontier workers are subject: the disparities which exist between national fiscal legislation and in particular between what is paid in direct and indirect taxation and even in the form of social security deductions may have an adverse effect on the fiscal status of the frontier worker. Without waiting for harmonization of European fiscal systems, we must make the measures already in force to prevent double taxation more effective. The committee should also say whether in its view, the

the criterion of the 'frontier region', which is a source of fiscal discrimination, should continue to be applied. At the same time the definition of a frontier worker should be standardized throughout the Community.

- give Parliament its opinion on the advisability of adopting a Community or international instrument (for example, through the Council of Europe) defining the status of the frontier worker.

