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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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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, Mrs 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.

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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;'