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REPORT

on the situation of frontier workers
(2000/2010(INI))

Committee on Employment and Social Affairs

Rapporteur: Ria G.H.C. Oomen-Ruijten

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PROCEDURAL PAGE

At the sitting of 21 January 2000 the President of Parliament announced that the Committee on Employment and Social Affairs had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on the situation of frontier workers and the Committee on Legal Affairs and the Internal Market had been asked for its opinion.

The Committee on Employment and Social Affairs appointed Ria G.H.C. Oomen-Ruijten rapporteur at its meeting of 1 February 2000.

The committee considered the draft report at its meetings of 11 September and 7 November 2000.

At the latter meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Winfried Menrad, acting chairman and vice-chairman; Marie-Thérèse Hermange, vice-chairman; Ria G.H.C. Oomen-Ruijten, rapporteur; Sylviane H. Ainaridi, Jan Andersson, Elspeth Attwooll (for Daniel G.L.E.G. Ducarme), María Antonia Avilés Perea, Regina Bastos, Philip Rodway Bushill-Matthews, Gunilla Carlsson (for Ilkka Suominen), Chantal Cauquil (for Arlette Laguiller), Luciano Emilio Caveri, Alejandro Cercas Alonso, Luigi Cocilovo, Proinsias De Rossa, Carlo Fatuzzo, Ilda Figueiredo, Hélène Flautre, Fiorella Ghilardotti, Marie-Hélène Gillig, Anne-Karin Glase, Roger Helmer (for James L.C. Provan), Richard Howitt (for Claude Moraes), Ian Stewart Hudghton, Stephen Hughes, Anne Elisabet Jensen (for Luciana Sbarbati), Karin Jöns, Ioannis Koukiadis, Jean Lambert, Elizabeth Lynne, Thomas Mann, Riitta Myller (for Harald Ettl), Mauro Nobilia, Manuel Pérez Álvarez, Guido Podestà, Bartho Pronk, Ulla Margrethe Sandbæk (for Jean-Louis Bernié), Herman Schmid, Miet Smet, Helle Thorning-Schmidt, Ieke van den Burg, Barbara Weiler and Teresa Zabell Lucas (for Tokia Saïfi).

The Committee on Legal Affairs and the Internal Market decided on 28 March 2000 not to deliver an opinion.

The report was tabled on 20 November 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the situation of frontier workers (2000/2010(INI))

The European Parliament,

- having regard to the EC Treaty, and in particular Articles 2, 10, 39, 40, 41, 42, 136, 137, 158 and 159 thereof,
- having regard to the many petitions that it has received on the problems of frontier workers, former frontier workers and those of their dependent partners and families,
- having regard to the recommendations of 18 March 1997 by the High Level Panel on free movement of workers and the subsequent action plan (COM(1997) 586),
- having regard to its resolutions and the recommendations contained therein
 - of 16 December 1988 on the problems of frontier workers in the Community¹,
 - of 9 February 1993 on living and working conditions in frontier regions²,
 - of 28 May 1998 on the situation of frontier workers in the European Union³,
- having regard to the proposal for a fundamental simplification and review of Regulation (EEC) 1408/71 (COM(1998) 779)⁴,
- recalling:
 - * the proposal for a regulation amending Regulation 1612/68 (COM(1998) 394)⁵;
 - * the proposal for a directive amending Directive 68/360/EEG (COM(1998) 394)⁶;
 - * the proposal for a decision establishing an Advisory Committee on freedom of movement and social security for Community workers (COM(1998) 394)⁷;
- recalling:
 - * the proposal for a Council regulation amending Regulation (EEC) 1408/71 as regards its extension to nationals of third-countries (COM(1997) 561)⁸;
 - * proposals on which the European Parliament has delivered a clear opinion and which, once adopted, require an adequate response from the Council;

¹ OJ C 12, 16.1.1989, p. 378.

² OJ C 72, 15.3.1993, p. 43.

³ OJ C 195, 22.6.1998, p. 49.

⁴ OJ C 38, 12.2.1999, p. 10.

⁵ OJ C 344, 12.11.1998, p. 9.

⁶ OJ C 344, 12.11.1998, p. 12.

⁷ OJ C 344, 12.11.1998, p. 16.

⁸ OJ C 6, 10.1.1998, p. 15.

- having regard to the many decisions of the European Court of Justice which all too often have had to reprimand Member States in respect of inconsistencies between national legislation and the European principle of free movement,
 - having regard to Rule 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A5-0338/2000),
- A. whereas there must be a social counterpart to monetary Union; whereas this has been acknowledged at the European summits in Lisbon and Feira,
 - B. whereas a coordinated European approach towards protecting persons making use of freedom of movement is of key importance for the proper functioning of the internal labour market,
 - C. whereas the single market cannot be said to be complete unless free movement of goods, services and capital is accompanied by free movement of persons,
 - D. whereas, in frontier regions in particular, the labour market benefits from the removal of obstacles to frontier work, thereby effectively promoting acceptance of a job in another Member State,
 - E. having regard to the fundamental principles based on the outlawing of discrimination on grounds of nationality and on equal treatment with national citizens,
 - F. whereas adequate rules on frontier work are of essential importance for healthy labour conditions and for preventing unfair competition,
 - G. whereas with the accession of new States to the European Union the number of frontier workers will increase,
 - H. whereas the existing European coordinating regulation, 1408/71, is no longer adequate because:
 - it coordinates social security in accordance with the principle of the country of employment. Fiscal aspects are not subject to European coordination and are regulated on a bilateral basis. More and more elements of national social security systems are becoming sourced from public funding, which results in greater uncertainty at the workplace and the creation of parafiscal charges whose status is not clear,
 - it always coordinates changes in national social security systems retrospectively. At the time when national legislation changes, the impact on the group is usually unknown; the legal implications and possible infringements of fundamental European principles are tested afterwards and solutions/compensation for the victims come when the damage has already been done;
 - there is no longer a clear distinction in Member States between social assistance and social security,
 - I. whereas the existing European coordination rules for health care and medical costs are inadequate:

- because of differences between public and private systems,
 - because after an active working life, benefits and options are restricted in accordance with the principle of the country of residence,
 - because dependent partners and/or family members are excluded from provisions and benefits in the country of employment,
- J. whereas the coordination rules are also inadequate with regard to social security and whereas they cause problems, for example:
- in the area of child benefit, care allowances and study grants for dependent family members;
 - with regard to the problems involving incapacity for work and unemployment, and in particular suitability for a labour market other than that in the country of residence;
 - with regard to day care for the elderly because of differences in the way systems are designed and contributions and differences in pensionable age;
 - because of the problems arising from inadequate coordination under Regulation 1408/71 of social security, social assistance and supplementary schemes;
- K. whereas the European Parliament has repeatedly stressed the need for a solution to these problems at Community level,
- L. whereas the Commission has made proposals for amending regulations 1408/71 and 1612/68 and directive 68/360/EEG, with the aim of simplification, modernisation, streamlining and adequately catering to the needs of workers from third countries,
- M. whereas there has been no progress in the Council with regard to these proposals; whereas it is very regrettable given the extent of the labour market problems occurring in frontier regions,
- N. whereas the consultants in the Member States operating within the Eures system have made an excellent contribution towards elucidating, and reporting on, the problems of cross-border working, and whereas thanks to their unremitting efforts they have contributed towards both general and individual solutions,
1. Regrets that the Commission, Council and Member States did not accept the recommendations made by the European Parliament in its resolution of 28 May 1998 concerning the situation of frontier workers in the European Union⁹,
 2. Calls on the Commission to draft a directive providing for the introduction of frontier effect reports. Such reports would oblige Member States, when changing their legislation on social security, taxation, employment, systems of provisions and benefits for health care, unemployment and incapacity to work, child allowances, study grants, pension systems and other social schemes, to study the impact on frontier workers; considers that this directive should also create a framework for a statutory compensation scheme based on the principle that if, after carrying out such a Europe test, a Member State amends social or fiscal legislation which is detrimental to frontier workers, it must compensate them for the resultant losses of income;

⁹ OJ C 195, 22.6.1998, p. 49.

3. Calls on the Council to take positive action with all possible expedition to adopt a position on the modernisation and simplification of Regulation 1408/71. Adequate coordination will be possible with the proposed extension of the scope and application of the target group, which received a positive response from Parliament at first reading. Solutions to many problems can be found through: 1) proposals to extend access by dependent family members of frontier workers, retired frontier workers and dependent members of their families to health care provisions and benefits in the country of residence and country of employment; 2) proposals for compensating and streamlining of agreements on early retirement and pension schemes; 3) proposals to improve the cross-border provision of labour and facilities for job applications for the unemployed;
4. Calls on the Commission, before the end of 2001, to organise an international conference for the Member States and applicant countries concerning the position of frontier workers and the consequences of the relevant present and future European legislation for them;
5. Calls for a study and an assessment with a view to inserting in Regulation 1408/71 the payment by a single State of pensions covered by agreements, with direct reimbursement of the appropriate percentages between the States concerned;
6. Calls on the Commission to take measures so that, in their bilateral taxation agreements, Member States regulate tax matters by analogy with Regulation 1408/71 (country of employment principle);
7. Calls on the Commission to take measures so that, in their bilateral taxation agreements, Member States regulate the period of secondment by analogy with Regulation 1408/71 (twelve months);
8. Calls on the Council and the Commission, pursuant to the Luxembourg process, to give thought to the extent and nature of frontier work;
9. Welcomes the new initiatives by social security agencies, which in the health sector, for example, have established cross-frontier services for frontier workers; calls on the Commission to support such initiatives and promote exchanges of experience and best practices;
10. Calls on the Council and the Commission to propose measures to remove obstacles to the mobility of stagiaires, students, volunteers and researchers;
11. Calls on the Commission to set up a system to monitor the implementation of measures to protect frontier workers, with special reference to areas where bilateral agreements with EFTA countries are in force;
12. Calls on the Commission to adopt a position as soon as possible on the consequences of the decisions of the European Court of Justice in the Kohl and Decker cases¹⁰ and related cases, now that it appears that residents of the Member States – including frontier workers – can under certain circumstances benefit from health provisions in other Member States.

¹⁰ Cases C-159/96 and C-120/95 respectively.

13. Instructs its President to forward this resolution to the Council and Commission.

EXPLANATORY STATEMENT

Introduction

The number of frontier workers is small as a percentage of the total working population.

The number is estimated at ca. 20 000, or about 0.3 %. However, the problems they face in exercising the right of free movement are well worth consideration.

To quote a few figures from a report which appeared in 1999¹¹: 91% of frontier workers are employed in 7 countries: Switzerland (164 905), Germany (93 107), Luxembourg (55 780), Monaco (21 535), Belgium (19 122), the Netherlands (17 634) and France (8 679). 39.4 % of all frontier workers work in Switzerland and almost half of all frontier workers live in France, working mainly in Switzerland, Germany, Luxembourg and Monaco. Almost half of all frontier workers work in non-EU Member States.

With the prospect of enlargement, the number of frontier workers will further increase in the next few years, which is all the more reason for resolving the problems of frontier work in advance.

The problems of frontier workers have been a matter of concern for Parliament for some time. Regardless of their political affiliations, the directly elected representatives of the people of Europe have been united in seeking, in collaboration with their colleagues from the frontier regions represented in the national parliaments, a solution to frontier problems.

In drafting this report I have drawn on the comments and experience of fellow parliamentarians from all over Europe who have spontaneously responded to my request to help with this report. What is apparent is that in addition to colleagues who have been working on this issue for a long time, there has been considerable input from new members seeking solutions.

In addition to this help I have also built on previous reports. I would refer to Mrs Van Lancker's report in 1998 and the Brok-Fayot report of 1993¹² which included an amendment by the present rapporteur calling for frontier effect reports.

The amendments to the recent Rocard own-initiative report¹³ on health care tabled by Ieke van den Burg and Bartho Pronk on access to facilities for frontier workers, ex frontier workers and members of their families, have been included in this report.

It is inconceivable to people experiencing Europe on an everyday basis – because they live in one country and work in another – that we are incapable of finding a solution to the problems involved. Despite the facts that the treaties of Maastricht and Amsterdam have brought improvements in the social fields, this is not apparent to frontier workers.

¹¹ Subtitle V. , "L'integration europeenne et les travailleurs frontaliers de l'Europe occidentale", Paris, 1999.

¹² OJ C 72, p. 43.

¹³ PE 286.239

The internal market, of which the free movement of workers is a cornerstone, is an absolute farce in the daily lives of these people. Fortunately, in the Treaty of Amsterdam the scope for tackling the Council at a European level to achieve improvements for frontier workers has improved.

The fact that no results have been achieved is by no means the fault of the Commission, As initiator, partner of Parliament and guardian of the Treaties, the Commission has consistently submitted improvements to legislation.

The European Court of Justice has also consistently supported frontier workers: many obstacles to freedom of movement of persons have been removed thanks to resolute decisions.

The European Parliament, as the representative of the people, including those in frontier areas, has always been an advocate of the free movement of persons.

The Social Council has been the blocking factor. Members of the European Parliament see it as their task to convince the Council, by force of argument, and to bring about improvements in the position of frontier workers.

The rapporteur would like to extend her special thanks to the many colleagues who have contributed to what is necessarily a compact report.