

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(85) 529 final

Brussels, 15 October 1985

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL,
PARLIAMENT AND THE MEMBER STATES
PEOPLE LIVING IN FRONTIER AREAS

COM(85) 529 final

COMMISSION COMMUNICATION TO THE COUNCIL ON
PEOPLE LIVING IN FRONTIER AREAS

1. In its first report issued in March 1985, the ad hoc Committee on a People's Europe (Adonnino Committee) set up in the wake of the Fontainebleau European Council raised a number of questions concerning frontiers and travel and more generally the problems caused by the existence of frontiers.

Taking account of the guidelines adopted by the European Council on 28/29 March 1985, which approved the Committee's report, this communication deals with the problems facing people living near a frontier, particularly those who frequently cross the frontier because of their jobs or for other reasons, such as the attraction of a neighbouring town or city.

The aim of this communication is to give a concise picture of the problems experienced by frontier dwellers in the European Community and outline the Commission's position on possible measures to make their lives easier. This involves both Commission proposals on the subject and views on ways of making life easier for people faced with the many physical, regulatory or administrative barriers thrown up by a frontier.

2. A frontier does not just mark the geographical limits of the territory of a State, it has become symbolic of the autonomy of the many powers which supervise, direct and organize a complex modern society. Accordingly, the exponential development of provisions adopted under social or tax laws in autonomous legal systems makes it more difficult to align or approximate such systems. This problem is a general one throughout the European Community, but has most impact on people who feel that they are physically at the junction of different regulatory systems which often have the same objectives (e.g. social protection), but are based on terms of reference which are totally alien.

This accounts for most of the problems encountered by people in frontier areas. They live in a coherent geographical, social or linguistic environment but are confronted daily with different laws and regulations. Measures adopted under bilateral agreements or recommended at Community level may attempt to limit these disadvantages; they will not be able to eliminate the incompatibilities or inconsistencies arising from the lack of a European Union.

3. The time spent on problems of frontiers and the people living near them in the European Parliament shows that they have become a symbol of the difficulties hindering the construction of Europe.¹

Frontier dwellers and the special problems that they encounter are pointers to the difficulties facing European integration in many areas: freedom of movement, free access to occupations, free movement of persons, goods and capital, harmonization of tax provisions, cohesion of social policies are questions raised every time public opinion or the European Parliament challenges the Commission or the Council of the European Communities to account for the lack of progress towards European integration which is affecting people living in frontier areas.

4. The slow pace of the construction of Europe is not the only cause of the difficulties. To start with, the problem of frontier dwellers goes beyond the Community framework and forms part of the relations between the Community or the Member States and non-member countries. The Communities (whether of Ten or Twelve) do not cover all frontier questions.

¹Of the hundred or so written parliamentary questions to the Commission and Council on frontier problems and the many oral questions to the Commission which have been dealt with since 1979, the vast majority relate to frontier checks: nature of the documents required and of the formalities, delays, customs checks on persons, police checks. Some ten questions refer explicitly to people living in frontier areas.

The French-Swiss, Italian-Swiss or German-Austrian frontier areas are, then, areas of intensive movement where a considerable number of frontier workers live. Similarly, the enlargement of the Community shows up the special problem of people who live on either side of the Pyrenees, whose freedom of movement is not covered for all that by the special measures during the transitional period.

Then again, even in frontier areas within the Community, the existing or proposed measures, particularly in the field of harmonization of tax or social policies, do not provide a solution to all the problems experienced by frontier dwellers. A number of these are matters for bilateral agreements or conventions, or could often be resolved through better coordination between the respective authorities.

5. The approach to transfrontier questions must be multidimensional, both as regards responsibilities and the questions dealt with. It is, for example, useless to attempt detailed regulation of the method of imposing income tax on frontier workers if there are still restrictions on the transfer of incomes arising from controls on capital movements.

Similarly, any attempt to tackle problems of concern to people living in frontier areas cannot be restricted to those affecting frontier workers. From the point of view of a People's Europe, anyone affected by the existence of a frontier is a subject of interest. Consideration should be given to consumers as well as producers. In this connection, the recent survey by the BEUC¹ shows how much the public is concerned by the fact that prices for the same product vary from one country to another; this question is certainly of great interest to people in frontier areas. Moreover, some movements of people in frontier areas are connected with tourist, social or cultural activities which should be encouraged, since the establishment of European Union goes beyond the idea of an economic community.

¹European Bureau of Consumers Unions.

6. Finally, the interest in frontier dwellers is not unrelated to the feeling of belonging to a regional community, a phenomenon which has grown everywhere in Europe in recent years and has found expression in a large number of studies and conferences, the increased importance of regions as political, administrative or territorial development units, or even, in the present context, the establishment on a formal or informal basis of transfrontier regional structures.¹ The problems of frontier dwellers are now considered in the framework of regional policy as applied to frontier regions and their economic development. In particular this shows the need to give consideration to the conditions specific to each region and its inhabitants, rather than simply observing the general principles of the free movement of persons and goods.

7. If the regional concept comes into play, the definition of what is meant by people living in frontier areas becomes much wider.

A narrow view of the problem of frontier dwellers limits the definition to frontier workers, i.e. any "worker who, whilst residing in the territory of a Member State to which he normally returns every day or at least once a week, is employed in the territory of another Member State". This definition may or may not be accompanied by an indication of the geographical area taken into consideration for the purposes of place of residence. The Commission has given definitions of what it means by frontier workers for the purposes of social protection on the one hand and taxation on the other.

¹Cf. in this connection the objectives of and actions undertaken by EUREGIO (Association for cross-frontier cooperation between communities in Germany and the Netherlands).

According to the most reliable estimates, since employment statistics are lacking or are no longer available, the number of frontier workers in the Community is around 250 000.¹ The figures date from 1975, but there do not seem to have been any significant changes; the crisis has not affected this number, in fact the opposite is true since the more precarious position of frontier workers from the point of view of social protection acts in their favour. These figures include nationals of Member States working outside the Community, mainly in Switzerland.

8. On the other hand, one may take the wider view that the 'frontier population' includes all those living in frontier regions. Disregarding problems of definition (e.g. what is a frontier region?), the number of people living in frontier regions within the Community of Twelve may be put at 48 million, or 15% of the total population of the Community (38 million, or 13.4% in the Community of Ten).

The density of the population in question varies considerably from fewer than 40 inhabitants per square kilometre in the Alpes de Haute-Provence or the Val d'Aosta to more than 500 in the province of Antwerp or the Aachen region. France is the only country where the population density in most frontier regions is higher than in the country as a whole.

The concept of 'frontier region' goes far beyond that of frontier "strip" or "zone" adopted inter alia in Community rules on duty-free allowances and international travel.² In that case the frontier zone is, according to a recent judgment by the Court of Justice, a series of circles having a radius

¹ Ch. Ricq, op. cit., and report presented by Ch. Ricq to the third European Conference on European regions, Borken, September 1984.

² Directive 69/169/EEC as amended by, among others, Directive 72/230/EEC (Art. 5).

of 15 kilometres¹ with their centres at the customs crossings. There are no figures on the population in question, but it must be several million.

9. It is therefore difficult to arrive at a single definition of the frontier area population. The people involved may be frontier workers in the strict sense, or workers and members of their families such is the extent to which family status gives rise to special social or tax conditions; they may be people living in the frontier zone in the sense of the Community definition for tax purposes, or the zone in which the various authorities are empowered to carry out checks.² They may also be the inhabitants of a region close to a frontier.

10. For each of these categories there are specific problems which should not be dealt with in a general way. At one end of the scale, frontier workers are faced with a number of problems which could be dealt with by the Community, or through bilateral conventions or administration arrangements. At the other end - the inhabitants of frontier regions in the broadest sense - the solutions to be found broadly concern the general problem of making it easier to cross frontiers.

The suggestions made below take account of this difference. The stress is laid on finding a solution to the problems of frontier workers, but the more general aspect of the situation of frontier dwellers cannot be overlooked.

¹Case 54/84 [Michael Paul v Hauptzollamt Emmerich] of 21 March 1985.

²According to the administrative practice of certain Member States.

11. Employment and social security are the areas which command most attention when problems facing frontier workers are raised.

The phenomenon of frontier workers is sufficiently widespread in the Community for their problems and demands to be the concern of regional, national, or international bodies. Moreover, the European Trade Union Confederation (ETUC) has set out its position on this matter.¹

Observing that frontier workers may be subject to different rules depending on international agreements, Community regulations (e.g. on social security or freedom of movement), multilateral rules (Benelux), bilateral or regional agreements or national laws, the ETUC feels that their precarious and special circumstances deserve particular attention and require solutions specifically adapted to their situation which may vary from one case to another.

A recent topic for discussion was the need to establish a special European status for frontier workers. This idea lay behind a number of initiatives, both at national and Community level,² but although discussed on occasion by the European Trade Union Confederation or the Economic or Social Committee it has little chance of being adopted. A single special status does not in fact appear to be the best way of responding to a wide range of situations. Moreover, introducing a special status would go against the objective of harmonizing the working conditions of all workers within an overall framework. Finally, in spite of calls by trade unions at local level, their national confederations do not appear to be in favour of the idea of according special status to workers whose situation is still marginal.

¹ Cf. ETUC memorandum "Frontier workers in Europe. Problems and demands".

² Executive Committee of the ETUC - 12 June 1981 - Geneva.

See report by Mr J. Oehler to the European Parliament in 1981, doc. PE 77.685.

Moreover, at Community level, the granting of special status could go against the general principle of freedom of movement for workers which underlies efforts to harmonize social or tax legislation.

It is therefore recommended that no support be given to the idea of creating a special status for frontier workers at European level.

12. This underlines the importance of the application of Community law:

- as regards freedom of movement, frontier workers - like any other Community nationals - benefit from the application of principles which prohibit discrimination on grounds of nationality, particularly as regards access to jobs. This principle is specifically embodied in Article 7(2) of Regulation 1612/68 as far as frontier workers are concerned.¹
- as regards social security, the regulations apply in full to frontier workers (employees or self-employed) and members of their families (Regulations 1408/71² and 574/72³).

Moreover, special rules apply in respect of sickness insurance (benefits in kind) and unemployment insurance.

Article 20 of Regulation (EEC) No 1408/71 lays down that a frontier worker may obtain benefits in kind under sickness insurance in both the country in which he works and his country of residence. The same applies for members of his family if an agreement has been concluded to this effect between the competent authorities of the two Member States in question.

Article 71 of the same Regulation lays down that a frontier worker who is wholly unemployed may receive unemployment benefits in the Member State in which he resides (contrary to the general rule which provides for entitlement to benefits in the country of employment), as if he had last been employed there.⁴

¹ Council Regulation of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, 19.10.1968, p. 2).

² Council Regulation of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 149, 5.7.1971, p. 2).

³ Council Regulation of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 (OJ L 74, 27.3.1972, p. 1).

⁴ This provision is the subject of a reference for a preliminary ruling currently before the Court of Justice (Case 1/85 *Miethe*).

13. In addition to ensuring compliance with Community legislation on employment and social security, the Commission is planning to play an active role in limiting the inconveniences faced by the transfrontier labour force, the members of which are especially vulnerable to changes in the economic situation and are as a general rule poorly trained.

Access to information and training in the transfrontier employment areas is, then, vital. Placement services, training and retraining bodies, mobility aids or the contractual obligations of undertakings, particularly following restructuring, are effective in the territory of the State in question and in practice benefit nationals only, having regard to the administrative organization system (approaches, forms, processing of files and centralized authorizations). None of these bodies pays much attention to the special circumstances of frontier workers, in spite of the existence of Community rules or bilateral conventions.

In this connection, mention should be made of the Commission initiative, following a seminar held in Brussels in March 1985, aimed at organizing a transfrontier dialogue between the employment services, most of whom know nothing about their counterparts, and enabling them to gradually establish long-term cooperation. To this end, in 1985 the Commission financed 150 exchanges lasting five working days for 300 employees of frontier placement services. A network of 68 joint teams of employees of different nationalities will be set up in ten frontier areas, which could cooperate on a decentralized basis with a view to gradually establishing frontier employment services. The specific repercussions of this could include the organization of integrated information systems on employment in the transfrontier regions in question, making use of computers in particular, and also the establishment of joint technical or vocational training programmes.

In the Commission's view, it is necessary to develop measures of this kind aimed at financing the organization of exchanges of employment service staff between the Member States and communicating the results of such contacts and initiatives to the frontier workers in question.

14. Access to education and vocational training institutions is another important aspect for frontier dwellers.

For geographical, cultural or occupational reasons, it may be advantageous to attend a school or university or undergo vocational training on the other side of the frontier.

The Commission feels that making access to educational establishments and vocational training institutions in frontier regions easier for frontier dwellers may serve as an example and as such provide an impetus for the building of a People's Europe.

15. The precarious or seasonal nature of certain jobs in frontier areas has provided the opportunity for a number of temporary employment agencies to operate on this specific job market.

The activities of these agencies cannot be banned, as the European Trade Union Confederation wishes, since it is very often they who organize transport, recruit labour and find jobs. Nevertheless, it is for the Commission and particularly national employment inspectorates to monitor their activities closely to ensure that the rules on conditions of recruitment, social security, employment guarantees and the payment of wages are observed. Here too workers must be given more information on their rights. Such information could be provided at Community level (cf. below, point 17).

16. The problem of the taxation of frontier workers has been the subject of many bilateral agreements between Member States or with non-member countries aimed at abolishing double taxation. Two principles, with the corresponding advantages and disadvantages, may be considered. As regards income tax, a frontier worker may be taxed at his place of work, i.e. in the country in which the activity is carried out, as is the case with non-resident workers, or at his place of residence.

At present, the two systems exist side by side for frontier workers within the Community; in both cases they encounter problems because of the way in which taxes are imposed: problems of aggregation of incomes, business or family-related deductions, and personal or family status are difficult to take into consideration.

The Commission opted for the system of taxation on the basis of residence in a 1979 proposal for a Directive,¹ mainly for reasons of simplicity, balance between direct and indirect taxation and fairness in the light of the situation of other non-residents and the personal situation of the taxpayer.

Although different in nature, the debate on the question of the refund of part of the tax paid in some cases further complicates the decision-making process.

Although there is a need in the long term to opt for a coherent system as part of the harmonization of tax arrangements, the present lack of progress cannot, however, be allowed to slow down efforts to eliminate the distortions in taxation penalizing frontier workers. In this connection, it would also be useful to ensure that frontier workers are better informed of their rights and obligations in tax matters. The provision of such information could result from cooperation between the tax authorities, organized by the Commission, on the lines of what is done in the field of employment. In addition, tax problems specific to frontier undertakings are far from being resolved. Apart from the fact that under the 17th VAT Directive, adopted by the Council on 16 July 1985 (OJ No L 192, 24.7.1985, p. 20), temporary importation exemption is granted subject to a security requirement in respect of VAT payment, Article 22 of the same Directive restricts the specific exemption for border zones to public authority works.

17. The lack of monetary union, the maintenance of certain exchange controls and the partitioning of capital markets give rise to problems for non-resident workers, particularly frontier workers.

¹ Proposal for a Council Directive concerning the harmonization of income taxation provisions with respect to freedom of movement for workers within the Community (COM(79)737 final).

under Community law, transfers of incomes of frontier workers to their country of residence are indeed completely unrestricted in the same way as any other transfer relating to current payments. However, the use of such incomes in the country of employment may be restricted to current expenditure and to those capital transactions which have been liberalized at Community level. Even disregarding the restrictions on capital movements that some member countries are allowed to maintain temporarily under their Treaty of Accession or because they have balance of payments difficulties, it is clear that without a common internal and external monetary policy at Community level, there is no reasonable prospect in the short term of full freedom for most capital movements. Consequently, in a number of Member States, the national authorities may subject the use of residents' income abroad to authorization and control formalities to check whether unauthorized capital movements are involved.

For frontier workers in particular, the main consequence in this respect is the obligation to repatriate their income to their country of residence and, where necessary, apply for authorization to re-export funds needed to cover their current or capital expenditure. Admittedly, in member countries with exchange controls there are normally special provisions in favour of frontier workers. For example, in Italy and France frontier workers may deposit, in a current account in a bank in their country of employment, a proportion of their income which is considered reasonable to meet current expenditure. In the Belgo-Luxembourg Union where frontier workers' incomes normally have to be repatriated on the official market, a special agreement with the Netherlands allows the workers concerned to hold or carry away their incomes in banknotes. It is nonetheless true that action is recommended at Community level to simplify as far as possible the authorization and control formalities applicable to transfers of frontier workers' incomes or deposits of funds by them in bank accounts opened at their place of employment. On this last

point, following the example of the Commission's recommendations in the field of tourism and travel for other purposes, harmonized thresholds should no doubt be established for the deposit of funds below which no formalities would be required. The Commission is planning to make proposals or recommendations in this connection.

On a bilateral basis, workers have sometimes been granted compensatory measures in the event of negative fluctuations in exchange rates, either through payments made by the employer or a system of compensation, as is the case with France and Belgium, which since 1969 have applied a system of compensatory allowances fixed on an annual basis to take account of parity fluctuations.

The effects of parity fluctuations have also been examined by the Advisory Committee on Social Security for Migrant Workers following a number of questions on this matter in the European Parliament.¹ It appears from this work that it would not be advisable to contemplate setting up an equalization system to correct monetary fluctuations which could affect social benefits, particularly migrant workers' pensions. In fact, in the long term, the mechanisms for adapting pensions to the levels of prices and wages correct, at least in part, any exchange losses. Moreover, it would only be fair that the equalization system should also operate where exchange rate gains are made.

The idea of an equalization fund (or common pensions fund) has moreover been rejected, not only on grounds of the complexity of such a system at Community level but also because a system of this kind would only be conceivable if standardized - or at least harmonized - social security schemes were established.

This is not the case with Regulation No 1408/71, which merely coordinates non-harmonized national laws. As a result, benefits due to migrant workers - even though determined by virtue of Community legislation - continue to be

¹ Cf. note from the Secretariat of the Advisory Committee on Social Security for Migrant Workers SS/TM 5/83 of 27 January 1983.

benefits payable under the national laws of the Member States in question and are governed by those laws as regards arrangements concerning the national currencies in which the amount of the benefit is calculated. The entire system set out in Regulations Nos 1408/71 and 574/72 is based on this idea (cf Regulation (EEC) No 1408/71, Article 51). This would no longer be the case under the system put forward. The amount of benefits granted to migrant workers would no longer be that obtained by applying the provisions of the national laws under which they are granted, but that amount after equalization adjustment applied by the "common pensions fund". This outcome is scarcely compatible with the present system applied under Regulation (EEC) No 1408/71.

The negative effects of exchange rate variations can only be brought under permanent control if greater monetary stability is achieved. The introduction of equalization or compensation systems, although they may appear justified, does not contribute towards this goal.

The Commission therefore considers it inadvisable to support the idea of introducing systems to compensate for the effects of monetary fluctuations on the incomes and social benefits of frontier workers.

18. Generally speaking, frontier workers are faced with complex social, tax and financial provisions. Apart from the general aim of simplifying the administrative formalities to which they in particular are subject, often under systems which are alien to them, more information on rights, obligations and formalities would be highly desirable.

For the provision of this information special efforts will be required from various quarters and particularly local, regional and national authorities, trade union organizations and the Commission.

A useful model here might be the 1984 Benelux operation, which produced "information brochures for the use of frontier workers in the Benelux countries". These brochures have been a great success not only with frontier workers but also with the employees of the national authorities in question. They provide a great deal of practical information, particularly on tax and social matters. In view of the success of the operation, the Benelux countries are planning to update the brochures and improve them annually.

Consideration should be given at Community level to the possibility of publishing similar brochures for each area of transfrontier movement. The Commission supports the idea that some of the problems of frontier dwellers could be resolved by a regional approach, involving multidisciplinary cooperation between the national and local authorities concerned.

19. As stated above, an overall approach to the problem of frontier dwellers cannot be restricted to questions relating to the activity or status of frontier workers.

The problems of Community nationals living in the special areas on the borders of the Member States should be tackled in the framework of the regional policy.

The Commission, which feels that it should help to finance such an operation, will also ensure that each of the specific publications produced with the aid of the competent national authorities is consistent with the others.

With this in view, in October 1981 the Commission sent a recommendation to the Member States on transfrontier coordination for regional development, which calls on Member States to draw up common regional development programmes for regions having a common frontier.¹ Moreover, the new Regulation on the European Regional Development Fund stipulates that Member States must endeavour to pursue, within the framework of their bilateral relations and without prejudice to Articles 92, 93 and 94 of the Treaty, transfrontier coordination of regional development by the means and at the levels which they jointly consider appropriate, and in this context to support cooperation between the regional and local bodies involved.²

In pursuit of this goal, the Commission lends its support to the formulation of transfrontier development programmes by financing studies on the problems raised and the solutions to be applied.

Mention should be made of the Commission's support for the Ems-Dollart transfrontier programme along the northern frontier between the Netherlands and the Federal Republic of Germany.

A second programme is now being drawn up for the Meuse-Rhine region along the borders between the Netherlands, Belgium and the Federal Republic of Germany. A third programme is being prepared in the Twente-Oostgelderland/Westmünsterland/Grafschaft Bentheim ("Euregio"), another Dutch/German cross transfrontier region already referred to in point 6 above.

The Commission has every reason to believe that the results of this cooperation will be positive and will encourage other regions, along the borders of other Member States, to follow their example.

¹ Commission Recommendation of 9 October 1981 on transfrontier coordination for regional development (OJ L 321, 10.11.1981, p. 27).

² Article 1(3) of Council Regulation (EEC) No 1787/84 of 19 June 1984 on the European Regional Development Fund (OJ L 169, 28.6.1984, p. 1).

The Commission plans to pursue this policy by supporting studies into and the implementation of transfrontier regional development programmes.

20. The Commission does not propose to recommend that transfrontier regions should be linked by means of a standard type of common inter-regional body. It feels that initiatives which, on the lines of "Euregio", are being taken in various frontier regions in the Community are more suited to the specific circumstances of those regions than any preestablished institutional structure.

Mention should be made in this connection of the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities, which was opened for signature on 29 May 1980 by the Council of Europe. This convention has already been signed and/or ratified by eight of the ten Member States. Only Greece and the United Kingdom have not done so.

This convention provides an appropriate framework and gives examples of forms of cooperation between the States and/or local communities concerned. Its aim is to show, in a flexible way, how territorial communities are empowered to cooperate, within certain limits, beyond frontiers and encourages such cooperation, particularly in the areas of civil protection, medical assistance, education, transport and simplified customs formalities.

21. Very often the special problems facing frontier dwellers can be solved in a bilateral and decentralized framework.

Admittedly, the implementation of Community solutions is preferable from the point of view of both the principle involved and ultimate effectiveness. The establishment of complete freedom of movement for goods and persons would solve most of the problems faced by frontier dwellers. Even in the short term, progress towards the simplification of frontier checks or the effective recognition of diplomas, for example, would meet the demands most often

expressed by frontier dwellers or by the organizations representing them.¹ The establishment of a People's Europe would resolve most of the problems of frontier dwellers.

While pursuing this objective, however, a number of specific measures may be suggested by the Commission, aimed at resolving particular problems pending overall Community solutions. In most of the cases mentioned below, the measures involved, including administrative arrangements, could result from bilateral agreements between Member States, or between subordinate powers.

Possible measures include the following:

- Where the local situation requires it, particularly at the Community's external frontiers, the passage of frontier traffic should be made easier through the creation of special traffic lanes, on the lines of the Franco-Swiss frontier crossings in the Geneva area. Cooperation between the customs authorities to regulate the question of opening times of frontier posts and special measures for frontier traffic.
- Cooperation in the organization of public transport (rail and bus) including the organization of services, timetables and arrangements for buying tickets. Organization of special meetings for those responsible for local and international transport to inform them of the practical details of such collaboration.
- Cooperation in matters of health care, as regards access to medical or hospital treatment and insurance cover, administrative formalities, reimbursements and control procedures.

¹ cf. In this connection the ETUC Memorandum 1981 (op. cit), the opinions issued by Euregio and the Association of European Border Regions (ARFE-AGEG), and the resolutions of the Conference of Local and Regional Authorities of Europe (CPLRE).

More specifically, it would be useful to regulate questions relating to the transport of accident victims and the sick and emergency medical assistance in the event of serious accidents or disasters.

- Organization of cooperation in civil protection matters, in the fields of prevention, the coordination of assistance in the event of accidents or disasters and the unhindered passage of emergency services and their equipment.¹
- Easy access for frontier dwellers to general and vocational training on a non-discriminatory basis as part of the search for pragmatic solutions.
- Introduction of procedures for consulting people on the other side of frontiers on matters connected with regional development and the construction of installations which could affect the environment. This corresponds to the direction taken by the Community, particularly in Directives 80/68/EEC² (groundwater), 82/501/EEC³ (accident risks) and 84/360/EEC⁴ (air pollution).

¹ Cf. in this connection the results of the informal meeting of Ministers responsible for civil protection held on 2 and 3 May 1985, particularly as regards the procedures for action and mutual assistance in the event of accidents or disasters affecting frontier areas.

² OJ L 20, 26.1.1980, p. 43.

³ OJ L 230, 5.8.1982, p. 1.

⁴ OJ L 188, 16.7.1984, p. 20.

22. Conclusions

- 22.1 Many of the problems faced by frontier dwellers would be largely overcome by the establishment of a genuine uniform internal market and monetary union and by substantial progress towards a People's Europe.
- 22.2 Care should be taken to avoid creating fresh obstacles by attempting to resolve specific problems. The Commission recommends:
- not creating a special status for frontier workers (para. 11);
 - not introducing systems to compensate for the effects of exchange fluctuations (para. 17).
- 22.3 The principle of fair treatment in the social field must be pursued through the application of Community rules on the free movement of workers and the provisions on social security for migrant workers (para. 12).
- 22.4 Pursuance of the objective of equal treatment as regards the taxation of earned income should not be allowed to hinder the progress that can be achieved through bilateral tax conventions (para. 16).
- 22.5 The Commission will present proposals to eliminate specific obligations connected with the existence of systems for controlling deposits in bank accounts and capital movements arising from the occupational activity of frontier workers (para. 17).
- 22.6 As regards the provision of information, the Commission will propose:
- the organization of special meetings between the national authorities responsible for social (employment service) and tax matters (paras. 13 and 16).
 - a campaign to inform frontier workers and their families of their rights and obligations (para. 18).
- 22.7 The Commission will pursue its efforts in support of regional development programmes for transfrontier regions (para. 19).
- 22.8 Specific measures must be encouraged to make life and travel easier for Community nationals living near frontiers, including procedures to ensure that they are informed and consulted on decisions that affect life on either side of the frontier. In most cases, these measures will be a matter for cooperation between States and between the subordinate regional or local authorities.

EEC definitions of workers or persons residing in frontier areas

1. Freedom of movement for workers

Article 8 of Directive 68/360/EEC of 15 October 1968.

Para. 1: "Member States shall, without issuing a residence permit, recognize the right of residence in their territory of:

...

(b) a worker who, while having his residence in the territory of a Member State to which he returns, as a rule, each day or at least once a week, is employed in the territory of another Member State. The competent authority of the State where he is employed may issue such worker with a special permit valid for five years and automatically renewable;"

2. Social Security for migrant workers

(a) Regulation No 36/63 of 2 April 1963 concerning social security for frontier workers¹

"Frontier worker" means anyone who, "while having his residence in the territory of a Member State to which he returns as a rule each day or at least once a week, is employed in the territory of another Member State" (Article 1(1)(c), first paragraph).

The frontier area in which the person concerned must work and reside extends for 20 km on each side of the frontier (Article 1(1)(c), second paragraph) between France and another Member State.

¹ Repealed on 30 September 1972 by Regulation (EEC) No 1408/71.

(b) Article 1 of Regulation (EEC) No 1408/71 of the Council.

Definitions:

For the purposes of this Regulation,

...

(c) "'frontier worker' means any employed or self-employed person who pursues his occupation in the territory of a Member State and resides in the territory of another Member State to which he returns as a rule daily or at least once a week; however, a frontier worker who is posted elsewhere in the territory of the same or another Member State by the undertaking to which he is normally attached or engages in the provision of services elsewhere in the territory of the same or another Member State, shall retain the status of frontier worker for a period not exceeding four months, even if he is prevented, during that period, from returning daily or at least once a week to the place where he resides;"

Notes

- . There is no definition of 'frontier area' for the purposes of the Regulation.
- . These provisions also apply to workers pursuing their occupation in a Member State which does not have a common frontier with the Member State of residence.

3. Transport policy

Cf. the definition of a 'frontier zone', extending for 25 km on each side of the frontier, in Annex I of the first Directive on the establishment of common rules for certain types of carriage of goods by road between Member States, as amended by Directive 78/175/EEC (OJ No L 54, 25.2.1978, p. 18).

4. Directives on exemption from tax and customs duties

(a) Council Directive of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (Directive 69/189/EEC) as amended by Directive 72/230/EEC (OJ No L 139, 17.6.1972, p. 28).

Article 3(5):

"For the purposes of paragraphs 1, 2 and 4:

- "frontier zone" means a zone which, as the crow flies, does not extend more than 15 km from the frontier of a Member State. Each Member State must however include within its frontier zone the local administrative districts part of the territory of which lies within the zone;
- "frontier zone worker" means any person whose normal activities require that he should go to the other side of the frontier on working days".

(b) Regulation (EEC) No 918/83 (OJ No L 105, 23.4.1983, p. 10).

"1. Member States may reduce the value and/or the quantities of goods allowed to enter duty-free if they are imported by:

- persons residing in the frontier area;
- frontier workers;

- the crews of means of transport used between third countries and the Community.

These restrictions shall not apply where persons having their residence in the frontier zone prove that they are not returning from the frontier zone of the adjacent third country. They shall, however, still apply to frontier workers and to the crew of means of transport used between third countries and the Community where they import goods when travelling in the course of their work.

2. For the purposes of applying the provisions of paragraph 1:

- "frontier zone" means, without prejudice to existing conventions in this respect, a zone which, as the crow flies, does not extend more than 15 km from the frontier. The local administrative districts, part of whose territory lies within the zone, shall also be considered to be part of this frontier zone;

- "frontier worker" means any person whose normal activities require that he should go to the other side of the frontier on his work days."

(c) In the agricultural sector, there are exemptions to the general rule that crossing a frontier entails the application of a monetary compensatory amount (MCA) for a number of agricultural products.

Derogations have been made to this general rule; monetary compensatory amounts are not applied to operations carried out under the same conditions as those referred to in the provisions on customs duty or tax exemptions (cf. Article 18(2) of Regulation (EEC) No 1371/81¹)

¹OJ No L 138, 25.5.1981, p. 8.

An exceptional provision in Article 23 of Regulation (EEC) No 1371/81 lays down that the competent authorities may, in trade in frontier areas, make the application of monetary compensatory amounts subject to special conditions in order to prevent irregularities.

This provision was introduced to give national governments an effective means of combating fraud.

(d) The Judgment of the Court of Justice in Case 54/84 Michael Paul v Hauptzollamt Emmerich interprets the concept of 'frontier zone' in connection with tax-free allowances in frontier zone travel:

"The expression 'frontier zone', defined in the first indent of Article 5(5) of Council Directive 69/169/EEC, as amended by Directive 72/230/EEC, must be interpreted as meaning a circular zone having a radius of 15 km and its centre at the customs crossing."

The judgment goes against a broad interpretation of the concept of frontier zone as a band 15 km wide along the border, as is applied by the German authorities. As a result, the judgment tends towards greater liberalization of imports for frontier dwellers in so far as the allowances are lower for travel within the frontier zone. The judgment is in line with the conclusions of the Commission and the Advocate-General.

5. Proposals on the taxation of frontier workers

Proposal for a Council Directive concerning the harmonization of income taxation provisions with respect to freedom of movement for workers within the Community (COM(79)737 final).

Article 3

"1. For the purposes of this Directive, the term "resident" is to be interpreted according to national tax provisions and the relevant double taxation agreements.

2. For the purposes of this Directive, "frontier worker" means any individual:

- i. deriving income from employment;
- ii. who exercises that employment in a Member State where he is not resident and
- iii. who is resident in another Member State to which he returns as a rule daily.

A frontier worker who is posted by his employer to a place inside the Community other than his usual place of work so that he is prevented from returning daily to the place where he resides shall not thereby lose his status of a frontier worker as regards the States mentioned in the first subparagraph, provided that such posting does not exceed in aggregate one third of the days in the calendar year for which he has, or would have if the posting were disregarded, the status of a frontier worker."