

**Opinion of the Committee of the Regions on Frontier workers: Assessment of the situation after ten years of the Internal Market: Problems and Perspectives**

(2005/C 43/02)

THE COMMITTEE OF THE REGIONS

HAVING REGARD TO the decision of its Bureau of (10 February 2004) in accordance with Article 265(5) of the Treaty establishing the European Community, to instruct its Commission for Economic and Social Policy to draw up this opinion, Frontier workers: Assessment of the situation after ten years of the Internal Market: Problems and Perspectives;

HAVING REGARD TO the consolidated version of the Treaty establishing the European Community of March 1957, and in particular Title III: Free movement of persons, services and capital, Chapter 1: Workers, Articles 39 and 42, Chapter 2: Right of establishment, Article 43;

HAVING REGARD TO the rules on the coordination of national social security systems, which are part of the free movement of persons and which are intended to contribute to the improvement of living and working conditions;

HAVING REGARD TO Council Regulation (EC) No. 118/97 of 2 December 1996 amending and updating Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, and Regulation (EEC) No. 574/72 laying down the procedure for implementing Regulation (EEC) No. 1408/71, as it is to be amended;

HAVING REGARD TO Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community;

HAVING REGARD TO the judgments of the European Court of Justice on cross-border workers, cross-border medical goods or services and regarding labour law and re-entry into employment;

HAVING REGARD TO the meeting of the Council of the European Union (Employment, Social Policy, Health and Consumer Protection) of 1 December 2003, agenda item 3, proposal for a Regulation of the European Parliament and of the Council coordinating social security systems (reform of Regulation (EEC) No. 1408/71);

HAVING REGARD TO the common position of the Council of 28 January 2004 with a view to the adoption of a Regulation of the European Parliament and of the Council coordinating social security systems;

HAVING REGARD TO the decision of the Copenhagen European Council of 13 December 2002 on the accession to the European Union on 1 May 2004 of Estonia, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, the Czech Republic, Hungary and Cyprus and of the informal Athens European Council of 16/17 April 2003 on the signature of the Accession Treaty and the Europe Conference;

HAVING REGARD TO the Europe Agreements with the Central and Eastern European Countries: the Agreements of December 1991 concluded with Hungary and Poland, that of February 1995 with Romania and Bulgaria, the Czech Republic and Slovakia, that of February 1998 with Estonia, Latvia and Lithuania, and that of February 1999 with Slovenia, as well as the Association Agreements existing since 1964 with Turkey, 1971 with Malta and 1973 with Cyprus;

HAVING REGARD TO the accession perspectives established by the Copenhagen European Council of June 1993, as set out in the 'Copenhagen criteria';

HAVING REGARD TO the Treaty on European Union signed in Maastricht on 7 February 1992 ('Maastricht Treaty'), which states that any European state may apply for membership of the EU;

HAVING REGARD TO the draft opinion adopted by the Commission for Economic and Social Policy on 30 April 2004 (CdR 95/2004 rev. 1) (rapporteur: **Mr Karl-Heinz Lambertz**, First Minister of the German-speaking community, (BE/PES));

Whereas:

1. **Regulation (EEC) No. 1408/71 defines a 'frontier worker'** as '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'.
2. Free movement of employed workers and their equal treatment in terms of work and employment conditions (wages, protection against dismissal, re-entry into employment, tax and social benefits) are mainly dealt with in **Regulation (EEC) No. 1612/68**.
3. The principle of equal treatment applies to all frontier (and migrant) workers living and working in the EU.
4. Social protection is regulated by **Regulation (EEC) No. 1408/71** and the corresponding **Implementing Regulation No. 574/72**. The aim of these is to coordinate the social security systems of the Member States.
5. In accordance with these regulations, the frontier worker is in principle covered by the rules and regulations of the country in which he works.
6. The EU accession of ten central and eastern European countries will lead to a new situation with regard to migration (migrant workers) and the frontier worker phenomenon, as well as to effects on the European labour market.
7. The eastern border areas of EU Member States like Austria and Germany are particularly geographically exposed in the context of enlargement. They have borders with Slovenia, Slovakia, Hungary, Poland and the Czech Republic and must initially expect an increase in cross-border movements. The effects of EU enlargement can, however, also offer opportunities, e.g. the chance to regulate migration which was previously illegal and the fact that migration will no longer be restricted to border regions, but will move to areas where there is a labour shortage.
8. EU enlargement will probably create administrative, legal or tax barriers to mobility in addition to those already facing every frontier worker in the EU.

**unanimously adopted the following opinion at its 56<sup>th</sup> plenary session of 29/30 September 2004 (meeting of 29 September):**

## 1. Views of the Committee of the Regions

THE COMMITTEE OF THE REGIONS

### 1.1 notes that:

1.1.1 the concept of frontier worker varies from one border region to another in line with the tax and social security law criteria applied in the country of residence or employment and the border commuters' active or inactive status; that there is no generally applicable definition of the concept embracing tax, legal and social-security components;

1.1.2 there is no Community-wide coordination of tax agreements or coordination between tax and social security agreements for cross-border activity, despite the significant achievements of Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, and Regulation (EEC) No. 574/72 laying down the procedure for implementing Regulation (EEC) No. 1408/71;

1.1.3 there is no Community-wide approach to the conditions for access to services, in the absence, for example, of a common definition of invalidity, or a common approach to the assessment of the degree of invalidity, or given the continuing differences in the systems for the calculation of insurance periods;

1.1.4 the principle that all frontier workers living and working in the EU should receive equal treatment is being respected but not always correctly applied; a definition of this principle does, however, exist, with regard to employment and working conditions, in Regulation (EEC) No. 1612/68;

1.1.5 national practices exist which impede the guaranteed freedom of movement for frontier and migrant workers, and that the European Court of Justice – in particular on the basis of Articles 39, 42 and 43 of the EC Treaty – is helping frontier workers encountering discrimination to assert their rights against national decisions and regulations, and is thus creating European social law;

1.1.6 after many years of additions designed to take account of changes in national rules, improve certain provisions, close loopholes and lay down rules on the insurance position of certain groups of persons, Regulation 1408/71 has become very large, complicated and opaque;

1.1.7 in the absence of uniform national data, there is no reliable statistical information giving an overview of the situation of frontier workers at European level;

1.1.8 it is estimated that less than 0.5 % of employed workers in the European Union are frontier workers;

1.1.9 there is a lack of forward-looking Community management of the specific and additional problems affecting frontier workers from the new Member States and that this management must mean more than the information distributed by EURES offices;

## 1.2 *considers that*

1.2.1 progress on European integration should be matched by progress on the free movement of persons and that this must be made a joint priority task for all the Member States and the European Union;

1.2.2 the question as to why – after completion of the internal market and the introduction of a single currency – there are still so few frontier workers is a relevant one. One of the aspects that should be improved on, therefore, is access for jobseekers and employers to an information and advice service to facilitate the mobility of the workforce and transparency in the EU labour market;

1.2.3 the vision of a united Europe, particularly in frontier regions – which should be cutting edge and engine of the integration process – is in this way losing credibility;

1.2.4 the question of frontier and migrant workers will be placed in a new light by the accession of ten new central and eastern European Member States, particularly in the current eastern border regions, and that forward-looking management of the expected trends should therefore be stepped up as a matter of urgency;

## 1.3 *welcomes*

1.3.1 the European Commission's initiative aimed at reducing obstacles to the mobility of workers in the European Union and at ensuring that everyone's social security entitlements are respected as well as the reform of Regulation 1408/71, now adopted, and Regulation 883/04, which should bring improvements for frontier workers with regard to sickness cover and family benefits;

1.3.2 the Commission's objective of coordinating the social security systems of the Member States, which should put into effect in the interest of Europeans and of the construction of a Social Europe;

1.3.3 Decision No. 189 of the Administrative Commission of the European Communities on social security for migrant workers of 18 June 2003 aimed at introducing a European health insurance card to replace the forms necessary for the application of Council Regulations (EEC) No. 1408/71 and (EEC) No. 574/72 as regards access to health care during a temporary stay in another Member State;

1.3.4 the common position of the Council of 28 January 2004 with a view to the adoption of a Regulation of the European Parliament and of the Council coordinating social security systems;

## 1.4 *considers that*

1.4.1 even when these proposed improvements are implemented they will by no means overcome all the obstacles in this area;

1.4.2 further problems but also opportunities might arise in relation to frontier workers as a result of the EU enlargement;

1.4.3 the development of Community-wide social law should not be left mainly to the European Court of Justice, but should itself actively contribute to solving frontier worker problems;

1.4.4 border regions are usually particularly dependent for their economic development on the components of the cross-border labour market and that this will be particularly true of the new border regions after enlargement.

## 2. Recommendations of the Committee of the Regions

### THE COMMITTEE OF THE REGIONS

2.1 **recommends** that the European Commission forward all information on problems encountered by frontier workers to one of the existing bodies, such as the Administrative Commission on Social Security for Migrant Workers set up by Regulation (EEC) No. 1408/71, or the Technical Committee promoting and advancing cooperation between the Member States on freedom of movement of workers and their employment set up by Regulation (EEC) No. 1612/68;

2.2 **proposes** that the body assuming this task:

2.2.1 collect (and collate) this information from all relevant political bodies and institutions, e.g. information relating to:

2.2.1.1 the remit extending to the EU Member States, the EFTA-EEA states and states with which the EU has concluded bilateral agreements which also touch on free movement of persons,

2.2.1.2 existing multilateral agreements such as the Benelux Treaty,

2.2.1.3 existing joint coordination efforts by Member States,

2.2.1.4 Community agreements and rules, the experience of the European Commission (DGV),

2.2.1.5 the experience of the AEBR,

2.2.1.6 the experience of parties involved with the problems of frontier workers and organisations concerned with the elimination of barriers to the free movement of persons;

2.2.2 asks how, on the basis of existing agreements, this experience can be exploited for the reduction of obstacles to intra-European mobility of persons and for improved coordination of the social security systems of the Member States and thus, inter alia in the light of enlargement, to promote the construction of a Social Europe more effectively.

2.2.3 At the same time, in order to avoid overlap with existing bodies, such as the agency for migration issues or the Schengen office:

2.2.3.1 the flow of information and cooperation between all players should be coordinated and promoted to the greatest possible extent;

2.2.3.2 Community statistics on frontier worker numbers should be prepared;

2.2.3.3 proposals on a Community social security and tax law definition of active and passive frontier commuters and migrant workers should be prepared;

2.2.3.4 proposals to improve the level of information and training of the administrative authorities responsible for the problems of frontier workers should be drawn up;

2.2.3.5 proposals to simplify and develop the relevant regulations should be prepared;

2.2.3.6 regional cross-border offices dealing with the problems of frontier workers should be set up which would be empowered to establish on their own initiative temporary working groups to look into specific issues relating to the elimination of obstacles to the free movement of frontier workers in European border areas.

2.3 **proposes** that the regional, cross-border offices dealing with the problems of frontier workers:

2.3.1 be set up within local authorities involved in cross-border activities or at existing EURES offices;

2.3.2 gather information on the specific situation of individual border regions and list specific problems;

2.3.3 check draft national and international regulations, agreements and laws for their compatibility with the rights of frontier workers;

2.3.4 notify, where appropriate, the competent national or supranational bodies of any detrimental effect on freedom of movement for migrant workers of the implementation of draft national and international regulations, agreements and laws and propose solutions to the partners concerned;

2.3.5 bilaterally involve the responsible experts from the competent national government departments in the event of specific problems between the Member States in question (e.g. with regard to double taxation agreements, nursing care insurance, child benefit for the families of frontier workers etc), and arrange for them to be assisted by local and/or regional experts;

2.3.6 submit proposed bilateral administrative or legislative solutions to the competent government departments within a short timespan and assist with their implementation;

2.3.7 be professionally staffed and managed;

2.4 **proposes that**, in view of the extended remit of the local authorities or existing EURES offices housing the regional offices dealing with the problems of frontier workers, the necessary funding be provided by the EU.

Brussels, 29 September 2004

The President  
of the Committee of the Regions  
Peter STRAUB