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STANDARDISATION OF THE SYSTEM OF PAYING FAMILY BENEFITS
TO WORKERS THE MEMBERS OF WHOSE FAMILIES RESIDE IN A
MEMBER STATE OTHER THAN THE COUNTRY OF EMPLOYMENT

(Communication from the Commission to the Council)

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INTRODUCTION

Since 1975, when the Commission submitted to the Council a proposal for the standardization of the payment of family benefits for members of the family not residing in the worker's country of employment, the Council has been unable to obtain the unanimity required to adopt the proposal¹ aimed at abolishing the exemption scheme from which France benefits. Furthermore, the majority of the Member States that were in favour of the Commission's proposal are now in favour of the opposite solution.

It is not likely that the latter solution will be unanimously approved. In addition, the lack of a solution to the problem has caused and is causing serious difficulties in related fields.

The new situation demands a fresh appraisal of the problem, which the Commission undertook to do at the 642nd Council meeting (Employment and Social Affairs) held on 9 June 1980. The purpose of this communication is to inform the Council of the results of the reappraisal.

A. FACTUAL BACKGROUND

I. The provisions of Regulation No 1408/71

Regulation No 1408/71 (Article 73) comprises two different rules according to whether a worker is employed in France or in another Member State:

- when a worker is employed in France, the members of his family receive the family allowances provided for by the legislation of the country in which they reside, which are then refunded by France to the institution of the country of residence which paid them.

¹Doc. COM(75)132 final.

- when a worker is employed in another Member State, he receives the family benefit of the country of employment for the members of his family, even when they reside in another Member State¹.

This double formula is the result of a compromise adopted in 1971 by the Council after lengthy discussions. Its authors, however, intended it only as a temporary solution. Thus, Article 98 of the Regulation, adopted at the same time, provides that the Council shall, on a proposal from the Commission, re-examine the whole problem in order to reach a uniform solution for all Member States.

II. The Commission proposal

The Commission forwarded its proposal to the Council on 10 April 1975².

As a result of amendments put forward by the European Parliament and the Economic and Social Committee, an amendment to its proposal was sent to the Council on 15 January 1976³.

The solution advocated by the Commission in its proposal consists in extending to all Community workers the right to family benefits from the country of employment, regardless of the Member State in which the worker is employed and regardless of the Member State in which the members of his family reside. The solution thus means that the rules already applied in eight Member States also apply to workers employed in France.

¹"Family allowances" means regular allowances granted solely according to the number and, where appropriate, the age of the children involved. "Family benefits" is a generic term which refers to family allowances and other allowances designed to compensate family charges, i.e.: special birth grants, allowances for handicapped minors, allowance for mothers working in the home, etc.

²OJ No C 96, 29 April 1975, p.4.

³Doc. COM(75)648 final of 15 December 1975.

III. Position adopted by the other insitutions

1. The country of employment formula was approved by the European Parliament¹ and the Economic and Social Committee² in their Opinions on the proposal from the Commission.
2. The position adopted by the Council.

The Commission proposal was discussed by the Council on two occasions (18 December 1975 and 9 December 1976).

Two-thirds of the delegations approved the Commission proposal, namely, the general application of the solution which consisted in the country of employment granting benefits to the worker.

Only a third of the delegations were not in favour of the proposal; they recommended the solution which consisted in granting the benefits of the children's country of residence, the cost of such benefits being borne by the country of employment.

As Article 51 of the EEC Treaty stipulates that the Council should act unanimously, the Council was unable to adopt the proposal from the Commission.

IV. Recent developments

1. Standardization of the system

The resumption of discussions by the Council showed that it was impossible to adopt either of the solutions in question. It appears to be out of the question that the standardization of the country of residence system could be unanimously approved, even if the majority of the delegations were in favour. On the other hand, the European Parliament, in a Resolution unanimously adopted on 17 June 1980, repeated its preference for the country of employment solution.

2. Related subjects

The lack of a solution to the problem is also giving rise to increasing difficulties in a certain number of related fields.

¹Opinion of 14 October 1975, OJ No C 257, 10 November 1975.

²Opinion of 24 September 1975, OJ No 286, 15 December 1975.

The situation in which any extension of the system in force would mean strengthening the country of employment system prevents the Council from taking decisions involving such an extension.

This is why:

- the Community offer to Turkey, concerning the implementation of Article 39 of the Additional Protocol to the Ankara Agreement, does not include any provisions on family benefits;
- within the framework of the accession of Greece, the matter was solved only by adopting a transitional period of three years in which Greek workers will be subject to the system of the country of residence¹.

In regard to current situations:

- the implementation of the Agreements between the EEC and the Mahgreb countries and the EEC and Portugal in the field of social security is running into the same difficulties as the question of the Turkish workers;
- it is very probable that the problem will also arise in the enlargement negotiations with Portugal and Spain;
- lastly, the problem of family benefits is one of the obstacles to the adoption of the Commission proposal on the extension of Regulation No 1408/71 to self-employed persons and non-employed insured persons.

B. SEARCH FOR A COMPROMISE SOLUTION

In view of the above and in accordance with the statement made at the Council meeting on 9 June 1980, the Commission has re-examined the problem in order to obtain a possible compromise solution.

The re-examination has shown that the facts of the matter have not changed since 1975, when the Commission first submitted its proposal.

¹The Community patrimony will be applied to them at the end of this period.