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Official Communications

Some Explanations Concerning the New Federal Act on Welfare Payments to the Swiss Abroad

The Police Division of the Federal Department of Justice and Police states as follows:—

Origin of the Act

For years various interests, such as the Welfare Directors' Conference and the New Helvetic Society's Commission of the Swiss Abroad, have been urging that the Confederation should take over welfare for the Swiss abroad, so as to ensure uniform treatment of welfare cases, which is not guaranteed by the present arrangements for assistance through the cantons and the communes. Both houses of the Swiss parliament have also had to concern themselves with this matter on various occasions.

In 1966 the electorate approved an article of the Constitution empowering the Confederation to promote a closer relationship among the Swiss abroad and between them in their homeland, and to issue regulations dealing, in particular, with the exercise of political rights, the fulfilment of military obligations and welfare benefits. Among other things it enabled the Confederation to regulate welfare for the Swiss abroad.

On 12th August, 1970, the Federal Council empowered the Federal Department of Justice and Police to convene a commission of experts for advance consultations on the Police Division's preliminary draft of a Federal Act on welfare payments to Swiss abroad. The commission started its work on 16th September, 1970. At the end of January, 1972, the preliminary draft of a Federal Act, together with an explanatory report, was submitted for their judgement and report to the cantonal governments, to the Federal Political Department for transmission to the Swiss diplomatic and consular representations, to the New Helvetic Society's Commission of the Swiss Abroad and to a number of other especially interested organisations. In September 1972 the Federal Council was able to submit to parliament the "message" and draft of a Federal Act on welfare payments to Swiss abroad. The bill was amended by the Council of States last winter session and by the National

Council in the March session 1973. On 21st March, 1973 the Act, which is the first one to be based on the Article 45bis of the Constitution, was accepted by the National Council by 169 votes to nil and by the Council of States by 36 votes to nil.

Basic Principles

Under the new Federal Act, which contains 26 articles, welfare for Swiss abroad will become largely a matter for the Confederation. The cantons will still have to bear the costs of repayment which another country can demand from Switzerland on the basis of a welfare agreement. Such agreements exist at present with France and the Federal Republic of Germany. All other costs, including expenditure for the reintegration of Swiss abroad who return home, will be borne by the Confederation.

The main purpose of the Act is to assist financially or to repatriate needy Swiss abroad, while taking care not to undermine the individual's independence or readiness to help himself. Of considerable legal and practical importance is the fact that this Act gives needy Swiss abroad a legal claim to assistance if certain specific conditions are fulfilled.

Content of the Act

Swiss citizens who are domiciled abroad, or who have been living abroad for more than three months, qualify as Swiss abroad within the meaning of the Act. Thus, Swiss citizens who are abroad temporarily or who have been living abroad for less than three months do not come under this Act; as hitherto, they are to be helped, on the basis of a Federal Council decree, by small repayable sums. The Federal Council will issue the necessary directives. In principle it would have been desirable for all assistance to Swiss citizens abroad to be regulated in the Act. However, this would be incompatible with the definition of the Swiss abroad which emerges from the history of the constitutional article.

Attinghausen, had made a commercial agreement with the town of Como in 1270 which already carried a kind of most-favoured-nation clause. These ancestors of Switzerland knew perfectly well the importance which the St. Gotthard highway would hold for their own economy and that of Europe. The powers of the time, the Hapsburgs in the forefront, also realised this and it was from that source that sprang the collision of interests and ambitions which found their outlet in the wars of independence and the battles of Morgarten and Sempach.

It may perhaps suffice to recall the importance attached to the St. Gotthard pass by the present European Communities, for whom it represents the principal north-south communications route, to understand the major economic importance and consequently political importance, which this route still has for Switzerland.

As for the opening of the east-west route, it was at the centre of policy in the second half of the 15th century. The ambition of Charles the Bold was the rebuilding of the Lotharingian empire from the North Sea to the Mediterranean, the realisation of which would have reduced Switzerland to the level of a buffer state between the powers and moreover, would have practically denied her access to the markets of the West, that is to say of France and of Spain — which was to open up towards America. It was the interminable trade wars between the Confederate States and the Burgundy of Charles the Bold which finally led the Swiss to take up arms. Their war against Burgundy was infinitely more decisive than those conducted by the King of France and the Emperor of Germany against the same enemy because their war was vital; 40 years after the victory over Charles the Bold and his Lotharingian ambitions came the perpetual peace with the King of France and that forbear of the free trade area of which mention was made earlier in this article.

The search for integration and trade, it is true, do not constitute all of Switzerland's history. But to the extent that this search is closely related to the constant economic factor in her existence, the need to use her only natural resource — the labour of her people — is a dominant principle.

In accordance with a generally recognised principle, assistance should begin as soon as a person is threatened by poverty. Article 4 therefore authorises the Confederation to take or assist appropriate measures to protect Swiss abroad from the threat of destitution.

Section II of the Act lays down the conditions on which welfare payments can be granted, refused or withdrawn. Of especial importance is the provision that benefits should be paid only when the need cannot be relieved in good time in any other way. The welfare organisations must investigate whether the applicant cannot help himself, whether he has relatives who could assist him and whether, in any case, there are other public or private assistance institutions upon which claims could be made. Cases of dual nationals are to be treated according to which citizenship predominates.

Section III of the Act contains details of the kind and amount of welfare payments. These should be so apportioned that they enable the recipient to lead a decent life by Swiss standards. The payments are not transferable, nor may they be advanced as security for loans. The needy person can be invited to return to Switzerland if this is in his real interest or that of his family. In this case the Confederation can assume the costs of his journey home.

Section IV sets out procedures. Anyone claiming a welfare payment must apply to the competent Swiss diplomatic or consular representation, which will examine the request and forward it with a report and recommendation to the Federal Police Division, which is responsible for the decision. The Police Division will guarantee any help it authorises. In urgent cases the Swiss representation can grant essential emergency help, at the same time notifying the Police Division. Applicants are notified of refusals in writing and advised on their legal remedies. Care of Swiss abroad who return home is a matter for the authority which is competent under the law of the canton concerned.

Section V regulates the enforcement of the obligation under Family Law to maintain or subsidise relatives, and the repayment of benefits drawn. These provisions meet the needs of modern welfare practice. They require a person who has previously drawn benefit to repay it only if this can reasonably be expected of him. Young persons who have drawn benefit before the age of 20 or for their education after that age are not required to pay it back. On the other hand, benefits acquired for oneself or for another person by means of wilfully false or incomplete statements must in all cases be repaid. There is a time

limit of 10 years after which no repayment of any benefits is required unless this is laid down by contract or by a decision of the Police Division.

Section VI regulates the distribution of costs between the Confederation and the Cantons, Section VII the appeal procedure. Taking into consideration that the Act is intended to give needy Swiss abroad an enforceable legal claim to welfare payments, it was appropriate that they should also be granted the corresponding legal protection. Article 22 therefore provides that the person concerned can appeal to the Police Division against decisions made by Swiss representations, and to the Federal Department of Justice and Police against first instance decisions of the Police Division. Decisions reached by the Police Division and by the Department of Justice and Police on appeals are subject to an appeal under administrative law to the Federal Court.

Section VIII contains transitional and final provisions. Of especial importance is Article 24, paragraph 2, which empowers the Federal Council to depart from the time limits laid down in Article 3, paragraph 1, i.e. to take special measures if "largish groups" of Swiss abroad fall upon hard times as a result of abnormal circumstances — this is intended to deal with acts of war, and political or economic coercion. It should be noted, however, that this is a typical case of an enabling regulation which, in contrast to that concerning ordinary assistance, does not form the basis of a legal claim. In accordance with Article 26, the Act was subject to the optional referendum. As this was not taken up within the legal time limit of 90 days, which expired on 1st July, 1973, the Act will become operative on a date to be determined by the Federal Council.

Concluding Remarks

Through this new Federal Act the legal position of the Swiss abroad with regard to welfare is considerably improved. It forms the basis of effective and uniform treatment for all Swiss abroad who fall upon hard time. However, as with all other Acts, its effectiveness largely depends upon its application. The Police Division and the Swiss diplomatic and consular representations abroad, which are charged with implementing the Act on behalf of the Federal Council, will do all in their power to treat considerately their needy compatriots far from home and, in reaching the decisions, to apply the provisions of the Act as generously as possible.

SWISS ABROAD

You are offered a special opportunity to join the AVS/AI

Don't miss it!

1. On the occasion of the eighth revision of the AVS/AI, Swiss abroad who have not yet enrolled in this voluntary insurance scheme are being given a special chance to do so. The offer is open to all Swiss nationals residing abroad who are still able to pay the contributions for at least one full year and thus acquire the right to an old age pension. This applies to men born after 30th November 1908 and women born after 30th November 1911.

The necessary application forms will be sent to anyone interested by the Swiss diplomatic or consular missions, to whom they must be returned by

31st December 1973 at the latest.

Contributions will be payable as from 1st January, 1973, whatever the date of enrolment.

From 1st January 1974 the only persons eligible to enrol in the voluntary

insurance scheme will be those Swiss abroad who apply to do so not later than one year after their fiftieth birthday (no longer the fortieth birthday, as hitherto). Of course, the usual time-limits for transference from the compulsory insurance schemes in Switzerland to the voluntary insurance scheme abroad, like those laid down in special cases, remain reserved.

3. The eighth revision of the AVS/AI has generally resulted in a *big increase in the size of pensions*. This improvement has not, of course, been possible without a certain *increase in contributions*.

4. Further details appear in the "Leaflet on the voluntary insurance scheme for Swiss citizens resident abroad", which has just been reissued and takes account of the situation as from 1st January 1973. This leaflet can be obtained from any Swiss diplomatic or consular mission.