

COMMISSION

ADMINISTRATIVE COMMISSION OF THE EUROPEAN COMMUNITIES ON SOCIAL SECURITY FOR MIGRANT WORKERS

DECISION No 205

of 17 October 2005

on the scope of the notion of 'partial unemployment' with regard to frontier workers

(Text of relevance to the EEA and to the EU/Switzerland Agreement)

(2006/351/EC)

THE ADMINISTRATIVE COMMISSION ON SOCIAL SECURITY FOR MIGRANT WORKERS,

Having regard to Article 81(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community ⁽¹⁾, under the terms of which it is responsible for dealing with any administrative question arising from Regulation (EEC) No 1408/71 and subsequent Regulations,

Having regard to Article 71(1)(a) of the said Regulation,

Whereas:

- (1) Article 71(1)(a) of Regulation (EEC) No 1408/71 contains a provision constituting an exemption, in the case of frontier workers who are wholly unemployed, from the general principle of *lex loci laboris* set out in Article 13(2)(a) of the said Regulation.
- (2) The Court of Justice of the European Communities has ruled that in order to determine whether a frontier worker is to be regarded as partially unemployed or wholly unemployed within the meaning of Article 71(1)(a) of the said Regulation, uniform Community criteria must be applied. Such assessment may not be made on the basis of criteria drawn from national law ⁽²⁾.
- (3) As the practices of the national social security institutions in the various Member States reflect differences in interpretation as regards determination of the type of unemployment, it is important to specify the scope of the said Article with a view to the adoption of uniform and balanced criteria for the purposes of application of the Article by the said institutions.
- (4) The Court of Justice of the European Communities has ruled that where a frontier worker no longer has any link with the competent Member State and is wholly unemployed, unemployment benefits are to be provided by the institution of the place of residence at its own expense.

⁽¹⁾ OJ L 149, 5.7.1971, p. 2. Regulation last amended by Regulation (EC) No 631/2004 of the European Parliament and of the Council (OJ L 100, 6.4.2004, p. 1).

⁽²⁾ Judgement of 15 March 2001 in case C-444/98, 'R. J. de Laat/Bestuur van het Landelijk instituut sociale verzekeringen', ECR 2001, pp. I-2229 et seq.

- (5) An assessment of whether or not an employment link exists or is maintained is based entirely on the national legislation of the State of employment.
- (6) The objective of protecting frontier workers pursued by Article 71 of the Regulation would not be achieved if a worker who remained employed by the same undertaking in a Member State other than that in whose territory he resides — his activity being suspended — were nevertheless regarded as wholly unemployed, thus requiring him to apply to the institution of his place of residence in order to obtain unemployment benefits,

HAS DECIDED AS FOLLOWS:

1. With respect to the application of Article 71(1)(a) of the Regulation, determination of the nature of unemployment (that is to say partial or whole) shall depend on whether or not any contractual employment link exists or is maintained between the parties, and not on the duration of any temporary suspension of the worker's activity.
2. If a frontier worker remains employed by an undertaking in a Member State other than that in whose territory he resides, but his activity is suspended although he can return to his post at any time, the said worker shall be regarded as partially unemployed, and the corresponding benefits shall be provided by the competent institution of the Member State of employment in accordance with Article 71(1)(a)(i) of Regulation (EEC) No 1408/71.
3. If a frontier worker, in the absence of any contractual employment link, no longer has any link with the Member State of employment (for example because the employment contract link has been terminated or has expired), he shall be regarded as wholly unemployed in accordance with Article 71(1)(a)(ii) of Regulation (EEC) No 1408/71, and benefits shall be provided by the institution of the place of residence at its own expense.
4. This decision shall apply from the first day of the month following its publication in the *Official Journal of the European Union*.

The Chair of the Administrative Commission
Anna HUDZIECZEK
