II

(Acts whose publication is not obligatory)

COMMISSION

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

DECISION No 160

of 28 November 1995

concerning the scope of Article 71 (1) (b) (ii) of Council Regulation (EEC) No 1408/71 relating to the right to unemployment benefits of workers, other than frontier workers, who, during their last employment, were residing in the territory of a Member State other than the competent State

(96/172/EC)

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

Having regard to Article 81 (a) of Council Regulation (EEC) No 1408/71, under which it is made responsible for dealing with all matters of interpretation arising from Regulations (EEC) No 1408/71 and (EEC) No 574/72,

Having been requested to decide which workers are referred to in Article 71 (1) (b) (ii) of Regulation (EEC) No 1408/71,

Whereas the categories of workers expressly referred to by Decision No 131 of 3 December 1985 should be extended and this Decision amended accordingly;

Whereas Article 71 of the said Regulation lays down special rules concerning the granting and the payment of unemployment benefits to unemployed persons who, during their last employment, resided in a Member State other than the competent State;

Whereas the determining factor for the application of Article 71 in its entirety is the fact that the person concerned resided during his last employment in a Member State other than the one to the legislation of which he was subject, which does not necessarily correspond to the one in which he was employed;

Whereas according to the definition given in Article 1 (h) of Regulation (EEC) No 1408/71, the term 'residence' means habitual residence, 'stay' being defined as temporary residence in subparagraph (i) of that Article;

Whereas the workers referred to in Articles 14 (1) and 14 (b) (1) of Regulation (EEC) No 1408/71 are presumed in the absence of proof to the contrary to reside in the competent State;

Whereas it ensues from the provisions of Article 1 (b) and (c) of Regulation (EEC) No 1408/71 that frontier workers and seasonal workers have their place of residence in a country other than the country of employment, which, by virtue of Article 13 (2) (a) of the said Regulation is the competent country and that there is therefore no doubt that such workers are covered by Article 71 of the same Regulation;

Whereas the categories of workers referred to by Articles 13 (2) (c), 14 (2) (a) and (b) and (3) and Article 16 (2) of Regulation (EEC) No 1408/71 and the workers to whom an agreement as referred to in Article 17 of that Regulation applies are likely to reside, in certain cases, in a Member State other than the State determined as being competent under that Article;

Whereas for the categories of workers referred to by Article 13 (2) (c), Article 14 (2) (a) and (b) and 3 and Article 16 (2) above and the workers to whom an agreement as referred to in Article 17 of that Regulation applies, determining in what State such workers have their place of residence must be examined on a case by case basis and whereas this must be done for workers referred to in Article 14 (2) (a) and (b) for the purposes of their affiliation;

Whereas, under Article 71 (1) (a) (ii) and (b) (ii), responsibility for the payment of benefits is transferred from the competent State to the country of residence where the person concerned puts himself at the disposal of the employment services of the latter country;

Whereas, although this is acceptable in the case of frontier workers and of seasonal workers and of certain other categories who likewise retain close links with their country of origin, it would no longer be acceptable if, by too broad an interpretation of the concept of 'residence', the field of application of Article 71 of Regulation (EEC) No 1408/71 were to be extended to include all migrant workers who have fairly stable employment in a Member State and who have left their families in their country of origin;

Acting in accordance with the provisions of Article 80 (3) of Regulation (EEC) No 1408/71,

HAS DECIDED AS FOLLOWS:

1. In addition to seasonal workers, Article 71 (1) (b) (ii) of Regulation (EEC) No 1408/71 shall apply in particular to the following categories of workers:

   (a) Workers referred to in Article 13 (2) (c) of the said Regulation;

   (b) Workers employed in international transport as referred to in Article 14 (2) (a) of the said Regulation;

   (c) Workers other than workers employed in international transport who normally pursue their occupation in several Member States as referred to in Article 14 (2) (b);

   (d) Workers employed by an undertaking straddling a common frontier as referred to in Article 14 (3);

   (e) Workers employed by diplomatic missions and consular posts and the private domestic staff of agents of such missions or posts as referred to in Article 16 (2) of the said Regulation;

   (f) To workers to whom an agreement as referred to in Article 17 of that Regulation applies,

   where they resided during their last employment in a Member State other than the competent State.

2. Workers referred to in paragraph 1, who during their last employment were subject to the legislation of a Member State other than the State of the place of employment shall be eligible for benefits to the provisions of the legislation of the State of residence, as if they had previously been subject to that legislation.

3. Workers referred to in Article 14 (1) and 14 (b) (1) shall be presumed, in the absence of proof to the countrary, to reside in the competent State.

4. This Decision, which replaces Decision No 131 of 3 December 1985, shall enter into force on the first day of the month following its publication in the *Official Journal of the European Communities.*

The Chairman of the
Administrative Commission
Carlos GARCÍA DE CORTÁZAR Y NEBREDA