

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

DECISION No 206
of 15 December 2005
concerning the methods of operation and the composition of the Audit Board of the Administrative
Commission on Social Security for Migrant Workers
(2006/352/EC)

THE ADMINISTRATIVE COMMISSION ON SOCIAL SECURITY FOR MIGRANT WORKERS,

Having regard to Article 101(3) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71, under which the Administrative Commission shall determine the methods of operation and the composition of the Audit Board,

Having regard to Decisions No 86 of 24 September 1973 and No 159 of 3 October 1995 concerning the methods of operation and the composition of the Audit Board,

Whereas the enlargement of the European Union on 1 May 2004 justifies a revision of the previous decisions on the methods of operation and composition of the Audit Board,

HAS DECIDED AS FOLLOWS:

1. Decisions No 86 and No 159 are deleted and the text concerning the methods of operation and the composition of the Audit Board of the Administrative Commission on Social Security for Migrant Workers reproduced in those decisions are replaced by the text annexed to this decision.
2. 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

ANNEX

Methods of operation and the composition of the Audit Board of the Administrative Commission on Social Security for Migrant Workers

1. The Audit Board provided for in Article 101(3) of Regulation (EEC) No 574/72 shall, when carrying out its functions as laid down in Article 102(1) and Article 113(3) of Regulation 574/72, operate under the authority of the Administrative Commission on Social Security for Migrant Workers, from which it shall receive directives.

Within this framework the Audit Board shall present a long term work programme to the Administrative Commission for approval. The Audit Board shall once a year submit to the Administrative Commission a progress report on the work programme.

2. The Audit Board shall, in principle, reach its decisions from documentary evidence. It can request from the competent authorities any information or enquiries it deems necessary for the investigation of the matters submitted for its examination. Where necessary, subject to the prior approval of the chairman of the Administrative Commission, the Audit Board may delegate a member of the Secretariat or certain members of the Audit Board to carry out, on the spot, any investigation required for the pursuit of its work. The chairman of the Administrative Commission shall notify the representative on the Administrative Commission of the Member State concerned that this investigation is being made.

The Audit Board shall be assisted by an independent expert with professional training and experience in matters concerning the functions of the Audit Board, in particular as regards its tasks under Articles 94, 95 and 101 of Regulation 574/72.

3. The Audit Board shall be composed of two representatives of each of the Member States of the European Union appointed by the competent authorities of those States.

Any member of the Audit Board unable to attend may be replaced by a deputy appointed for that purpose by the competent authorities.

4. Decisions shall be taken by majority, each Member State having only one vote.

The opinions of the Audit Board must indicate whether they were reached unanimously or by majority. They must, where appropriate, set out the conclusions or reservations of the minority.

Whenever an opinion is not reached unanimously, the Audit Board shall submit it to the Administrative Commission together with a report containing in particular a statement of and the reasons for the opposing views.

It shall also appoint a rapporteur responsible for supplying the Administrative Commission with all the information the latter deems appropriate in order to enable it to settle the dispute in question.

The rapporteur shall not be selected from the representatives of countries involved in the dispute.

5. The representative of the European Commission or his alternate on the Administrative Commission shall act in a consultative capacity within the Audit Board.
6. The office of chairman of the Audit Board shall be held by a member belonging to the Member State whose representative on the Administrative Commission holds the office of chairman of that Commission.

The chairman of the Audit Board may, in conjunction with the Secretariat, take all steps required to solve without delay all problems within the competence of the Audit Board.

As a rule, the chairman of the Audit Board shall chair meetings of working parties set up to examine problems for which the Audit Board is competent; if, however, he is incapacitated or if certain specific problems are being examined, the chairman may be represented by another person designated by him.

7. The Secretariat of the Administrative Commission shall prepare and organise the meetings of the Audit Board and draw up the minutes thereof. It shall carry out the work required for the functioning of the Audit Board. The agenda, date and duration of the Audit Board meetings shall be agreed with the chairman.

8. The agenda shall be forwarded by the Secretariat of the Administrative Commission to the members of the Audit Board and the members of the Administrative Commission not less than 20 days before the start of each meeting.

The Secretariat of the Administrative Commission shall make available within the same time-limit the documents relating to the meeting.

9. In so far as is necessary, the rules of the Administrative Commission shall apply to the Audit Board.
