

DECISION No U2

of 12 June 2009

concerning the scope of Article 65(2) of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the right to unemployment benefits of wholly unemployed persons other than frontier workers who were resident in the territory of a Member State other than the competent Member State during their last period of employment or self-employment

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

(2010/C 106/12)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ⁽¹⁾, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems ⁽²⁾,

Having regard to Article 65(2) and (5) of Regulation (EC) No 883/2004,

Whereas:

- (1) Article 65 of Regulation (EC) No 883/2004 lays down special rules concerning the granting and the payment of unemployment benefits to unemployed persons, who during their last activity as employed or self-employed persons, resided in a Member State other than the competent State.
- (2) The determining factor for the application of Article 65 of the said Regulation in its entirety is the fact that the persons concerned resided, during their last period of employment or self-employment, in a Member State other than the one to the legislation of which they were subject, which does not necessarily correspond to the one in which they were employed or self-employed.
- (3) According to the definition provided in Article 1(j) of the said Regulation, the term 'residence' means the place where a person habitually resides and the term 'stay' is defined as temporary residence in point (k) of that Article.
- (4) Article 11 of Regulation (EC) No 987/2009 sets out criteria for determining residence where there is a difference of opinion about this between the institutions of two or more Member States.

(5) It follows from Article 1(f) of Regulation (EC) No 883/2004 that frontier workers have their place of residence in a country other than the country of their professional activity, which, by virtue of Article 11(3)(a) of the said Regulation is the competent State and that there is therefore no doubt that such workers are covered by Article 65 of the same Regulation.

(6) The categories of persons referred to in Articles 11(4) and 13 of the said Regulation and the persons to whom an agreement referred to in Article 16 of the said Regulation applies are likely to reside, in certain cases, in a Member State other than the State determined as being competent under these Articles.

(7) Determining in what State the persons belonging to these categories have their place of residence must be examined on a case-by-case basis and, for the persons referred to in Article 13(1)(a) and 13(2)(a) of Regulation (EC) No 883/2004, this must be done for the purposes of their affiliation.

(8) Under Article 65(5) of Regulation (EC) No 883/2004, responsibility for the payment of benefits is transferred from the competent State to the State of residence where the person concerned puts himself at the disposal of the employment services of the latter State.

(9) Although this is currently acceptable in the case of frontier workers and certain categories who likewise retain close links with their countries 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 65 of Regulation (EC) No 883/2004 were to be extended to include all persons who have fairly stable employment or self-employment in a Member State and who have left their families in their country of origin.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

Acting in accordance with the conditions laid down in Article 71(2) of Regulation (EC) No 883/2004,

HAS DECIDED AS FOLLOWS:

1. Article 65(5) of Regulation (EC) No 883/2004 shall apply in particular to:
 - (a) the persons referred to in Article 11(4) of the said Regulation;
 - (b) the persons referred to in Article 13 of the said Regulation normally pursuing their activities in the territories of two or more Member States;
 - (c) persons to whom an agreement as referred to in Article 16(1) of the said Regulation applies
2. Persons referred to in paragraph 1 who, during their last professional activity, were subject to the legislation of a Member State other than the State of the place of activity as an employed or self-employed person, shall be eligible for benefits under the provisions of the legislation of the State of residence, as if they had previously been subject to that legislation.
3. For the purpose of applying this Decision, the State of residence shall be determined in accordance with Article 11 of Regulation (EC) No 987/2009.
4. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

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

The Chair of the Administrative Commission
Gabriela PIKOROVÁ
