

DECISION No U3

of 12 June 2009

concerning the scope of the concept of 'partial unemployment' applicable to the unemployed persons referred to in Article 65(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council

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

(2010/C 106/13)

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(1) of Regulation (EC) No 883/2004,

Whereas:

- (1) Article 65(2) of Regulation (EC) No 883/2004 contains a provision constituting an exemption, in the case of wholly unemployed persons, from the general principle of *lex loci laboris* set out in Article 11(3)(a) of the said Regulation.
- (2) Uniform Community criteria must be applied to determine whether a person is regarded as being wholly or partially unemployed within the meaning of Article 65(1) and (2) of the said Regulation. Such assessment may not be made on the basis of criteria drawn from national law.
- (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) Under Article 65(2) of Regulation (EC) No 883/2004, a wholly unemployed person who no longer has any link with the competent Member State receives unemployment benefits from the institution at their place of residence.

(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 unemployed persons that is pursued by Article 65 of the Regulation would not be achieved if a person 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.

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

HAS DECIDED AS FOLLOWS:

1. With respect to the application of Article 65(1) of the Regulation (EC) No 883/2004, 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 person 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 65(1) of the said Regulation.
3. If a person, 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 65(2) of the said Regulation, and benefits shall be provided by the institution of the place of residence.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

4. If a self-employed person does not carry out any professional or trade activity in the Member State of activity, he shall be regarded as wholly unemployed in accordance with Article 65(2) of the said Regulation, and benefits shall be provided by the institution of the place of residence.

5. 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.

The Chair of the Administrative Commission
Gabriela PIKOROVÁ
