JUDGMENT OF THE COURT
31 MARCH 1977 [1]

Walter Bozzone
v Office de Sécurité Sociale d'Outre-Mer
(preliminary ruling requested by the Tribunal du Travail of Brussels)

Case 87/76

1. *Social security for migrant workers — Legislation of a Member State within the meaning of Article 1 (j) of Regulation No 1408/71 — Concept*

2. *Social security for migrant workers — Rights acquired under the legislation of a Member State — Recipient — Employment exclusively in a non-metropolitan territory — Residence clause — Waiver — Application*
(Regulation No 1408/71, Article 10 (1))

1. The expression 'legislation' within the meaning of Article 1 (j) of Regulation No 1408/71 includes all provisions laid down by law, regulation and administrative action by the Member States and must be taken to cover all the national measures applicable in this case, not only within the metropolitan territories but also in territories maintaining special relations with those States.
2. In the absence of express provisions to the contrary, the waiving of residence clauses prescribed by the first subparagraph of Article 10 (1) of Regulation No 1408/71 applies to the situation of a recipient of benefits guaranteed by the legislation of a Member State relating to employment exclusively in a territory which at the time maintained special relations with a Member State, where that recipient, who is a national of a Member State, resides in the territory of a Member State other than that which is responsible for payment of social security benefits in respect of employment in the said territory.

In Case 87/76,

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal du Travail of Brussels, for a preliminary ruling in the action pending before that court between

WALTER BOZZONE

and

OFFICE DE SÉCURITÉ SOCIALE D'OUTRE-MER (overseas Social Security Office)

1 — Language of the Case: French.

on the interpretation of the concept of a worker within the meaning of Regulation No 1408/71, where the employment was in a State which was once a colony and is now an associated territory,

THE COURT

composed of: H. Kutscher, President, A.M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate-General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The judgment making the reference and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

The plaintiff in the main action, Walter Bozzone, is an Italian national who worked in the former Belgian Congo, now the Republic of Zaïre, from 12 July 1952 to 13 May 1960.

In April 1960, he left Africa for reasons of health and returned to Italy, having been notified in the meantime by his employer that his contract was terminated and having received compensation amounting to three months' salary. On 20 April 1960 Bozzone submitted a claim to the Belgian Fonds des Invalidités (Invalidity Fund) for an invalidity allowance under the Colonial Decree of 7 August 1952 governing the sickness and invalidity insurance of colonial employees. He was granted this allowance until 31 January 1961 by decision of 18 August 1960. However, by a letter of 29 December 1960, the Fonds des Invalidités informed him that since he did not actually and habitually reside in Belgium payment of the allowance could not be continued after 31 January 1961, in accordance with Article 2 (2) of the Colonial Decree of 7 August 1952 which lays down that the beneficiary must have his actual and habitual residence in Belgium, the Belgian Congo, Ruanda-Urundi, or in a country with which a reciprocal agreement has been concluded, unless the Fund has authorized him temporarily to leave his place of residence for reasons of health. On 7 February 1967 the plaintiff submitted, through a professional association, a new claim for

allowances based on the Royal Decree of 16 November 1966, extending to the nationals of the Member States of the EEC certain advantages provided by the Law of 17 July 1963 on overseas social security. In the view of the Tribunal du Travail, this claim was not well founded since his case related exclusively to colonial social security because his working life in the Congo terminated before 30 June 1960. Nevertheless, by decision of 21 March 1967 the Office de Sécurité Sociale d'Outre-Mer, the defendant in the main action, granted him the benefit of the decrees concerning sickness and invalidity insurance for employees in the Congo and Ruanda-Urundi for a period initially limited to that from 8 February 1967 to 31 July 1967, which was then renewed at six-monthly intervals until 31 December 1973. On 28 December 1973 the defendant in the main action notified Mr Bozzone of its decision that as from 1 January 1974 it would discontinue the benefits which had been awarded to him since it was no longer possible to concede that his residence in Italy since 1960 was of the temporary nature prescribed by the legislation. On 26 February 1974 the plaintiff lodged his application before the Tribunal du Travail for the admission of his entitlement to the invalidity allowance.

The Tribunal du Travail, Brussels, found that the dispute arose from the requirement of residence in Belgium, Zaïre, Ruandi-Urundi, or in a State with which Belgium has concluded a reciprocal agreement, and that the Colonial Decree of 7 August 1952 therefore contains an element of discrimination between beneficiaries on the basis of residence.

The Tribunal du Travail, Brussels, has therefore requested the Court of Justice of the European Communities to rule on the following questions:

1. Is the first subparagraph of Article 10 (1) of Regulation No 1408/71, concerning the waiving of residence clauses, applicable to a recipient of benefits acquired in respect of employment exclusively in an associated territory when such recipient, who is a national of a Member State, resides in the territory of a Member State other than that which is responsible for payment of the social security benefits in respect of employment in the said associated territory? In other words, is Article 2 (2) of the Colonial Decree of 7 August 1952, as amended by the Colonial Decree of 2 July 1956, contrary to the provisions of Regulation No 1408/71 in that it requires actual and habitual residence in Belgium, the Belgian Congo, Ruanda-Urundi or in a State with which a reciprocal agreement has been concluded?
2. Is it necessary to consider a worker employed in an associated territory and at the same time subject to specific legislation enacted by one of the Member States with regard to that territory and the persons employed in it, in this case the Colonial Decree of 7 August 1952, as a worker who is or has been subject to the legislation of one or more Member States within the meaning of Article 2 (1) of Regulation No 1408/71?

The judgment making the reference was registered at the Court on 15 September 1976.

In accordance with the provisions of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the parties to the main action, that is to say, Mr Bozzone and the Office de Sécurité Sociale d'Outre-Mer, and by the Commission of the European Communities.

Having heard the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Summary of written observations submitted to the Court

Walter Bozzone, *the plaintiff in the main action,* recalls the facts and notes that the Office de Sécurité Sociale d'Outre-Mer suspended payment of his benefits under pressure from the Cour des Comptes. He further states that the residence requirement contained in the former colonial rules cannot form an obstacle to the free movement of workers and in particular as to the application of Article 51 of the Treaty. At the very most, such a condition may be justified by the need to ascertain the state of health of the recipient of social security benefits. The economic preoccupations which guided the Belgian legislature in 1952 and the fact that the decree upon which reliance is placed is a provision adopted in a colonial context should not in any way change the application of Community rules. In terms of the latter, Mr Bozzone should be considered as a migrant worker; he should therefore benefit from Article 10 of Regulation No 1408/71 of 14 June 1971, which precludes all discrimination by reason of the fact that the recipient of a benefit resides in the territory of a Member State other than that in which the institution responsible for payment is situated. Since the latter, the Office de Sécurité Sociale d'Outre-Mer, is a Belgian institution, the fact that the recipient acquired entitlement on the basis of employment in the Congo does not prevent the application of Community Law.

Finally, Mr Bozzone is a 'worker' within the meaning which the Court has given to that expression, that is to say a person insured for social security, even if he is no longer in fact employed.

The plaintiff in the main action suggests that the Court should reply to the Tribunal du Travail, Brussels, as follows:

'1. The first subparagraph of Article 10 (1) of Regulation No 1408/71 is applicable to the plaintiff Bozzone, wherever he may have been employed; it is established that, as a national of a Member State of the EEC, he resides in the territory of a Member State other than that in which the institution responsible for payment of social security benefits is situated.
2. The Decree of 7 August 1952, amended by that of 2 July 1956, is contrary to the provisions of the Treaty of Rome and more particularly to Regulation No 1408/71, in that it requires actual and habitual residence in Belgium, the Belgian Congo, Ruanda-Urundi or in a State with which a reciprocal agreement has been concluded.
3. A worker employed in an associated territory and at the time subject to specific legislation issued by one of the Member States with regard to that territory must be considered as a worker who is subject to the legislation of one or more Member States within the meaning of Article 2 (1) of Regulation No 1408/71.'

The Office de Sécurité Sociale d'Outre-Mer, *the defendant in the main action,* first outlines the circumstances in which the dispute arose, commenting upon the arguments adduced by the parties before the Tribunal du Travail and on the judgment given by that court, and so finds itself able to discern the purpose of the questions referred: it is to ascertain whether a situation such as that which has arisen in this case is covered by the provisions of Regulation No 1408/71 or, on the contrary, by Article 135 of the Treaty and the agreements provided for therein. It is furthermore appropriate to ascertain whether the social security legislation enacted for the overseas territories is to be considered as 'legislation of one or more Member States' within the meaning of Article 2 (1) of Regulation No 1408/71.

In reply to the question as to the applicability of Regulation No 1408/71 to workers of the Member States

employed in an overseas country or territory, the Office recalls the judgments of the Court *(Nonnenmacher* 92/63; *Ciechelski* 1/67; *De Moor* 2/67) which defined the objective of Articles 48 to 51 of the Treaty and, in consequence, the aim and scope of the implementing rules. That objective is the encouragement of free movement of workers between the Member States, not in overseas countries and territories; in fact the criterion for the applicability of the Community rules on social security for migrant workers is not solely that of nationality, but the activities in respect of which the Treaty seeks to encourage mobility of workers must be undertaken 'within the Community', as the title to Regulation No 1408/71 itself recalls.

The reply to the first question should therefore be that Article 10 (1) of Regulation No 1408/71 is not applicable to the recipient of benefits entitlement to which was acquired on the basis of employment within an associated territory, even where that recipient is a national of a Member State and resides in the territory of a Member State other than that which is responsible for payment of social security benefits on the basis of employment within the said associated territory. Accordingly, Article 2 (2) of the Colonial Decree of 7 August 1952, amended by that of 2 July 1956, is not contrary to the provisions of Regulation No 1408/71 in that it requires actual and habitual residence in Belgium, the Belgian Congo, Ruanda-Urundi or in a State with which a reciprocal agreement has been concluded.

As regards the meaning of the expression 'legislation of one or more Member States', used in Article 2 (1) of Regulation No 1408/71, the Office states that the legislation applicable in this case is 'a colonial decree, emanating from the King of the Belgians, legislator ordinary for the colony', which would form an integral part of the internal law of Zaïre had it not been formally abrogated on 1 July 1960 by the Zaïrian authorities.

The Belgian legislature merely guaranteed payment of benefits under a legislation which had become a foreign legislation although remaining unchanged. That being the case, does the Colonial Decree of 7 August 1952 form part of the 'legislation of one or more Member States' to which a worker 'has been subject'? The system of the Treaty, which on several occasions makes a distinction between the 'Member States' and the 'overseas countries and territories' (Articles 3 (k), 131, 136, 227), gives reason to suppose that where Regulation No 1408/71 speaks of the 'legislation of a Member State', it means the 'legislation applicable in that Member State' as opposed to that applicable in a country or territory which maintains special relations with that Member State. A guarantee offered by a Member State does not create entitlement to benefits and a law embodying such guarantee cannot be considered as legislation to which a worker is or has been subject.

Moreover, the aim of the rules relating to free movement of workers between Member States, and in particular Article 51, do not allow Regulation No 1408/71 to be given a field of application which is wider than the provision on which it is based.

The second question should therefore be answered as follows:

'A worker employed in an associated territory and at the time subject to specific legislation enacted by one of the Member States with regard to that territory and the persons employed in it cannot be considered as a worker who is or who has been subject to the legislation of one or more Member States, within the meaning of Article 2 (1) of Regulation No 1408/71.'

The *Commission of the European Communities* prefaces its submissions with an observation on the wording of the questions referred to the Court by

the Tribunal du Travail, Brussels, and proposes to reverse the order of the questions since the reply to the first question is conditional upon the reply given to the second question. Moreover, the first question should refer to the whole body of rules of Community law which may be applicable and not merely to the provisions of Regulation No 1408/71 alone. The Commission proposes to reframe the questions as follows:

'1. Is it necessary to consider a worker employed in an associated territory and at the time subject to specific legislation enacted by one of the Member States with regard to that territory and the persons employed in it, in this case the Colonial Decree of 7 August 1952, as a worker who is or has been subject to the legislation of one or more Member States within the meaning of Article 2 (1) of Regulation No 1408/71?

2. Are the rules of Community law and in particular the first subparagraph of Article 10 (1) of Regulation No 1408/71, concerning the waiving of residence clauses, applicable to a recipient of benefits acquired in respect of employment exercised exclusively in an associated territory when such recipient, who is a national of a Member State, resides in the territory of a Member State other than that which is responsible for payment of the social security benefits in respect of employment in the said associated territory? In other words, is Article 2 (2) of the Colonial Decree of 7 August 1952, as amended by the Colonial Decree of 2 July 1956, contrary to the provisions of Community law and in particular to those of Regulation No 1408/71 in that it requires actual and habitual residence in Belgium, the Belgian Congo, Ruanda-Urundi, or in a State with which a reciprocal agreement has been concluded?'

In reply to the first part of the question thus reframed, the Commission is of the opinion that the Decree of 7 August 1952 forms part of the colonial legislation enacted by the Belgian Authorities and applied in the Congo until 30 June 1960, that is to say, following the departure from that territory of the plaintiff in the main action. Since that decree was subsequently abrogated retroactively in Zaïre, the Belgian Law of Guarantee of 16 June 1960 ensured the continuity of the system, as appears from Articles 9 and 7 of that Law. Those provisions, which are indubitably applicable to the person concerned, may be considered as legislation of one of the Member States for the purposes of the determination of persons covered under Article 2 (1) of Regulation No 1408/71 and of the concept of legislation defined in Article 1 (k) of the same Regulation. Article 4, which determines the matters covered by the regulation, enumerates the branches of social security, amongst which invalidity benefits are expressly mentioned. The very wide definition of the systems to which the regulation applies unquestionably includes a colonial decree which was to be treated in the same way as ordinary Belgian legislation and was in any event incorporated into the latter by the Law of Guarantee of 16 June 1960. Regarding the arguments concerning the applicability of Article 51 of the Treaty solely to situations covered by the legislation of the Member States which is applicable to Community territories and other territories expressly treated as such, it must be emphasized that these arguments are open to challenge. Indeed:

— The fact that Article 135 of the Treaty made provision for conventions which have never been concluded cannot result in Community or national guarantees being devoid of effect;

— An implied restrictive condition limiting the field of application of Community provisions must be clearly laid down in order to be applicable. The field of application of Regulation No 1408/71 is defined both as regards persons and matters

covered (Articles 2 and 4), and the concept of territory, which is not defined in Article 1, appears only as a subsidiary matter in specific cases (Article 2 (1); Article 3 (1)), which are clearly defined.

The case-law of the Court *(Merluzzi* 80/71) has already accepted the application of Community rules to migrants who have been subject to the legislation of another Member State within a former colonial territory. The place where possible entitlement to benefits was acquired does not in any way change the 'national' character of legislation embodying the rules allowing such acquisition. The reply to be given to the first question should therefore be in the affirmative.

In the Commission's view it therefore follows that the reply to the second part of the question, as likewise reframed, should also be in the affirmative. It is sufficient that the clear wording of Article 10 (1) of Regulation No 1408/71 should be followed, wherever the latter is applicable. Even if the Court were to give a negative reply to the first question, the reply to the second should remain in the affirmative by reason of the Treaty itself, since Articles 48 to 51 preclude the introduction or retention of conditions as to residence affecting the payment of benefits acquired as the result of employment.

In the light of all the observations submitted by it, the Commission considers that the replies to be given to the questions referred to the Court could be as follows:

'1. Article 2 (1) of Regulation No 1408/71 is to be interpreted as meaning that it applies to workers who have been subject to the legislation of a Member State, including the case where that legislation was enacted in respect of an associated territory and the persons employed in it;

2. The first subparagraph of Article 10 (1) of Regulation No 1408/71 must be interpreted as applying to rights acquired pursuant to the legislation of a Member State, including the case where such legislation was enacted in respect of an associated territory and the persons employed in it.'

III — Oral procedure

The public hearing took place on 8 February 1977.

Mr Bozzone, represented by Raymond Schueler and Robert Versteegh, Advocates of the Brussels Bar, expanded the arguments already put forward during the written procedure and emphasized the fact that in his opinion what was applied to him was indeed Belgian legislation, whether it be the Decree of 1952 or the Law of 17 July 1963. In his view proof of this resides in the very jurisdiction assumed by the court which has referred the question to the Court of Justice. Moreover, the 'reciprocal agreement' claimed by the Social Security Office could, at the very least, be taken to be the EEC Treaty itself which binds Italy and Belgium.

The *Office de Sécurité Sociale d'Outre-Mer,* represented by Professor Michel Waelbroeck, Advocate of the Brussels Bar, emphasized the fact that the territorial scope of the Community rules cannot be extended arbitrarily, in the absence of legislative provisions. The *Merluzzi* judgment concerned a different type of case, to which a specific legislative provision could be applied. Finally, it noted that the Community rules, which have been harmonized in relation to the state of European legislation and local situations, cannot be extended to situations which have arisen overseas where there is still complete diversity of legislations formerly applied and still applicable.

The *Commission,* represented by its Agent, R. Baeyens, Legal Adviser, assisted by Madame D. Sorasio-Allo, a member of

the Legal Service, laid particular emphasis on the fact that the Law of Guarantee by virtue of which the Social Security Office is at present responsible for payment of a pension to Mr Bozzone, is a Belgian law and that payment of any social benefits by an institution in a Member State to a citizen of the Community may not be dependent upon any condition as to residence, in view of the legislative provisions and the established case-law.

In reply to questions put by the Court, the *Office de Sécurité Sociale d'Outre-Mer* replied that:

— 60 to 70 % of the assets of the colonial offices were acquired by Zaïre and 30 to 40 % were transferred to new Belgian institutions, set up to continue the administration of repatriated capital;

— The concept of legislation within the meaning of Article 2 of Regulation No 1408/71 should be interpreted as referring to 'the legislation to which workers have been subject in metropolitan territories, European territories in particular, of perhaps also to the legislation to which those workers are subject in the European territories but by virtue of benefits acquired within the Community'.

The Advocate-General delivered his opinion at the hearing on 9 March 1977.

Law

1 By judgment of 6 September 1976 which reached the Court Registry on 11 October 1976 the Tribunal du Travail, Brussels, referred to the Court pursuant to Article 177 of the EEC Treaty two questions intended to ascertain:

1. Whether the first subparagraph of Article 10 (1) of Regulation No 1408/71, concerning the waiving of residence clauses, is applicable to a recipient of benefits acquired in respect of employment exclusively in an associated territory when such recipient, who is a national of a Member State, resides in the territory of a Member State other than that which is responsible for payment of the social security benefits in respect of employment in the said associated territory; in other words, whether Article 2 (2) of the Colonial Decree of 7 August 1952, as amended by the Colonial Decree of 2 July 1956, is contrary to the provisions of Regulation No 1408/71 in that it requires actual and habitual residence in Belgium, the Belgian Congo, Ruanda-Urundi or in a State with which a reciprocal agreement has been concluded.

2. Whether it is necessary to consider a worker employed in an associated territory and at the same time subject to specific legislation enacted by one of the Member States with regard to that territory and the persons employed in it, in this case the Colonial Decree of 7 August 1952, as a worker who is or has been subject to the legislation of one or more Member States within the meaning of Article 2 (1) of Regulation No 1408/71.

2 These questions have been raised in the context of an action brought by an Italian worker resident in Italy against a Belgian social security institution for the annulment of the refusal by that institution to grant the plaintiff invalidity benefits on the basis of insurance periods completed by the latter in the former Belgian Congo, now the Republic of Zaïre.

3 That refusal was based on the fact that pursuant to the Colonial Decree referred to by the national court — to which the plaintiff in the main action had been subject and of which the relevant clauses in the present context are repeated in a Belgian law — such benefits are granted only to persons who actually and habitually reside in Belgium or in one of the former Belgian colonies.

4 Regulation No 1408/71 of 14 June 1971 (OJ, English Special Edition 1971 (II), p. 416) applies, according to Article 2 (1) thereof, to workers who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States.

5 In view of that provision the second question referred to the Court must be considered first, for if the applicant — whose status as a worker and as a national of a Member State is not contested — cannot be held to be or have been 'subject to the legislation of a Member State', his situation is not governed by Community rules and the first question therefore becomes devoid of purpose.

6 It is therefore appropriate to establish first the scope of the concept 'legislation of a Member State'.

7 The defendant in the main action maintains that 'legislation of a Member State' must be taken to mean 'the legislation applicable in that Member State as opposed to that applicable in a country or territory which maintains special relations with that Member State'.

8 It deduces from that interpretation that the Community rules apply exclusively to the metropolitan territories of the Member States.

9 In interpreting the expression 'legislation' reference must be made to Article 1 (j) of Regulation No 1408/71 whereby that expression means all the laws,

regulations, and other provisions and all other present or future implementing measures of each Member State relating to the branches and schemes of social security covered by Article 4 (1) and (2); this Article determines the matters covered by the regulation, including in particular invalidity benefits, which are the subject-matter of the applicant's claim.

10 This definition is remarkable for its breadth, including as it does all provisions laid down by law, regulation and administrative action by the Member States and must be taken to cover all the national measures applicable in this case.

11 This must be borne in mind when considering whether measures such as that referred to by the national court form part of the concept of 'legislation (of a Member State)' within the meaning of Articles 1 (j) and 2 (1) of the regulation.

12 It is clear from the file that the person concerned first enjoyed the benefit of the Colonial Decree of 7 August 1952 governing the sickness and invalidity insurance of colonial employees, pursuant to which he was granted an invalidity pension.

13 That insurance scheme was guaranteed and rights acquired thereunder were affirmed by a Belgian Law of 16 June 1960 ensuring the continuity of the scheme instituted by the said Decree of 7 August 1952.

14 Moreover, that Law does not merely guarantee benefits acquired pursuant to the decree but, by way of subsequent amendments, supplements it by providing for the grant of additional benefits (Article 5 bis) and in particular adapts it to the cost of living according to the rules in force in Belgium (Article 11, final provision).

15 As a whole, those provisions therefore constitute 'national legislation' within the meaning of Article 2 (1) of Regulation No 1408/71.

16 Finally, no special rules for the implementation of the legislation in question are laid down in the annexes to the regulation.

17 It is clear from these considerations taken as a whole that the second question referred by the Tribunal du Travail, Brussels, must be answered to the effect that Article 2 (1) of Regulation No 1408/71 is to be interpreted as applying to workers who are or have been subject to the insurance scheme instituted by the Decree of 7 August 1952, the continuity of which is guaranteed by the Belgian Law of 16 June 1960.

18 As regards the first question, it is sufficient to note that according to the first subparagraph of Article 10 (1) 'Save as otherwise provided in this regulation, invalidity ... cash benefits ... acquired under the legislation of one or more Member States shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated'.

19 The regulation contains no provision derogating from that article in relation to situations such as that under consideration.

20 The reply to the question must therefore be in the affirmative.

21 It is therefore appropriate to reply to the first question referred by the Tribunal du Travail, Brussels, that, in the absence of express provisions to the contrary, the waiving of residence clauses prescribed by the first subparagraph of Article 10 (1) of Regulation No 1408/71 applies to the situation of a recipient of benefits guaranteed by the legislation of a Member State relating to employment exclusively in a territory which at the time maintained special relations with a Member State, where that recipient, who is a national of a Member State, resides in the territory of a Member State other than that which is responsible for payment of social security benefits in respect of employment in the said territory.

Costs

22 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

23 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Tribunal du Travail, Brussels, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunal du Travail, Brussels, by judgment of 6 September 1976, hereby rules:

1. **Article 2 (1) of Regulation No 1408/71 is to be interpreted as applying to workers who are or have been subject to the insurance scheme instituted by the Decree of 7 August 1952, the continuity of which is guaranteed by the Belgian Law of 16 June 1960.**

2. **In the absence of express provisions to the contrary, the waiving of residence clauses prescribed by the first subparagraph of Article 10 (1) of Regulation No 1408/71 applies to the situation of a recipient of benefits guaranteed by the legislation of a Member State relating to employment exclusively in a territory which at the time maintained special relations with a Member State, where that recipient, who is a national of a Member State, resides in the territory of a Member State other than that which is responsible for payment of social security benefits in respect of employment in the said territory.**

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 31 March 1971.

A. Van Houtte
Registrar

H. Kutscher
President