

Corrigendum to Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community

(Official Journal of the European Communities No L 149 of 5 July 1971, page 2)

as amended by the Council Decision of the European Communities of 1 January 1973

(Official Journal of the European Communities No L 2 of 1 January 1973, page 1)

[C 41]

1. Article 1 (j), first subparagraph:

read:

'(j) "legislation" means in respect of each Member State statutes, regulations and other provisions and all other implementing measures, present or future, relating to the branches and schemes of social security covered by Article 4 (1) and (2).'

2. Article 1 (j), second subparagraph:

point (ii),

for: 'scheme',

read: 'schemes';

text after point (ii):

for: 'specifying the schemes',

read: 'specifying the schemes of such a kind'.

3. Article 15 (1):

for: 'sectors',

read: 'branches'.

4. Article 19 (2)

read:

'2. The provisions of paragraph 1 shall apply by analogy to members of the family who reside in the territory of a Member State other than the competent State in so far as they are not entitled to such benefits under the legislation of the State in whose territory they reside.'

5. Article 20:

read:

'Article 20

Frontier workers and members of their families — Special rules

A frontier worker may also obtain benefits in the territory of the competent State. Such benefits shall be provided by the competent institution in accordance with the provisions of the legislation of that State, as though the worker were resident in that State. Members of his family may receive benefits under the same conditions; however, receipt of such benefits shall, except in urgent cases, be conditional upon an agreement between the States concerned or between the competent authorities of those States or, in its absence, on prior authorization by the competent institution.'

6. Article 22 (3):

for: 'a worker's family',

read: 'the family of a worker'.

7. Article 25 (3):

read:

'3. Where an unemployed person satisfies the conditions of the legislation of the Member State which is responsible for the cost of unemployment benefits for entitlement to sickness and maternity benefits, taking account where appropriate of the provisions of Article 18, the members of his family shall receive these benefits, irrespective of the Member State in whose territory they reside or are staying. Such benefits shall be provided:

- (i) with regard to benefits in kind, by the institution of the place of residence or stay in accordance with the provisions of the legislation which it administers, on behalf of the competent institution of the Member State which is responsible for the cost of unemployment benefits;
- (ii) with regard to cash benefits, by the competent institutions of the Member State which is responsible for the cost of unemployment benefits, in accordance with the legislation which it administers.'

8. Article 28, heading and (1):

read:

'Article 28

Pensions payable under the legislation of one or more States, in cases where there is no right to benefits in the country of residence

1. A pensioner who is entitled to a pension under the legislation of one Member State or to pensions under the legislation of two or more Member States and who is not entitled to benefits under the legislation of the Member State in whose territory he resides shall nevertheless receive such benefits for himself and for members of his family, in so far as he would, taking account where appropriate of the provisions of Article 18 and Annex V, be entitled thereto under the legislation of the Member State or of at least one of the Member States competent in respect of pensions if he were resident in the territory of such State. The benefits shall be provided under the following conditions:

- (a) benefits in kind shall be provided on behalf of the institution referred to in paragraph 2 by the institution of the place of residence as though the person concerned were a pensioner under the legislation of the State in whose territory he resides and were entitled to such benefits;
- (b) cash benefits shall where appropriate be provided by the competent institution as determined by the rules of paragraph 2, in accordance with the legislation which it administers. However, upon agreement between the competent institution and the institution of the place of residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the legislation of the competent State.'

9. Article 29:

read:

'Article 29

Residence of members of the family in a State other than the one in which the pensioner resides — Transfer of residence to the State where the pensioner resides

1. Members of the family of a pensioner entitled to a pension under the legislation of one Member State or to pensions under the legislation of two or more Member States who reside in the territory of a Member State other than the one in which the pensioner resides shall, where he is entitled to benefits under the legislation of one Member State, receive benefits as though the pensioner were resident in the same territory as themselves. Benefits shall be provided under the following conditions:

- (a) benefits in kind shall be provided by the institution of the place of residence of the members of the family in accordance with the provisions of the legislation which that institution administers, the cost being borne by the institution of the pensioner's place of residence;

- (b) cash benefits shall, where appropriate, be provided by the competent institution as determined by the provisions of Article 27 or Article 28 (2), in accordance with the provisions of the legislation which it administers. However, upon agreement between the competent institution and the institution of the place of residence of the members of the family, such benefits may be provided by the latter institution on behalf of the former, in accordance with the provisions of the legislation of the competent State.
2. Members of the family referred to in paragraph 1 who transfer their residence to the territory of the Member State where the pensioner resides, shall receive:
- (a) benefits in kind under the provisions of the legislation of that State, even if they have already received benefits for the same case of sickness or maternity before transferring their residence;
- (b) cash benefits provided, where appropriate, by the competent institution determined by the provisions of Article 27 or of Article 28 (2), in accordance with the legislation which it administers. However, upon agreement between the competent institution and the institution of the place of residence of the pensioner, such benefits may be provided by the latter institution on behalf of the former, in accordance with the provisions of the legislation of the competent State.'
10. Article 31, heading:
- read:*
- 'Stay of the pensioner and/or members of his family in a State other than the State in which they reside'**
11. Article 31 (a) and (b):
- read:*
- '(a) benefits in kind provided by the institution of the place of stay in accordance with the provisions of the legislation which it administers, the cost being borne by the institution of the pensioner's place of residence;
- (b) cash benefits provided where appropriate by the competent institution as determined by the provisions of Article 27 or Article 28 (2), in accordance with the provisions of the legislation which it administers. However, upon agreement between the competent institution and the institution of the place of stay, these benefits may be provided by the latter institution on behalf of the former, in accordance with the provisions of the legislation of the competent State.'
12. Article 34, first sentence:
- for:* 'an occupational activity',
- read:* 'a professional or trade activity'.
13. Article 34, second sentence:
- read:*
- 'In such a case, the person concerned shall, for the purposes of the implementation of the provisions of this Chapter, be considered as a worker or as a member of the family of a worker.'
14. Section 2, heading (before Article 40):
- read:*
- Section 2
- Workers subject either only to legislations under which the amount of invalidity benefit depends on the duration of periods of insurance or residence or to legislations of this type and of the type referred to in Section 1'**

15. Article 45, heading:

for: 'Recognition',
read: 'Consideration';
for: 'entitlement',
read: 'the right'.

16. Article 46 (1), second subparagraph, first sentence:

for: 'undertake the calculation of',
read: 'calculate'.

17. Article 46 (1), second subparagraph, second sentence:

for: 'considered',
read: 'taken into consideration'.

18. Article 46 (2) (b), (c) and (d):

read:

'(b) the institution shall then establish the actual amount of the benefit on the basis of the theoretical amount referred to in the preceding subparagraph, and in the ratio which the length of the periods of insurance or residence completed before the risk materializes under the legislation administered by that institution bears to the total length of the periods of insurance and residence completed under the legislations of all the Member States concerned before the risk materialized;

(c) if the total length of the periods of insurance and residence completed before the risk materializes under the legislations of all the Member States concerned is longer than the maximum period required by the legislation of one of these States for receipt of full benefit, the competent institution of that State shall, when applying the provisions of this paragraph, take into consideration this maximum period instead of the total length of the periods completed; this method of calculation must not result in the imposition on that institution of the cost of a benefit greater than the full benefit provided for by the legislation which it administers;

(d) the procedure for taking into account overlapping periods, when applying the rules of calculation laid down in this paragraph shall be laid down in the Implementing Regulation referred to in Article 97.'

19. Article 47 (1) (b), (c) and (d), and (2)

read:

'(b) where, under the legislation of a Member State, benefits are calculated on the basis of the amount of wages or salaries, contributions or increases, the competent institution of that State shall determine the wages or salaries, contributions and increases to be taken into account in respect of the periods of insurance or residence completed under the legislation of other Member States on the basis of the average wages or salaries, contributions or increases recorded in respect of the periods of insurance completed under the legislation which it administers;

(c) where, under the legislation of a Member State, benefits are calculated on the basis of a standard wage or salary or a fixed amount, the competent institution of that State shall consider the standard wage or salary or the fixed amount to be taken into account by it in respect of periods of insurance or residence completed under the legislations of other Member States as being equal to the standard wage or salary or the fixed amount or, where appropriate, to the average of the standard wages or salaries or the fixed amount corresponding to the periods of insurance completed under its own legislation;

(d) where, under the legislation of a Member State, benefits are calculated for some periods on the basis of the amount of wages or salaries, and, for other periods, on the basis of a standard wage or salary or a fixed amount, the competent institution of that State shall, in respect of periods of insurance or residence completed under

the legislations of other Member States, take into account the wage, salary or fixed amount determined in accordance with the provisions of (b) or (c) above or, as appropriate, the average of these wages, salaries or fixed amounts; where benefits are calculated on the basis of a standard wage or salary or fixed amount for all the periods completed under the legislation which it administers, the competent institution shall consider the wage or salary to be taken into account in respect of the periods of insurance or residence completed under the legislations of other Member States as being equal to the notional wage or salary corresponding to the standard wage, salary or fixed amount.

2. The provisions of the legislation of a Member State concerning the revalorization of the factors taken into account for the calculation of benefits shall apply, as appropriate, to the factors to be taken into account by the competent institution of that State, in accordance with the provisions of paragraph 1, in respect of the periods of insurance or residence completed under the legislation of other Member States.'

20. Article 48, heading and (1):

read:

'Periods of insurance or residence of less than one year

1. Notwithstanding the provisions of Article 46 (2), if the total length of the periods of insurance or residence completed under the legislation of a Member State does not amount to one year and if under that legislation no right to benefit is acquired by virtue only of those periods, the institution of that State shall not be bound to award benefits in respect of such periods.'

21. Article 48 (3):

for: 'is to relieve',

read: 'would be to relieve';

for: 'granted',

read: 'awarded'.

22. Article 49, heading:

read: **'Calculation of benefits when the person concerned does not simultaneously satisfy the conditions laid down by all the legislations under which periods of insurance or of residence have been completed'**

23. Article 49 (1) (b):

read:

'(b) however,

(i) if the person concerned satisfies the conditions of at least two legislations without having recourse to periods of insurance or residence completed under the legislations whose conditions are not satisfied, these periods shall not be taken into account for the purposes of the provisions of Article 46 (2);

(ii) if the person concerned satisfies the conditions of only one legislation without having recourse to periods of insurance or residence completed under the legislations whose conditions are not satisfied, the amount of the benefit payable shall be calculated in accordance with the provisions only of that legislation whose conditions are satisfied, taking account of the periods completed under that legislation only.'

24. Article 50, heading

for: 'is permanently resident',

read: 'resides'.

25. Article 50, first sentence:

read: 'A recipient of benefits to whom this Chapter applies may not, in the State in whose territory he resides and under whose legislation a benefit is payable to him, be awarded a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods of insurance taken into account for the payment in accordance with the provisions of the preceding Articles.'

26. Article 50, second sentence:

for: 'responsible',

read: 'competent'.

27. Article 57 (3) (c):

read:

'(c) the cost of cash benefits including pensions shall be divided between the competent institutions of the Member States in whose territory the person concerned pursued an activity likely to cause the disease. This division shall be carried out in the ratio which the length of the periods of old-age insurance or residence referred to in Article 45 (1) completed under the legislation of each of the States bears to the total length of the periods of old-age insurance or residence completed under the legislation of all the States at the date on which the benefits commenced.'

28. Article 72:

for: 'responsible',

read: 'competent';

for: 'in so far as',

read: 'to the extent';

for: 'had been completed under its own legislation',

read: 'were periods completed under the legislation which it administers'.

29. Article 79 (1) (a):

read:

'(a) if that legislation provides that the acquisition, retention or recovery of the right to benefits shall be dependent on the length of periods of insurance, employment or residence, such length shall be determined taking into account, where appropriate, of the provisions of Article 45 or, as the case may be, Article 72;'

30. Article 94 (1) to (7):

read:

1. No right shall be acquired under this Regulation in respect of a period prior to the date of its entry into force or to the date of its application in the territory of the Member State concerned.

2. All periods of insurance and, where appropriate, all periods of employment or residence completed under the legislation of a Member State before the date of entry into force of this Regulation or before the date of its application in the territory of that Member State, shall be taken into consideration for the determination of rights to benefits under this Regulation.

3. Subject to the provisions of paragraph 1, a right shall be acquired under this Regulation though it relates to a contingency which materialized prior to the date of entry into force of this Regulation or to the date of its application in the territory of the Member State concerned.

4. Any benefit which has not been awarded or which has been suspended by reason of the nationality or place of residence of the person concerned shall, on the application of the person concerned, be awarded or resumed with effect from the date of entry into

force of this Regulation or the date of its application in the territory of the Member State concerned provided that the rights previously determined have not given rise to a lump sum payment.

5. The rights of a person to whom a pension was awarded prior to the date of entry into force of this Regulation or to the date of its application in the territory of the Member State concerned may, on the application of the person concerned, be reviewed, taking into account the provisions of this Regulation. This provision shall also apply to the other benefits referred to in Article 78.

6. If an application referred to in paragraph 4 or 5 is submitted within two years from the date of entry into force of this Regulation or from the date of its application in the territory of the Member State concerned, the rights acquired under this Regulation shall have effect from that date, and the provisions of the legislation of any Member State concerning the forfeiture or limitation of rights may not be invoked against the persons concerned.

7. If an application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period following the entry into force of this Regulation or following the date of its application in the territory of the Member State concerned, rights which have not been forfeited or which are not time barred shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member State apply.'

31. Article 94 (9), first and second sentences:

read:

'The implementation of the provisions of Article 73 (2) shall not have the effect of reducing any rights existing at the date of entry into force of this Regulation or the date of its application in the territory of the Member State concerned. As regards persons who at that date are receiving more favourable benefits by virtue of bilateral agreements concluded with France, those agreements shall continue to apply to such persons for as long as they are subject to French legislation.'

32. Annex I, heading:

for: 'maternity benefits',

read: 'childbirth allowances'.

33. Annex II, Part A, point 3. BELGIUM—FRANCE (c):

for: 'for elderly employed workers',

read: 'to elderly employed persons'.

34. Annex II, Part A, point 16. GERMANY—FRANCE (a):

for: '(2)',

read: 'second paragraph'.

35. Annex II, Part A, point 16. GERMANY—FRANCE (d) and (f):

for: 'Headings',

read: 'Titles'.

36. Annex II, Part A, point 20. GERMANY—NETHERLANDS (b):

for: 'arrangements concerning',

read: 'settlement of'.

37. Annex II, Part B, heading:

read:

'Provisions of Conventions which do not apply to all persons to whom the Regulation applies (Article 3 (3) of the Regulation)'

38. Annex II, Part B, point 3. BELGIUM—FRANCE (a):
read: '(a) Exchange of letters of 29 July 1953 on allowances to elderly employed persons;'
39. Annex II, Part B, point 16. GERMANY—FRANCE (a):
for: '(2)',
read: 'second paragraph'.
40. Annex II, Part B, point 20. GERMANY—NETHERLANDS (b):
for: 'arrangements concerning',
read: 'settlement of'.
41. Annex III, point A. BELGIUM:
for: 'The legislation',
read: 'Legislations';
for: 'sailors',
read: 'mariners'.
42. Annex III, point D. FRANCE:
read:
D. FRANCE
All legislations on invalidity insurance, except for the legislation concerning the invalidity insurance of the social security scheme for miners.'
43. Annex V, point B. DENMARK (2):
before: 'a system',
insert: 'the framework of'.
44. Annex V, point E. IRELAND (2) (at the end):
for: 'death benefits',
read: 'death grants'.
45. Annex V, point I. UNITED KINGDOM:
paragraph 3, introductory sentence:
before: 'Title',
insert: 'the provisions of';
paragraph 6 (b):
before: 'there',
insert: 'present'.
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