

DECISION No 146
of 10 October 1990
concerning the interpretation of Article 94 (9) of Regulation (EEC) No 1408/71
(91/424/EEC)

THE ADMINISTRATIVE COMMISSION OF THE EUROPEAN COMMUNITIES 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 the members of their families moving within the Community, under which it is responsible for dealing with all administrative questions and questions of interpretation arising from the provisions of Regulation (EEC) No 1408/71 and subsequent Regulations,

Having regard to Article 2 (1) of Council Regulation (EEC) No 574/72 of 21 March 1972 under which it is responsible for drawing up models of certificates, certified statements, declarations, applications and other documents necessary for the application of the Regulations,

Having regard to Council Regulation (EEC) No 3427/89 of 30 October 1989 which introduces a uniform solution for all the Member States to the problem of the payment of family benefits to members of the family not residing in the territory of the competent State,

Having regard to Article 94 (9), as amended by the said Regulation, which on the one hand provides that the family allowances received by employed persons employed in France in respect of the members of their families residing in another Member State on the date of 15 November 1989 shall continue to be paid at the rates, within the limits and according to the procedures applicable on that date as long as their amount exceeds that of the benefits that would be due as from the date of 16 November 1989 and as long as the persons concerned are subject to French legislation, and on the other hand provides that the Administrative Commission shall deliver an opinion on the procedure for implementing this paragraph, and in particular the sharing of the cost of these allowances,

Whereas it is important to define exactly the scope of Article 94 (9) and the conditions of its application;

Whereas it is necessary to lay down the procedure enabling the provisions of the allowances, with regard to the responsibilities of the institutions concerned, the comparison between the amount of the family allowances (guaranteed amount) and that of French family benefits, the payment, where appropriate, of a supplement equal to the difference between these two amounts, and the sharing of the cost of these allowances between the institutions concerned;

Whereas, moreover, it is necessary to specify the rate of conversion of currencies to be used for the aforementioned comparison;

Whereas two specific model forms should be created, one certifying the payment of family allowances for November 1989 and the other certifying the continuation or termination of the payment of family allowances pursuant to Article 94 (9);

Whereas the language in which the forms are to be issued has been settled by Recommendation No 15 of the Administrative Commission;

Whereas, finally, the time limits applicable for the exercise of the right to receive a guaranteed amount of family allowances should be determined;

Acting in accordance with the conditions laid down in Article 80 (3) of Regulation (EEC) No 1408/71,

HAS DECIDED AS FOLLOWS:

1. (a) The provisions of Article 94 (9) of Regulation (EEC) No 1408/71 shall be applicable if on 15 November 1989 an employed person subject to French legislation received the family allowances provided for in the former Article 73 (2) for the members of his family residing in another Member State; they shall not be applicable if the right to family benefits was acquired in the State of residence on 15 November 1989; they shall permanently cease to be applicable if subsequently a right to family benefits is acquired in the State of residence.

Moreover, the family allowances which an employed person employed in France receives on 15 November 1989 for the members of his family residing in another Member State shall continue to be provided pursuant to the provisions of Article 94 (9) as long as the members of the family are still resident in the territory of that other Member State.

- (b) The family allowances referred to in Article 94 (9) of Regulation (EEC) No 1408/71 shall be those that were effectively provided to the employed person in November 1989 for the members of his family qualifying for these allowances. The amount of these allowances shall constitute the guaranteed amount.

The family benefits referred to in the said Article shall be the French family benefits due to the employed person from 16 November 1989.

- (c) If for two consecutive months the amount of French family benefits, except for those paid as a once-only payment (these being disregarded for the purpose of the comparison) is higher than or equal to the guaranteed amount for a given month, entitlement to that amount shall be permanently withdrawn.

With regard to the condition, laid down in Article 94 (9), of the person concerned remaining subject to French legislation, no account shall be taken of interruptions of work of less than one month or of periods of temporary suspension of work due to illness, maternity, accident at work, occupational disease or unemployment, with the continued receipt of pay or receipt of corresponding benefits under French legislation, except for pensions and annuities or because of paid leave, a strike or a lockout.

- (d) The guaranteed amount shall be established definitively. In particular, it cannot be reassessed subsequently either because of a change in the rate of family allowances provided for by the legislation of the Member State in whose territory the members of the family resided on 15 November 1989 or because of an increase in the number of members of the family.

However, in the event of a subsequent decrease in the number of members of the family, referred to in Article 94 (9), in the Member State of residence, the guaranteed amount shall be recalculated by reference to the number of family members remaining, at the rate and within the limits applicable on 15 November 1989 in the territory of the said Member State.

2. (a) In order to enable the French competent institution to determine whether the provisions of Article 94 (9) should be applied, the institution of the place in which the members of the family resided on 15 November 1989 shall, at the request of the persons concerned or of the French institution issue a statement certifying whether family allowances were or were not actually provided for November 1989, in accordance with the model form E 412 F produced below.

If family allowances were provided, the institution of the place of residence shall on the certified statement specify the members of the family for whom they were provided as well as the amount of the allowances, per member of the family or for the family as a whole, in accordance with the provisions of the legislation applied.

The said certified statement must also specify whether the employed person's spouse or the person to whom the family allowances were provided pursued an occupation in November 1989 or an activity treated as such in accordance with Decision No 199.

- (b) Upon receipt of this certified statement, the French competent institution shall, where appropriate, compare the amount of the family benefits referred to in the second sentence of paragraph 1(b) with the guaranteed amount.

If the amount of the family benefits is higher than or equal to the guaranteed amount, only the benefits shall be provided by the competent institution.

If the amount of the family benefits is less than the guaranteed amount, the benefits shall be provided by the French competent institution and a supplement equal to the difference between the guaranteed amount and these benefits shall be provided by the institution of the place of residence.

If the amount of the French family benefits is nil, the supplement provided by the institution of the place of residence shall be equal to the guaranteed amount.

- (c) In order to make the comparison referred to in the preceding subparagraph, the French competent institution shall convert the guaranteed amount to its own currency, using the rate of conversion provided for in Article 107 (1) of Regulation (EEC) No 574/72. The rate of conversion to be taken into account shall be the rate applicable on 16 November 1989.

3. (a) Where a differential supplement has to be provided, the French competent institution shall every month send the institution of the place of residence a certificate concerning the continuation or termination of the provision of family allowances, in accordance with the model form E 413 F reproduced below.

Upon receipt of this certificate, the institution of the place of residence shall provide the supplement equal to the difference between the guaranteed amount and the equivalent in its own currency, at the official rate of exchange on the day of comparison, of the amount of the French family benefits.

- (b) If the legislation applied by the institution of the place of residence provides that the family benefits shall be provided at intervals other than monthly intervals, the said institution may provide the differential supplement in accordance with these other intervals.

- (c) If the person concerned ceases to benefit from the provisions of Article 94 (9), the French competent institution shall use the certificate referred to in the preceding subparagraphs to notify the institution of the place of residence of the permanent termination of entitlement to the guaranteed amount.

4. The competent authorities of the Member States shall make the forms referred to in paragraphs 2 (a) and 3 (a) available to the competent institutions concerned. These forms shall be available in the official languages of the Community and shall be laid out in such a manner that the different versions are perfectly superposable to enable every person concerned to receive the forms in his own language.

5. In the event of a recalculation of the guaranteed amount, in accordance with the conditions laid down in the third sentence of paragraph 1 (d), the institution of the place of residence shall again issue the certificate referred to in paragraph 2 (a). The French competent institution shall then make a new comparison as indicated in subparagraphs 2 (b) and (c).

6. The cost of the allowances constituting the amount guaranteed by Article 94 (9) of Regulation (EEC) No 1408/71 shall be shared in the following manner:
 - the French competent institution shall bear the cost of these allowances up to the total amount of the French family benefits provided to the employed person for the members of his family residing in another Member State,
 - the institution of the place of residence of the members of the family shall bear the cost of the difference between the guaranteed amount and the amount of these family benefits.

However, France and another Member State or their competent authorities may agree or other cost-sharing arrangements and shall inform the Administrative Commission thereof.

7. For the exercise of the right, recognized by Article 94 (9), to receive a guaranteed amount of family allowances, the two-year time limit provided for by French legislation shall be suspended up to the date of application of this Decision and shall apply only with effect from the said date.
8. This Decision shall be applicable from the first day of the month following its publication in the *Official Journal of the European Communities*.

The Chairman of the Administrative Commission
M. T. FERRARO

E 412

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(1)

CERTIFICATE OF PAYMENT OF FAMILY ALLOWANCES UNDER THE FORMER ARTICLE 73 (2) OF REGULATION 1408/71 FOR THE MONTH OF NOVEMBER 1989

Regulation 1408/71: Article 94 (9)

A. Request for certificate

To be completed by the French institution responsible for granting family benefits

1	Applicant for family benefits: employed person subject to French legislation on 15 November 1989			
1.1	Surname (1a):			
1.2	Forenames:	Maiden name:	Place of birth (1b):	
1.3	Date of birth:	Sex:	Nationality:	DNI (1c):
1.4	Civil status: <input type="checkbox"/> single <input type="checkbox"/> married <input type="checkbox"/> divorced <input type="checkbox"/> separated <input type="checkbox"/> widow/widover			
1.5	Address (2):			

2	Spouse or person with whom members of the family reside (5)			
2.1	Surname (1a):			
2.2	Forenames:	Maiden name:	Place of birth (1b):	
2.3	Date of birth:	Sex:	Nationality:	DNI (1c):
2.4	Current occupation: Is the person covered currently in paid employment (or in a position treated as such? (1)) <input type="checkbox"/> Yes <input type="checkbox"/> No Self-employed (or in a position treated as such? (1)) <input type="checkbox"/> Yes <input type="checkbox"/> No			
2.5	Address:			

3	Members of the family other than the spouse (known to the Institution referred to in section 5)				
Name (1a)	Forenames	Date of birth	Relationship (3)	Place of residence (4)	Occupation
1.
2.
3.
4.
5.

4 Competent institution in the place of residence of the members of the family

4.1 Name:

4.2 Address (?):

4.3 File reference number:

5 French institution responsible for granting family benefits

5.1 Name:

5.2 Address (?):

5.3 File reference number:

5.4 Stamp:

5.5 Date:

5.6 Signature:

B. Certificate concerning the guaranteed amount of family allowances

To be completed by the institution of the place where the members of the family resided on 15 November 1989

6

6.1 In November 1989, the person named in section 2:

6.2 ☐ pursued an occupation or was in a position treated as such (?) entitling him to family benefits (under the terms of Article 76 of Regulation 1408/71);

6.3 ☐ did not pursue an occupation and was not in a position treated as such (?) and, by virtue of the rights of the worker specified in section 1, received family allowances under the former Article 73 (2) of Regulation 1408/71 from the competent French institution;

Amount of family allowances paid in November 1989 (?):

6.4 ☐ was in the situation referred to in 6.3 but received no family allowance for November 1989:

Reason:

6.5 Comments:

7

7.1 If the guaranteed amount at 15 November 1989 referred to in section 6 has had to be recalculated:

It amounts to from the month of

7.2 Reason for recalculation:

8 Institution of the place where the members of the family resided on 15 November 1989

8.1 Name:

8.2 Address (?):

8.3 File reference number:

8.4 Stamp:

8.5 Date:

8.6 Signature:

INSTRUCTIONS

Please complete this form in block letters, writing on the dotted lines only. It consists of three pages, none of which may be left out even if it does not contain any relevant information.

NOTES

- (1) Symbol of the country to whose legislation the employee is subject: F = France.
- (1a) In the case of Spanish nationals state both names.
In the case of Portuguese nationals state all names (forenames, surname, maiden name) in the order of civil status in which they appear on the identity card or passport.
- (1b) In the case of Portuguese districts state also the parish and the local authority.
- (1c) In the case of Spanish nationals state the number appearing on the national identity card (DNI) if it exists, even if it has expired. Failing this, indicate 'none'.
- (2) Street, number, postcode, town, country.
- (3) Show the relationship of each member of the family to the worker, using the following symbols:
A = legitimate child. In Spain child born in wedlock (matrimonial) and child born out of wedlock (non-matrimonial).
B = legitimized child.
C = adopted child.
D = natural child (if the form is completed for a male worker, the natural children must be mentioned only if the paternity or the worker's obligation to maintain them has been officially recognized).
E = child of a spouse belonging to the worker's household.
F = grandchildren, brothers and sisters whom the person concerned has taken into his household. Also, nephews and nieces to the third degree where the competent institution is a Greek institution.
G = other children belonging permanently to the household on the same footing as the worker's children (foster children).
Other relationship (e.g. grandfather) must be written in full.
If a child is married, divorced or widowed, this should be indicated at point 3.1. Also indicate there (for Greek institutions) whether a child has only one surviving parent.
- (4) If a child lives at a different address from that indicated at 1.5 or 2.5, please indicate below:

Surname and forenames:

Address (2):

- (5) In this case, please indicate in brackets after point 2.1 what family relationship there is between this person and the members of the worker's family.
- (6) Please indicate the amount in the currency of the State of residence of the members of the family and the type of currency.
- (7) As defined in Decision No 119.

E 413

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(1)

**CERTIFICATE OF PAYMENT OR CESSATION OF PAYMENT OF FAMILY ALLOWANCES GUARANTEED UNDER ARTICLE 94 (9)
OF REGULATION (EEC) No 1408/71**

Regulation 1408/71: Article 94 (9)

To be filled in by the competent French institution which has paid family benefits during the month of ...

1	Employed person subject to French legislation on 15 November 1989			
1.1	Surname (1a):			
1.2	Forenames:	Maiden name:	Place of birth (1b):	
1.3	Date of birth:	Sex:	Nationality:	DNI (1c):
1.4	Status:	<input type="checkbox"/> single <input type="checkbox"/> divorced	<input type="checkbox"/> married <input type="checkbox"/> separated	<input type="checkbox"/> widow/widower
1.5	Address (2):			

2	Spouse or person with whom members of the family reside			
2.1	Surname (1a):			
2.2	Forenames:	Maiden name:	Place of birth (1b):	
2.3	Date of birth:	Sex:	Nationality:	DNI (1c):
2.4	Is the person concerned currently in paid employment (or in a position treated as such? (3)) <input type="checkbox"/> Yes <input type="checkbox"/> No Self-employed: (Or in a position treated as such? (3)) <input type="checkbox"/> Yes <input type="checkbox"/> No			
2.5	Address (2):			

3	Competent institution in the place of residence of the members of the family			
3.1	Name:			
3.2	Address:			
3.3	File reference number:			

4	Guaranteed amount or new guaranteed amount if recalculation
4.1	Amount:
4.2	Currency:
4.3	Equivalent in French francs for the month of November 1989:

5	Amount of family benefits paid by the competent French institution for members of the family residing in the other Member State
5.1	Family allowances and age supplements:
5.2	Allowances for children aged over 3 months:
5.3	Family supplement:
5.4	Family support allowance (unless orphan):
5.5	Special education allowance:
5.6	Single parent allowance:
5.7	Schooling expenses allowance (for the record):
5.8	Total (excluding 5.7):

6	Article 94 (9) continues to apply during the month of
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7	Article 94 (9) will cease to apply from the month of for the following reason:
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7.1	<input type="checkbox"/> The person named in section 1 has not pursued an occupation for more than a month and is not receiving sickness or unemployment benefit under the terms of French legislation;
7.2	<input type="checkbox"/> The spouse or the person with whom the members of the family are living, named in section 2, has a right to family benefits in the country of residence under the terms of Article 76;
7.3	<input type="checkbox"/> The amount of French family benefits paid during the month of is greater than the guaranteed amount referred to in section 4.
7.4	<input type="checkbox"/> Transfer of residence by all family members to another Member State

8	French institution competent as regards family benefits
8.1	Name:
8.2	Address:
8.3	File reference number:
8.4	Stamp:
	8.5 Date:
	8.6 Signature:

INSTRUCTIONS

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NOTES

- (1) Symbol of the country to whose legislation the employee is subject:
F = France.
 - (1a) In the case of Spanish nationals state both names.
In the case of Portuguese nationals state all names (forenames, surname, maiden name) in the order of civil status in which they appear on the identity card or passport.
 - (1b) In the case of Portuguese districts state also the parish and the local authority.
 - (1c) In the case of Spanish nationals state the number appearing on the national identity card (DNI) if it exists, even if it has expired. Failing this, indicate 'none'.
 - (2) Street, number, postcode, town, country.
 - (3) The meaning is the same as in Decision No 119.
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