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DECISION No 145

of 27 June 1990

concerning the payment of arrears of family benefits due to self-employed persons pursuant to Articles 73 and 74 of Regulation (EEC) No 1408/71

(91/423/EEC)

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of 27 June 1990

concerning the payment of arrears of family benefits due to self-employed persons pursuant to Articles 73 and 74 of Regulation (EEC) No 1408/71

(91/423/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 shall draw 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, in particular, 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 States, and extends its provisions to self-employed persons,

Whereas Regulation (EEC) No 3427/89 is, under the terms of its Article 3, applicable from 15 January 1986, save for the part of its Article 1(1) relating to the amendment of Article 76;

Whereas it is necessary for the award and payment of arrears of family benefits due to self-employed persons pursuant to Articles 73 and 74 of Regulation (EEC) No 1408/71, as amended since the date of application of Regulation (EEC) No 3427/89, to specify the conditions under which the amounts of family benefits already paid under the legislation of the State of residence of the members of the family by virtue of such residence or of the pursuit of an occupation by the spouse or by another member of the family are deducted from the amounts of such arrears;

Whereas, moreover, the rate for the conversion of currencies to be used for this deduction must be determined;

Whereas, moreover, a special model form should be drawn up for the payment of arrears;

Whereas Recommendation No 15 of the Administrative Commission makes provision for the language in which the forms should be issued;

Whereas the time limits applicable to claims for the payment of arrears of family benefits due under Articles 73 and 74 of Regulation (EEC) No 1408/71, as amended, must be determined, and also with regard to the payment of these arrears,

HAS DECIDED AS FOLLOWS:

1. a) At the request of the person concerned the competent institution shall award and pay arrears of family benefits due to self-employed persons for the period between the date of application of Regulation (EEC) No 3427/89 and the date on which the said institution effectively implements that Regulation.

   b) The payment of arrears is effected after deduction of the amount of family benefits received for the same periods either under the legislation of the State of residence of the members of the family, by virtue of residence or of the pursuit of an occupation by the spouse or the person within whose household the members of the worker's family live, or of the activity of the spouse in another Member State or under a bilateral convention.

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c) In order to obtain the payment of arrears of family benefits, the person concerned shall enclose with his request a solemn statement specifying the total amount of family benefits received, year by year, for the members of his family under the legislation of the State of residence of these members or by virtue of another entitlement.

Notwithstanding this statement, the competent institution may ask the institutions concerned for a statement certifying the receipt or non-receipt of family benefits in accordance with the model below.

The competent authorities of the Member States shall make this form available to the competent institutions concerned. This form shall be available in the official languages of the Community and shall be laid out in such a manner that the different language versions are perfectly superposable so as to enable the person concerned to receive the form printed in his own language.

d) The amounts of family benefits granted under the legislation of the competent State, on the one hand, and under the legislation of the State of residence of the members of the family or by virtue of another entitlement, on the other hand, to be taken into account for the application of subparagraph (b), shall be the amounts granted for all the members of the worker's family qualifying for either of these benefits.

e) The deduction referred to in subparagraph (b) shall be effected for a worker's family as a whole, whereby the total amount of family benefits received under the legislation of the State of residence of the members of the family or by virtue of another entitlement for a particular year shall be deducted from the total amount of family benefits due for the same year under the legislation of the competent State.

Where the former benefits are higher than or equal to the latter, no arrears of benefits shall be due by the competent institution. Where the former benefits are lower than the latter, the arrears of benefits shall be paid to the worker, after deduction of the amount already received as indicated in subparagraph (b).

In all cases the total sum of benefits already paid under the legislation of the State of residence of the members of the family or by virtue of another entitlement shall remain acquired by the worker, and the institution that paid these benefits shall be regarded as having waived their refund by the competent institution.

f) In order to effect the deduction referred to in subparagraph (b), the competent institution shall convert into its currency the amount of family benefits received by the person concerned for the members of his family under the legislation of the State of residence of the said members of the family or by virtue of another entitlement, 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 that applicable on 16 November 1989.

2. With regard to the requests for the payment of arrears of family benefits referred to in paragraph 1, the time limits provided for by the national legislations shall apply; however, such requests may be validly lodged within the two years following 16 November 1989, even if the aforementioned time limits are shorter.

3. With regard to the payment of arrears of family benefits, if the application referred to in paragraph 1 is submitted within two years of 16 November 1989, the rights provided under Regulation (EEC) No 3427/89 shall be acquired, and the provisions of the legislation of any Member State relating to the lapse or barring of the rights may not be applied to the persons concerned.

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4. 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

E. MC CUMISKEY

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