DECISION No 147

of 10 October 1990

concerning the application of Article 76 of Regulation (EEC) No 1408/71

(91/425/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 or 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 the duty of the Administrative Commission to 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 amending, in particular, Article 76 of Regulation (EEC) No 1408/71,

Whereas Article 76 now provides, in paragraph 1, that in the case of overlapping of rights to family benefits under the legislation of the competent State and under the legislation of the State of residence of the members of the family, the amount provided for by the legislation of the competent State shall be suspended up to the amount provided for by the legislation of the State of residence of the members of the family, and in paragraph 2 that if an application for benefits is not made in the State of residence, the competent institution of the other State may apply the provisions of paragraph 1 as if benefits were granted in the first State;

Whereas it is therefore necessary to define the procedure or implementing the said Article with regard to the information to be provided by the institution of the place of residence to the competent institution for the purposes of the aforementioned suspension, with regard to the comparison between the amounts provided for by the two legislations concerned, and with regard to the determination of the differential supplement that may have to be paid by the competent institution;

Whereas it is necessary for this purpose to draw up an amended model form E 411;

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

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

HAS DECIDED AS FOLLOWS:

1. (a) If the competent institution does not have at its disposal information showing that an occupation (or activity treated as such within the meaning of Decision No 119) giving entitlement to family benefits is pursued in the State of residence of the members of the family, that institution shall pay the family benefits in full.

(b) In case of doubt, or where there is certainty that an occupation (or activity treated as such within the meaning of Decision No 119) giving entitlement to family benefits in the State of residence of members of the family is pursued, the competent institution may suspend the payment of family benefits. It shall then immediately ask the institution of the place of residence of the members of the family for information concerning the right to family benefits in the State of residence of the members of the family, in accordance with the amended model form E 411 reproduced below.

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

(c) The competent institution shall then send form E 411 each year to the institution of the place of residence of the members of the family. The latter institution shall return the form to the competent institution within a period of three months of receiving it.

(d) Upon receipt of the information supplied by the institution of the place of residence, the competent institution shall for each member of the family make a comparison between the amount of family benefits provided by the legislation of the State of residence of the members of the family (indicated in the information certified by the institution of the place of residence) and the amount of family benefits provided for by the legislation which it administers.

(e) After having made the comparison, the competent institution shall, where appropriate, provide a supplement to the benefits provided for by the legislation of the Member State of residence of the members of the family, equal to the difference between the amount of benefit provided for by the said legislation an the amount of benefit due under the legislation of the competent State.

The amount of the supplement shall for the first time be determined not later than twelve months after the acquisition of the right to benefits in the Member State or residence of the members of the family and in the competent State. The supplement shall subsequently be determined at least every twelve months.

If no benefit is provided for, under the legislation which the competent institution administers, for the same member of the family or if the amount for which that legislation makes provision is less than that certified by the institution of the place or residence of the members of the family, the competent institution shall not provide a supplement.

Where benefits are provided for, under its legislation for the same member of the family and where their amount is higher than that certified by the institution of the place of residence of the members of the family, it shall pay the supplement equal to the difference between the two amounts.

If benefits are due under the legislation which the competent institution administers while no benefits are provided for by the legislation of the State of residence for the same member of the family, the said institution shall provide these benefits in full.

The competent institution may aggregate sums due as supplement for the family as a whole before providing the said sums to the persons concerned.

(f) An advance on the differential supplement may be provided by the competent institution. In this case, if it appears subsequently that the amount of the advance exceeds the amount due, the competent institution shall undertake the appropriate regularization by deducting the amount overpaid from the supplement which it provides to the person concerned for the following period.

(g) In the event that no claim for family benefits has been submitted in the State or residence of the members of the family and if the information at the disposal of the institution of the place of residence does not allow it to indicate the amount of family

benefits that would have been due if a claim had been submitted, the said institution shall send to the competent institution the general scale of rates provided for by the legislation which it administers that is in force for the period or periods concerned.

2. For the comparison to be made between the two amounts, the competent institution shall convert to its currency the amount of the family benefits provided for by the legislation of the State or residence of the members of the family, using the rate of conversion referred to 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 the day on which the comparison is made.

3. 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

EUROPEAN COMMUNITIES
Social Security Regulations

See 'Instructions' on page 3

E 411 [ ] (1)

REQUEST FOR INFORMATION ON ENTITLEMENT TO FAMILY BENEFITS IN THE MEMBER STATE OF RESIDENCE OF THE MEMBERS OF THE FAMILY

Reg. 1408/71: Art. 76
Reg. 574/72: Art. 10

A. Request for certificate

The competent institution responsible for the payment of family benefits in the Member State in which the employed or self-employed person works, which wishes to know whether entitlement to family benefits exists in the Member State of residence of the members of the family, should complete two copies of Part A and send them to the institution of the place of residence of the members of the family.

1 ☐ Employed person ☐ Self-employed person

1.1 Surname (2a)
.....

1.2 Forename(s) ..... Maiden name (2a) ..... Place of birth (2b) .....

1.3 Date of birth ..... Sex ..... Nationality ..... DNI (2c) .....

1.4 Address (3)
.....
.....

2 Spouse or other persons whose entitlement to family benefits in the country of residence of the members of the family must be verified

2.1 Surname (2a)
.....

2.2 Forename(s) ..... Maiden name ..... Date of birth .....

2.3 Address (3) .....
.....

2.4 Relationship to the members of the family mentioned in box 3
.....

2.5. Period for which the information is requested .....

3 Members of the family

Surname (2a)	Forename(s)	Date of birth	Relationship (4)	Place of residence (5)
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

4 Information concerning the occupation pursued in the country of residence of the members of the family

4.1 Employer: .....
4.2 Address (3): .....
.....
4.3 Self-employment: .....
4.4 Activity treated as an occupation as defined by Decision No 119
.....

E 411

5 Competent institution

5.1 Name: .....

5.2 Address: (3) .....

.....

5.3 File reference number (2): .....

5.4 Stamp

5.5 Date .....

5.6 Signature .....

B. Certificate

To be completed by the competent institution in the place of residence of the members of the family or by the employer of the person named in box 2 (8).

6 Certificate issued by the competent institution responsible for the payment of family benefits in the place residence of the members of the family or by the employer

6.1 During the period from the person named in box 2 ..... to .....

☐ pursued an occupation (or an activity treated as such as defined in Decision No 119) from ..... to .....

☐ did not pursue an occupation (or an activity treated as such as defined in Decision No 119) from ..... to .....

6.2 For the period from the person named in box 2 ..... to .....

☐ is entitled to family benefits for the members of the family

☐ total amount of family benefits: .....

☐ is not entitled to family benefits for the following reasons:

.....

☐ has not submitted a claim (6)

.....

7 Information concerning the family benefits referred to in box 6 per family member

Surname	Forename(s)	Date of birth	Relation-ship	Place of residence	Amount (7)
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

8 Employer of the person named in box 2 (8)

8.1 Name of employer (if a company, the corporate name) .....

8.2 Address: (3) .....

.....

8.3 Stamp

8.4. Date .....

8.5. Signature .....

9 Institution of the place of residence of the members of the family (9)

9.1 Name: .....

9.2 Address (3): .....

.....

9.3 File reference number .....

9.4 Stamp

9.5 Date .....

9.6 Signature .....

E 411

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 which the institution completing the form belongs: B = Belgium; DK = Denmark; D = Germany; GR = Greece; E = Spain; F = France; IRL = Ireland; I = Italy; L = Luxembourg; NL = The Netherlands; P = Portugal; GB = United Kingdom.

(2) For use by the sending institution.

(2a) 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.

(2b) In the case of Portuguese districts, state also the parish and the local authority.

(2c) In the case of Spanish nationals state the number appearing on the national identity card (DNI), if it exists, even if the card is out of date. Failing this, indicate 'None'.

(3) Street, number, post code, town, country.

(4) 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 relationships (e.g. grandfather) must be written in full.

(5) If the member of the family resides at an address other than that indicated at 2.3, please indicate here.

Surname and forenames: .....
.....
Address (3): .....
.....

(6) In this case the institution of the place of residence should indicate the amount of family benefits they would have been granted if a claim had been submitted. If it does not have sufficient information to do so, it should indicate in box 7 the tariffs provided for by its legislation for each member of the family.

(7) Where appropriate, indicate the tariffs referred to in footnote (6).

(8) The certificate should be completed by the employer only if he has to pay the family benefits of the country of residence.

(9) To be completed by the institution of the place of residence of the members of the family or, failing this, by the liaison body.