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# DECISION No 170

## of 11 June 1998

## amending Decision No 141 of 17 October 1989, concerning the compilation of the lists provided for in Articles 94(4) and 95(4) of Council Regulation (EEC) No 574/72 of 21 March 1972

**(Text with EEA relevance)**

(98/565/EC)

(OJ L 275, 10.10.1998, p. 40)

Amended by:

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# DECISION No 170

## of 11 June 1998

## amending Decision No 141 of 17 October 1989, concerning the compilation of the lists provided for in Articles 94(4) and 95(4) of Council Regulation (EEC) No 574/72 of 21 March 1972

**(Text with EEA relevance)**

(98/565/EC)

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, self-employed persons, and members of their families moving within the Community, under which it is made responsible for dealing with all administrative questions and questions of interpretation arising from Regulation (EEC) No 1408/71 and subsequent Regulations,

Having regard to Article 36(2) of the aforementioned Regulation (EEC) No 1408/71,

Having regard to Articles 17(1) to (4), 29(1) to (3), 30(1) and (2), 94(4) and (5), 95(4) and (5) and 102(2) of Regulation (EEC) No 574/72,

Having regard to Decision No 141 of 17 October 1989,

Whereas there are grounds for revising Decision No 141 of 17 October 1989 in order particularly to take account of the introduction in Article 95 of Regulation (EEC) No 574/72 of an average cost per person in place of an average cost for each pensioner and for the members of his family,

Whereas, however, this amendment of Article 95 of Regulation (EEC) No 574/72 does not apply to relations with France until 1 January 2002,

HAS DECIDED AS FOLLOWS:

*Article 1*

The lists provided for in Articles 94(4) and 95(4) of Regulation (EEC) No 574/72 shall be drawn up according to the following rules:

### I. LIST PROVIDED FOR IN ARTICLE 94(4)

**Families of employed or self-employed persons**

1. For the purposes of applying paragraphs 1 to 4 of Article 17 of Regulation (EEC) No 574/72, the following procedure shall be laid down.

   At the request of the employed or self-employed person, the competent institution, after completing Part A of Form E 109, shall forward two copies to the person concerned, who shall pass them on to the members of his family. The latter must submit the two copies to the sickness insurance institution of the place of their residence when registering for the granting of benefits in kind.

   If the members of the family do not submit the said certificate, the institution of the place of residence shall request it from the competent institution by means of Form E 107, whereupon the latter institution shall send the certificate in duplicate to the institution of the place of residence.

   After completing Part B, the institution of the place of residence of the members of the family shall return a copy of Form E 109 to the sickness insurance institution with which the employed or self-employed person is insured.

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2. The date with effect from which the lump sums shall be calculated is:

(a) the date on which entitlement to benefits in kind is acquired under the legislation of the competent State; this date is recorded on Form E 109

(b) the date of change of residence, where this is subsequent to the date referred to under (a) above; this date is recorded on Form E 109

(c) the day following the date on which entitlement under Form E 106, E 111, E 112 or E 128 ends, if one of these forms has been issued and specifies a precise date on which entitlement ends; this date is recorded on Form E 109

(d) the date on which Form E 109 is received by the institution of the place of residence; this date is recorded on this form and constitutes the date on which Form E 106, E 111, E 112 or E 128 ceases to have effect, if one of these forms has been issued and does not specify a precise date on which entitlement ends.

If the members of the family are still entitled to receive benefits, in connection with carrying out a professional activity or receiving a replacement income, under the legislation of their country of residence or of another Member State, on a priority basis, in accordance with the regulations, the lump sums shall be calculated from the day following the date on which such entitlement ends.

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3. The competent institution or the institution of the place of residence, as the case may be, shall inform the institution of the place of residence or the competent institution of the suspension or withdrawal of entitlement to benefits in kind by sending it two copies of form E 108, with part A completed. The receiving institution, after completing part B of the form, must return one copy to the sending institution.

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4. The date with effect from which the lump sums shall cease to be paid is:

(a) the date of suspension or withdrawal of entitlement, if Form E 108 is received by the institution of the place of residence within three months of that date. The date is recorded on the form and constitutes the date from which Form E 109 ceases to apply

(b) the date on which Form E 108 is received by the institution of the place of residence, if that date is later than three months following the date of suspension or withdrawal of entitlement. The date on which the form was received is recorded on this form and constitutes the date from which Form E 109 ceases to apply

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(c) the date of suspension or withdrawal of entitlement notified by the institution of the place of residence to the competent institution. This date shall be stated on form E 108 and shall be the date on which form E 109 ceases to apply

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►M1 (d) ◄ the date on which entitlement to benefits in kind under the legislation of the country of residence or of another Member State is acquired, in accordance with the regulations, in connection with the carrying out of a professional activity in that State, where this date is prior to the date referred to under (a) or (b). However, if under the legislation of the country of residence entitlement to benefits in kind is subject not to conditions of insurance or the exercise of an activity, but to residence conditions, the date to be taken into account is the date on which professional activity commenced

►M1 (e) ◄ the date from which there are no longer any family members in the Member State of residence who meet the conditions of entitlement to these benefits under that Member State's

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legislation, where this date is prior to the date referred to under (a) or (b).

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5. The institution of the place of residence shall keep the list up to date, by taking as a basis its own information or that provided by the competent institution concerning acquisition of entitlement (form E 109) or suspension or withdrawal of such entitlement (form E 108), and taking account of the one-year validity of E 109 forms issued by German, French, Italian and Portuguese institutions, though without prejudice to the form with which it is possible to end validity of this entitlement as soon as facts occur which, under the legislation of these Member States, justify the withdrawal or suspension of entitlement to benefits.

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6. Where the members of the family of the employed or self-employed person transfer their place of residence to another Member State other than the competent Member State, the provisions of paragraph 1 shall again be applied.

7. For the purposes of calculating the number of monthly lump-sum payments, the period during which the persons concerned may claim benefits shall be counted in months.

   The number of months shall be obtained by counting as a whole month the calendar month which contains the day from which the calculation of the lump sums has been made.

   The calendar month during which entitlement has ceased shall not be counted unless it is a complete month.

   If the period is less than one month, it shall be counted as a month.

8. Where the members of an employed or self-employed person's family are living in different countries of residence other than the competent State, and where the conditions of entitlement to benefits in kind are met in each of the countries of residence, a lump sum shall be calculated for each State.

9. The lump sums shall be calculated on the basis of the figures obtained from the forms mentioned in paragraph 5.

## II. LIST PROVIDED FOR IN ARTICLE 95(4)

### Pensioners and/or members of their families

1. For the purposes of applying paragraphs 1 to 3 of Article 29 and paragraphs 1 and 5 of Article 30 of Regulation (EEC) No 574/72, the following procedure shall be laid down

   At the request of the pensioner or of a member of his family, the institution responsible for the pension, or the competent sickness insurance organisation of the Member State responsible for the pension shall, after completing Part A of Form E 121, forward two copies to the person concerned. The latter must submit the two copies to the sickness insurance institution of his place of residence when registering for the granting of benefits in kind.

   If the person does not submit the said certificate, the institution of the place of residence shall ask the institution responsible for issuing Form E 121 to do so by means of Form E 107, whereupon the latter institution shall forward Form E 121 in duplicate to the institution of the place of residence. In the mean time, the latter institution may provisionally register the person on the basis of such documentation as is acceptable to it, but this registration is not valid *vis-à-vis* the other institution until the latter has issued the E 121 form.

   After completing Part B, the institution of the place of residence of the person shall return a copy of Form E 121 to the institution which issued it.

   Form E 121 is issued in respect of a particular individual. Where appropriate, one such form will be issued to the pensioner and/or one for each member of his family not residing in the Member State responsible for the pension.

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2. The date with effect from which the lump sums shall be calculated is:

   (a) the date on which entitlement to benefits in kind is acquired under the legislation of the competent Member State; this date is recorded on Form E 121

   (b) the date of change of residence, where this is subsequent to the date referred to under (a); this date is recorded on Form E 121

   (c) the day following the date on which entitlement to benefits under Form E 106, E 109, E 111, E 112, E 120 or E 128 ends, if one of these forms has been issued and specifies a precise date for the end of entitlement; this date is recorded on Form E 121

   (d) the date on which the institution of the place of residence receives Form E 121. This date is recorded on this form and constitutes the date on which Form E 106, E 109, E 111, E 112, E 120 or E 128 ceases to apply, if one of these forms has been issued and no final validity date is specified.

   If the pensioner or one of the members of his family is still entitled to receive benefits, in connection with carrying out a professional activity or receiving a replacement income, under the legislation of their country of residence or of another Member State, on a priority basis, in accordance with the regulations, the lump sums shall be calculated from the day following the date on which such entitlement ends.

3. ►M1 The competent institution or the institution of the place of residence, as the case may be, shall inform the competent institution or the institution of the place of residence of the suspension or withdrawal of entitlement to benefits in kind by forwarding two copies of form E 108, with part A completed. After completing part B, the receiving institution shall return one of these copies to the sending institution.

   Where the E 108 form suspends or cancels an E 121 form, it shall, like the E 121 form, be issued in respect of a particular individual; in the event of the suspension or cancellation of a number of E 121 forms for members of the same family, as many E 108 forms must be issued as there are E 121 forms involved, even if the suspension or cancellation dates are identical or if all the persons concerned are registered with the same institution of the place of residence. ◄

4. The date with effect from which the lump sums shall cease to be paid is:

   (a) the date of suspension or withdrawal of entitlement, if Form E 108 is received by the institution of the place of residence within three months of that date. The date is recorded on this form and constitutes the date on which Form E 121 ceases to apply

   (b) the date on which Form E 108 is received by the institution of the place of residence, where this is more than three months after the date of suspension or withdrawal of entitlement. The date of receipt is recorded on this form and constitutes the date on which Form E 121 ceases to apply

   ►M1 ►C1 (c) ◄ ◄ the date of death of the pensioner or of a member of his family or the date on which the pensioner or member of his family changes residence to another Member State, where this date is prior to the date referred to under (a) or (b)

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   (d) the date of suspension or withdrawal of entitlement notified by the institution of the place of residence to the competent institution. This date shall be stated on form E 108 and shall be the date on which form E 121 ceases to apply

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►M1 ►C1 (e) ◄ ◄ the date on which entitlement to benefits in kind under the legislation of the country of residence or of another Member State is acquired in accordance with the regulations in connection with the carrying out of a professional activity in this State or the granting of a pension under the legislation of that same State, where this date is prior to the date referred to under (a) or (b). However, if under the legislation of the country of residence entitlement to benefits in kind is subject not to conditions of insurance or the exercise of an activity but to residence conditions, the date to be taken into account is the date on which the professional activity was first carried out or the date on which the pension first became payable

►M1 ►C1 (f) ◄ ◄ the date from which a member of the pensioner's family in the Member State of residence ceases to meet the conditions of entitlement to benefits in kind under the legislation of that country, where this date is prior to the date referred to under (a) or (b).

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5. The institution of the place of residence shall keep the list up to date by taking as a basis its own information or that supplied by the institution responsible for the pension, or the competent sickness insurance organisation of the Member State responsible for the pension, concerning acquisition of entitlement (form E 121) or the suspension or withdrawal of entitlement to benefits (form E 108), and taking account of the one-year validity period of E 121 forms issued by the German, French, Italian and Portuguese institutions concerning cases in which pensioners' family members reside in a Member State other than the competent Member State where the pensioner resides (Article 30 of Regulation (EEC) No 574/72), though without prejudice to the form with which it is possible to end validity of this entitlement as soon as facts occur which, under the legislation of these Member States, justify the withdrawal or suspension of entitlement to benefits.

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6. Where the pensioner or a member of his family transfers his or her place of residence to another Member State, other than the Member State responsible for the pension, paragraph 1 shall again be applied.

7. For the purposes of calculating the number of monthly lump-sum payments, the period during which the persons concerned may claim benefits shall be counted in months.

   The number of months shall be obtained by counting as a whole month the calendar month which contains the day from which the calculation of the lump sums has been made.

   The calendar month during which entitlement has ceased shall not be counted unless it is a complete month.

   If the period is less than one month, it shall be counted as a month.

8. The lump sums shall be calculated on the basis of the figures obtained from the forms mentioned in paragraph 5.

*Article 2*

For the purposes of applying Article 102 (2) of Regulation (EEC) No 574/72, the institutions of the place of residence shall forward every year to their national institutions and bodies designated in Annex 10 of Regulation (EEC) No 574/72 the individual statements of monthly lump-sum payments (Form E 127) drawn up on the basis of the lists provided for in Articles 94 and 95 of Regulation (EEC) No 574/72

The designated institutions and bodies of the country of residence shall send the aforementioned statements to the designated institutions and bodies of the competent State.

The E 127 forms shall indicate the number of monthly lump-sum payments due in respect of a single year for each family of an employed or self-employed person. In the case of pensioners and/or members of their families, the E 127 forms shall indicate the number

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of monthly lump-sum payments per person due in respect of a single year.

*Article 3*

On the entry into force of this Decision, a list of those persons and/or membes of their families entitled, under an E 121 or E 122 form issued prior to this date and still valid, to benefits in kind in their State of residence shall be compiled in accordance with the following procedure:

— E 121 (family) forms remain valid until they are cancelled and/or replaced for the pensioner only, thus excluding the members of the pensioner's family

— in respect of each member of the family of a pensioner previously registered on the basis of a former E 121 (family) form, a new E 121 (individual) form is to be issued, taking effect on the entry into force of this Decision. This latter date shall serve as the commencement date for the purposes of calculating lump-sum payments in respect of this person

— the above provisions shall also apply to each member of the family of a pensioner previously registered on the basis of an E 122 form.

*Article 4*

This Decision shall be published in the *Official Journal of the European Communities*.

It replaces Decision No 141 of 17 October 1989.

It shall be applicable from 1 January 1998.

However, in relations with France:

the provisions of the present Decision concerning the establishment of the lists provided for in Article 95 (4) of Regulation (EEC) No 574/72, which result from the introduction into Article 95 of this Regulation of an average cost per person for pensioners and the members of their families, shall apply only from 1 January 2002;

the provisions of Decision No 141 of 17 October 1989 concerning the establishment of the lists provided for in Article 95 (4) of Regulation (EEC) No 574/71, in its version prior to 1 January 1998, which result from the calculation of an average cost per family unit for pensioners and members of their families, shall remain applicable until 31 December 2001.