



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 4 April 2012**

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**SOC 261**

**PROPOSAL**

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from:	the Commission
dated:	30 March 2012
No Cion doc.:	COM(2012) 156 final
Subject:	Proposal for a Council Decision on the position to be taken on behalf of the European Union within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, with regard to the provisions on the coordination of social security systems

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Delegations will find attached a proposal from the Commission, submitted under a covering letter from Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

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Encl.: COM(2012) 156 final



EUROPEAN COMMISSION

Brussels, 30.3.2012  
COM(2012) 156 final

2012/0078 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, with regard to the provisions on the coordination of social security systems**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### **Grounds for and objectives of the proposal**

Article 51 of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Montenegro, of the other part<sup>1</sup> ("the Agreement"), lays down that the Stabilisation and Association Council shall, by decision, put provisions in place to implement the principles on the coordination of social security systems set out in that Article.

#### **General context**

Article 51 of the Agreement with Montenegro contains provisions for limited coordination between the social security systems of Member States and Montenegro. A Decision of the Stabilisation and Association Council established by the Agreement is required in order that the principles set out in Article 51 can take effect.

A number of other Agreements with third countries contain similar provisions on the co-ordination of social security systems. This proposal is part of a package of proposals which includes similar proposals with regard to the Agreements with Albania, San Marino and Turkey. A first package with similar proposals in respect of Algeria, Morocco, Tunisia, Croatia, the former Yugoslav Republic of Macedonia and Israel was adopted by the Council in October 2010.<sup>2</sup>

In order to establish the position to be taken on behalf of the Union in this Stabilisation and Association Council, a Council Decision is necessary.

#### **Existing provisions in the area of the proposal**

At the level of the European Union, Member States' social security systems are coordinated by Regulation (EC) No 883/2004<sup>3</sup> and its implementing Regulation (EC) No 987/2009<sup>4</sup>.

Council Regulation (EU) No 1231/2010<sup>5</sup> extends the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by those provisions solely on the grounds of their nationality. This Regulation already covers the principle of aggregation of insurance periods acquired by Montenegrin workers in the various Member States regarding entitlement to certain benefits, as set out in Article 51(1)(a) of the Agreement with Montenegro.

#### **Consistency with other policies and objectives of the Union**

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<sup>1</sup> OJ L 108, 29.4.2010, p.1.

<sup>2</sup> OJ L306, 23.11.10.

<sup>3</sup> OJ L 166, 30.4.2004, p. 1.

<sup>4</sup> OJ L 284, 30.10.2009 p. 1.

<sup>5</sup> OJ L 344, 29.12.2010, p. 1. In accordance with Protocols Nos 21 and 22, Denmark and the United Kingdom are not bound by or subject to the application of Regulation (EU) No 1231/2010. However, the United Kingdom continues to be bound by and subject to the application of the previous Regulation (EC) No 859/2003, OJ L124, 20.5.2003, p.1.

The Stabilisation and Association Agreement with Montenegro has as one of its objectives to support the efforts of Montenegro to develop its economic and international cooperation. The Agreement is a step towards preparing Montenegro for accession to the EU. Implementation of the social security coordination provisions in Article 51 of the Agreement between the EU and Montenegro will enhance the special relationship with Albania, as envisaged in Article 8 TEU.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **Consultation of interested parties**

The proposal for limited coordination between the social security systems of the Member States and Montenegro is modelled almost identically on the package of six draft Association Council Decisions, respectively Stabilisation and Association Council Decisions, in respect of Algeria, Morocco, Tunisia, Croatia, the former Yugoslav Republic of Macedonia and Israel, in respect of which the European Union position was decided by the Council in October 2010. Detailed negotiation took place in Council in 2010 on the content of such decisions. These negotiations were preceded by an intensive discussion with all Member States in the Administrative Commission for the Coordination of Social Security Systems.

### **Collection and use of expertise**

There was no need for external expertise.

### **Impact assessment**

Article 51 of the Agreement with Montenegro contains the principles for limited coordination between the social security systems of Member States and Montenegro. Additionally, a number of other agreements with third countries contain similar provisions on the coordination of social security systems. All of them require a Decision of the relevant body set up by those agreements so that the coordination principles can take effect.

The aim of the Articles on social security in these agreements is that a worker from the associated country concerned can receive certain social security benefits provided under the legislation of the Member State(s) to which he is or has been subject. This also applies, by way of reciprocity, to an EU national working in the associated country.

As the provisions in the proposals included in the current package of proposals with regard to four countries (Albania, Montenegro, San Marino and Turkey) are almost identical – and also almost identical to the first package of six decisions in respect of Algeria, Morocco, Tunisia, Croatia, the former Yugoslav Republic of Macedonia and Israel adopted by the Council in October 2010, this will facilitate the application of these provisions by Member States' social security institutions. There might be some financial implications for national social security institutions resulting from the application of these proposals, since they have to provide, for example, the benefits as described in Article 51 of the Agreement with Montenegro. However, this Article only concerns persons who are or have been contributing to the national social security system of the country concerned, as provided for under its national legislation. In any case, it may be difficult to gauge the precise impact of these proposals on the national social security systems at this stage.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **Summary of the proposed action**

This proposal consists of a Council Decision on the position to be taken on behalf of the Union within the Stabilisation and Association Council established by the Agreement with Montenegro and, in the Annex, of a draft Decision of the Stabilisation and Association Council in the social security field.

The proposed Decision of the Stabilisation and Association Council fulfils the requirement of Article 51 of the Agreement with Montenegro for such a Decision, in order to put in place the social security principles contained in that Article. The Decision therefore contains implementing provisions with regard to those provisions of Article 51 of the Agreement with Montenegro which are not already covered by Regulation (EU) No 1231/2010.

Moreover, the proposed Decision of the Stabilisation and Association Council ensures that the provisions on the export of benefits and the granting of family benefits also apply, by way of reciprocity, to EU workers legally employed in Montenegro and to their family members legally resident in Montenegro.

#### **Legal basis**

Article 218(9) of the Treaty on the Functioning of the European Union in conjunction with its Article 79(2)(b). As a consequence, Denmark will not participate in the adoption of this decision. Neither will Ireland and the United Kingdom participate in the adoption of this decision, unless notice is given of the wish to take part in the adoption and application of it. The non-participation of these countries in the Council decision is without prejudice to their participation in the decision of the Stabilisation and Association Council.

#### **Subsidiarity principle**

The Agreement with Montenegro provides for principles on coordination of social security systems which have to be applied equally by all Member States. The implementation of these principles should therefore be submitted to uniform conditions, which can be better achieved at Union level.

#### **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

Member States continue to have exclusive competence in determining, organising and financing their national social security systems.

The proposal only organises to some extent the coordination of social security systems of Member States and Montenegro, to the benefit of the citizens of these countries. Moreover, the proposal does not affect any rights and obligations arising from bilateral social security agreements concluded between the Member States and Montenegro where the latter provide for more favourable treatment of the persons concerned.

The proposal minimises the financial and administrative burden for national authorities, as it is part of a package of similar proposals which ensure a uniform application of social security provisions contained in Association Agreements with third countries.

## **Choice of instruments**

Proposed instruments: Council Decision (containing in Annex a draft Stabilisation and Association Council Decision).

Other means would not be adequate for the following reason.

There is no alternative option to the proposed action. Article 51 of the Agreement requires a Decision of the Stabilisation and Association Council. Article 218(9) of the Treaty on the Functioning of the European Union provides for a Council Decision for the purpose of establishing the positions to be adopted on behalf of the Union in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects.

## **4. BUDGETARY IMPLICATION**

The proposal has no implications for the budget of the European Union.

## **5. OPTIONAL ELEMENTS**

### **Simplification**

The proposal will lead to simplification of administrative procedures for national public authorities and simplification of administrative procedures for private parties.

The provisions in the proposal relating to the coordination of social security systems for Montenegrin nationals are almost identical to those for the nationals of the other associated countries. This will lead to a simplification of the procedures and fewer administrative burdens for national social security institutions.

Persons falling under the proposal are not confronted with different national provisions as regards the social security principles contained in Article 51 of the Agreement with Montenegro, and can therefore rely instead on uniform provisions within the Community.

### **Detailed explanation of the proposal**

**A. Council Decision on the position to be taken on behalf of the European Union within the Stabilisation and Association Council established by the Stabilisation and Association Agreement with Montenegro with regard to the provisions on the coordination of social security systems.**

Article 1

This Article provides for the adoption of the EU position in the EU-Montenegro Stabilisation and Association Council.

**B. Annexed draft Decision of the Stabilisation and Association Council with regard to the provisions on the coordination of social security systems contained in the Agreement.**

Part I: General provisions

Article 1

This Article defines, for the purposes of the legislation of a Member State and for the purpose of the legislation of Montenegro, the terms "Agreement", "Regulation", "implementing Regulation", "Member State", "worker", "member of the family", "legislation", "benefits" and "exportable benefits", and refers to the Regulation and implementing Regulation for the other terms used in the annexed Decision.

## Article 2

In line with the wording of Article 51 of the Agreement with Montenegro, this Article defines the persons covered by the annexed Decision.

## Article 3

This Article provides for non-discriminatory treatment of all persons covered by the Agreement with regard to all social security benefits covered by it.

## Part II

### Relations between the Member States and Montenegro

This Part of the annexed draft Decision covers the principles contained in Article 51(1)(b) of the Agreement with Montenegro as well as the reciprocity clause with regard to EU nationals and the members of their family, as provided for in Article 51 (2).

## Article 4

This Article contains the principle of the export of cash benefits as provided for in Article 51 (1)(b) of the Agreement with Montenegro and makes it clear that this principle is limited to the benefits contained in Article 1(1)(i) of the annexed Decision which lists the benefits referred to in this paragraph.

## Part III

### Miscellaneous provisions

## Article 5

This Article contains general provisions for cooperation between Member States and their institutions, of the one part, and Montenegro and its institutions, of the other part, as well as between the beneficiaries and the institutions concerned. These provisions are similar to those of Article 76 (3), (4), first and third sub-paragraphs, and (5) of Regulation (EC) No 883/2004.

## Article 6

This Article lays down the procedures for administrative checks and medical examinations similar to those contained in Article 87 of Regulation (EC) No 987/2009. Moreover, it provides for the possibility to adopt other implementing provisions in this area.

## Article 7

This Article refers to the possibility to use the conflict settlement procedure laid down in the Agreement.

## Article 8

This Article refers to Annex II to the annexed Decision which is similar to Annex XI to Regulation (EC) No 883/2004, and which is necessary in order to lay down the necessary special provisions for the application of Montenegrin legislation with regard to the annexed Decision.

## Article 9

This Article allows administrative procedures from existing agreements between a Member State and Montenegro to continue to apply under certain conditions.

## Article 10

This Article provides for the possibility to conclude supplementary administrative Agreements.

## Article 11

The transitional provisions provided for under this Article are similar to the transitional provisions in Article 87 (1), (3), (4), (6) and (7) of Regulation (EC) No 883/2004.

## Article 12

This Article clarifies the legal status of the Annexes to the annexed Decision and the procedure for amending them.

## Article 13

This Article clarifies the date of entry into force of the annexed Decision.



Proposal for a

## COUNCIL DECISION

**on the position to be taken on behalf of the European Union within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, with regard to the provisions on the coordination of social security systems**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(2)(b) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 51 of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part<sup>6</sup> ("the Agreement"), provides that the Stabilisation and Association Council shall, by decision, put in place the provisions to implement the principles set out in that Article.
- (2) In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, [Ireland] [and] [the United Kingdom][has] [have] notified, by letter[s] of [ ...], [its] [their] wish to take part in the adoption and application of this Decision.
- (3) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, [Ireland] [the United Kingdom] [is] [are] not taking part in the adoption of this Decision and [is] [are] not bound by it or subject to its application.
- (4) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

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<sup>6</sup> OJ L 108, 29.4.2010, p.1.

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on behalf of the European Union within the Stabilisation and Association Council set up by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part ("the Agreement"), concerning the implementation of Article 51 of the Agreement, shall be based on the draft decision of the Stabilisation and Association Council attached to this Decision.

Minor changes to the draft decision may be agreed to by the representatives of the Union in the Stabilisation and Association Council without further decision of the Council.

*Article 2*

The Decision of the Stabilisation and Association Council shall be published in the *Official Journal of the European Union*.

*Article 3*

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council  
The President*

## ANNEX

### Draft

## DECISION No.../.... OF THE EU – MONTENEGRO STABILISATION AND ASSOCIATION COUNCIL

of ...

**with regard to the provisions on the coordination of social security systems contained in the Stabilisation and Association Agreement**

THE STABILISATION AND ASSOCIATION COUNCIL,

Having regard to the Stabilisation and Association Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part<sup>7</sup>, and in particular Article 51 thereof,

Whereas:

- (1) Article 51 of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part ("the Agreement"), provides for the coordination of the social security systems of Montenegro and the Member States and lays down the principles for such coordination.
- (2) Article 51 of the Agreement provides that the Stabilisation and Association Council shall adopt a Decision for the purposes of implementing the principles set out in that Article.
- (3) With regard to the application of the non-discrimination principle, this Decision should not give any additional rights arising from certain facts or events occurring on the territory of the other Contracting Party, where such facts or events are not taken into account under the legislation of the first Contracting Party, other than the right to export certain benefits.
- (4) In applying this Decision, the right of Montenegrin workers to family benefits should be subject to the condition that their family members legally reside with these workers in the Member State where the workers are employed. This Decision should not give any entitlement to family benefits with respect to members of their family who reside in another state, for instance Montenegro.
- (5) Council Regulation (EU) No 1231/2010<sup>8</sup> already extends the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by those provisions solely on the grounds of their nationality. Regulation (EU) No 1231/2010 already covers the principle of aggregation of insurance periods acquired by Montenegrin workers in the various Member States

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<sup>7</sup> OJ L108, 29.4.2010, p.1.

<sup>8</sup> OJ L 344, 29.12.2010, p. 1.

regarding entitlement to certain benefits, as set out in Article 51(1)(a) of the Agreement.

- (6) It might be necessary to lay down special provisions which correspond to the specific characteristics of the legislation of Montenegro, in order to facilitate the application of the coordination rules.
- (7) To ensure the smooth functioning of the coordination of the social security systems of the Member States and of Montenegro, it is necessary to provide for specific provisions regarding the cooperation between the Member States and Montenegro as well as between the person concerned and the institution of the competent State.
- (8) Transitional provisions should be adopted to protect the persons covered by this Decision and to ensure that they do not lose rights as a result of its entry into force.

HAS ADOPTED THIS DECISION:

## *PART I*

### **GENERAL PROVISIONS**

#### *Article 1*

#### **Definitions**

1. For the purposes of this Decision
  - (a) "Agreement" means the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part;
  - (b) "Regulation" means Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems<sup>9</sup> as applicable in the Member States of the European Union;
  - (c) "implementing Regulation" means Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems<sup>10</sup>;
  - (d) "Member State" means a Member State of the European Union;
  - (e) "worker" means,

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<sup>9</sup> OJ L 166, 30.4.2004, p.1.

<sup>10</sup> OJ L 284, 30.10.2009, p. 1.

- (i) for the purposes of the legislation of a Member State, a person pursuing an activity as an employed person within the meaning of Article 1(a) of the Regulation;
  - (ii) for the purposes of the legislation of Montenegro, a person pursuing an activity as an employed person within the meaning of that legislation;
- (f) "member of the family" means,
- (i) for the purposes of the legislation of a Member State, a member of the family within the meaning of Article 1(i) of the Regulation;
  - (ii) for the purposes of the legislation of Montenegro, a member of the family within the meaning of that legislation;
- (g) "legislation" means,
- (i) in relation to the Member States, legislation within the meaning of Article 1(1) of the Regulation as applicable to the benefits covered by this Decision;
  - (ii) in relation to Montenegro, the relevant legislation as applicable in Montenegro relating to the benefits covered by this Decision;
- (h) "benefits" means,
- old-age pensions,
  - survivors' pensions,
  - pensions in respect of accidents at work and occupational diseases,
  - invalidity pensions related to accidents at work and occupational diseases,
  - family allowances.
- (i) "exportable benefits" means,
- (i) in relation to the Member States:
    - old-age pensions,
    - survivors' pensions,
    - pensions in respect of accidents at work and occupational diseases,
    - invalidity pensions related to accidents at work and occupational diseases,

within the meaning of the Regulation, with the exception of special non-contributory cash benefits as listed in Annex X to the Regulation;

- (ii) in relation to Montenegro, the corresponding benefits provided under the legislation of Montenegro, with the exception of special non-contributory cash benefits as set out in Annex I to this Decision;

2. Other terms used in this Decision shall have the meaning which is assigned to them:

- (a) in relation to the Member States, in the Regulation and the implementing Regulation;
- (b) in relation to Montenegro, in the relevant legislation as applicable in Montenegro.

## *Article 2*

### ***Persons covered***

This Decision shall apply:

- (a) to workers who are Montenegrin nationals and who are or have been legally employed in the territory of a Member State and who are or have been subject to the legislation of one or more Member States, and their survivors;
- (b) to the members of the family of workers referred to in point (a) provided that these family members are or have been legally resident with the worker concerned while the worker is employed in a Member State;
- (c) to workers who are nationals of a Member State who are or have been legally employed in the territory of Montenegro and who are or have been subject to the legislation of Montenegro and their survivors; and
- (d) to the members of the family of workers referred to in point (c) provided that these family members are or have been legally resident with the worker concerned while the worker is employed in Montenegro.

## *Article 3*

### ***Equality of Treatment***

1. Workers who are Montenegrin nationals and are legally employed in a Member State and any members of their families legally residing with them shall enjoy, with regard to the benefits within the meaning of Article 1(1)(h), treatment free from any discrimination based on nationality relative to nationals of the Member States in which those workers are employed.
2. Workers who are nationals of a Member State and are legally employed in Montenegro and any members of their families legally residing with them shall enjoy, with regard to the benefits within the meaning of Article 1(1)(h), treatment free from any discrimination based on nationality relative to Montenegrin nationals.

## *Part II*

### **RELATIONS BETWEEN THE MEMBER STATES AND MONTENEGRO**

#### *Article 4*

##### **Waiving of residence clauses**

1. Exportable benefits within the meaning of Article 1(1)(i) to which the persons as referred to in Article 2(a) and (c) are entitled shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the beneficiary is residing,
  - (i) for the purpose of a benefit under the legislation of a Member State, within the territory of Montenegro, or
  - (ii) for the purpose of a benefit under the legislation of Montenegro, within the territory of a Member State.
2. Family members of a worker as referred to in Article 2(b) are entitled to exportable benefits within the meaning of Article 1(1)(i)(i) in the same way as the family members of a worker who is a national of the Member State concerned when these family members reside within the territory of Montenegro.
3. Family members of a worker as referred to in Article 2(d) are entitled to exportable benefits within the meaning of Article 1(1)(i)(ii) in the same way as the family members of a worker who is a national of Montenegro when these family members reside within the territory of a Member State.

## *PART III*

### **MISCELLANEOUS PROVISIONS**

#### *Article 5*

##### **Cooperation**

1. The Member States and Montenegro shall communicate to each other all information regarding changes in their legislation which may affect the implementation of this Decision.
2. For the purposes of this Decision, the authorities and institutions of the Member States and of Montenegro shall lend one another their good offices and act as though implementing their own legislation. The administrative assistance given by the said authorities and institutions shall, as a rule, be free of charge. However, the competent authorities of the Member States and of Montenegro may agree to certain expenses being reimbursed.

3. The authorities and institutions of the Member States and of Montenegro may, for the purposes of this Decision, communicate directly with one another and with the persons involved or their representatives.
4. The institutions and persons covered by this Decision shall have a duty of mutual information and cooperation to ensure the correct implementation of this Decision.
5. The persons concerned must inform the institutions of the competent Member State or Montenegro, where the latter is the competent state, and of the Member State of residence or Montenegro, where the latter is the State of residence, as soon as possible of any change in their personal or family situation which affects their right to benefits under this Decision.
6. Failure to respect the obligation of information referred to in paragraph 5 may result in the application of proportionate measures in accordance with national law. Nevertheless, these measures shall be equivalent to those applicable to similar situations under domestic law and shall not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by this Decision.
7. The Member States and Montenegro may provide for national provisions that establish conditions for verification of the entitlement to benefits to take into account the fact that the beneficiaries are staying or residing outside the territory of the State where the debtor institution is located. Such provisions shall be proportionate, free from any discrimination based on nationality and in accordance with the principles of this Decision. Such provisions shall be notified to the Stabilisation and Association Council.

#### *Article 6*

##### **Administrative checks and medical examinations**

1. This Article shall apply to the persons as referred to in Article 2 and in receipt of exportable benefits as referred to in Article 1(1)(i), as well as to the institutions in charge of the implementation of this Decision.
2. Where a recipient or a claimant of benefits, or a member of his family, is staying or residing within the territory of a Member State when the debtor institution is located in Montenegro or in Montenegro when the debtor institution is located in a Member State, the medical examination shall be carried out, at the request of that institution, by the institution of the beneficiary's place of stay or residence in accordance with the procedures laid down by the legislation applied by that institution.

The debtor institution shall inform the institution of the place of stay or residence of any special requirements, if necessary, to be followed and points to be covered by the medical examination.

The institution of the place of stay or residence shall forward a report to the debtor institution that requested the medical examination.



The debtor institution shall reserve the right to have the beneficiary examined by a doctor of its choice, either in the territory where the recipient or claimant of benefit is staying or residing or in the country where the debtor institution is located. However, the beneficiary may be asked to return to the State of the debtor institution only if he or she is able to make the journey without prejudice to his health and the cost of travel and accommodation is paid for by the debtor institution.

3. Where a recipient or a claimant of benefits, or a member of his family, is staying or residing in the territory of a Member State when the debtor institution is located in Montenegro or in Montenegro when the debtor institution is located in a Member State, the administrative check shall, at the request of the debtor institution, be performed by the institution of the beneficiary's place of stay or residence.

The institution of the place of stay or residence shall forward a report to the debtor institution that requested the administrative check.

The debtor institution shall reserve the right to have the situation of the beneficiary examined by a professional of its choice. However, the beneficiary may be asked to return to the State of the debtor institution only if he or she is able to make the journey without prejudice to his health and the cost of travel and accommodation is paid for by the debtor institution.

4. One or more Member States and Montenegro may agree on other administrative provisions, subject to their informing the Stabilisation and Association Council thereof.
5. As an exception to the principle of free-of-charge mutual administrative assistance set out in Article 5(2) of this Decision, the effective amount of the expenses of the checks referred to in paragraphs 2 and 3 of this Article shall be refunded to the institution which was requested to carry them out by the debtor institution which requested them.

#### *Article 7*

### **Application of Article 129 of the Agreement**

Article 129 of the Agreement shall apply in case either Party considers that the other Party has not complied with the obligations as laid down in Articles 5 and 6.

#### *Article 8*

### **Special provisions for the application of the legislation of Montenegro**

The Stabilisation and Association Council may, if necessary, lay down special provisions for the application of the legislation of Montenegro in Annex II.

## *Article 9*

### **Administrative procedures from existing bilateral agreements**

Administrative procedures contained in existing bilateral agreements between a Member State and Montenegro may continue to apply provided that these procedures do not adversely affect the rights or obligations of the persons concerned established by this Decision.

## *Article 10*

### **Agreements supplementing the procedures for implementing this Decision**

One or more Member States and Montenegro may conclude agreements designed to supplement the administrative procedures for implementing this Decision, especially with regard to preventing and combating fraud and error.

## *PART IV*

### **TRANSITIONAL AND FINAL PROVISIONS**

## *Article 11*

### **Transitional provisions**

1. No rights shall be acquired pursuant to this Decision for the period before its entry into force.
2. Subject to paragraph 1, a right shall be acquired under this Decision even if it relates to a contingency arising before its date of entry into force.
3. 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, at the request of that person, be provided or resumed with effect from the date of entry into force of this Decision, provided that the rights for which benefits were previously provided have not given rise to a lump-sum payment.
4. If a request as referred to in paragraph 3 is submitted within two years from the date of entry into force of this Decision, the rights acquired in accordance with this Decision shall have effect from the date of entry into force of this Decision, and the legislation of any Member State or Montenegro concerning the forfeiture or limitation of rights may not be invoked against the persons concerned.
5. If a request as referred to in paragraph 3 is submitted after the expiry of the two-year period following the date of entry into force of this Decision, rights not forfeited or not time-barred shall have effect from the date on which the request was submitted,

subject to any more favourable provisions under the legislation of any Member State or Montenegro.

*Article 12*

**Annexes to this Decision**

1. The Annexes to this Decision constitute an integral part thereof.
2. At the request of Montenegro or the European Union, the Annexes may be amended by a decision of the Stabilisation and Association Council.

*Article 13*

**Entry into force**

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Stabilisation and Association Council

The President

**ANNEX I**

**LIST OF MONTENEGRIN SPECIAL NON-CONTRIBUTORY CASH BENEFITS**

**ANNEX II**

**SPECIAL PROVISIONS FOR THE APPLICATION OF THE LEGISLATION OF  
MONTENEGRO**