



**COUNCIL OF
THE EUROPEAN UNION**

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**SOC 920
ME 9
COWEB 185**

"I/A" ITEM NOTE

from : General Secretariat of the Council
to : Permanent Representatives Committee (Part I)/Council (Employment, Social Policy, Health and Consumer Affairs)

No. prev. doc.: 13986/12 SOC 761 ME 7 COWEB 139
No. Cion prop.: 8554/12 + COR 1 - 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
= Adoption

1. On 30 March 2012, the Commission submitted the above-mentioned proposal which aims at establishing the position to be taken by the European Union within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and Montenegro. This draft Decision is part of a package of four proposals which includes similar proposals with regard to Albania, San Marino and Turkey¹ which are largely based on the Decisions which were adopted by the Council in 2010 with regard to Algeria, Croatia, the Former Yugoslav Republic of Macedonia, Israel, Morocco and Tunisia².

¹ Documents 8553/12, 8555/12 and 8556/12.

² OJ L 306 of 23 November 2010, respectively p. 14, p. 35, p. 28, p. 21, p. 1 and p. 8.

2. 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.
3. The draft Decision aims at fulfilling the requirement set out in the Stabilisation and Association Agreement that a decision of the Stabilisation and Association Council be taken in order to implement the principles for the co-ordination of social security systems as laid down in Article 51 of the Agreement. The draft Decision 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. In substance, the aim of these principles is that Montenegrin nationals who are, or have been, subject to the legislation of one or more Member States, may be granted certain social security benefits as provided for under the legislation of the Member State to which they are, or have been, subject. These principles also apply to their family members provided they are, or have been, legally resident with the worker concerned in the Member State where the worker is employed.
4. By way of reciprocity, these principles are also applicable to EU nationals legally employed in Montenegro as well as to their family members legally resident therein.
5. The proposal for a decision further lays down a number of provisions on cooperation between the Member States and Montenegro concerning, inter alia, the procedures for administrative checks and medical examinations.
6. The legal basis proposed by the Commission is Article 79(2)(b) TFEU in conjunction with Article 218(9) TFEU.
7. In accordance with Article 218(10) TFEU, the European Parliament shall have to be immediately and fully informed at all stages of the procedure.

8. 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, those Member States are not taking part in the adoption of this Decision and are not bound by it or subject to its application.
9. 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.
10. Considering the importance of giving effect to the principles on the co-ordination of social security systems set out in Article 51 of the Agreement with Montenegro, the Danish and the Cyprus Presidencies held discussions³ on this proposal with a view to the Council (EPSCO) reaching a political agreement at its session on 4 October 2012.
11. At its meeting on 4 October 2012, the Council (EPSCO) reached a political agreement on the text of the draft Decision, as set out in doc. 13986/12 +COR1, taking note of a statement by MT to be entered in the Council Minutes (see Annex).
12. The text of the draft Decision, as finalised by the lawyer-linguists, is to be found in doc. 14796/12.

³ See outcomes of proceedings in documents 11123/12 + COR1 + COR2 + COR3 and 12364/12 + COR1.

13. The Permanent Representatives Committee therefore recommends the Council (EPSCO) to:

- adopt the draft Decision, as set out in doc. 14796/12, as an "A" item at its session on 6 December 2012;
- enter in its Minutes the statement by the Maltese delegation, as set out in the Annex to this note.

Statement by Malta

Malta fully recognises and supports the objective of the Council Decisions with respect to Turkey, the Republic of Montenegro, the Republic of Albania and the Republic of San Marino.

However, Malta considers that these Council Decisions should implement the principles for the coordination of social security as set out in the Association Agreements and should not exceed the remit of such Agreements or extend their scope.

Malta notes that the Council Decisions of the Republic of Albania and the Republic of Montenegro will implement the principle of equal treatment even though an equal treatment clause is not explicitly embodied in the respective Association Agreements.

Therefore, Malta is of the view that the inclusion of an equal treatment clause in these Council Decisions should not be interpreted as meaning that Malta considers the equal treatment of third country nationals as a general principle of EU law or that it sets a precedent with regard to possible future agreements between the EU and third countries in the field of social security coordination or with regard to future Council Decisions implementing any such agreements.

Malta therefore abstains on the Council Decisions concerning the Republic of Albania and the Republic of Montenegro.
