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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Association Council set up by the Agreement establishing an association between the European Economic Community and Turkey 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

It follows from Article 12 of the Agreement establishing an association between the European Economic Community and Turkey¹ ("the Ankara Agreement") and Article 36 of the Additional Protocol to the Ankara Agreement² ("the Additional Protocol") that freedom of movement for workers between the Union and Turkey is to be secured by progressive stages. Article 9 of the Ankara Agreement provides that within the scope of the Agreement any discrimination on grounds of nationality shall be prohibited. Article 39 of the Additional Protocol lays down that the Association Council shall adopt social security measures for workers of Turkish nationality moving within the Union and for their families residing in the Union, and lists some coordination principles which those measures should implement.

As a first step towards the implementation of these social security coordination principles in the Ankara Agreement and its Additional Protocol, Decision No 3/80 of the Association Council on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families was adopted by the Association Council on 19 September 1980³ ("Decision No 3/80"). The second step, namely the adoption of a Regulation to implement the provisions of Decision No 3/80, was never taken.⁴

In the meantime, the Court of Justice has held that Article 3(1) of Decision No 3/80, the principle of non-discrimination, and Article 6 of this Decision, the requirement to waive residence clauses in respect of benefits payable under the Decision, have direct effect and can be relied upon before the national courts.⁵

In order to provide legal certainty and to give full effect to the principles of social security coordination contained in the Ankara Agreement and its Additional Protocol, it is necessary that a new decision is adopted by the Association Council, to replace Decision No 3/80. The Commission's previous proposal to implement Decision No 3/80 will be withdrawn, as it is envisaged that the new Association Council decision will implement in one step the obligations in the Agreement and its Protocol.

General context

The provisions of the Ankara Agreement and the Additional Protocol on the freedom of movement of workers and the measures adopted to implement them, in particular Association Council Decision No 1/80, should be accompanied by appropriate social security coordination measures. Moreover, Article 39 of the Additional Protocol contains explicit provisions for

¹ OJ 217, 29.12.1964, p. 3687/64.

² OJ L293, 29.12.1972, p.3.

³ OJ C110, 25.4.1983, p.60.

⁴ The Commission presented on 2.2.1983 a proposal for a regulation to implement Decision No 3/80, COM(83) 13 .

⁵ ECJ, Case C-262/96, *Sürül*, Case C-485/07, *Akdas*.

coordination between the social security systems, which need to be implemented. A Decision of the Association Council is required to that effect.

A number of other Association Agreements with third countries contain also provisions on the coordination of social security systems. This proposal is part of a package of proposals which includes similar proposals with regard to the Agreements with Albania, Montenegro and San Marino. 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 2010.⁶

In order to establish the position to be taken by the Union in the 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 883/2004⁷ and its implementing Regulation (EC) No 987/2009⁸.

Council Regulation (EU) No 1231/2010⁹ 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 Turkish workers in the various Member States regarding entitlement to certain benefits, as set out in Article 39 (2) of the Additional Protocol to the Agreement with Turkey.

Consistency with other policies and objectives of the Union

Turkey has been associated with the European integration project ever since the signature of the Ankara Association Agreement in 1963, which was supplemented in 1970 with an Additional Protocol. These agreements provide as an aim, to be achieved by progressive stages, the free movement of workers between Turkey and the EU. As a corollary to these provisions that set out a programme, Article 39 of the Additional Protocol lays down provisions on social security coordination. Full implementation of these provisions will enhance the special relationship with Turkey, as envisaged in Article 8 TEU. At the same time, it will permit Turkey to align its policies on social security coordination with those of the EU in preparation for future accession to the EU.

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

Consultation of interested parties

⁶ OJ L306, 23.11.2010.

⁷ OJ L 166, 30.4.2004, p. 1.

⁸ OJ L 284, 30.10.2009, p. 1.

⁹ 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.

This proposal for coordination of the social security systems of the Member States and Turkey will replace Decision No 3/80. The proposal 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 39 of the Additional Protocol to the Agreement with Turkey contains provisions on coordination between the social security systems of Member States and Turkey. A number of other agreements with third countries contain also provisions on the coordination of social security systems. All of them require a Decision of the relevant body set up by these agreements so that the principles, as set out in Article 39, can take effect.

The aim of the provisions on social security in such 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 all the provisions included in the current package of proposals with regard to the four associated 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 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 39 of the Additional Protocol. 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 Association Council established by the Agreement with Turkey and, in the Annex, of a draft Decision of the Association Council in the social security field.

The proposed Association Council Decision fulfils the requirement of Article 39 of the Additional Protocol for such a Decision, in order to put in place the social security principles contained therein. The Decision contains moreover implementing provisions with regard to those provisions of Article 39 of the Additional Protocol to the Agreement with Turkey which are not already covered by Regulation (EU) No 1231/2010. In addition, specific provision is made – as was made in Decision No 3/80 - to implement Article 9 of the Agreement in the field of social security coordination.

Moreover, the proposed Decision of the 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 Turkey and to their family members legally resident in Turkey. As the Association Council Decision would in doing so go beyond the scope of Article 39 of the Additional Protocol, the draft Association Council Decision is also based on Article 22(3) of the Ankara Agreement.

Legal basis

The Council Decision on the position to be taken in the Association Council should be based on Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) in conjunction with Article 48 TFEU.

Indeed, the Ankara Agreement and the Additional Protocol provide for a legal situation which has to be distinguished from the legal situation set by the other relevant Association Agreements with social security provisions, since – in contrast with these other agreements – the Ankara Agreement and the Additional Protocol clearly provide for the free movement of workers as a goal to be secured in progressive stages. In this context, the notion of free movement of workers has to be understood in the same way as in the relevant Union provisions (cf. Article 12 of the Ankara Agreement).

It is true that the free movement of workers between Turkey and the EU has not at all been achieved, and that it is therefore not possible to describe the current legal situation as an extension of the internal market with respect to free movement of persons (as is the case for the EEA and Switzerland). Nevertheless, in view of the different perspective set by the Association Agreement and the Additional Protocol, which aim at extending so far as possible to Turkish nationals the principles laid down in the Union provisions on free movement of workers¹⁰, the implementation of the social security provisions, which constitute a necessary corollary to the movement of workers, must in the same way find its legal basis in Article 48 TFEU.

Subsidiarity principle

The Additional Protocol 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 the coordination of social security systems of Member States and Turkey for 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 Turkey 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

¹⁰ cf. ECJ, Case C-275/02, *Ayaz*, paragraphs 44-45, Case C-467/02, *Cetinkaya*, paragraphs 42-43.

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

Other means would not be adequate for the following reasons.

There is no alternative option to the proposed action. Article 39 of the Additional Protocol to the Agreement requires a Decision of the respective Association Council. Article 218 (9) of the Treaty 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 Union budget.

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.

Detailed explanation of the proposal

A. Council Decision on the position to be taken on behalf of the Union within the Association Council created by the Association Agreement with Turkey 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 - Turkey Association Council.

B. Annexed draft Decision of the Association Council with regard to the provisions on the coordination of the 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 Turkey, 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 39 of the Additional Protocol to the Agreement with Turkey, 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 the social security benefits covered by it.

Part II

Relations between the Member States and Turkey

This Part of the annexed Decision covers the principles contained in Article 39(4) of the Additional Protocol with Turkey as well as the reciprocity clause with regard to EU nationals and the members of their family.

Article 4

This Article contains the principle of the export of cash benefits as provided for in Article 39(4) of the Additional Protocol with Turkey 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 Turkey 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 Turkish legislation with regard to the annexed Decision.

Article 9

This Article allows administrative procedures from existing agreements between a Member State and Turkey 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. In addition, there is a provision to protect the rights of Turkish workers who, as a result of the judgment of the Court of Justice in Case C-485/07 Akdas concerning the direct effect of Article 6(1) of Decision No 3/80, are prior to the entry into force of the Decision being provided with a pension or benefit by a Member State.

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.

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on the position to be taken on behalf of the European Union within the Association Council set up by the Agreement establishing an association between the European Economic Community and Turkey 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 48, in conjunction with Article 218(9), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement establishing an association between the European Economic Community and Turkey¹ ("the Agreement") and the Additional Protocol to the Agreement of 23 November 1970² ("the Additional Protocol") provide that the freedom of movement for workers between the Union and Turkey is to be secured by progressive stages.
- (2) Article 9 of the Agreement provides that within the scope of the Agreement any discrimination on grounds of nationality shall be prohibited.
- (3) Article 39 of the Additional Protocol provides that the Association Council shall adopt social security measures for workers of Turkish nationality moving within the Community and for their families residing in the Community.
- (4) As a first step towards the implementation of Article 39 of the Additional Protocol and of Article 9 of the Agreement in the field of social security, Decision No 3/80 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families was adopted by the Association Council on 19 September 1980³ ("Decision No 3/80").
- (5) It is necessary to ensure that in the field of social security Article 9 of the Agreement and Article 39 of the Additional Protocol are fully implemented.

¹ OJ 217, 29.12.1964, p.3687/64.

² OJ L 293, 29.12.1972, p.3.

³ OJ C110, 25.4.1983, p.60.

- (6) There is a need to update the content of Decision No 3/80 so that its provisions reflect developments in the field of European Union social security coordination⁴.
- (7) Decision No 3/80 should therefore be repealed and replaced with a decision of the Association Council that in one single step implements the relevant provisions of the Agreement and the Additional Protocol regarding the coordination of social security systems,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the European Union within the Association Council set up by the Agreement establishing an association between the European Economic Community and Turkey, with regard to the provisions for the coordination of social security systems, shall be based on the draft decision of the Association Council attached to this Decision.

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

Article 2

The Decision of the 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*

⁴ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L166, 30.4.2004, p.1; Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009, OJ L284, 30.10.09, p.1; Regulation (EU) No 1231/10 of the European Parliament and of the Council extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, OJ L344, 29.12.2010, p.1.

ANNEX

Draft

DECISION No.../.... OF THE EU - TURKEY ASSOCIATION COUNCIL

of ...

with regard to the provisions on the coordination of social security systems

THE ASSOCIATION COUNCIL,

Having regard to the Agreement establishing an association between the European Economic Community and Turkey¹, and in particular Article 22(3) thereof,

Having regard to the Additional Protocol of 23 November 1970², and in particular Article 39 thereof,

Whereas:

- (1) The Agreement establishing an association between the European Economic Community and Turkey ("the Agreement") and the Additional Protocol to the Agreement of 23 November 1970 ("the Additional Protocol") provide that freedom of movement for workers between the Union and Turkey is to be secured by progressive stages.
- (2) Article 9 of the Agreement provides that within the scope of the Agreement any discrimination on grounds of nationality shall be prohibited.
- (3) Article 39 of the Additional Protocol provides for the coordination of the social security systems of Turkey and the Member States and lays down the principles for such coordination.
- (4) Article 39 of the Additional Protocol provides that the Association Council shall adopt social security measures for workers of Turkish nationality moving within the Community and for their families residing in the Community.
- (5) As a first step towards the implementation of Article 39 of the Additional Protocol, Decision No 3/80 of the Association Council on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families was adopted by the Association Council on 19 September 1980³ ("Decision No 3/80").
- (6) It is necessary to ensure that in the field of social security Article 9 of the Agreement and Article 39 of the Additional Protocol are fully implemented.

¹ OJ 217, 29.12.1964, p.3687/64.

² OJ L 293, 29.12.1972, p.3.

³ OJ C110, 25.4.1983, p.60.

- (7) It is necessary to update the content of Decision No 3/80 so that its provisions reflect recent developments in the field of European Union social security coordination.
- (8) Council Regulation (EU) No 1231/2010⁴ 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 Turkish workers in the various Member States regarding entitlement to certain benefits, as set out in Article 39(2) of the Additional Protocol.
- (9) Decision No 3/80 should therefore be repealed and replaced with a decision of the Association Council that in one single step implements all principles on the coordination of social security systems contained in the Agreement and in the Additional Protocol.
- (10) 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.
- (11) In applying this Decision, the right of 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 Turkey.
- (12) It might be necessary to lay down special provisions which correspond to the specific characteristics of the legislation of Turkey, in order to facilitate the application of the coordination rules.
- (13) To ensure the smooth functioning of the coordination of the social security systems of the Member States and of Turkey, it is necessary to provide for specific provisions regarding the cooperation between the Member States and Turkey as well as between the person concerned and the institution of the competent State.
- (14) 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:

⁴ OJ L 344, 29.12.2010, p. 1.

PART I

GENERAL PROVISIONS

Article 1

Definitions

1. For the purposes of this Decision
 - (a) "Agreement" means the Agreement establishing an association between the European Economic Community and Turkey;
 - (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 systems⁵ 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 systems⁶;
 - (d) "Member State" means a Member State of the European Union;
 - (e) "worker" means,
 - (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 Turkey, 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 Turkey, 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 Turkey, the relevant legislation as applicable in Turkey relating to the benefits covered by this Decision;
 - (h) "benefits" means,

⁵ OJ L 166, 30.4.2004, p.1.

⁶ OJ L 284, 30.10.2009, p. 1.

- (i) in relation to the Member States, benefits within the meaning of Article 3 of the Regulation;
 - (ii) in relation to Turkey, the corresponding benefits applying within Turkey;
 - (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,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 Turkey, the corresponding benefits provided under the legislation of Turkey, 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 Turkey, in the relevant legislation as applicable in Turkey.

Article 2

Persons covered

This Decision shall apply:

- (a) to Turkish workers 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 Turkey and who are or have been subject to the legislation of Turkey 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 Turkey.

Article 3

Equality of Treatment

1. Turkish workers who 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 Turkey 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 Turkey.

Part II

RELATIONS BETWEEN THE MEMBER STATES AND TURKEY

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 Turkey, or
 - (ii) for the purpose of a benefit under the legislation of Turkey, 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 Turkey.
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 Turkey when these family members reside within the territory of a Member State.

PART III

MISCELLANEOUS PROVISIONS

Article 5

Cooperation

1. The Member States and Turkey 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 Turkey 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 Turkey may agree to certain expenses being reimbursed.
3. The authorities and institutions of the Member States and of Turkey 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 Turkey, where the latter is the competent state, and of the Member State of residence or Turkey, 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 Turkey 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 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 Turkey or in Turkey 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 Turkey or in Turkey 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 Turkey may agree on other administrative provisions, subject to their informing the 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 25 of the Agreement

Article 25 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 Turkey

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

Article 9

Administrative procedures from existing bilateral agreements

Administrative procedures contained in existing bilateral agreements between a Member State and Turkey 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 Turkey 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 Turkey 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 Turkey.
6. The rights of a person to whom a pension or special non-contributory cash benefit is being provided by a Member State prior to the date of entry into force of this Decision as a result of the direct effect of Article 6(1) of Decision No 3/80 of the Association Council shall not be limited or forfeited as a result of this Decision.

Article 12

Annexes to this Decision

The Annexes to this Decision constitute an integral part thereof.

Article 13

Repeal

Decision No 3/80 of the Association Council of 19 September 1980 shall be repealed from the date of entry into force of this Decision.

Article 14

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 Association Council

The President

ANNEX I

LIST OF TURKISH SPECIAL NON-CONTRIBUTORY CASH BENEFITS

ANNEX II

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