

## COUNCIL DECISION

of 6 December 2012

**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 adoption of provisions on the coordination of social security systems**

(2012/776/EU)

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 Turkey<sup>(1)</sup> (the 'Agreement') and the Additional Protocol to the Agreement of 23 November 1970<sup>(2)</sup> (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 is prohibited.

(3) Article 39 of the Additional Protocol provides that the Association Council is to adopt social security measures for workers of Turkish nationality moving within the Union and for their families residing in the Union.

(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<sup>(3)</sup> ('Decision No 3/80') was adopted by the Association Council on 19 September 1980.

(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.

(6) There is a need to update the implementing provisions currently contained in Decision No 3/80 so that they reflect developments in the field of European Union social security coordination<sup>(4)</sup>.

(7) Decision No 3/80 should therefore be repealed and replaced with a Decision of the Association Council that, in one single step, implements the relevant provisions of the Agreement and of the Additional Protocol regarding the coordination of social security systems.

(8) It is appropriate to establish the position to be taken on the Union's behalf in the Association Council, with regard to the adoption of provisions on the coordination of social security systems.

(9) The position of the Union within the Association Council should therefore be based on the attached draft decision,

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 adoption of provisions on the coordination of social security systems, shall be based on the draft decision of the Association Council attached to this Decision.

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

<sup>(1)</sup> OJ 217, 29.12.1964, p. 3687/64.

<sup>(2)</sup> OJ L 293, 29.12.1972, p. 3.

<sup>(3)</sup> OJ C 110, 25.4.1983, p. 60.

<sup>(4)</sup> 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 L 166, 30.4.2004, p. 1); 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 (OJ L 284, 30.10.2009, p. 1); Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 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 L 344, 29.12.2010, p. 1).

*Article 2*

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

Done at Brussels, 6 December 2012.

*For the Council*  
*The President*  
S. CHARALAMBOUS

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DRAFT

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

of ...

**with regard to the adoption of 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 Turkey<sup>(1)</sup>, and in particular Article 22(3) thereof,

Having regard to the Additional Protocol of 23 November 1970<sup>(2)</sup>, 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 is 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 further provides that the Association Council is to 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 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families<sup>(3)</sup> ('Decision No 3/80') was adopted by the Association Council on 19 September 1980.
- (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.
- (7) It is necessary to update the implementing provisions currently contained in Decision No 3/80 so that they reflect developments in the field of European Union social security coordination.
- (8) Regulation (EU) No 1231/2010<sup>(4)</sup> extends the application of the provisions of 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>(5)</sup> and of 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>(6)</sup> to nationals of third countries who are not covered by those provisions 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 the relevant provisions of the Agreement relating to 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 Turkish workers to family benefits should be subject to the condition that their family members legally reside with them in the Member State where they are employed. Where their family members legally reside in another Member State, Regulation (EU) No 1231/2010 applies. This Decision should not give any entitlement to family benefits with respect to the family members of a worker who reside in a country other than a Member State, for instance Turkey.
- (12) It may 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) In order 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 cooperation between the Member States and Turkey, as well as between the person concerned and the institution of the competent State.

<sup>(1)</sup> OJ 217, 29.12.1964, p. 3687.

<sup>(2)</sup> OJ L 293, 29.12.1972, p. 3.

<sup>(3)</sup> OJ C 110, 25.4.1983, p. 60.

<sup>(4)</sup> OJ L 344, 29.12.2010, p. 1.

<sup>(5)</sup> OJ L 166, 30.4.2004, p. 1.

<sup>(6)</sup> OJ L 284, 30.10.2009, p. 1.

(14) Transitional provisions should be adopted in order to protect the persons covered by this Decision and to ensure that they do not lose any 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 Agreement establishing an association between the European Economic Community and Turkey;

(b) 'Regulation' means Regulation (EC) No 883/2004, as applicable in the Member States of the European Union;

(c) 'implementing Regulation' means Regulation (EC) No 987/2009;

(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(l) of the Regulation, as applicable to the benefits covered by this Decision;

(ii) in relation to Turkey, the legislation, as applicable in Turkey, relating to the benefits covered by this Decision;

(h) 'benefits' means:

(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 as provided for 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 to:

(a) 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) the members of the family of workers referred to in point (a), provided that those family members are, or have been, legally resident with the worker concerned while the worker is employed in a Member State;

(c) 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) the members of the family of workers referred to in point (c), provided that those 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 family legally residing with them shall enjoy, with regard to 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 who are legally employed in Turkey and any members of their family legally residing with them shall enjoy, with regard to 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 referred to in Article 2(a) and (c) are entitled, shall not be subject to any reduction, modification, suspension, withdrawal or confiscation on the grounds that the beneficiary resides:

(i) for the purpose of benefits under the legislation of a Member State, within the territory of Turkey, or

(ii) for the purpose of benefits under the legislation of Turkey, within the territory of a Member State.

2. The members of the family of a worker referred to in Article 2(b) shall be 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 those family members reside within the territory of Turkey.

3. The members of the family of a worker referred to in Article 2(d) shall be 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 those 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 those 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 covered by this Decision shall inform the institutions of the competent Member State or of Turkey, where the latter is the competent State, and of the Member State of residence or of 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 set out in paragraph 5 may result in the application of proportionate measures in accordance with national law. Nevertheless, those measures shall be equivalent to those applicable to similar situations under national law, and they 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 the verification of entitlement to benefits in order to take into account the fact that the beneficiaries stay or reside 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 shall be in accordance with the principles set out in 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 referred to in Article 2, 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 that person's family, stays or resides within the territory of a Member State when the debtor institution is located in Turkey, or stays or resides within the territory of Turkey when the debtor institution is located in a Member State, the medical examination shall be carried out, at the request of the debtor 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 benefits stays or resides, 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 where he or she is able to make the journey without prejudice to his or her health and where 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 that person's family, stays or resides in the territory of a Member State when the debtor institution is located in Turkey, or stays or resides 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 where he or she is able to make the journey without prejudice to his or her health and where 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 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 to this Decision.

#### Article 9

##### **Administrative procedures contained in existing bilateral agreements**

Administrative procedures contained in existing bilateral agreements between a Member State and Turkey may continue to apply provided that those procedures do not adversely affect the rights or obligations of the persons concerned, as set out in this Decision.

#### Article 10

##### **Agreements supplementing the administrative 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 date of 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 of the date of entry into force of this Decision, the rights acquired in accordance with this Decision shall have effect from that date, 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 referred to in paragraph 4, 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 of Turkey.

6. The rights of a person to whom a pension or special non-contributory cash benefit is provided by a Member State prior to the date of entry into force of this Decision and as a result of the direct effect of Article 6(1) of Decision No 3/80, 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 shall be repealed as 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 ..., ...

*For the Association Council  
The President*

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ANNEX I

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

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ANNEX II

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

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