

Draft

**DECISION No .../... OF THE ASSOCIATION COUNCIL**

**set up by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part,**

**of ...**

**with regard to the provisions on the coordination of social security systems contained in the Euro-Mediterranean Agreement**

THE ASSOCIATION COUNCIL,

Having regard to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part,<sup>(1)</sup> and in particular Article 67 thereof,

Whereas:

- (1) Articles 65 to 68 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part (the Agreement), provide for the coordination of the social security systems of Tunisia and the Member States. Article 65 lays down the principles for such coordination.
- (2) Article 67 of the Agreement provides that the Association Council shall adopt a decision implementing the principles set out in Article 65 before the end of the first year following the entry into force of the Agreement.
- (3) Objective 29, second indent, of the EU-Tunisia Action Plan, as adopted by the Association Council in the context of the European Neighbourhood Policy on 4 July 2005, calls for the adoption of a decision implementing Article 65 of the Agreement.
- (4) 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.
- (5) In applying this Decision, the right of Tunisian 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 Tunisia.

(6) Council Regulation (EC) No 859/2003<sup>(2)</sup> already extends the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the grounds of their nationality. Regulation (EC) No 859/2003 already covers the principle of aggregation of insurance periods acquired by Tunisian workers in the various Member States regarding entitlement to certain benefits, as set out in Article 65(2) of the Agreement.

(7) It might be necessary to lay down special provisions which correspond to the specific characteristics of the legislation of Tunisia, in order to facilitate the application of the coordination rules.

(8) To ensure the smooth functioning of the coordination of the social security systems of the Member States and of Tunisia, it is necessary to provide for specific provisions regarding the cooperation between the Member States and Tunisia as well as between the person concerned and the institution of the competent State.

(9) 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 Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, 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>(3)</sup> as applicable in the Member States of the European Union;

<sup>(1)</sup> OJ L 97, 30.3.1998, p. 2.

<sup>(2)</sup> OJ L 124, 20.5.2003, p. 1.

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

- (c) 'implementing Regulation' means Regulation (EC) No 987/2009 of the European Parliament and 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>(1)</sup>;
- (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 Tunisia, 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 Tunisia, 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;
  - (ii) in relation to Tunisia, the corresponding relevant legislation as applicable in Tunisia;
- (h) 'benefits' means,
- (i) in relation to the Member States, benefits within the meaning of Article 3 of the Regulation;
  - (ii) in relation to Tunisia, the corresponding benefits applying in Tunisia;
- (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 Tunisia, the corresponding benefits provided under the legislation of Tunisia, 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 Tunisia, in the relevant legislation as applicable in Tunisia.

#### Article 2

##### Persons covered

This Decision shall apply:

- (a) to workers who are Tunisian 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 Tunisia and who are or have been subject to the legislation of Tunisia, 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 Tunisia.

#### Article 3

##### Equality of treatment

1. Workers who are Tunisian 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 Tunisia 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 Tunisian nationals.

#### PART II

##### RELATIONS BETWEEN THE MEMBER STATES AND TUNISIA

#### 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,

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

(i) for the purpose of a benefit under the legislation of a Member State, within the territory of Tunisia; or

(ii) for the purpose of a benefit under the legislation of Tunisia, 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) 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 Tunisia.

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) in the same way as the family members of a worker who is a national of Tunisia when these family members reside within the territory of a Member State.

### PART III

#### MISCELLANEOUS PROVISIONS

##### Article 5

#### Cooperation

1. The Member States and Tunisia 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 Tunisia 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 Tunisia may agree to certain expenses being reimbursed.

3. The authorities and institutions of the Member States and of Tunisia 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 Tunisia, where the latter is the competent State, and of the Member State of residence or Tunisia, 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 Tunisia may provide for national provisions that establish conditions for the verification of 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 Tunisia or in Tunisia 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 Tunisia or in Tunisia 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 Tunisia 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 90 of the Agreement**

Article 90 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 Tunisia**

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

*Article 9*

**Administrative procedures from existing bilateral agreements**

Administrative procedures contained in existing bilateral agreements between a Member State and Tunisia may continue to apply provided that those 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 Tunisia 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 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 Tunisia 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 Tunisia.

*Article 12*

**Annexes to this Decision**

1. The Annexes to this Decision constitute an integral part thereof.

2. At the request of Tunisia, the said Annexes may be amended by a decision of the Association Council.

*Article 13*

**Entry into force**

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

Done at ..., ...

*For the Association Council*  
The President

*ANNEX I*

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

...

\_\_\_\_\_

*ANNEX II*

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

...

\_\_\_\_\_