



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.12.1999
COM(1999) 676 final

Proposal for a

COUNCIL DECISION

on the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Poland, on the other part, with regard to the adoption of provisions for the co-ordination of social security schemes

(presented by the Commission)

EXPLANATORY MEMORANDUM

Context

The Europe Agreement concluded between the Community and Poland¹ contains provisions on co-ordination of social security systems. In accordance with the Europe Agreement, the Association Council shall by decision adopt the appropriate provisions to implement the above objective. A draft Association Council decision for that purpose is attached, which is the same for all associated countries of central and eastern Europe. Member States have been consulted within the Administrative Commission for Social Security of Migrant Workers on 20 April 1999. Candidate countries have also been informed in a meeting held on 28 May 1999.

One of the objectives of the Europe Agreements is to provide an appropriate framework for the associated countries' gradual integration into the Community. The Europe Agreements with the countries of Central and Eastern Europe are therefore a means towards their joining the Community. This ultimate goal is taken into account in the attached draft Association Council decision, insofar as it is based on the *acquis communautaire* in this field, especially Regulation 1408/71². However, to take account of Ruling No 30/98 by Hungary's Constitutional Court, no direct reference to the *acquis communautaire*³ has been used. Instead, the draft decision contains an Annex I consisting of the Regulation 1408/71 text which allows to apply rules matching those of Community law in this regard.

The Community has already found it necessary in the past to draw up provisions similar to those which need to be adopted for implementation of the above mentioned agreement, in particular Decision No 3/80 of the EEC-Turkey Association Council⁴ derived from Article 39 of the Additional Protocol to the Ankara Agreement.

Legal Basis

The draft Association Council decision is based on Articles 38, 39 and 40 of the Europe Agreement with Poland

The Europe Agreement provides for the establishment of a co-ordination system founded in particular on the following:

1. For nationals of the associated countries of central and eastern Europe legally employed in a Member State and the members of their family:
 - (a) aggregation of insurance, employment or residence periods completed under the legislation of one or more Member States for acquisition of entitlement to pensions and annuities in respect of old age, invalidity and death and to medical care;

¹ OJ L 348/93 of 31.12.1993.

² See codified version, OJ L 28 of 30.1.1997.

³ In its judgement, the Hungarian court ruled as unconstitutional the Hungarian authorities' application of Community law provisions in whose formation they had not participated.

⁴ Decision No 3/80 of 19.9.1980, OJ C 110 of 25.4.1983, p. 60.

- (b) exportation, to the associated country of origin, of pensions or annuities in respect of old age, death, industrial accident or occupational disease, or of invalidity resulting therefrom;
 - (c) payment of family allowances for family members legally residing with the worker.
2. For workers who are nationals of a Member State and legally employed in the territory of an associated country and the members of their family:

affording, by analogy, the advantages referred to in 1(b) and 1(c) above.

It should be stressed that - in keeping with the Europe Agreement provisions - the draft decisions will in no way affect the rights and obligations arising from bilateral agreements concluded between a Member State and an associated country where such bilateral agreements provide for more favorable treatment of those concerned.

Proposal

The attached draft Association Council decision contains (i) provisions concerning the obligations incumbent on each Contracting Party and (ii) provisions dealing solely with Member States' obligations with respect to associated country workers:

- Parts I, III, and IV relate to the Member States and associated countries;
- Part II is applicable by Member States alone.

In view of the above, the Commission invites the Council to approve the attached proposal for an Association Council Decision.

Proposal for a

COUNCIL DECISION

on the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Poland, on the other part, with regard to the adoption of provisions for the co-ordination of social security schemes

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 42 thereof,

Having regard to the proposal of the Commission,

Whereas Article 39 of the Europe Agreement signed between the European Communities and their Member States, of the one part, and Republic of Poland on the other part, lays down that the Association Council shall by decision adopt the appropriate provisions to implement the objective set out Article 38 thereof,

HAS DECIDED AS FOLLOWS:

The position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States, of the one part and the Republic of Poland on the other part, with regard to the provisions on the co-ordination of social security systems contained in the Europe Agreement shall be based on the draft decision of the Association Council annexed to this decision.

Done at Brussels,

*For the Council
The President*

ANNEX

ASSOCIATION BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF POLAND

- The Association Council -

DECISION No.../99 OF THE ASSOCIATION COUNCIL

established by the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part,

of ...

**with regard to the provisions on co-ordination of the social security schemes
contained in the Europe Agreement**

THE ASSOCIATION COUNCIL,

Having regard to the agreement creating an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, and in particular Articles 38, 39 and 40 thereof,

Whereas Article 38 of the said agreement provides for co-ordination of the social security schemes of Poland and the Members States and lays down the principles for such co-ordination;

Whereas, Article 39 of the said agreement provides that the Association Council shall by decision adopt the appropriate provisions to implement the objective set out in Article 38,

HAS DECIDED AS FOLLOWS:

PART I - GENERAL PROVISIONS

Article 1

Definitions

For the purpose of application of this Decision:

- a) “worker” means any person defined as an employed person within the meaning of Article 1 of Annex I or within the meaning of the legislation of Poland.
- b) “frontier worker”, “seasonal worker”, “member of the family”, “survivor”, “residence”, “stay”, “competent State”, “period of insurance”, “period of employment”, “period of residence”, “benefits and pensions”, “family benefits and family allowances”, “death grants” have the meaning assigned to them in Article 1 of Annex I.
- c) “legislation”, “competent authority”, “institution”, “competent institution”, “institution of the place of residence”, “competent State” have, respectively for each Member State and for Poland, the meaning assigned to them in Article 1 of Annex I.

Article 2

Persons covered

Save as otherwise provided for, this Decision shall apply:

- a) to workers who are nationals of Poland legally employed in a Member State and who are or have been subject to the legislation of one or more Member States, and to the members of their family and to their survivors;
- b) to workers who are nationals of a Member State legally employed in Poland and who are or have been subject to the legislation of Poland, and to the members of their family and to their survivors;

Article 3

Equality of treatment

1. Subject to the special provisions of this Decision, the nationals of Poland to whom the provisions of this Decision apply and who are resident in the territory of a Member State shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as nationals of the said State.
2. Similarly, subject to the special provisions contained in this Decision, the nationals of a Member State to whom the provisions of this Decision apply and who are resident in Poland shall be subject to the same obligations and enjoy the same benefits under the legislation of Poland as nationals of the said country.

3. The provisions of paragraph 1 and 2 shall apply to the right to elect members of the organs of social security institutions or to participate in their nomination, but shall not affect the legislative provisions of any Member State relating to eligibility or methods of nomination of persons concerned to those organs.

Article 4

Matters covered

1. Taking account of the special provisions which it contains, this Decision shall apply to all legislation concerning the following branches of social security:

- (a) sickness and maternity benefits;
- (b) invalidity benefits;
- (c) old-age benefits;
- (d) survivors' benefits;
- (e) benefits in respect of accidents at work and occupational diseases;
- (f) death grants;
- (g) unemployment benefits;
- (h) family benefits.

2. This Decision shall apply to all general and special social security schemes, whether contributory or non-contributory, and to schemes concerning the liability of an employer or shipowner in respect of the benefits referred to in paragraph 1.

2 a. This Decision shall also apply to special non-contributory benefits which are provided under legislation or schemes other than those referred to in paragraph 1 or excluded by virtue of paragraph 4, where such benefits are intended:

- a) either to provide supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in paragraph 1 (a) to (f);
- b) solely as specific protection for the disabled.

2 b. This Decision shall not apply to the provisions in the legislation of a Member State or of Poland concerning the special non-contributory benefits referred to in Annex II.B], the validity of which is confined to part of its territory.

3. The provisions of Part II, Title II, of this Decision shall not, however, affect the provisions under any legislation concerning a shipowner's liability.

4. This Decision shall not apply to social and medical assistance, to benefit schemes for victims of war or its consequences, or to special schemes for civil servants and persons treated as such.

Article 5

Declarations by the Contracting Parties on the scope of this Decision

The Member States and Poland shall specify the legislation and schemes referred to in Article 4(1) and (2), the special non-contributory benefits referred to in Article 4(2 a), the minimum benefits referred to in Article 50 of Annex I in declarations to be notified and published in accordance with Article 19.

Article 6

Waiving of residence clauses - Effect of compulsory insurance on reimbursement of contributions

1. Save as otherwise provided for in this Decision, old-age or survivors' benefits, pensions for accidents at work or occupational diseases, and cash benefits for invalidity arising therefrom, acquired respectively under the legislation of one or more Member States or of Poland shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides respectively in the territory of Poland or of a Member State other than that in which the institution responsible for payment is situated.
2. Where under the legislation of a Member State or of Poland reimbursement of contributions is conditional upon the person concerned having ceased to be subject to compulsory insurance, this condition shall not be considered satisfied as long as the person concerned is subject to compulsory insurance as a worker under the legislation of another Contracting Party.

Article 7

Special non-contributory benefits

1. Notwithstanding the provisions of Article 6 and Part II, Title II, persons to whom this Decision applies shall be granted the special non-contributory cash benefits referred to in Article 4(2 a) exclusively in the territory of the State in which they reside, in accordance with the legislation of that State, provided that such benefits are mentioned in Annex II. Such benefits shall be granted by and at the expense of the institution of the place of residence.
2. Where entitlement to a benefit covered by paragraph 1 but granted in the form of a supplement is subject, under the legislation of a Member State or of Poland, to receipt of a benefit covered by Article 4(1)(a) to (f), and no such benefit is due under that legislation, any corresponding benefit granted under the legislation of another Contracting Party shall be treated as a benefit granted under the legislation of the first State for the purposes of entitlement to the supplement.
3. Where the granting of a disability or invalidity benefit covered by paragraph 1 is subject, under the legislation of a Member State or of Poland, to the condition that the disability or invalidity should be diagnosed for the first time in the territory of that

Member State, this condition shall be deemed to be fulfilled where such diagnosis is made for the first time in the territory of another Contracting Party.

Article 8

Revalorisation of benefits

Rules for revalorisation provided for by the legislation of a Member State or of Poland shall apply to benefits due under that legislation taking into account the provisions of this Decision.

Article 9

Prevention of overlapping of benefits

The provisions of Article 12 of Annex I shall apply for the purposes of applying the provisions on benefit reduction, suspension or withdrawal contained in the legislation of a Member State or of Poland in respect of benefits calculated in accordance with this Decision.

PART II - PROVISIONS GOVERNING APPLICATION OF THE SOCIAL SECURITY SCHEMES OF MEMBER STATES TO WORKERS FROM POLAND

TITLE I - DETERMINATION OF THE LEGISLATION APPLICABLE

Article 10

Workers who are nationals of Poland to which this Decision applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of Articles 13, 14, 14b, 14c, 14d, 15, 17 and 17a of Annex I.

**TITLE II - SPECIAL PROVISIONS RELATING TO THE VARIOUS
CATEGORIES OF BENEFITS**

CHAPTER 1

SICKNESS AND MATERNITY

Article 11

Workers who are nationals of Poland and the members of their family to whom this Decision applies shall be entitled to sickness benefits in accordance with the terms and conditions stipulated in Articles 18 to 36 of Annex I.

CHAPTER 2

INVALIDITY

Article 12

Workers who are nationals of Poland to whom this Decision applies shall be entitled to invalidity benefits in accordance with the terms and conditions stipulated in Articles 37 to 43 of Annex I.

CHAPTER 3

OLD AGE AND DEATH (PENSIONS)

Article 13

Workers who are nationals of Poland to whom this Decision applies shall be entitled to old-age benefits in accordance with the terms and conditions stipulated in Articles 44 to 51 of Annex I.

CHAPTER 4

ACCIDENTS AT WORK AND OCCUPATIONAL DISEASES

Article 14

Workers who are nationals of Poland to whom this Decision applies shall be entitled to benefits in respect of accidents at work and occupational diseases in accordance with the terms and conditions stipulated in Articles 52 to 63 of Annex I.

CHAPTER 5

DEATH GRANTS

Article 15

Workers who are nationals of Poland to whom this Decision applies shall be entitled to death grants in accordance with the terms and conditions stipulated in Articles 65 and 66 of Annex I.

CHAPTER 6

FAMILY BENEFITS

Article 16

Workers who are nationals of Poland to whom this Decision applies shall be entitled to family benefits for the members of their family legally resident in the territory of the competent State in accordance with the terms and conditions stipulated in the legislation of that State.

PART III - MISCELLANEOUS PROVISIONS

Article 17

For the purposes of implementing this Decision, the provisions of Articles 84 to 93 of Annex I shall apply to relations between the Contracting Parties.

PART IV - TRANSITIONAL AND FINAL PROVISIONS

Article 18

Transitional provisions

1. No right shall be acquired under this Decision in respect of a period prior to the date on which it enters into force.
2. All periods of insurance and, where appropriate, all periods of employment or residence completed under the legislation of a Member State prior to the date on which this Decision enters into force shall be taken into consideration for the determination of rights acquired under the provisions of Part II of this Decision.
3. Subject to the provisions of paragraph 1, a right shall be acquired under this Decision even though it relates to a contingency which materialised prior to the date on which this Decision enters into force.
4. 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, on the application of the person concerned, be awarded or resumed with effect from the date on which this Decision enters into force, provided that the rights previously determined have not given rise to a lump-sum payment.
5. The rights of a person to whom a pension was awarded prior to the date on which this Decision enters into force may, on the application of the person concerned, be reviewed, taking into account the provisions of this Regulation.
6. If an application referred to in paragraph 4 or 5 is submitted within two years from the date on which this Decision enters into force, the rights acquired under this Decision shall have effect from that date, and the provisions of the legislation of any Member State or of Poland concerning the forfeiture or limitation of rights may not be invoked against the persons concerned.
7. If an application referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period following the date on which this Decision enters into force, rights which have not been forfeited or which are not time-barred shall have effect from the date on which the application was submitted, except where more favorable provisions of the legislation of any Member State or of Poland apply.

Article 19

1. The notifications referred to in Article 5 shall be addressed to the President of the Association Council. They shall indicate the date of entry into force of the laws and schemes in question.
2. Notifications received in accordance with the provisions of paragraph 1 shall be published in the *Official Journal of the European Communities*.

Article 20

Two or more Member States, or Poland and one or more Member States may, where necessary, conclude agreements designed to supplement the administrative procedures for implementing this Decision.

Article 21

Each Contracting Party shall, each to the extent to which it is concerned, take the necessary steps to implement this Decision.

Done at...

For the Association Council,

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ANNEX I

Annex I contains the text of Regulation 1408/71 in its codified form as published on 30 January 1997 (OJ L 28).

ANNEX II

A] Special non-contributory benefits

A. Belgium

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B. Denmark

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C. Germany

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D. Spain

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E. France

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F. Greece

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G. Ireland

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H. Italy

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I. Luxembourg

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J. Netherlands

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K. Austria

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L. Portugal

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M. Finland

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N. Sweden

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O. United Kingdom

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P. Poland

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B] Special non-contributory benefits within the meaning of Article 4(2 b) which do not fall within the scope of the Decision

A. Belgium

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B. Denmark

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C. Germany

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D. Spain

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E. France

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F. Greece

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G. Ireland

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H. Italy

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I. Luxembourg

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J. Netherlands

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K. Austria

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L. Portugal

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M. Finland

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N. Sweden

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O. United Kingdom

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P. Poland

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