



Brussels, 2.10.2014  
COM(2014) 611 final

2014/0283 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken by the European Union in the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons as regards the amendment of Annex II to that Agreement on the coordination of social security schemes**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

On 1 June 2002, the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons ('the Agreement') entered into force. Annex II to this Agreement provides for the coordination of social security schemes.

Under Article 18 of the Agreement, the Joint Committee on the free movement of persons may amend Annex II to the Agreement. Article 2 of Decision 2002/309/EC<sup>1</sup>, provides that the Council, following a proposal from the Commission, will lay down the position to be taken by the Union on decisions by the Joint Committee.

To ensure the consistent and correct application of EU legislation, and to avoid administrative and possible legal difficulties, Annex II to the Agreement needs to refer to all relevant EU legislation and decisions of the Administrative Commission for the Coordination of Social Security Systems. Annex II to the Agreement was therefore replaced by Decision No 1/2012 of the Joint Committee of 31 March 2012. This Decision created a modernised system to coordinate social security schemes, which had become applicable within the EU on 1 May 2010, under Regulation (EC) No 883/2004 (as amended by Regulation (EC) No 988/2009), implementing Regulation No 987/2009 and the decisions and recommendations of the Administrative Commission. These three Regulations were also applicable to Switzerland.

Annex II to the Agreement now needs to be amended to take account of the EU legislation that has come into force since then, in particular amendments made by Commission Regulation (EU) No 1244/2010 of 9 December 2010<sup>2</sup>, Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012<sup>3</sup> and Commission Regulation (EU) No 1224/2012 of 18 December 2012<sup>4</sup> to Regulation (EC) No 883/2004<sup>5</sup> and Regulation (EC) No 987/2009<sup>6</sup>.

To that end, the Commission presents this proposal for a Council Decision on position that the Union should take in the Joint Committee established by the Agreement. Following the Court of Justice ruling of 27 February 2014 in case C-656/11 concerning the legal basis for taking decisions, this proposal for a new Council Decision is based on Article 48 of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218(9) of the same Treaty. This proposal takes into account the text of the draft Joint Committee decision, agreed at service level with the Swiss authorities on 14 March 2013, and supports the consistent

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<sup>1</sup> Decision 2002/309/EC, Euratom of the Council, and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation.

<sup>2</sup> OJ L 338, 22.12.2010, p. 35.

<sup>3</sup> OJ L 149, 8.6.2012, p. 4.

<sup>4</sup> OJ L 349, 19.12.2012, p. 45.

<sup>5</sup> OJ L 166, 30.4.2004, p. 1 as corrected in OJ L 200, 7.6.2004, p. 1; 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>6</sup> OJ L 284, 30.10.2009, 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

application of EU legislation on the coordination of social security systems between the EU and Switzerland.

Annex II to this Agreement should also be amended to take account of the the Swiss Federal Supplementary Benefits Act of 6 October 2006. This legal act replaced the one from 19 March 1965. The reason for the new law was the general revision of the tasks distribution between the Federal State and the Cantons and their financing. Neither the benefits nor the entitlement conditions were modified by it. The characteristics and purpose of the benefits remain exactly the same.

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

The version of Annex II in the attached proposal results from technical discussions involving social security experts, in particular experts from the Swiss social security administration and from the European Union. Updating Annex II to the Agreement will simplify and modernise the coordination of social security systems between Switzerland and EU Member States, particularly through the implementation of Regulation (EU) No 465/2012. This will have a positive impact compared with existing legislation, and will improve administrative procedures for all users of the Regulations, including national social security authorities, employers (in particular small and medium-sized businesses) and individual citizens.

## **3. BUDGETARY IMPLICATION**

The proposal does not have implications for the EU budget.

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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 Decision 2002/309/EC, Euratom of the Council and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven agreements with the Swiss Confederation<sup>7</sup>, and in particular Article 2 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons (hereinafter referred to as 'the Agreement') came into force on 1 June 2002.
- (2) Article 18 of that Agreement provides that the Joint Committee may, by decision, adopt amendments to the Agreement, including to Annex II to the Agreement, dealing with the co-ordination of social security schemes.
- (3) In order to maintain the consistent application of Union legislation and to avoid administrative and possible legal difficulties, Annex II to the Agreement needs to be amended to include new legal acts of the Union to which the Agreement does not currently refer.
- (4) The position of the Union in the Joint Committee should therefore be based on the draft Decision set out in the Annex to this Decision,

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<sup>7</sup> OJ L 114, 30.4.2002, p. 1.

HAS DECIDED AS FOLLOWS

*Article 1*

The position to be taken by the Union in the Joint Committee established under Article 14 of the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons shall be based on the draft Decision of the Joint Committee set out in the Annex to this Decision.

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

*Article 2*

After its adoption, the Decision of the Joint Committee shall be published in the *Official Journal of the European Union*.

*Article 3*

This Decision shall enter into force on [...].

Done at Brussels,

*For the Council*  
*The President*