



Brussels, 21.4.2015  
COM(2015) 168 final

2013/0273 (NLE)

Amended proposal for a

**COUNCIL DECISION**

**on the conclusion, on behalf of the European Union and its Member States, of the Protocol to the Agreement on Cooperation and Customs Union between the European Community and its Member States, of the one part, and the Republic of San Marino, of the other part, regarding the participation, as a contracting party, of the Republic of Croatia, following its accession to the European Union**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

The Republic of Croatia (hereinafter 'Croatia')~~will joined~~ the European Union on 1 July 2013. On 14 September 2012, the Council authorized the Commission to negotiate the adaptation, through a Protocol, of the Agreement on Cooperation and Customs Union between the European Community and its Member States, of the one part, and the Republic of San Marino, of the other part<sup>1</sup> (hereinafter 'the Agreement'), ~~regarding Croatia's participation as a contracting party, in view of the enlargement of the Union~~ to include the latter Croatia as a contracting party in view of its accession to the EU.

In accordance with Article 6(2) of the ~~Protocol concerning the conditions and arrangements for admission~~ Act of Accession of the Republic of Croatia to the European Union, the Commission is ~~to submit~~ submitted to the Council a ~~draft of the Protocol to be concluded~~ proposals for Council Decisions on the signature and provisional application of the Protocol<sup>2</sup>, and on its conclusion<sup>3</sup>.

The Council adopted the Decision on the signature of the Protocol on 7 October 2013<sup>4</sup>. The Protocol was duly signed on 29 October 2013.

On 2 August 2013, the draft Protocol and the draft Council Decision on its conclusion were forwarded to the European Parliament, in accordance with the procedure in Article 218(6)(a) of the Treaty on the Functioning of the European Union (TFEU). On 23 April 2014, the President of the European Parliament wrote to the President-in-Office of the Council requesting a revision of the legal basis for the Council Decision.

### 2. LEGAL ELEMENTS OF THE AMENDED PROPOSAL

~~The Agreement entered into force on 1 April 2002 and needs to be amended to include Croatia as a contracting party. Following the authorisation given to the Commission on 14 September 2012, negotiations have been concluded with San Marino on a Protocol to the Agreement.~~

~~Pursuant to Article 218(6)(a) of the Treaty on the Functioning of the European Union, the European Parliament gave its consent to the conclusion of the said Protocol to the Agreement on [...].~~

The legal basis in the Commission's original proposal for a Council Decision on the conclusion of the Protocol was Articles 207 and 352, in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8), of the TFEU. The European Parliament concluded that Article 212 TFEU, rather than Article 352, was the appropriate substantive legal basis, as it relates specifically to the economic cooperation with third countries other than developing countries. Accordingly, the Parliament asked the Council to revise the legal basis in its Decision.

The proposal has been amended in line with the Parliament's request.

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<sup>1</sup> OJ L 84, 28.3.2002, p. 43.

<sup>2</sup> COM(2013) 530 final.

<sup>3</sup> COM(2013) 568 final.

<sup>4</sup> OJ L 322, 3.12.2013, p. 1.

The Commission agrees with the Parliament that Article 207 TFEU is the appropriate substantive legal basis for Title I of the Agreement, on ‘Customs union’, and that Article 212 TFEU is the appropriate substantive legal basis for Title II, on ‘Cooperation’.

However, the Agreement also has a Title III on ‘Social provisions’. The Commission considers that the appropriate substantive legal basis for Title III is Article 79(2)(b) TFEU, on the rights of third country nationals under the Union’s immigration policy, as there is no agreement between the EU and San Marino providing for the free movement of their nationals.

In this respect, Denmark, Ireland and the United Kingdom are bound vis-à-vis San Marino by the provisions of the Agreement, including Title III. As a consequence, Ireland and the United Kingdom should take part in the adoption of the present Decision. Denmark, Ireland and the United Kingdom are in any event to remain bound vis-à-vis San Marino on the basis of the Agreement, as extended through the Protocol to Croatia.

Summary of the proposed action

~~This proposal consists of a draft Council Decision on the conclusion, on behalf of the European Union and its Member States, of a Protocol to the Agreement (in annex), to provide for Croatia’s participation as a contracting party following its accession to the European Union.~~

#### Legal basis

The Treaty on the Functioning of the European Union, and in particular Articles 79(2)(b), 207 and 212, in conjunction with Article 218(6)(a) thereof; the Treaty of Accession of Croatia<sup>5</sup>; and the Act of Accession of Croatia<sup>6</sup>, in particular the second subparagraph of Article 6(2) thereof.

#### Choice of instrument

Pursuant to Article 218(6)(a) TFEU, in cases covered by ~~the said~~ that Article, the Council shall is to adopt a Decision ~~authorising~~ on the conclusion of the Agreement after obtaining the consent of the European Parliament. This is an amended proposal for such a Decision.

#### Proportionality

This amended proposal is in line with the principle of proportionality because its effects are strictly limited to what is necessary to provide for Croatia’s participation in the Agreement, as a contracting party, following its accession to the European Union.

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<sup>5</sup> OJ L 112, 24.4.2012, p. 10.

<sup>6</sup> OJ L 112, 24.4.2012, p. 21.

Amended proposal for a

## COUNCIL DECISION

**on the conclusion, on behalf of the European Union and its Member States, of the Protocol to the Agreement on Cooperation and Customs Union between the European Community and its Member States, of the one part, and the Republic of San Marino, of the other part, regarding the participation, as a contracting party, of the Republic of Croatia, following its accession to the European Union**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 79(2)(b), 207 and Article 352 and 212, in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8), thereof,

Having regard to the Act of Accession of Croatia, and in particular the second subparagraph of Article 6(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament<sup>7</sup>,

Whereas:

- (1) On 14 September 2012, the Council authorised the Commission to open negotiations with the Republic of San Marino for the adaptation, through a Protocol, of the Agreement on Cooperation and Customs Union between the European Community and its Member States, of the one part, and the Republic of San Marino, of the other part<sup>8</sup>, regarding the Republic of Croatia's participation as a contracting party, in view of its accession to the European Union ('the Protocol').
- (2) The negotiations on the Protocol ~~to the Agreement~~ were conducted by the Commission and were recently concluded on 26 March 2013. On 2 August 2013, the Commission submitted to the Council and the European Parliament proposals for Council Decisions on the signature and provisional application of the Protocol<sup>9</sup>, and on its conclusion<sup>10</sup>.
- (3) ~~The European Parliament gave its consent to the said Protocol on [...]~~ Pursuant to Article 218(6)(a) TFEU, the European Parliament's consent is required for the conclusion of the Protocol. The Parliament concluded that Articles 207 and 212 TFEU, rather than Articles 207 and 352 TFEU, were the appropriate substantive legal basis for the Council Decision on the conclusion of the Protocol. Accordingly, on 23 April 2014, the President of the Parliament wrote to the President-in-Office of the Council requesting a revision of the legal basis for the Decision.

<sup>7</sup> OJ C , p. .

<sup>8</sup> OJ L 84, 28.3.2002, p. 43.

<sup>9</sup> COM(2013) 530 final.

<sup>10</sup> COM(2013) 568 final.

**(4) The Commission is therefore submitting to the Council an amended proposal for a Council Decision on the conclusion of the Protocol, in line with the European Parliament's request.**

**(5) The Commission considers that Article 79(2)(b) TFEU should also be referred to as a substantive legal basis for the Decision, as Title III ('Social provisions') of the Cooperation and Customs Union Agreement falls under the Union's common immigration policy.**

**(6) The European Parliament gave its consent to the conclusion of the Protocol on [...].**

(7) The Protocol should be concluded on behalf of the ~~European~~ Union,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Protocol to the Agreement on Cooperation and Customs Union between the European Community and its Member States, of the one part, and the Republic of San Marino, of the other part, regarding the Republic of Croatia's participation, as a contracting party, following its accession to the European Union<sup>11</sup>, is hereby approved on behalf of the ~~European~~ Union and its Member States.

~~The text of the Protocol is attached to this Decision.~~

#### *Article 2*

The President of the Council shall designate the person empowered on behalf of the ~~European~~ Union and its Member States to deposit the instrument of approval provided for in Article 3 of the Protocol, in order to express the consent of the ~~European~~ Union and its Member States to be bound by the Protocol<sup>12</sup>.

#### *Article 3*

This Decision shall enter into force on the day of its adoption<sup>13</sup>.

Done at Brussels,

*For the Council  
The President*

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<sup>11</sup> **The text of the Protocol was published in OJ L 322, 3.12.2013, pp. 2–5, together with the Decision on signing.**

<sup>12</sup> **The General Secretariat of the Council will publish the date of entry into force of the Protocol in the Official Journal of the European Union.**

<sup>13</sup> ~~The date of entry into force of the Protocol will be published in the Official Journal of the European Union by the General Secretariat of the Council.~~