EC/San Marino Cooperation and Customs Union Agreement: participation of Croatia following its accession to the EU. Protocol

2013/0273(NLE) - 21/04/2015 - Modified legislative proposal

The Commission proposed an amended proposal for a Council Decision seeking to conclude a Protocol of the Agreement on Cooperation and Customs Union between the European Community and its Member States, of the one part, and San Marino, of the other part, regarding Croatia's participation in this Agreement.

This amended proposal seeks mainly to **take account of the accession of Croatia to the European Union on 1 July 2013**.

Background to the proposal: on 14 September 2012, the Council authorised 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, 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.

Meanwhile, Croatia became a member of the European Union and legal changes have proved necessary to take account of this accession. Thus, the Council adopted the Decision on the signature of the Protocol on 7 October 2013. The Protocol was duly signed on 29 October 2013 and on 2 August 2013, it was forwarded to the European Parliament for its consent.

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**.

Modification of the legal basis: 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.

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.

The remainder of the proposal is identical to the initial proposal (*please refer to the summary of the Commission's initial legislative proposal dated 02/08/2013*).