

III

(Preparatory acts)

COUNCIL

POSITION (EU) No 13/2010 OF THE COUNCIL AT FIRST READING

with a view to the adoption of a Regulation of the European Parliament and of the Council extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality

Adopted by the Council on 26 July 2010

(2010/C 253 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

vigorous integration policy should be geared to granting them rights and obligations comparable to those of citizens of the Union.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(2)(b) thereof,

(3) Council Regulation (EC) No 859/2003 of 14 May 2003⁽⁵⁾ extended Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 on the coordination of Member States' statutory social security schemes to the nationals of third countries who were not already covered by those Regulations solely on the ground of their nationality.

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

(4) This Regulation respects the fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union, notably Article 34(2) thereof.

Acting in accordance with the ordinary legislative procedure⁽²⁾,

Whereas:

(5) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems⁽⁶⁾ replaces Regulation (EEC) No 1408/71. 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⁽⁷⁾ replaces Regulation (EEC) No 574/72. Regulations (EEC) No 1408/71 and (EEC) No 574/72 shall be repealed with effect from the date of application of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.

(1) The European Parliament⁽³⁾, the Council and the European Economic and Social Committee⁽⁴⁾ have called for the better integration of nationals of third countries who are legally resident in the territory of the Member States by giving them a set of uniform rights which match as closely as possible those enjoyed by citizens of the Union.

(2) The Justice and Home Affairs Council of 1 December 2005 stressed that the Union must ensure fair treatment of third-country nationals residing legally in the territory of the Member States and that a more

(6) Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 significantly update and simplify the coordination rules for insured persons as well as social security institutions. For the latter, the updated coordination rules aim to accelerate and facilitate the processing of data on insured persons' rights to benefits and to reduce the corresponding administrative costs.

⁽¹⁾ OJ C 151, 17.6.2008, p. 50.

⁽²⁾ Position of the European Parliament of 9 July 2008 (OJ C 294 E, 3.12.2009, p. 259) and Council's position at first reading of 26 July 2010.

⁽³⁾ European Parliament resolution of 27 October 1999 on the European Council meeting in Tampere (OJ C 154, 5.6.2000, p. 63).

⁽⁴⁾ EESC opinion of 26 September 1991 on the status of migrant workers from third countries (OJ C 339, 31.12.1991, p. 82).

⁽⁵⁾ OJ L 124, 20.5.2003, p. 1.

⁽⁶⁾ OJ L 166, 30.4.2004, p. 1.

⁽⁷⁾ OJ L 284, 30.10.2009, p. 1.

- (7) Promoting a high level of social protection and raising the standard of living and the quality of life in the Member States are objectives of the Union.
- (8) In order to avoid a situation where employers and national social security bodies have to manage complex legal and administrative situations concerning only a limited group of persons, it is important to enjoy the full benefits of modernisation and simplification in the field of social security by making use of a single legal coordination instrument combining Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.
- (9) It is therefore necessary to replace Regulation (EC) No 859/2003 with a legal instrument the basic aim of which is to substitute Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 for Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 respectively.
- (10) The application of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by those Regulations solely on the ground of their nationality must not give them any entitlement to enter, to stay or to reside in a Member State or to have access to its labour market. Accordingly, the application of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 should be without prejudice to the right of the Member States to refuse to grant, to withdraw or to refuse to renew a permit to enter, to stay, to reside or to work in the Member State concerned, in accordance with the law of the Union.
- (11) Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 should, by virtue of this Regulation, be applicable only in so far as the person concerned is already legally resident in the territory of a Member State. Legal residence should therefore be a prerequisite for the application of those Regulations.
- (12) Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 should not apply in a situation which is confined in all respects within a single Member State. This concerns, inter alia, the situation of a third country national who has links only with a third country and a single Member State.
- (13) The condition of residing legally in the territory of a Member State should not affect the rights deriving from the application of Regulation (EC) No 883/2004 concerning invalidity, old age or survivors' pensions, on behalf of one or more Member States, for a third-country national who has previously fulfilled the conditions of this present Regulation, or the survivors of such third-country national, insofar as they derive their rights from a worker, when residing in a third country.
- (14) The continued right to unemployment benefit, as laid down in Article 64 of Regulation (EC) No 883/2004, is subject to the condition of registering as a job-seeker with the employment services of each Member State entered. Those provisions should only therefore apply to a third-country national provided that individual has the right, where appropriate pursuant to his or her residence permit or long-term resident status, to register as a job-seeker with the employment services of the Member State entered and the right to work there legally.
- (15) This Regulation should be without prejudice to rights and obligations arising from international agreements with third countries to which the Union is a party and which confer benefits in terms of social security.
- (16) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States on account of the cross-border situations involved and can therefore, by reason of the Union-wide scale of the proposed action, be better achieved at Union level, the Union may adopt measures in accordance with the principles of subsidiarity enshrined in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (17) In accordance with Article 3 of Protocol (No 21) on the position of United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified, by letter of 24 October 2007, its wish to take part in the adoption and application of this Regulation.
- (18) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (19) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 shall apply to nationals of third countries who are not already covered by those Regulations solely on the ground of their nationality, as well as to members of their families and to their survivors, provided they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.

This Regulation shall be binding in its entirety and directly applicable in Member States in accordance with the Treaties.

Done ...

For the European Parliament
The President

...

For the Council
The President

...

Article 2

Regulation (EC) No 859/2003 shall be repealed between the Member States that are bound by this Regulation.

Article 3

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 25 July 2007, the Commission submitted the above-mentioned proposal which is intended to replace Regulation (EC) No 859/2003 and extend the provisions of Regulation (EC) No 883/2004 and its implementing Regulation (Council Regulation (EC) No 987/2009) to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality.

The proposal is based on Article 63(4) of the Treaty (unanimity and consultation procedure). Following the entry into force of the Lisbon Treaty, the legal basis is now Article 79(2)(b) TFEU (qualified majority and ordinary legislative procedure).

The European Parliament delivered its Opinion on 9 July 2008, in the framework of the consultation procedure. Following the entry into force of the Lisbon Treaty, the European Parliament adopted, on 5 May 2010, a Resolution⁽¹⁾ in which it confirmed its position in the framework of the ordinary legislative procedure.

The European Economic and Social Committee delivered its Opinion on 16 January 2008.

The Commission did not submit any formal amended proposal as a follow-up to the Parliament's opinion in first reading.

In accordance with Article 294(5) (TFEU), the Council adopted its position at first reading by qualified majority on 26 July 2010.

In accordance with Articles 1 and 2 of the Protocol on the position of United Kingdom and Ireland, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Ireland gave notice, by letter of 24 October 2007, of its wish to take part in the adoption and application of this Regulation.

In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of the said Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it nor subject to its application.

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

II. OBJECTIVE

Council Regulation (EC) No 859/2003 extended the application of the provisions of Council Regulation (EEC) No 1408/71 and its implementing Regulation (EEC) No 574/72 to nationals of third countries. These latter Regulations have been simplified and updated by Regulations (EC) 883/2004 and No 987/2009 respectively, which apply since 1 May 2010.

The proposal for a Regulation pursues the same objectives as Regulation (EC) No 859/2003, which is to extend the scope of the Community provisions in force in the field of the coordination of social security schemes to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality.

⁽¹⁾ European Parliament Resolution of 5 May 2010 on the consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures.

It aims to ensure that the same rules for coordinating social security schemes are applied to nationals of third countries as those which apply to European citizens since the entry into force of Regulations (EC) No 883/2004 and No 987/2009. The objective is to avoid an extremely confusing duplication of having individuals and national administrations dealing with two different sets of rules and entitlements covering the coordination of social security systems between Member States.

III. ANALYSIS OF THE COUNCIL POSITION IN FIRST READING

The European Parliament adopted 2 amendments to the Commission's proposal with a view to introducing two new recitals (3a and 6a) in the Preamble to emphasise the importance of equality of treatment.

The Commission indicated in the course of the debate in plenary session that it could accept these amendments.

The Council could also accept the two amendments (recitals No 4 and 7 in the Council Position in first reading).

The Council further considered it necessary to clarify recital No 8 of the proposal (recital No 10 of the Position in first reading) to specify that the application of Regulations (EC) No 883/2004 and No 987/2009 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality is without prejudice to the right of the Member States to refuse, withdraw, or refuse to renew, a permit to enter, to stay, to reside or to work in the Member State concerned in accordance with Community law.

In addition recital No 13 in the Council Position in first reading specifies that the condition of residing legally in the territory of a Member State, as laid down in Article 1, does not affect the rights deriving from the application of the provisions of Regulation (EC) No 883/2004 concerning invalidity, old age or survivors pensions, on behalf of one or more Member States, for a third country national who has previously fulfilled the conditions of the Regulation, or the survivors of such third country national.

Finally, recitals No 17, 18 and 19 of the Council Position in first reading refer to the position of Ireland, the United Kingdom and Denmark with regard to the adoption and application of this Regulation.

The Commission has accepted the Council position in first reading.

IV. CONCLUSION

The Council considers that its position in first reading on the Proposal for a Council Regulation extending the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality provides for a balanced approach to ensure equal treatment and non-discrimination with respect to the nationals of third countries who are legally resident on the territory of the European Union.

The Council looks forward to a constructive discussion with the European Parliament with a view to reaching final agreement on this important Regulation.
