



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 June 2010**

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**Interinstitutional File:  
2007/0152 (CNS)**

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**SOC 394  
MIGR 56**

**“A” ITEM NOTE**

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from : General Secretariat of the Council  
to : Council (Employment, Social Policy, Health and Consumer Affairs)

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No. Cion prop. : 12166/07 SOC 287 (COM (2007) 439 final)

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Subject : **Proposal for a Council Regulation extending the provisions of  
Regulation(EC) No 883/2004 and Regulation (EC) No [...] to nationals of  
third countries who are not already covered by these provisions solely on the  
ground of their nationality.  
= Political Agreement**

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**I. INTRODUCTION**

1. 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 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality.

2. 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).
3. In accordance with Articles 1 and 2 of the Protocol on the position of United Kingdom and Ireland, annexed 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.
4. 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 does not take part in the adoption of this Regulation and is not bound by it nor subject to its application.
5. 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 does not take part in the adoption of this Regulation and will neither be bound by it nor subject to its application .
6. 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<sup>1</sup> in which it confirmed its position in the framework of the ordinary legislative procedure.
7. The European Economic and Social Committee delivered its Opinion on 16 January 2008.

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<sup>1</sup> 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.

8. At its meeting on 2 June 2010, the Permanent Representatives Committee reached a very broad measure of agreement on the text of the draft Regulation as set out in the Annex.
  9. Four delegations (AT, BG, CZ and DE) maintained their positions as set out in doc. 9710/10.
  10. Having noted that the Council would be in a position to reach a political agreement by qualified majority, the Committee agreed with the Presidency's suggestion to move this item from the list of the "B" items on the agenda of the EPSCO Council meeting on 7/8 June 2010 to the list of the "A" items.
  11. The Permanent Representatives Committee therefore recommends the Council (EPSCO) to reach a political agreement on the text of the draft Regulation, as set out in Annex, as an "A" item at its meeting on 7/8 June 2010.
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Draft

**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**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee,<sup>3</sup>

Having regard to the opinion of the Committee of the Regions,<sup>4</sup>

Acting in accordance with the ordinary legislative procedure<sup>5</sup>,

Whereas:

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<sup>2</sup> OJ C [...] of [...], p. [...].

<sup>3</sup> OJ C [...] of [...], p. [...].

<sup>4</sup> OJ C [...] of [...], p. [...].

<sup>5</sup> Position of the European Parliament of (not yet published in the Official Journal) and Council Decision of...

- (1) Since the special meeting in Tampere in 1999 the European Parliament<sup>6</sup>, the Council and the European Economic and Social Committee<sup>7</sup> have called for the better integration of nationals of third countries who are legally resident in the territory of Member State by giving them a set of uniform rights as close as possible to those enjoyed by citizens of the European Union.
- (2) The Justice and Home Affairs Council of 1 December 2005 stressed that the European Union must ensure fair treatment of third-country nationals residing legally in the territory of the Member States and that a more vigorous integration policy should be geared to granting them rights and obligations comparable to those of EU citizens.
- (3) Council Regulation (EC) No 859/2003 of 14 May 2003 extended the provisions of 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 these provisions solely on the ground of their nationality<sup>8</sup>.
- (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.
- (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<sup>9</sup> replaces Regulation (EEC) No 1408/71. Regulation (EC) No 987/2009 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.

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<sup>6</sup> OJ C 154, 5.6.2000, p. 63.

<sup>7</sup> OJ C 339, 31.11.1991, p. 82.

<sup>8</sup> OJ L 124, 20.5.2003, p.1.

<sup>9</sup> OJ L 166, 30.4.2004, p.1.

- (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 aims to accelerate and facilitate the processing of data on insured persons' rights to benefits and to reduce the corresponding administrative costs.
- (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 European 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 in the form of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.
- (9) Hence, it is necessary to adopt a legal instrument to replace Regulation (EC) No 859/2003 with the basic aim of substituting the application of Regulation (EEC) No 883/2004 for Regulation (EC) No 1408/71.
- (10) The application of Regulation (EEC) 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 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 they are without prejudice to the right of the Member States to refuse, 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 Community law.

- (11) The provisions of Regulation (EEC) No 883/2004 and Regulation (EC) No 987/2009 are, by virtue of this Regulation, applicable only in so far as the person concerned is already legally resident in the territory of a Member State. Being legally resident is therefore a prerequisite for the application of these provisions.
- (12) The provisions of Regulation (EEC) No 883/2004 and Regulation (EC) No 987/2009 shall 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, as laid down in Article 1 of the present Regulation, does not affect the rights deriving from the application of the provisions of Regulation (EC) No. 883/04 concerning invalidity, old age or survivors pension, on behalf of one or more Member States, for a third country national, who has previously fulfilled the conditions of the 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 883/04, is subject to the condition of registering as a job-seeker with the employment services of each Member State entered. Those provisions may only therefore apply to a third-country national provided he/she has the right, where appropriate pursuant to his/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 is without prejudice to rights and obligations arising from international agreements with third countries to which the European Union is a party and which afford advantages in terms of social security.

- (16) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States on account of cross-border situations and can therefore, by reason of the European Union scale of the proposed action, be better achieved at Union level, the Union may take 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 Articles 1 and 2 of the Protocol on the position of United Kingdom and Ireland, annexed to the Treaty on 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.
- (18) In accordance with Articles 1 and 2 of the Protocol on the position of United Kingdom and Ireland, 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 the said Protocol, the United Kingdom does not take part in the adoption of this Regulation and is not bound by it nor subject to its application.
- (19) 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 does not take part in the adoption of this Regulation and is not bound by it nor subject to its application.

HAS ADOPTED THIS REGULATION:



### *Article 1*

The provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 shall apply to nationals of third countries who are not already covered by these provisions 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.

### *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*.

This Regulation shall be binding in its entirety and directly applicable in Member States in accordance with the Treaty on the Functioning of the European Union.

Done at Brussels,

*For the Council*

*The President*

[...]

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