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THE EUROPEAN UNION**

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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: **Position of the Council at first reading adopted by the Council on [26] July 2010 with a view to the adoption of a Regulation of the European Parliament and of the Council 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.
= Draft 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 Resolution¹ 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.

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.

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.

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.
