

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 2.9.2010
COM(2010) 448 final

2007/0152 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council on the adoption of a proposal for a Regulation of the European Parliament and of the Council extending the provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009 to nationals of third countries who are not already covered by these provisions by virtue of their nationality

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council on the adoption of a proposal for a Regulation of the European Parliament and of the Council extending the provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009 to nationals of third countries who are not already covered by these provisions by virtue of their nationality

1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2007) 439 final — 2007/0152(COD):	23 July 2007
Date of the opinion of the European Economic and Social Committee:	16 January 2008
Date of the opinion of the European Parliament on the basis of the consultation procedure:	9 July 2008
Entry into force of the Treaty on the Functioning of the European Union	1 December 2009
Date of first reading in the European Parliament on the basis of the ordinary legislative procedure:	5 May 2010
Date of adoption of the political agreement by qualified majority:	7 June 2010
Date of adoption of the Council's position at first reading	26 July 2010

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The objective of the proposal is to extend the provisions of Regulation (EC) No 883/2004 and its implementing Regulation (EC) No 987/2009 on the coordination of social security systems to nationals of third countries who are legally resident in a Member State and who are not already covered by these provisions by virtue of their nationality.

The proposal completes the process of modernisation that led to Regulations (EC) No 883/2004 and 987/2009, as it extends the new rights, procedures and provisions for electronic data exchange established therein to nationals of third countries who are mobile within the EU but not covered by the existing Regulations.

3. COMMENTS ON THE POSITION OF THE COUNCIL

3.1 Overall position on the Council's position

The position of the Council incorporates the two amendments proposed by the European Parliament and, in addition, makes a number of modifications by the Council to the Commission's original proposal. All amendments and modifications are fully supported by the Commission.

3.2 European Parliament amendments included in full, in part or in principle in the Council's position

The European Parliament adopted two amendments by a legislative resolution under the consultation procedure on 9 July 2008. These were confirmed in a first reading under the ordinary legislative procedure on 5 May 2010. Both these amendments were accepted in full in the Council's position.

Amendment 1 added a new recital making reference to Article 34(2) of the Charter of Fundamental Rights of the European Union. The Commission agrees that it is important, in the context of this proposal, to recall the right conferred by the Charter on all persons legally resident and legally moving in the EU to social security benefits in accordance with EU and national law.

Amendment 2 added a new recital making reference to promoting a high level of social protection and to raising the standard of living and the quality of life in the EU. The Commission agrees that it is important to underline these key drivers behind the proposal.

3.3 Main differences between the Commission's proposal and the Council's position

- Deletion of transitional provisions: the Council has deleted Article 2 and the associated recital 12 in the original proposal, which contained transitional provisions for the entry into force of the proposed Regulation. The Council agreed that no particular transitional provisions for the entry into force of this proposal are necessary, since the appropriate transitional provisions are already contained in Regulation (EC) No 883/2004. The Commission supports this simplified approach, in particular as it will ensure that nationals of third countries are given the same rights as EU nationals as regards the transition to the modernised Regulations, for example to request a review of their pension rights under Article 87(3).
- Addition of recitals for Ireland and the United Kingdom: the legal basis of the proposal is Article 79(2)(b) of the Treaty on the Functioning of the European Union. On the basis of Articles 1 to 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, the United Kingdom and Ireland are not bound by this proposal unless they give notification that they will take part in it. The Council has added recital 17 to indicate that Ireland is taking part in the proposal pursuant to a letter of 24 October 2007 and recital 18 to indicate that the United Kingdom is not taking part. The Commission agrees that inclusion of these two recitals is necessary.
- Repeal of the old Regulation: the Council has clarified the parameters for the repeal of Regulation (EC) No 859/2003 in the new Article 2 of the proposal. Given that the United Kingdom will not take part in this proposal but will continue to apply Regulation (EC) No

859/2003, it is not possible to repeal the latter completely. The Commission supports the change proposed, as it achieves legal clarity on this practical point.

- Determination of legal residence: Regulations (EC) No 883/2004 and (EC) No 987/2009 apply to nationals of third countries who are legally resident on the territory of a Member State. However, determination of legal residence falls entirely outside the remit of the Coordination Regulations and Member States retain the right to determine, in accordance with Union law, whether a person is entitled to enter, remain, reside or work on its territory. The extra sentence added to recital 10 by the Council underlines this division of powers between the Union and its Member States. The Commission agrees to its inclusion.
- Clarification of application of the criterion of ‘legal residence’ in case of invalidity, old-age and survivors’ pensions: recital 13 was added by the Council to clarify that the condition of legal residence on the territory of the Member State does not apply at the point in time when a person who has been subject to the Regulation, or a person deriving rights from such a person, applies for a pension based on rights given by the Regulation. What is necessary is that the person concerned was legally resident at the time when such rights were acquired. The Commission welcomes this additional recital, which aims to avoid misinterpretation, to protect acquired rights and to ensure uniform application of the proposed Regulation by Member States.

4. CONCLUSION

The Commission considers that the Council's position improves and refines certain aspects of the Commission's proposal. It provides clarification on key practical legal issues, such as repeal and transitional provisions. In addition, it provides for a clearer understanding, and hence better protection, of the acquired rights of nationals of third countries (and those who derive rights from them) when they are no longer resident in the EU. Inclusion, in full, of the European Parliament's amendments provides a fuller context for the proposal.

The Commission welcomes the agreement by the Council on this position, which is a major step towards attaining the objective of Article 34 of the Charter of Fundamental Rights of the European Union, namely that everyone residing and moving legally within the EU is entitled to social security benefits. It is also a vital step towards the completion of the legislative package of modernised EU social security rules. It guarantees that nationals of third countries can benefit from the same improved rights conferred by the modernised rules and simplifies processes for national social security administrations, which will be able to apply the same procedures regardless of whether the rights concern an EU national or a national of a third country.

In view of the foregoing, the Commission fully supports the Council's position.