Social security: nationals of third countries not covered due to their nationality

2007/0152(COD) - 19/07/2010 - Council position

The Council adopted its position at first reading by qualified majority 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 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.

The European Parliament adopted two amendments to the Commission's proposal with a view to introducing two new recitals in the Preamble to emphasise the importance of equality of treatment. The Commission indicated that it could accept these amendments.

The Council also accepts these two amendments.

New elements introduced by the Council:

- **Deletion of transitional provisions**: the Council 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.
- **Addition of recitals for Ireland and the United Kingdom**: the Council added a recital to indicate that Ireland is taking part in the proposal and anothing indicating that the United Kingdom is not taking part.
- **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.
- **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.
- **Clarification of application of the criterion of ‘legal residence’ in case of invalidity, old-age and survivors’ pensions**: the Council added a recital 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.