

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation 2007/0152(COD)	Procedure completed
Social security: nationals of third countries not covered due to their nationality Amending Regulation (EC) No 883/2004 1998/0360(COD) Repealing Regulation (EC) No 859/2003 2002/0039(CNS) Amending Regulation (EC) No 987/2009 2006/0006(COD)	
Subject 4.10.10 Social protection, social security 7.10 Free movement and integration of third-country nationals	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	EMPL Employment and Social Affairs	Verts/ALE LAMBERT Jean	11/09/2007
	Former committee responsible	Verts/ALE LAMBERT Jean	11/09/2007
	EMPL Employment and Social Affairs	The committee decided not to give an opinion.	
	Former committee for opinion		
	LIBE Civil Liberties, Justice and Home Affairs		
Council of the European Union	Council configuration	Meeting	Date
	General Affairs	3028	26/07/2010
	Employment, Social Policy, Health and Consumer Affairs3019		07/06/2010
	Employment, Social Policy, Health and Consumer Affairs2947		08/06/2009
	Employment, Social Policy, Health and Consumer Affairs2876		09/06/2008
European Commission	Commission DG	Commissioner	
	Employment, Social Affairs and Inclusion	ANDOR László	

Key events			
23/07/2007	Legislative proposal published	COM(2007)0439	Summary
24/09/2007	Committee referral announced in Parliament, 1st reading		
29/05/2008	Vote in committee, 1st reading		Summary
02/06/2008	Committee report tabled for plenary, 1st reading	A6-0209/2008	
09/06/2008	Debate in Council	2876	Summary
09/07/2008	Results of vote in Parliament		
09/07/2008	Debate in Parliament		

09/07/2008	Decision by Parliament, 1st reading	T6-0350/2008	Summary
08/06/2009	Debate in Council	2947	Summary
02/12/2009	Additional information		Summary
19/07/2010	Council position published	11160/4/2010	Summary
09/09/2010	Committee referral announced in Parliament, 2nd reading		
30/09/2010	Vote in committee, 2nd reading		Summary
01/10/2010	Committee recommendation tabled for plenary, 2nd reading	A7-0261/2010	
07/10/2010	Decision by Parliament, 2nd reading	T7-0342/2010	Summary
24/11/2010	Final act signed		
24/11/2010	End of procedure in Parliament		
29/12/2010	Final act published in Official Journal		

Technical information

Procedure reference	2007/0152(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation (EC) No 883/2004 1998/0360(COD) Repealing Regulation (EC) No 859/2003 2002/0039(CNS) Amending Regulation (EC) No 987/2009 2006/0006(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 079-p2
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/7/03367

Documentation gateway

Legislative proposal	COM(2007)0439	23/07/2007	EC	Summary
Committee draft report	PE402.935	13/03/2008	EP	
Amendments tabled in committee	PE404.789	15/04/2008	EP	
Committee report tabled for plenary, 1st reading/single reading	A6-0209/2008	02/06/2008	EP	
Text adopted by Parliament, 1st reading/single reading	T6-0350/2008	09/07/2008	EP	Summary
Commission response to text adopted in plenary	SP(2008)4891	27/08/2008	EC	
Council position	11160/4/2010	19/07/2010	CSL	Summary
Commission communication on Council's position	COM(2010)0448	02/09/2010	EC	Summary
Committee draft report	PE448.861	14/09/2010	EP	
Committee recommendation tabled for plenary,	A7-0261/2010	01/10/2010	EP	

2nd reading					
Text adopted by Parliament, 2nd reading		T7-0342/2010	07/10/2010	EP	Summary
Draft final act		00058/2010/LEX	24/11/2010	CSL	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Regulation 2010/1231](#)
[OJ L 344 29.12.2010, p. 0001](#) Summary

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

PURPOSE: to extend provisions on the co-ordination of social security systems to third country nationals.

PROPOSED ACT: Council Regulation.

CONTENT: the purpose of this proposal is to extend the provisions of Regulation (EC) No 883/2004 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. For a summary of this Regulation see: [COD/1998/0360](#). It is being presented in order to simplify existing acts and can be viewed, essentially, as a recasting exercise.

This proposal aims to ensure that the same rules applied to European citizens for co-ordinating social security schemes are applied to nationals of third countries since Regulation (EC) No 883/2004 and its implementing Regulations have entered into force. It is a key extension to the co-ordination of social security systems, both in terms of equal treatment and non-discrimination with respect to the nationals of third countries and in terms of administrative simplification, the reduction of administrative costs and legal clarity for all parties involved (national administrations, social security institutions and the persons insured.)

The main elements of the proposal, in summary, are as follows:

Article 1: The purpose of this article is to apply the provisions of Regulation (EC) No 883/04 and its implementing Regulations to nationals of third countries who are not already covered by this Regulation on the ground of their nationality. The nationals of third countries covered by this text must be legally resident on the territory of a Member State. To benefit from the Regulation in a second Member State, the third-country national does not have to satisfy the residency conditions. Instead they may simply move to the second country, in compliance with that country's national legislation on entry and residence.

Article 2: This article contains provisional rules designed to protect the persons covered by this Regulation, so that they do not lose their rights as a result of its entry into force.

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

The Committee on Employment and Social Affairs adopted the report by Jean LAMBERT (PES, UK) on the 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.

The committee approved two amendments which aim to reinstate two recitals in the current legislation that is not included in the new proposal. They concern:

- the respect for fundamental rights and principles recognised, in particular, by the Charter of Fundamental Rights of the European Union;
- the promotion of a high level of social protection and raising the standard of living and the quality of life in the Member States which are defined as objectives of the European Union.

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

The Council reached a unanimous partial general approach regarding part of a regulation aimed at implementing Regulation (EC) No 883/2004 on the coordination of social security systems and covering chapter III of title IV (financial provisions - recovery of benefits provided but not due, recovery of provisional payments and contributions, offsetting and assistance with recovery).

Regulation (EC) No 883/2004 was the first step in a process aimed at modernising and simplifying EU rules on the coordination of national social security systems. Such rules are intended to allow EU citizens to move freely within Europe, while maintaining their social rights and expectations (health, pensions, unemployment protection, etc.).

The process must be completed by adoption of the implementing regulation, the proposal for which is now under examination. The regulation will replace Regulation (EEC) No 574/72, with provisions designed to strengthen cooperation between national institutions and improve the methods of data exchange.

With regard to the Annexes to Regulation (EC) 883/2004, the Council has agreed on a general approach on a regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems and determining the content of its Annexes. These Annexes are necessary in order to ensure that the particular characteristics of the various systems in the Member States are taken into account.

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

The European Parliament adopted, by 663 votes to 26 with 13 abstentions, a legislative resolution amending the 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. The report had been tabled for consideration in plenary by Jean LAMBERT (PES, UK) on behalf of the Committee on Employment and Social Affairs.

The amendments ? adopted under the consultation procedure ? were as follows:

- a new recital states that 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 ;

- a second new recital observes that 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 EU.

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

Despite substantial progress, ministers did not reach an agreement on a draft Regulation designed to ensure that third-country nationals who are legally resident in the EU and who are in a cross-border situation are subject to the same rules coordinating social security entitlements as European citizens.

The last two outstanding issues concern the principle of equal treatment of third-country nationals and the possibility of exporting pensions to third countries.

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

The Lisbon Treaty, which entered into force on 1 December 2009, amended the EU's two core treaties, the Treaty on European Union (TEU) and the Treaty establishing the European Community (EC Treaty). The latter was renamed the Treaty on the Functioning of the European Union (TFEU).

These changes had various consequences for many ongoing procedures. First of all, the articles of the TEU and of the old EC Treaty that constitute the legal basis of all the proposals founded on those Treaties were renumbered in accordance with the table of equivalences mentioned in Article 5 of the Lisbon Treaty.

In addition, some proposals underwent a change to their legal basis going beyond a mere change to their numbering, and this resulted in changes to the type of procedure.

The Lisbon Treaty also introduced new concepts of decision-making procedure. The old "codecision procedure" was extended to new areas and renamed the "ordinary legislative procedure". A new "consent procedure" replaced the old "assent procedure". New interinstitutional procedures were also set up for the adoption of certain non-legislative acts, for example the conclusion of some international agreements.

The ongoing proposals concerned by these changes were formally modified by the Commission in a Communication published on 2 December 2009 ([COM\(2009\)0665](#)).

In the case of the 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, the entry into force of the Lisbon Treaty had the following impacts:

- the old legal basis ? Treaty/EC/Art.63(4) ? became Art 79 2(b) of the TFEU. Please note that the numbering of the old legal basis corresponds to the consolidated version of the Treaty that was applicable immediately before the entry into force of the Lisbon Treaty, and may differ from the references in the original Commission proposal;
- the proposal, which had previously fallen under the old consultation procedure (CNS), was classified as an ordinary legislative procedure (COD).

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

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 another 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.

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

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.

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

The Committee on Employment and Social Affairs adopted the recommendation for second reading by Jean LAMBERT (Greens/EFA, UK) on the Council position 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.

The committee recommends that Parliament takes over the Council's position.

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

The European Parliament adopted a legislative procedure on the Council's position in 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.

The European Parliament adopted the Council's position unamended.

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

PURPOSE: to extend provisions on the co-ordination of social security systems to third country nationals.

LEGISLATIVE ACT: Regulation (EU) No 1231/2010 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.

CONTENT: the Council adopted its position at first reading on a draft regulation aimed at extending the application of regulation 883/2004 on the coordination of social security systems and its implementing regulation 987/2009 to nationals of third countries. The German, Austrian and

Bulgarian delegations voted against, and the Czech delegation abstained.

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.

In addition, 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.

Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. The same applies to the United Kingdom.

Ireland has notified its wish to take part in the adoption and application of this Regulation.

ENTRY INTO FORCE: 01/01/2011.