

Proposal for a Council Regulation extending the provisions of Regulation (EEC) No 1408/71 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality

(2002/C 126 E/15)

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(Submitted by the Commission on 6 February 2002)

THE COUNCIL OF THE EUROPEAN UNION,

the Charter of Fundamental Rights of the European Union.

Having regard to the Treaty establishing the European Community and in particular Article 63(4) thereof,

(6) The promotion of a high level of social protection and the raising of the standard of living and quality of life in the Member States are objectives of the Community.

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

(7) As regards the conditions of social protection of third-country nationals, and in particular the social security scheme applicable to them, the Employment and Social Policy Council argued in its conclusions of 3 December 2001 that the coordination applicable to third-country nationals should grant them a set of uniform rights as near as possible to those enjoyed by EU citizens.

Whereas:

(1) As its special meeting in Tampere on 15 and 16 October 1999, the European Council proclaimed that the European Union should ensure fair treatment of third-country nationals who reside legally on the territory of its Member States, grant them rights and obligations comparable to those of EU citizens, enhance non-discrimination in economic, social and cultural life and approximate their legal status to that of Member States' nationals.

(8) Currently, Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, which is the basis for the coordination of the social security schemes of the different Member States, applies only to certain third country nationals⁽³⁾. The number and diversity of legal instruments governing problems encountered by nationals of third countries in connection with the coordination of the Member States' social security schemes give rise to legal and administrative complexities. They create major difficulties both for the individuals concerned, their employers, and the competent national social security bodies.

(2) In its resolution of 27 October 1999, the European Parliament called for prompt action on promises of fair treatment for third-country nationals legally resident in the Member States and on the definition of their legal status, including uniform rights as close as possible to those enjoyed by the citizens of the European Union⁽¹⁾.

(9) Hence, it is necessary to provide for the application of the coordination rules of Regulation (EEC) No 1408/71 to third-country nationals legally resident in the Community who are not currently covered by the provisions of this Regulation on grounds of their nationality and who satisfy the other conditions provided for in this Regulation.

(3) The Economic and Social Committee has also appealed for equal treatment of Community nationals and third-country nationals in the social field, notably in its opinion of 26 September 1991 on the status of migrant workers from third countries⁽²⁾.

(4) Article 6(2) of the Treaty on European Union provides that the Union shall respect fundamental rights, as guaranteed by the European Convention on the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

(10) The application of Regulation (EEC) No 1408/71 to these persons 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.

(5) This Regulation respects the fundamental rights and observes the principles which are notably enshrined in

⁽³⁾ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ L 149, 5.7.1971, p. 2. Regulation updated by Regulation (EC) No 118/97 (OJ L 28, 30.1.1997, p. 1) and last amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001 (OJ L 187, 10.7.2001, p. 1).

⁽¹⁾ OJ C 154, 5.6.2000, p. 63.

⁽²⁾ OJ C 339, 31.12.1991, p. 82.

- (11) Transitional provisions should be adopted to protect the persons covered by this Regulation and to ensure that they do not lose rights as a result of its entry into force.
- (12) To achieve these objectives it is necessary and appropriate to extend the scope of the rules coordinating the national social security schemes by adopting a Community legal instrument which is binding and directly applicable in every Member State which adopts this Regulation.
- (13) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved at Community level, the Community may take measures in accordance with the principles of subsidiarity enshrined in Article 5 of the Treaty. In compliance with the principle of proportionality as set out in said article, this Regulation does not go beyond what is necessary to achieve these objectives,

HAS ADOPTED THIS REGULATION:

Article 1

The provisions of Regulation (EEC) No 1408/71 shall apply to nationals of third countries who are not already covered by its provisions solely on the ground of their nationality, provided they are legally resident on the territory of a Member State and move legally within the Community.

Article 2

Transitional rules

1. This Regulation shall not create any rights in respect of the period before ...⁽¹⁾.

2. Any period of insurance and, where appropriate, any period of employment, self-employment or residence completed under the legislation of a Member State before ... shall be taken into account for the determination of rights acquired in accordance with the provisions of this Regulation.

3. Subject to the provisions of paragraph 1, a right shall be acquired under this Regulation even if it relates to a contingency arising prior to ...

4. Any benefit that has not been awarded or that has been suspended on account of the nationality or the residence of the person concerned shall, at the latter's request, be awarded or resumed from ..., provided that the rights for which benefits were previously awarded did not give rise to a lump-sum payment.

5. The rights of persons who prior to ..., obtained the award of a pension may be reviewed at their request, account being taken of the provisions of this Regulation.

6. If the request referred to in paragraph 4 or paragraph 5 is lodged within two years from ..., rights deriving from this Regulation shall be acquired from that date and the provisions of the legislation of any Member State on the forfeiture or lapse of rights may not be applied to the persons concerned.

7. If the request referred to in paragraph 4 or paragraph 5 is lodged after expiry of the deadline referred to in paragraph 6, rights not forfeited or lapsed shall be acquired from the date of such request, subject to any more favourable provisions of the legislation of any Member State.

Article 3

This Regulation shall enter into force on the first day of the month following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

⁽¹⁾ Date of entry into force of the Regulation based on this proposal.