Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 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

REGULATION (EU) No 1231/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 November 2010

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(2)(b) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The European Parliament[(3)], the Council and the European Economic and Social Committee[(4)] have called for the better integration of nationals of third countries who are legally resident in the territory of the Member States by giving them a set of uniform rights which match as closely as possible those enjoyed by citizens of the Union.

(2) The Justice and Home Affairs Council of 1 December 2005 stressed that the Union must ensure fair treatment of third-country nationals residing legally in the territory of the Member States and that a more vigorous integration policy should be geared to granting them rights and obligations comparable to those of citizens of the Union.

(3) Council Regulation (EC) No 859/2003[(5)] extended Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 on the coordination of Member States' statutory social security schemes to the nationals of third countries who were not already covered by those Regulations solely on the ground of their nationality.

(4) This 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.

(5) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems[(6)] replaces Regulation (EEC) No 1408/71. Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004[(7)] replaces Regulation (EEC) No 574/72. Regulations (EEC) No 1408/71

and (EEC) No 574/72 are to be repealed with effect from the date of application of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.

(6) Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 significantly update and simplify the coordination rules for insured persons as well as social security institutions. For the latter, the updated coordination rules aim to accelerate and facilitate the processing of data on insured persons' rights to benefits and to reduce the corresponding administrative costs.

(7) 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 Union.

(8) In order to avoid a situation where employers and national social security bodies have to manage complex legal and administrative situations concerning only a limited group of persons, it is important to enjoy the full benefits of modernisation and simplification in the field of social security by making use of a single legal coordination instrument combining Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.

(9) It is therefore necessary to replace Regulation (EC) No 859/2003 with a legal instrument, the basic aim of which is to substitute Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 for Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 respectively.

(10) 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.

(11) Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 should, by virtue of this Regulation, be applicable only in so far as the person concerned is already legally resident in the territory of a Member State. Legal residence should therefore be a prerequisite for the application of those Regulations.

(12) Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 should not apply in a situation which is confined in all respects within a single Member State. This concerns, inter alia, the situation of a third-country national who has links only with a third country and a single Member State.

(13) 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.

(14) The continued right to unemployment benefit, as laid down in Article 64 of Regulation (EC) No 883/2004, is subject to the condition of registering as a job-seeker with the employment services of each Member State entered. Those provisions should only therefore apply to a third-country national provided that that individual has the right, where appropriate pursuant to his or her residence permit or long-term resident status, to register as a job-seeker with the employment services of the Member State entered and the right to work there legally.

(15) This Regulation should be without prejudice to rights and obligations arising from international agreements with third countries to which the Union is a party and which confer benefits in terms of social security.

(16) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States on account of the cross-border situations involved and can therefore, by reason of the Union-wide scale of the proposed action, be better achieved at Union level, the Union may adopt measures in accordance with the principles of subsidiarity enshrined in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

(17) In accordance with Article 3 of Protocol (No 21) on the position of United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified, by letter of 24 October 2007, its wish to take part in the adoption and application of this Regulation.

(18) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(19) In accordance with Articles 1 and 2 of Protocol (No 22) 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,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 shall apply to nationals of third countries who are not already covered by those Regulations solely on the ground of their nationality, as well as to members of their families and to their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.