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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the European Parliament[(2)],

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 in 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.

(2) In its resolution of 27 October 1999[(3)], 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.

(3) The European 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[(4)].

(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.

(5) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular the spirit of its Article 34(2).

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 859/2003. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(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.

(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.

(8) Currently, Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community[(5)], which is the basis for the coordination of the social security schemes of the different Member States, and Council Regulation (EEC) No 574/72 of 21 March 1972, laying down the procedure for implementing Regulation (EEC) No 1408/71[(6)], apply only to certain third-country nationals. The number and diversity of legal instruments used in an effort to resolve problems in connection with the coordination of the Member States' social security schemes encountered by nationals of third countries who are in the same situation as Community nationals give rise to legal and administrative complexities. They create major difficulties for the individuals concerned, their employers, and the competent national social security bodies.

(9) Hence, it is necessary to provide for the application of the coordination rules of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to third-country nationals legally resident in the Community who are not currently covered by the provisions of these Regulations on grounds of their nationality and who satisfy the other conditions provided for in this Regulation; such an extension is in particular important with a view to the forthcoming enlargement of the European Union.

(10) The application of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to these persons does not give them any entitlement to enter, to stay or to reside in a Member State or to have access to its labour market.

(11) The provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 are, by virtue of this Regulation, applicable only in so far as the person concerned is already legally resident in the territory of a Member State. Being legally resident is therefore a prerequisite for the application of these provisions.

(12) The provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 are not applicable 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 continued right to unemployment benefit, as laid down in Article 69 of Regulation (EEC) No 1408/71, is subject to the condition of registering as a job-seeker with the employment services of each Member State entered. Those provisions may therefore apply to a third-country national only provided he/she has the right, where appropriate pursuant to his/her residence permit, to register as a job-seeker with the employment services of the Member State entered and the right to work there legally.

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(14) 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.

(15) 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 takes part in the adoption of this Regulation.

(16) This Regulation is without prejudice to rights and obligations arising from international agreements with third countries to which the Community is a party and which afford advantages in terms of social security.

(17) 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 principle of subsidiarity enshrined in Article 5 of the Treaty. In compliance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve these objectives.

(18) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and to the Treaty establishing the European Community, Ireland and the United Kingdom gave notice, by letters of 19 and 23 April 2002, of their wish to take part in the adoption and application of this Regulation.

(19) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on the European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not therefore bound by or subject to it,

HAS ADOPTED THIS REGULATION:

Article 1

Subject to the provisions of the Annex to this Regulation, the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 shall apply to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality, as well as to members of their families and to their survivors, provided 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.

Article 2

1 This Regulation shall not create any rights in respect of the period before 1 June 2003.

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 1 June 2003 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 1 June 2003.