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From: Presidency

To: Delegations

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Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State

In view of the meeting of Justice and Home Affairs Counsellors on 11 November 2014, delegations will find in Annex a Presidency compromise text. The changes compared to the Commission proposal (11864/14) are indicated in **bold**.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State

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 78(2)(e) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (1) Regulation (EU) No 604/2013 of the European Parliament and of the Council¹ determines the Member State where the unaccompanied minor has lodged the application for international protection as the Member State responsible for examining that application.
- (2) After adoption of the Regulation (EU) No 604/2013 the Court of Justice ruled in case C-648/11 that, where an unaccompanied minor with no family member legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated as the Member State responsible **provided that this is in the unaccompanied minor's interests.**
- (2a) **It is in the interest of unaccompanied minors not to prolong unnecessarily the procedure for determining the Member State responsible, and to ensure that unaccompanied minors have prompt access to the procedure for determining the international protection status.**
- (2b) **Therefore, in assessing the minor's best interests, Member States should, in particular, take due account of the stage of advancement of the examination on the substance of the application for international protection in other Member States, in addition to the minor's well-being and social development, safety and security considerations, his/her views in accordance with his/her age and maturity, including his/her background.**

¹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

- (2c) **In particular, in order to ensure that unaccompanied minors have prompt access to the procedure for determining international protection, if a Member State which has already taken a decision on the application for international protection on the basis of an adequate and complete examination of its substance in line with the requirements of Directive 2011/95/EU, that Member State should be the Member State responsible. However, in view of protecting the best interests of the minor, the respective Member States should ensure a swift completion of the Dublin procedure, including, where applicable, of any appeal against a transfer decision, and of the actual implementation of the transfer.**
- (2d) **Member States should also ensure that the unaccompanied minor is given an effective opportunity to explain why he or she has left the Member State which has already taken a decision at first instance on his or her application for international protection, and due account of his or her views in line with his or her age and maturity should be taken, including by consulting with his/her representative.**
- (2e) **Unaccompanied minors seeking international protection are particularly vulnerable to abuse and exploitation. Their secondary movements in several Member States can put them at risk. In view of ensuring that their best interests are protected and that the asylum procedure is not misused, it is important to discourage and prevent such movements and exploitation.**

- (3) The situation of an unaccompanied minor with no family member legally present in the territory of a Member State, who has lodged asylum applications in one or more Member States, and who is present in the territory of a Member State without having lodged an application there, has not been addressed by the judgment. In order to ensure a coherent provision on unaccompanied minors in this Regulation and avoid legal uncertainty, the criterion for establishing the Member State responsible in such a situation should equally be provided for.
- (4) According to the judgment, the Member State responsible should inform accordingly the Member State with which the first application has been lodged. Since the asylum application is required to be examined only by a single Member State, the Member State responsible should inform of its decision the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge or take back the minor, as the case may be.
- (5) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the 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, those Member States have notified their wish to take part in the adoption and application of this Regulation.]
- (6) 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.
- (7) Regulation (EU) No 604/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

In Regulation (EU) No 604/2013 paragraph 4 of Article 8 is replaced by the following:

- "4a. Where the unaccompanied minor has no family member, sibling or relative legally present in a Member State as referred to in paragraphs 1 and 2, the Member State responsible shall be the one where the unaccompanied minor has lodged an application for international protection and is present, provided that this is in the best interests of the minor.
- 4b. By way of derogation from paragraph 4a, the Member State responsible shall be the one that has already taken a decision at first instance on the basis of an adequate and complete examination of its substance in line with the requirements of Directive 2011/95/EU, unless this is not in the best interests of the minor.**
- 4c. Paragraph 4b shall only apply provided that:**
- i) by way of derogation from Article 34(5), the period for the requested Member State to reply to a request for information concerning point (g) of Article 34(2) does not exceed one week from the receipt of such request; and**
 - ii) by way of derogation from Article 23(2), the period for submitting a take back request does not exceed one month from the lodging of an application and the requesting Member State asks for an urgent reply in these cases; and**

- iii) **by way of derogation from Article 25(1), the reply of the requested Member State does not exceed two weeks from the receipt of the request.**

The requested Member State shall provide an explicit reply to the request to take back the person concerned. By way of derogation from Article 25(2), a failure to reply within the two weeks from the receipt of the request shall not be tantamount to accepting the request and shall not entail the obligation to take back the person concerned; and

- iv) **by way of derogation from Article 27, the period of time within which the person concerned may exercise his/her right to an effective remedy and within which a final decision on an appeal or review where there is a suspensive effect in line with Article 27(3) can be taken is no longer than four weeks from the receipt of the reply of the requested Member State accepting responsibility.**

Where the transfer of the person from the requesting Member State to the Member State responsible does not take place at the latest within six weeks from the acceptance of the responsibility by the requested Member State, or of the moment when the appeal or review no longer has a suspensive effect in line with Article 27(3), the responsibility shall be transferred to the requesting Member State. The responsible Member State shall prioritize the examination of the application for international protection, in line with Directive 2013/32/EU.

4d. Where an applicant as referred to in paragraph 4a is present in the territory of a Member State without having lodged an application there, that Member State shall inform the unaccompanied minor of the right to make an application and give him or her an effective opportunity to lodge an application in that Member State.

Where the unaccompanied minor referred to in the first subparagraph lodges an application in the Member State where he or she is present, **the rules provided for in paragraphs 4a, 4b and 4c apply that Member State shall become responsible for examining that application, provided this is in the best interests of the minor.**

Where the unaccompanied minor referred to in the first subparagraph does not lodge an application in the Member State where he or she is present, the Member State responsible shall be the one where the unaccompanied minor has lodged his or her most recent application, unless this is not in the best interests of the minor.

~~4e. The Member State requested to take back an unaccompanied minor shall cooperate with the Member State where the unaccompanied minor is present in order to assess the best interests of the minor.~~

4e. The Member State, which is responsible pursuant to paragraph 4a, shall inform the following Member States, as applicable, thereof:

- (a) **the Member State where the unaccompanied minor previously lodged an application for international protection;**
- (b) the Member State previously responsible;
- (c) the Member State conducting a procedure for determining the Member State responsible;

- (d) the Member State which has been requested to take charge of the unaccompanied minor;
- (e) the Member State which has been requested to take back the unaccompanied minor.

That information shall be sent using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003."

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
