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Subject:	Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]

1. During the informal meetings of the Asylum Working Party under the Portuguese Presidency between 7 January and 15 April 2021, the first examination of the proposal for the Asylum and Migration Management Regulation (AMMR) was carried out.
2. On the basis of these discussions, the first suggestions for technical modifications of the solidarity part of AMMR were presented at the informal meeting of the Asylum WP on 16 June 2021¹.
3. The Presidency aims to continue examination of AMMR, starting with provisions of Part III - Criteria and mechanisms for determining the Member State responsible, in order to gain a broader picture of the whole proposal. In Annex to this document, delegations will find suggestions for modifications of Articles 1, 2 (points (a) to (q), (x) to (aa)) and 8 to 27, to be examined at the forthcoming informal meeting of the Asylum WP. Suggestions for modifications of Articles 28 to 44 will follow in due time.

¹ document 9656/21

4. The suggestions for modifications of Part III of AMMR are based on detailed examination of proposals and concerns stressed by Member States. As the Portuguese Presidency already noted in the presentation of its suggestions for modifications of the solidarity part of the AMMR at the informal meeting of the Asylum WP on 16 June 2021, there is a thin layer between technical and political issues. Considerations on a larger and more political scale are needed before addressing those issues in the AMMR text, taking into account the overall balance between responsibility and solidarity in the new Pact on Migration and Asylum as presented by the European Commission on 23 September 2020. Therefore, the Slovenian Presidency aims to continue the approach taken by the Portuguese Presidency. The attached compromise proposal thus aims at making progress at a technical level that the Presidency considers feasible for the time being, and which could contribute to the progress on the political issues at a later stage.

5. It is understood that all delegations have general scrutiny reservations on the whole AMMR proposal and that in addition, some delegations have scrutiny or substantive reservations on certain specific provisions.

6. Modifications as compared to the Commission proposal are indicated as follows:
 - new Presidency text is in **bold underline**;
 - deleted Presidency text is in ~~**bold strikethrough**~~.

2020/0279 (COD)

Draft

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on asylum and migration management and amending Council Directive (EC) 2003/109 and
the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]**

(Text with EEA relevance)

PART I

SCOPE AND DEFINITIONS

Article 1

Aim and subject matter

In accordance with the principle of solidarity and fair sharing of responsibility, and with the objective of reinforcing mutual trust, this Regulation:

- (a) sets out a common framework for the management of asylum and migration in the Union;
- (b) establishes ~~a~~ mechanisms for solidarity;
- (c) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.

Article 2

Definitions

For the purposes of this Regulation:

- (a) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty and who is not a person enjoying the right to free movement under Union law as defined in Article 2, point (5) of Regulation (EU) 2016/399 of the European Parliament and of the Council²;
- (b) ‘application for international protection’ or ‘application’ means a request **made by a third-country national or a stateless person** for protection **from made to** a Member State **by a third-country national or a stateless person**, who can be understood **to as** seeking refugee status or subsidiary protection status;
- (c) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a decision has not been taken, or has been taken and is either subject to or can still be subject to a remedy in the Member State concerned, irrespective of whether **that person the applicant** has a right to remain or is allowed to remain in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], including a person who has been granted immediate protection pursuant to Regulation (EU) XXX/XXX [*Regulation addressing situations of crisis and force majeure in the field of asylum and migration*];
- (d) ‘examination of an application for international protection’ means examination of the admissibility or the merits of an application for international protection in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] and Regulation (EU) XXX/XXX [*Qualification Regulation*], excluding procedures for determining the Member State responsible in accordance with this Regulation;

² Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p. 1.

- (e) ‘withdrawal of an application for international protection’ means either explicit or implicit withdrawal of an application for international protection in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*];
- (f) ‘beneficiary of international protection’ means a third-country national or a stateless person who has been granted international protection as defined in Article 2(2) of Regulation (EU) XXX/XXX [*Qualification Regulation*];
- (g) ‘family members’ means, insofar as the family already existed before the applicant or the family member arrived on the territory of the Member States, the following members of the applicant’s family who are present on the territory of the Member States:
- (i) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,
 - (ii) the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,
 - (iii) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,
 - (iv) where the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present,
 - (v) sibling or siblings of the applicant;

On the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage would not be in accordance with the relevant national law had it been contracted in the Member State concerned, in particular having regard to the legal age of marriage.

- (h) ‘relative’ means the applicant’s adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;
- (i) ‘minor’ means a third-country national or a stateless person below the age of 18 years;
- (j) ‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;
- (k) ‘representative’ means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary;
- (l) ‘residence document’ means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;

- (m) ‘visa’ means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States, including:
- (i) an authorisation or decision issued in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than 90 days,
 - (ii) an authorisation or decision issued in accordance with its national law or Union law required for entry for a transit through or an intended stay in that Member State not exceeding 90 days in any 180-day period,
 - (iii) an authorisation or decision valid for transit through the international transit areas of one or more airports of the Member States;
- (n) ‘diploma or qualification’ means a diploma or qualification which is obtained **in a Member State** after at least a ~~three months~~² period of **one year of study on the territory of that Member State** in a recognised, state or regional programme of education or vocational training at least equivalent to level 2 of the International Standard Classification of Education, operated by an education establishment in accordance with national law or administrative practice of the Member States;
- (o) ‘education establishment’ means ~~any type of~~ public or private education or vocational training establishment established in a Member State and recognised by that Member State ~~or considered as such~~ in accordance with national law or whose courses of study or training are recognised in accordance with national law or administrative practice;
- (p) ‘absconding’ means the action by which **a person concerned deliberately evades the reach of the competent administrative or judicial authorities responsible for carrying out the procedures set out in this Regulation** ~~an applicant does not remain available to the competent administrative or judicial authorities, such as by leaving the territory of the Member State without authorization from the competent authorities for reasons which are not beyond the applicant’s control;~~

- (q) ‘risk of absconding’ means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria defined by national law to believe that **a person concerned** ~~an applicant~~ who is subject to **procedures set out in this Regulation** ~~a transfer procedure~~ may abscond;
- (...)
- (x) ‘resettled or admitted person’ means a person who has been accepted by a Member State for admission pursuant to Regulation (EU) XXX/XXX [*Union Resettlement Framework Regulation*] or under a national resettlement scheme outside the framework of that Regulation;
- (y) ‘Asylum Agency’ means the European Union Agency for Asylum as established by Regulation (EU) XXX/XXX [*European Union Asylum Agency*];
- (z) ‘return decision’ means an administrative or judicial decision or act stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return that respects Directive 2008/115/EC of the European Parliament and of the Council³;
- (aa) ‘illegally staying third-country national’ means a third-country national who does not fulfil or no longer fulfils the conditions of entry as set out in Article 6 of Regulation (EU) 2016/399 or other conditions for entry, stay or residence in a Member State.
- (...)

³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJL 348, 24.12.2008, p. 98.

PART III

CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE

CHAPTER I

GENERAL PRINCIPLES AND SAFEGUARDS

Article 8

Access to the procedure for examining an application for international protection

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter II **or the clauses set out in Chapter III** of Part III indicate is responsible.
2. **Without prejudice to the rules set out in part IV of this Regulation,** ~~where~~ where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was registered shall be responsible for examining it.

3. Where it is impossible for a Member State to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter II **or the clauses set out in Chapter III** of Part III in order to establish whether another Member State can be designated as responsible.

Where a Member State cannot carry out the transfer pursuant to the first subparagraph to any Member State designated on the basis of the criteria set out in Chapter II **or the clauses set out in Chapter III** of Part III or to the first Member State with which the application was registered, that Member State shall become the Member State responsible.

4. If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] has not been carried out **pursuant to that Regulation**, the first Member State in which the application for international protection was registered shall examine whether there are reasonable grounds to consider the applicant a danger to national security or public order of **the that Member States** as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III.

If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] has been carried out, but the first Member State in which the application for international protection was registered has justified reasons to examine whether there are reasonable grounds to consider the applicant a danger to national security or public order of **the that Member States**, that Member State shall carry out the examination as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III.

Where the security check carried out in accordance with Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] or in accordance with the first and second subparagraphs of this paragraph shows that there are reasonable grounds to consider the applicant a danger to national security or public order of ~~a~~ the Member State, the Member State carrying out the security check, ~~that Member State~~ shall be the Member State responsible, and Article 29 shall not apply.

5. Each Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*].

Article 9

Obligations regarding applications of the applicant

1. Where a third-country national or stateless person intends to make an application for international protection, the application shall be made and registered in the Member State of first entry.
2. By derogation from paragraph 1, where a third-country national or stateless person is in possession of a valid residence permit or a valid visa, the application shall be made and registered in the Member State that issued the residence permit or visa.

Where a third-country national or stateless person who intends to make an application for international protection is in possession of a residence permit or visa whose validity has ceased which has expired, the application shall be made and registered in the Member State where he or she is present.

3. The applicant shall fully cooperate with the competent authorities of the Member States in matters covered by this Regulation, in particular by submitting as soon as possible and at the latest during the interview referred to in Article 12, all the elements and information available to him or her relevant for determining the Member State responsible. **The applicant shall submit his or her identity documents if the applicant is in possession of such documents and cooperate with the competent authorities in collecting the biometric data in accordance with Regulation EU XXX/XXX [Eurodac Regulation].**
- Where the applicant is not in a position at the time of the interview to submit evidence to substantiate the elements and information provided, the competent authority may set a time limit within the period referred to in Article 29(1) for submitting such evidence.
4. The applicant shall be required to be present in:
- (a) the Member State referred to in paragraphs 1 and 2 pending the determination of the Member State responsible and, where applicable, the implementation of the transfer procedure;
 - (b) the Member State responsible;
 - (c) the Member State of relocation following a transfer pursuant to Article 57(9).
5. Where a transfer decision is notified to the applicant in accordance with Article 32(2) and Article 57(8), the applicant shall **cooperate with the authorities and** comply with that decision.

Article 10

Consequences of non-compliance

1. The applicant shall not be entitled to the reception conditions set out in Articles 15 to 17 of Directive XXX/XXX/EU [*Reception Conditions Directive*] **in accordance with** ~~pursuant to~~ Article 17a of that Directive in any Member State other than the one in which he or she is required to be present pursuant to Article 9(4) of this Regulation ~~from the moment he or she has been notified of a decision to transfer him or her to the Member State responsible~~, provided that the applicant has been informed of that consequence pursuant to Article 8(2), point (b) of Regulation (EU) XXX/XXX [*Screening Regulation*]. This shall be without prejudice to the need to ensure a standard of living in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations.
2. Elements and information relevant for determining the Member State responsible submitted after expiry of the time limit referred to in Article 9(3) shall not be taken into account by the competent authorities.

Article 11

Right to information

1. As soon as possible and at the latest when an application for international protection is registered in a Member State, its competent authorities shall inform the applicant of the application of this Regulation and of the obligations set out in Article 9 as well as the consequences of non-compliance set out in Article 10, and in particular:

- (a) that the right to apply for international protection does not encompass a choice by the applicant in relation to either the Member State responsible for examining the application for international protection or the Member State of relocation;
- (b) of the objectives of **part III of** this Regulation and the consequences of making another application in a different Member State as well as the consequences of leaving the Member State where he or she is required to be present pursuant to Article 9(4), in particular that the applicant shall only be entitled to the reception conditions as set out in Article 10(1);
- (c) of the criteria and the procedures for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration;
- (d) of the aim of the personal interview pursuant to Article 12 and the obligation to submit and substantiate orally or through the provision of documents information as soon as possible in the procedure any relevant information that could help to establish the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information, as well as any assistance that the Member State can offer with regard to the tracing of family members or relatives;
- (e) of the obligation for the applicant to disclose, as soon as possible in the procedure any relevant information that could help to establish any prior residence permits, visas or educational diplomas;
- (ea) of the obligation for the applicant to submit his or her identity documents where the applicant is in possession of such documents and to cooperate with the competent authorities in collecting the biometric data in accordance with the Regulation (EU) XXX/XXX [Eurodac Regulation];**
- (f) of the possibility to challenge a transfer decision within the time limit set out in Article 33(2) and of the fact that the scope of that challenge is limited as laid down in Article 33(1);

(g) **in case of an appeal against, or review of, the transfer decision,** of the right to be granted, on request, legal assistance free of charge where the person concerned cannot afford the costs involved;

(ga) of the fact that absconding will lead to an extension of the time limit in accordance with Article 35;

(h) that the competent authorities of Member States and the Asylum Agency will process personal data of the applicant including for the exchange of data on him or her for the sole purpose of implementing their obligations arising under this Regulation;

(i) of the categories of personal data concerned;

(j) of the right of access to data relating to him or her and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article 41 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data, and of the contact details of the data protection officer;

(k) in the case of an unaccompanied minor, of the role and responsibilities of the representative and of the procedure to file complaints against a representative in confidence and safety and in full respect of the child's right to be heard in this respect;

~~(l) where applicable, of the relocation procedure set out in Articles 57 and 58.~~

2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common information material drawn up in clear and plain language pursuant to paragraph 3 for that purpose.

Where necessary for the applicant's proper understanding, the information shall also be supplied orally, where appropriate in connection with the personal interview as referred to in Article 12.

Where the applicant is an unaccompanied minor, the information shall be supplied in a child-friendly manner, taking into account in particular the age and maturity of that minor.

3. The Asylum Agency shall, in close cooperation with the responsible national **authorities agencies**, draw up common information material, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1. That common information material shall also include information regarding the application of Regulation (EU) XXX/XXX [*Eurodac Regulation*] and, in particular, the purpose for which the data of an applicant may be processed within Eurodac. The common information material shall be drawn up in such a manner as to enable Member States to complete it with additional Member State-specific information.

Article 12

Personal interview

1. In order to facilitate the process of determining the Member State responsible, the determining Member State **referred to in Article 28(1)** shall conduct a personal interview with the applicant **for the purpose of application of Article 29**. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article 11.
2. The personal interview may be omitted where:
 - (a) the applicant has absconded;
 - (b) the applicant has not attended the personal interview and has not provided justified reasons for his or her absence;
 - (c) after having received the information referred to in Article 11, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible within the period referred to in Article 29(1).

3. The personal interview shall take place in a timely manner and, in any event, before any take charge request is made pursuant to Article 29.
4. The personal interview shall be conducted in a language that the applicant understands or ~~may is~~ reasonably ~~be expected supposed~~ to understand and in which he or she is able to communicate. Interviews of ~~unaccompanied~~ minors shall be conducted in a child-friendly manner, by staff who are appropriately trained ~~and qualified~~ under national law, in the presence of the representative and, where applicable, the minor's legal advisor, taking into account in particular the age and maturity of the minor. Where necessary, Member States shall have recourse to an interpreter, ~~and where appropriate a cultural mediator, who is able to ensure appropriate communication between the applicant and the person conducting the personal interview~~. The applicant may on his or her request ~~to~~ be interviewed and assisted by staff of the same sex. Member States shall endeavour to satisfy such requests, where reasonably practicable.
5. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law. Applicants who are identified as being in need of special procedural guarantees pursuant to Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], shall be provided with adequate support in order to create the conditions necessary for effectively presenting all elements allowing for the determination of the Member State responsible.
6. The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. The summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.

Article 13

Guarantees for minors

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.
2. Each Member State where an unaccompanied minor is present shall ensure that he or she is represented and assisted by a representative with respect to the relevant procedures provided for in this Regulation. The representative shall have the qualifications, training and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such representative shall have access to the content of the relevant documents in the applicant's file including the specific information material for unaccompanied minors.

Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out its duties in respect of the minor. The first subparagraph shall apply to that person.

The representative provided for in the first subparagraph may be the same person or organisation as provided for in Article 22 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*].

3. The representative of an unaccompanied minor shall **represent and assist the minor** ~~be involved~~ in the process of establishing the Member State responsible under this Regulation. The representative shall assist the unaccompanied minor to provide information relevant to the assessment of his or her best interests in accordance with paragraph 4, including the exercise of the right to be heard, and shall support his or her engagement with other actors, such as family tracing organisations, where appropriate for that purpose.

4. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:
- (a) family reunification possibilities;
 - (b) the minor's well-being and social development, taking into particular consideration the minor's background;
 - (c) safety and security considerations, in particular where there is a risk of the minor being a victim of any form of violence and exploitation, including trafficking in human beings;
 - (d) the views of the minor, in accordance with his or her age and maturity;
 - (e) where the applicant is an unaccompanied minor, the information provided by the representative in the Member State where the unaccompanied minor is present.
5. Before transferring an unaccompanied minor ~~to the Member State responsible or, where applicable, to the Member State of relocation~~, the transferring Member State shall notify ~~make sure that~~ the Member State responsible or the Member State of relocation, which shall confirm that all appropriate ~~takes the~~ measures referred to in Articles 14 and 23 of Directive XXX/XXX/EU [*Reception Conditions Directive*] and Article 22 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] will be taken without delay⁴. Any decision to transfer an unaccompanied minor shall be preceded by an assessment of his/her best interests. The assessment shall be based on the relevant factors listed in paragraph 4 and the conclusions of the assessment on these factors shall be clearly stated in the transfer decision. The assessment shall be done without delay swiftly by appropriately trained staff ~~with the qualifications and expertise~~ to ensure that the best interests of the minor are taken into consideration.
6. For the purpose of applying Article 15, the Member State where the unaccompanied minor's application for international protection was first registered shall, as soon as possible, take appropriate action to identify the family members or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

⁴ explanatory recital to be added

To that end, that Member State may call for the assistance of international or other relevant organisations, and may facilitate the minor's access to the tracing services of such organisations.

The staff of the competent authorities referred to in Article 41 who deal with requests concerning unaccompanied minors shall ~~receive have received, and shall continue to receive~~, appropriate training concerning the specific needs of minors **relevant for the application of this Regulation.**

7. With a view to facilitating the appropriate action to identify the family members or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph 6, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

CHAPTER II

CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Article 14

Hierarchy of criteria

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.
2. The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation obtaining when the application for international protection was first registered with a Member State.

Article 15

Unaccompanied minors

1. Where the applicant is an unaccompanied minor, only the criteria set out in this Article shall apply, in the order in which they are set out in paragraphs 2 to 5.
2. The Member State responsible shall be that where a family member of the unaccompanied minor is legally present, unless it is demonstrated that it is not in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present, **unless it is demonstrated that it is not in the best interests of the minor.**
3. Where the applicant has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, unless it is demonstrated that it is not in the best interests of the minor.
4. Where family members or relatives as referred to in paragraphs 2 and 3, are staying in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.
5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be that where the unaccompanied minor's application for international protection was first registered, unless it is demonstrated that this is not in the best interests of the minor.

6. The Commission is empowered to adopt delegated acts in accordance with Article 68 concerning:
- (a) the identification of family members or relatives of unaccompanied minors;
 - (b) the criteria for establishing the existence of proven family links;
 - (c) the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor are staying in more than one Member State.

In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 13(4).

7. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Article 16

Family members who are beneficiaries of international protection

Where the applicant has a family member who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 17

Family members who are applicants for international protection

Where the applicant has a family member ~~in a Member State~~ whose application for international protection in a ~~that~~ Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 18

Family procedure

1. Where several family members **make submit** applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined as follows:

- (a) responsibility for examining the applications for international protection of all the family members shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;
- (b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

2. Where the applicant has family members as referred to in Articles 16 and 17 in more than one Member State, the Member State responsible shall be determined as follows:

- (a) responsibility shall lie with the Member State responsible for the family member referred to in Article 2(g), points (i) to (iv);**
- (b) failing this, responsibility shall lie with the Member State which is responsible for the sibling to which the applicant states that he/she has the strongest ties.**

Article 19

Issue of residence documents or visas

1. Where the applicant is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.
2. Where the applicant is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009. In such a case, the represented Member State shall be responsible for examining the application for international protection.
3. Where the applicant is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:
 - (a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;
 - (b) where the various visas are of the same type the Member State which issued the visa having the latest expiry date;
 - (c) where the visas are of different types, the Member State which issued the visa having the longest period of validity or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.
4. Where the applicant is in possession of one or more residence documents or one or more visas **whose validity has ceased**~~which expired~~ less than three years before the application was registered, paragraphs 1, 2 and 3 shall apply.

5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the Member State issuing the residence document or visa shall not be responsible if it can establish that fraud was committed after the document or visa was issued.

Article 20

Diplomas or other qualifications

1. Where the applicant is in possession of a diploma or qualification issued by an education establishment established in a Member State ~~and the application for international protection was registered after the applicant left the territory of the Member States following the completion of his or her studies~~, the Member State in which that education establishment is established shall be responsible for examining the application for international protection, provided that the application is registered less than five years after the diploma or qualification was issued.
2. Where the applicant is in possession of more than one diploma or qualification issued by education establishments in different Member States, the responsibility for examining the application for international protection shall be assumed by the Member State which issued the diploma or qualification following the longest period of study or, where the periods of study are identical, by the Member State in which the most recent diploma or qualification was obtained.

Article 21

Entry

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [*Eurodac Regulation*], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the first Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than 3 years after the date on which that border crossing took place.
2. The rule set out in paragraph 1 shall also apply where the applicant was disembarked on the territory following a search and rescue operation.
3. Paragraphs 1 and 2 shall not apply if it can be established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [*Eurodac Regulation*], that the applicant was relocated pursuant to Article 57 of this Regulation to another Member State after having crossed the border. In that case, that other Member State shall be responsible for examining the application for international protection.

Article 22

Visa waived entry

If a third-country national or a stateless person enters into the territory of the Member States through a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection. That responsibility shall cease if the application is registered more than three years after the date on which the person entered the territory.

Article 23

Application in an international transit area of an airport

Where the application for international protection is made in the international transit area of an airport of a Member State by a third-country national or a stateless person, that Member State shall be responsible for examining the application.

CHAPTER III

DEPENDENT PERSONS AND DISCRETIONARY CLAUSES

Article 24

Dependent persons

1. Where, on account of pregnancy, having a new-born child, serious illness, severe disability, severe **psychological** trauma or old age, an applicant is dependent on the assistance of his or her child or parent legally resident in one of the Member States, or his or her child or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child or parent, provided that family ties existed before the applicant arrived on the territory of the Member States, that the child or parent or the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing.

Where there are indications that a child or parent is legally resident on the territory of the Member State where the dependent person is present, that Member State shall verify whether the child or parent can take care of the dependent person, before making a take charge request pursuant to Article 29.

2. Where the child or parent referred to in paragraph 1 is legally resident in a Member State other than the one where the applicant is present, the Member State responsible shall be the one where the child or parent is legally resident unless the applicant's health prevents him or her from travelling to that Member State for a significant period of time. In such a case, the Member State responsible shall be the one where the applicant is present. Such Member State shall not be subject to the obligation to bring the child or parent of the applicant to its territory.
3. The Commission is empowered to adopt delegated acts in accordance with Article 68 concerning:
 - (a) the elements to be taken into account in order to assess the dependency link;
 - (b) the criteria for establishing the existence of proven family links;
 - (c) the criteria for assessing the capacity of the person concerned to take care of the dependent person;
 - (d) the elements to be taken into account in order to assess the inability to travel for a significant period of time.
4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Article 25

Discretionary clauses

1. By way of derogation from Article 8(1), each Member State may decide to examine an application for international protection by a third-country national or a stateless person registered with it, even if such examination is not its responsibility under the criteria laid down in this Regulation.
2. The Member State in which an application for international protection is registered and which is carrying out the process of determining the Member State responsible, or the Member State responsible, may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations, even where that other Member State is not responsible under the criteria laid down in Articles 15 to 18 and 24. The persons concerned shall express their consent in writing.

The take charge request shall contain all the material in the possession of the requesting Member State necessary to allow the requested Member State to assess the situation.

The requested Member State shall carry out any necessary checks to examine the humanitarian grounds cited, and shall reply to the requesting Member State within two months of receipt of the request using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. A reply refusing the request shall state the reasons on which the refusal is based.

CHAPTER IV

OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

Article 26

Obligations of the Member State responsible

1. The Member State responsible under this Regulation shall be obliged to:
 - (a) take charge, under the conditions laid down in Articles 29, 30 and 35, of an applicant whose application was registered in a different Member State;
 - (b) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, an applicant or a third-country national or a stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*];
 - (c) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a beneficiary of international protection in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*];
 - (d) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a resettled or admitted person who has made an application for international protection or who is irregularly staying in a Member State other than the Member State which accepted to admit him or her in accordance with Regulation (EU) XXX/XXX [*Union Resettlement Framework Regulation*] or which granted international protection or humanitarian status under a national resettlement scheme.

2. For the purposes of this Regulation, the situation of a minor who is accompanying the applicant and meets the definition of family member shall be indissociable from that of his or her family member and the minor shall be taken charge of or taken back by the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, unless it is demonstrated that this is not in the best interests of the child. The same principle shall be applied to children born after the applicant arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.
3. In the situations referred to in paragraph 1, points (a) and (b), ~~the Member State responsible shall examine or complete the examination of the application for international protection pursuant to~~ Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] **shall apply**.

Article 27

Cessation of responsibilities

1. Where a Member State issues a residence document to the applicant, decides to apply Article 25, or does not transfer the person concerned to the Member State responsible within the time limits set out in Article 35, that Member State shall become the Member State responsible and the obligations laid down in Article 26 shall be transferred to that Member State. Where applicable, it shall inform 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 of the applicant or has received a take back notification, using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

The first subparagraph shall not apply if the person has already been granted international protection by the responsible Member State.

The Member State which becomes responsible pursuant to the first subparagraph of this Article shall indicate that it has become the Member State responsible pursuant to Article 11(3) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].

2. The obligation laid down in Article 26(1), point (b), of this Regulation to take back a third-country national or a stateless person shall cease where it can be established, on the basis of the update of the data set referred to in Article 11(2)(c) of Regulation (EU) XXX/XXX [*Eurodac Regulation*], that the person concerned has left the territory of the Member States, on either a compulsory or a voluntary basis, in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.

An application registered after an effective removal **or voluntary return** has taken place shall be regarded as a new application for the purpose of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.