



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 18 July 2011**

**12069/11**

**Interinstitutional File:  
2008/0243 (COD)**

**LIMITE**

**ASILE 53  
CODEC 1106**

### **OUTCOME OF PROCEEDINGS**

---

of:	Asylum Working Party
on	23 June 2011
No Cion proposal:	16929/08 ASILE 26 CODEC 1758
No prev. doc.:	10981/11 ASILE 44 CODEC 947 11540/1/11 REV 1 ASILE 48 CODEC 1021
Subject:	Proposal for a Regulation of the European Parliament and of the Council 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 (recast)

---

1. At its meeting on 23 June 2011, the Working Party examined compromise suggestions in relation to Recitals 13, 18 and 29, as well as to Articles 2(d), (gc), (i), (j), 4, 5, 6(2), 8(2), 11(1), 17(2), 26(3A), 28(1) and 30A(1).
2. The results of the discussions are set out in the Annex with delegations' comments in the footnotes.

N.B. New text is indicated by underlining and **bold** the insertion and including it within Council tags: ➤ ➤;  
Deleted text is indicated within underlined square brackets as follows:  
➤ [...] ➤.

## ANNEX

↓ 343/2003/EC

⇒ new

⇒ Council

2008/0243 (COD)

Proposal for a

### **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application ⇒ for international protection ⇐ lodged in one of the Member States by a third-country national ⇒ or a stateless person ⇐<sup>1</sup>**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ⇒ [...] ⇐ ⇒ on the Functioning of the European Union (TFEU) ⇐ , and in particular ⇒ point 1 (e) of Article 78 ⇐ ⇒ [...] ⇐ thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the procedure laid down in Article ⇒ [...] ⇐ ⇒ 294 ⇐ of the ⇒ [...] ⇐ ⇒ TFEU ⇐<sup>4</sup>,

---

<sup>1</sup> **FR:** scrutiny reservation on the latest **Pres** compromise suggestions, contained in doc. 8821/1/11.

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ C [...], [...], p. [...].

Whereas:<sup>5</sup>

---

↓ new

- (1) A number of substantive changes are to be made to Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national<sup>6</sup>. In the interests of clarity, that Regulation should be recast.
- 

↓ 343/2003/EC recital 1

⇒ Council

- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the ⇒ [...] ⇒ Union ⇒ .
- 

↓ 343/2003/EC recital 2

- (3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement. In this respect, and without affecting the responsibility criteria laid down in this Regulation, Member States, all respecting the principle of non-refoulement, are considered as safe countries for third-country nationals.

---

<sup>5</sup> **DE, FI, FR, IT, AT:** scrutiny reservations on all the Recitals (except 14, 15, 30 and 31).

<sup>6</sup> OJ L 50, 25.2.2003, p.1.

---

↓ 343/2003/EC recital 3

- (4) The Tampere conclusions also stated that this system should include, in the short term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

---

↓ 343/2003/EC recital 4

⇒ new

- (5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for determining ~~refugee~~ ⇒ international protection ⇐ status and not to compromise the objective of the rapid processing of ~~asylum~~ applications ⇒ for international protection ⇐ .

---

↓ 343/2003/EC recital 5

~~As regards the introduction in successive phases of a common European asylum system that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, it is appropriate at this stage, while making the necessary improvements in the light of experience, to confirm the principles underlying the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities(4), signed in Dublin on 15 June 1990 (hereinafter referred to as the Dublin Convention), whose implementation has stimulated the process of harmonising asylum policies.~~

---

↓ new

↻ Council

(6) The first phase in the creation of a Common European Asylum System that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, has now been achieved. The European Council of 4 November 2004 adopted The Hague Programme which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect The Hague Programme invited the European Commission to conclude the evaluation of the first phase legal instruments and to submit the second-phase instruments and measures to the Council and the European Parliament with a view to their adoption before 2010.

↻ (6a) In the Stockholm Programme the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity in accordance with Article 78 TFEU, for those granted international protection, by 2012 at the latest. Furthermore it emphasized that the Dublin System remains a cornerstone in building the Common European Asylum System, as it clearly allocates responsibility for the examination of asylum applications. <sup>7</sup>

(7) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying the Regulation (EC) No 343/2003, while making the necessary improvements in the light of experience to enhance the effectiveness of the system and the protection granted to applicants for international protection under this procedure.

---

<sup>7</sup> **EL, SI:** scrutiny reservations on this Recital. **SI:** pointed out that the 2012 deadline should not be reiterated in this draft Regulation.

(8) In view of ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with current EU asylum *acquis*, in particular with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted,<sup>8</sup> it is appropriate to ~~☞ [...]~~ ~~☞ extend~~ the scope of this Regulation in order to include applicants for subsidiary protection and persons enjoying subsidiary protection<sup>9</sup>

(9) ~~☞ [...]~~

10

(10) In accordance with the 1989 United Nations Convention on the Rights of the Child and ~~☞ as recognised in~~ the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States in the application of this Regulation. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.

↓ 343/2003/EC recital 6

~~Family unity should be preserved in so far as this is compatible with the other objectives pursued by establishing criteria and mechanisms for determining the Member State responsible for examining an asylum application.~~

<sup>8</sup> OJ L 304, 30.9.2004, p. 12.

<sup>9</sup> **IE:** reservation on this Recital, considering that it should not be permissible under EU law for a TCN to apply for subsidiary protection in a MS and never to be assessed as an applicant for refugee status. **Cion:** this Recital purports to confirm that an application covers both the examination for refugee status and for subsidiary protection.

<sup>10</sup> **DE** suggested adding the following new Recital 9A: "In view of ensuring the application of the general rules and principles of the Members States on the representation of minors this Regulation does not oblige the Member States to introduce rules for the representation of unaccompanied minors which go beyond the existing national rules." **EL** supported this wording. **Cion** pointed out that the suggested wording contradicts the relevant current draft definition of Article 2. In relation to this suggestion, see also comments under footnote 38.

---

↓ new

→ Council

- (11) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and → as recognised in → the Charter of Fundamental Rights of the European Union, respect for family → life → [...] → should be a primary consideration of Member States when applying this Regulation.

---

↓ 343/2003/EC (recital 7)

⇒ new

- (12) The processing together of the ~~asylum~~ applications ⇒ for international protection ⇐ of the members of one family by a single Member State makes it possible to ensure that the applications are examined thoroughly and the decisions taken in respect of them are consistent ⇒ and that the members of one family are not separated ⇐.

---

↓ new

↻ Council

(13) In order to ensure full respect for the principle of family unity and of the best interests of the child, the existence of a relationship of dependency between an applicant and his/her [...] **certain relatives** on account of the applicant's pregnancy or maternity, [...] state of health or [...] old age, should become binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a family member or a minor unmarried sibling, or [...] **certain** relative<sup>11</sup> on the territory of another Member State who can take care of him/her should also become binding responsibility criterion.<sup>12</sup>

---

<sup>11</sup> **AT:** reservation on the reference to the minor unmarried siblings (in connection with its general concerns about the scope of the family members' definition).

<sup>12</sup> **DE, SE, SK, UK:** reservations and **CZ, EE, ES, EL, FR, IE, SI:** scrutiny reservations on this Recital, most of them due to its linkage with Articles 8 and 11, for which they maintain concerns/reservations. **DE, AT:** cannot have a definite view on the Recital before examining the relevant operative provisions of the draft Regulation (which are still under negotiation). **CZ, EE, EL:** have concerns about the extension of the scope to the third-degree relatives, provided for in the relevant Articles. **FR** suggested adding after "certain relatives", "as defined in Article 8(2)". **IT:** suggested adding "as defined in relevant Articles"; **Cion:** this suggestion could be acceptable. **SK:** suggested adding "as defined in Article 2(g)" and deleting the word "certain" before "relatives". **CY, ES** also expressed doubts about the added value and the clarity of the word "certain".



---

↓ 343/2003/EC (recital 7)

⇒ new

↻ Council

- (14) Any Member States should be able to derogate from the responsibility criteria, ~~so as to make it possible to bring family members together where this is necessary on humanitarian grounds~~ ⇒ in particular for humanitarian and compassionate reasons ↻ so as to make it possible to bring family members ↻ and other relatives including minor unmarried siblings ↻ together<sup>13</sup> ↻ and examine an application for international protection lodged with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in the Regulation ↻ [...] ↻ . ↵

---

↓ new

↻ Council

- (15) A personal interview ↻ [...] ↻ ↻ may ↻ be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection ↻ [...] ↻ ↻ The asylum seeker should be informed, as soon as the application for international protection is lodged, on the application of the present Regulation and should be provided with the opportunity to request an interview with the purpose of providing information regarding the presence of family members or other relatives in the Member States ↻.<sup>14</sup>

---

<sup>13</sup> ES, supported by BE suggested adding after “together”: “as well as other relatives, including minor unmarried siblings”. CY, DE, AT: scrutiny reservations on this wording.

<sup>14</sup> SE: reservation, SI: scrutiny reservation on the Recital, linked with their reservation on Article 5(1).

(16) In accordance in particular with **☞** the rights recognised in **☞** Article 47 of the Charter of Fundamental Rights of the European Union, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established to guarantee effective protection of the rights of the individuals concerned.

(17) **☞** [...] **☞** <sup>15</sup>

(18) Detention of asylum seekers should be applied in line with the underlying principle that a person should not be held in detention for the sole reason that he is seeking international protection.<sup>16</sup> **☞** Detention should be only be possible under clearly defined exceptional circumstances and be subject to the principles of necessity and proportionality. **☞** In particular, detention of asylum seekers must be applied in line with Article 31 of the Geneva Convention **☞** [...] **☞** . Moreover, the use of detention for the purpose of transfer to the Member State responsible should be limited<sup>17</sup> **☞** [...] **☞** .

---

<sup>15</sup> **BE:** scrutiny reservation on the deletion of this Recital, suggesting alternatively amending its wording. **LU, CLS, Cion:** expressed strong concerns on the deletion, because they consider that this Recital was offering guidance for the implementation of this draft Regulation and was serving as a reminder for observance of the relevant case law on fundamental rights. **FI:** could live with the deleted Recital. **IE, NL, SE, UK:** supported the deletion.

<sup>16</sup> **DE** suggested adding the following wording: "Detention should be only be possible under clearly defined exceptional circumstances and be subject to the principles of necessity and proportionality". **EL, Cion** could live with this suggestion.

<sup>17</sup> **CZ, DE, ES, FR, IE, MT, NL, SI, UK:** reservations, **EL:** scrutiny reservation, on the Recital and in particular on the most recent Presidency compromise. **DE, ES, NL, AT** consider that an agreement on the operative part related to detention should be reached before adapting this Recital, all the more because the corresponding draft Article 27 is still largely unclear and under negotiation. **CZ:** points out that this Recital's conditions are very hard to be met in practice. **FR** reiterated that the detention provisions should be gathered in the RCD proposal (for which the negotiations are ongoing). **EE, IT, MT, NL, UK:** suggested deleting the word "exceptional" (as **UK** stressed, the risk of absconding does not constitute an exceptional case in the Dublin system). In the same vein, **ES, IE** underscored that the second sentence of the Recital goes beyond the scope of draft Article 27. It was also pointed out that the last sentence of the Recital has become redundant following the most recent **Pres** compromise. **Pres:** This suggestion could be further considered. **CY:** the Recital could become clearer, but it supported the **Pres** compromise in general. **Cion:** could support the latest **Pres** compromise and would prefer maintaining the last sentence of the Recital and tally it with the final wording of Article 27.

(19) In accordance with Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003<sup>18</sup>, transfers to the Member State responsible may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers and should ensure that supervised or escorted transfers are undertaken in a human manner, in full respect for fundamental rights and human dignity.

---

↓ 343/2003/EC recital 8

(20) The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the Treaty establishing the European Community and the establishment of Community policies regarding the conditions of entry and stay of third country nationals, including common efforts towards the management of external borders, makes it necessary to strike a balance between responsibility criteria in a spirit of solidarity.

---

<sup>18</sup> OJ L222, 5.9.2003, p.3.

---

↓ new

↻ Council

(21) ↻ [...] ↻<sup>19</sup>

(22) ↻ [...] ↻

(23) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>20</sup> applies to the processing of personal data by the Member States in application of this Regulation.

(24) The exchange of applicant's personal data, including sensitive data concerning health, to be transferred before a transfer is carried out will ensure that the competent asylum authorities are in a position to provide applicants with adequate assistance and to ensure continuity in the protection and rights afforded to them. Special provision should be made to ensure the protection of data relating to applicants involved in this situation, in conformity with Directive 95/46/EC.

---

<sup>19</sup> **EL:** reservation on the deletion of Recital 21 linked with its reservation for the deletion of Article 31.

<sup>20</sup> OJ L 281, 23.11.1995, p. 31.

---

↓ 343/2003/EC recital 9 (adapted)

- (25) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communications between competent departments, reducing time limits for procedures or simplifying the processing of requests to take charge or take back, or establishing procedures for the performance of transfers.

---

↓ 343/2003/EC recital 10 (adapted)

- (26) Continuity between the system for determining the Member State responsible established by the ~~Dublin Convention~~  Regulation (EC) No 343/2003  and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and ~~Council Regulation (EC) No 2725/2000 of 11 December 2000~~  [concerning the establishment of "~~Eurodac~~ EURODAC" for the comparison of fingerprints for the effective application of the ~~Dublin Convention~~<sup>21</sup>  Regulation .

---

↓ 343/2003/EC recital 11 (adapted)

⇒ new

- (27) The operation of the ~~Eurodac~~ EURODAC system, as established by Regulation ~~(EC) No 2725/2000~~  [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation]  and in particular the implementation of Articles ~~4~~ 6 and ~~8~~ 10 contained therein should facilitate the ~~implementation~~  application  of this Regulation.

---

<sup>21</sup> ~~OJ L 316, 15.12.2000, p.1~~

---

↓ new

- (28) The operation of the Visa Information System, as established by Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas<sup>22</sup>, and in particular the implementation of Articles 21 and 22 contained therein should facilitate the application of this Regulation.

---

↓ 343/2003/EC recital 12

- (29) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.<sup>23</sup> ↻ **They shall comply with their obligations under the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms in particular and take into account the relevant case-law of the European Court of Human Rights, including the case-law regarding effective remedy.** ↻<sup>24</sup>

---

↓ 343/2003/EC recital 13

↻ Council

---

<sup>22</sup> OJ L 218, 13.8.2008, p. 60.

<sup>23</sup> **SE:** suggested deleting the last part of the the Recital "...including the case-law regarding effective remedy" as redundant.

<sup>24</sup> In the light of their comments related to new compromise draft Art. 26(3)A, delegations also pointed out the following: **UK:** it should be clarified that, in the Dublin framework, the scope of the rights provided for under the Charter of Fundamental Rights could not extend beyond what is recognised by the ECHR. **CZ, DE, ES, FR, IE, AT, SI, SK:** reservations, **BE, EE:** scrutiny reservations on the new **Pres** compromise. Certain **delegations** among them expressed concerns that the way this Recital is worded might imply that MS do not comply with their obligations deriving from the Fundamental Rights acquis and therefore, the added part should be deleted. **DE** suggested deleting the last part of the provision ("... and take into account the relevant case-law...effective remedy") as redundant.

- (30) ☞ [...] ☞ ☞ In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. of the European Parliament and of the Council of 16 February 2011 ☞ laying down ☞ [...] ☞ ☞ the rules and general principles concerning mechanisms for control by the Member States of ☞ the Commission ☞ 's exercise of implementing powers ☞ <sup>25</sup>.

↓ 1103/2008/EC pt. 3, first sub-paragraph of the Annex  
☞ Council

- (31) ☞ [...] ☞ ☞ The examination procedure should be used for the adoption of an information leaflet on Dublin/Eurodac, of procedures related to the implementation of measures concerning the reunification of unaccompanied minors and dependent persons with relatives, of procedures for preparing and transmitting take charge and take back requests, of establishing and revising the two lists indicating the elements of proof regarding a take charge request, the design of the laissez-passer, the procedures for carrying out transfers and meeting their costs, drawing a standard form of data exchange, the practical arrangements on the transfer of health data, the rules relating to the establishment of secure electronic transmission channels for all written correspondence, given that those acts are of general scope. ☞ <sup>26</sup>

<sup>25</sup> **CY, EL, AT, SI:** scrutiny reservations on this Recital because of its relation with the implementing acts-related provisions of the proposal.

<sup>26</sup> **EL, AT, SI** (in relation to the issue of family reunification and the transfer costs): scrutiny reservations on this Recital because of its relation with the implementing acts-related provisions of the proposal.

---

↓ new

(32) The measures necessary for the implementation of Regulation (EC) No 343/2003 have been adopted by Regulation (EC) No 1560/2003. Certain provisions of Regulation (EC) No 1560/2003 should be incorporated into this Regulation, for reasons of clarity or because they can serve a general objective. In particular, it is important both for the Member States and the asylum seekers concerned, that there should be a general mechanism for finding a solution in cases where Member States differ over the application of a provision of this Regulation. It is therefore justified to incorporate the mechanism provided for in Regulation (EC) No 1560/2003 for the settling of disputes on the humanitarian clause into this Regulation and to extend its scope to the whole of this Regulation.

---

↓ 343/2003/EC recital 14 (adapted)

⇒ new

(33) ⇒ The effective monitoring of ⇐ ~~the~~ application of ~~the~~ this ⇐ Regulation ~~should~~ ⇐ requires that it ⇐ be evaluated at regular intervals.



---

↓ 343/2003/EC recital 15 (adapted)

⇒ new

↻ Council

- (34) ~~The~~ ~~observes~~ This Regulation respects the fundamental rights and observes the principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union<sup>27</sup>. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 and ~~[...]~~ the rights recognized by Articles 1, 4, 7, 24 and 47 of the said Charter and ~~[...]~~ should be applied accordingly.

---

↓ 343/2003/EC recital 16

⇒ new

- (35) Since the objective of the proposed measure, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an ~~asylum~~ application for international protection lodged in one of the Member States by a third-country national or a stateless person, cannot be sufficiently achieved by the Member States and, given the scale and effects, can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

---

<sup>27</sup> OJ C 364, 18.12.2000, p. 1.

---

↓ 343/2003/EC recital 17 (adapted)

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland gave notice, by letters of 30 October 2001, of their wish to take part in the adoption and application of this Regulation.~~

---

↓ 343/2003/EC recital 18 (adapted)

~~In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it nor subject to its application.~~

---

↓ 343/2003/EC recital 19 (adapted)

~~The Dublin Convention remains in force and continues to apply between Denmark and the Member States that are bound by this Regulation until such time an agreement allowing Denmark's participation in the Regulation has been concluded.~~

---

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

HAVE ADOPTED THIS REGULATION:

# CHAPTER I

## SUBJECT-MATTER AND DEFINITIONS

### Article 1

#### ⊗ Subject-matter ⊗

This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for ~~asylum~~ ⇒ international protection ⇐ lodged in one of the Member States by a third-country national ⇒ or a stateless person ⇐.

### Article 2

#### ⊗ Definitions ⊗

For the purposes of this Regulation:

(a) "third-country national" means ~~anyone~~ ⊗ any person ⊗ who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community ⇒ and who is not ~~[...]~~ ⊗ national of a state which participates in this Regulation by virtue of an agreement with the European Community. ⊗ ⇐;

~~(b) "Geneva Convention" means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;~~

~~(c) "application for asylum" means the application made by a third-country national which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless a third-country national explicitly requests another kind of protection that can be applied for separately;~~

---

↓ new

(b) "application for international protection" means an application for international protection as defined in Article 2(g) of Directive 2004/83/EC;

---

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

~~(c)(d)~~ "applicant" or "asylum seeker" means a third country national ⇒ or a stateless person ⇐ who has made an application for asylum ⇒ international protection ⇐ in respect of which a final decision has not yet been taken;

~~(d)(e)~~ "examination of an asylum application ⇒ for international protection ⇐" means any examination of, or decision or ruling concerning, an application for asylum ⇒ international protection ⇐ by the competent authorities in accordance with national law ⇒ Council Directive 2005/85/EC<sup>28</sup> ⇒ and Directive 2004/83/EC ⇐, ⇐ except for procedures for determining the Member State responsible in accordance with this Regulation ⇒ ⇒ [...] ⇐ ⇐;

~~(e)(f)~~ "withdrawal of the ⇐ an ⇐ asylum application ⇒ for international protection ⇐" means the actions by which the applicant for asylum terminates the procedures initiated by the submission of his/her application for asylum ⇒ international protection ⇐, in accordance with national law ⇒ Directive 2005/85/EC, ⇐ either explicitly or tacitly;

---

<sup>28</sup> OJ L 326, 13.12.2005, p.13.

(f)(e) "refugee" ⇒ person granted international protection ⇐ " means ~~any~~ ⊗ a ⊗ third-country national ⇒ or a stateless person recognised as ⊕ [...] ⊖ ⊕ entitled to ⊖ international protection as defined in Article 2(a) of Directive 2004/83/EC ⇐ ~~qualifying for the status defined by the Geneva Convention and authorised to reside as such on the territory of a Member State;~~

↓ new

⊖ Council

⊖ [...] ⊖ ⊕<sup>29</sup> (g) "family members" means, insofar as the family already existed in the country of origin, the following members of the applicant's family who are present in the territory of the Member States:

- (i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation 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 point (i) or of the applicant, on condition that they are unmarried ~~and dependent~~ and regardless of whether they were born in or out of wedlock or adopted as defined under the national law; ⊖

<sup>29</sup> **DE, AT:** reservations on point (g), linked with reservations on Arts 8 and 11. **FR:** reservation - for coherence purposes - on the provisions of this draft Regulation related to the proposal on Reception Conditions Directive, on which discussions have not yet been resumed.

---

↓ new

☞ Council

☞ [...] ☞

☞ (iii) when the applicant is a minor and unmarried the father, mother or another adult ☞ [...] ☞ responsible for the ☞ [...] ☞ him/her whether by ☞ [...] ☞ law or ☞ [...] ☞ by the national practice<sup>30</sup> of the Member State where the adult is present. ☞ [...] ☞

(iv) when the person granted international protection is a minor and unmarried the father, mother or another adult responsible for ☞ [...] ☞ him/her by law or by the national practice<sup>31</sup> of the Member State where the person granted international protection is present ☞ ☞ [...] ☞

☞ ga) "first degree relatives" means ☞ [...] ☞ the following relatives of the asylum seeker: ☞

☞ i) his/her mother and father; ☞

☞ ii) his/her children<sup>32</sup> regardless of whether they were born in or out of wedlock or adopted as defined under the national law; ☞<sup>33</sup>

---

<sup>30</sup> **IT:** reservation on the reference to national practice, instead of solely to national law, which could cause uncertainty and give raise to disputes on interpretation among MS.

<sup>31</sup> **IT:** reservation, idem with footnote 29.

<sup>32</sup> **IT** reservation, suggesting qualifying the term "children" as "minor and unmarried children", in order to reflect exactly the contents of Articles 8 and 11 of this proposal. **Pres:** the current definition is the appropriate one in order to reflect draft Articles 8 and 11.

<sup>33</sup> **UK:** reservation on the extension of family members' concept beyond the concept of nuclear family. **AT:** scrutiny reservation.

☞ gb) “second degree relatives” means the following relatives of the asylum seeker: ☞

☞ i) his/her grandmother and grandfather, ☞

☞ ii) his/her grandchildren regardless of whether they were born in or out of wedlock or adopted as defined under the national law; ☞

☞ iii) his/her siblings<sup>34</sup> regardless of whether they were born in or out of wedlock or adopted as defined under the national law ☞<sup>35</sup>

---

<sup>34</sup> **IT, SI:** reservations, **RO:** scrutiny reservation on point iii); they suggested qualifying the term "siblings" as "minor and unmarried". (see also comments under footnote 31).

<sup>35</sup> **UK:** reservation on the extension of family members' concept beyond the concept of nuclear family. **AT:** scrutiny reservation; **AT** preferred referring to minor grandchildren. **Pres:** the definition should be read in conjunction with Art. 11.

⇒ **gc)**<sup>36</sup> “third degree relatives” means the following relatives of the asylum seeker: ☹

⇒ **i) his/her great-grandfather and great-grandmother,** ☹

⇒ **ii) his/her great-grandchildren regardless of whether they were born in or out of wedlock or adopted as defined under national law;** ☹

⇒ **iii) his/her uncle and aunt**<sup>37</sup> **regardless of whether they were born in or out of wedlock or adopted as defined under national law;** ☹

⇒ **iv) his/her nephew and niece regardless of whether they were born in or out of wedlock or adopted as defined under national law.** ☹

---

<sup>36</sup> **CZ, MT, AT:** reservations on this point, because they consider it broadening the scope of the relatives’ notion, with the inclusion of the third-degree relatives. **Pres:** pointed out that the scope of the current term “other relatives” is vague and could have a wider scope. **IT, NL, Cion:** share this view of the **Pres. CY, DE, ES, IE, IT, PL, SI, UK:** reservations, linked primarily with draft Arts 8 and 11. **DE** considers that the current Art. 15 offer a greater flexibility to MS, which at first sight looks supplier. **Pres:** the current Art. 15 refers to “relatives” in general and is of wider scope than this draft compromise. **CY, IT** pointed out that it would be too difficult and costly to ascertain who are the relatives covered by this provision. **IE** had also concerns about the width and the practical implications of this provision’s scope. In the same vein, **PL** stressed that practical problems may arise from the fact that MS may interpret differently the notions of the relatives covered by this provision and grade them differently in the family context. **UK:** ponted out that this draft definition has a bigger impact on the scope of the Dublin system because of the explicit obligation to re-unite the relatives in question, in addition to possible delays by exercise of remedies by these relatives, etc.

**EE, EL, FI, FR, LV, SE, SK:** scrutiny reservations on the point; (**EE, FI, IE, SK** – the latter shares the concerns of **CZ**) suggested reverting to “other relatives”, because they deem it more flexible for MS. **SE** has concerns linked with Arts 8 and 11, it could accept the compromise but questions the practical need of including great parents, etc for whom Art. 17 could be used to bring them together). **Pres:** great grandparents were included only for the sake of a complete definition.

<sup>37</sup> **LV:** suggested replacing “uncle and aunt” with “sisters and brothers of father and mother”. **Pres:** this suggestion could be taken into consideration.



---

↓ 343/2003/EC

⇒ Council

⇒ [...] <sup>38</sup>

⇒ [...] (h) “minor” means a third-country national or a stateless person below the age of 18 years; <sup>39</sup>

---

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

⇒ [...] (i) "unaccompanied minor" means ~~unmarried persons below the age of eighteen~~ ⇒ an unmarried<sup>40</sup> [...] minor who ~~arrive~~ arrives in the territory of the Member States unaccompanied by an adult responsible for ~~him/her~~ whether by law or by ~~the national practice of the Member State concerned~~ [...], and for as long as ~~he/she~~ [...] is not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of ~~the~~ Member States;

⇒ [...] <sup>38</sup>

- 
- <sup>38</sup> **IT, Cion:** opposed the **Pres** compromise approach to delete point (v) and take out of the “family members” definition the minor unmarried siblings and insert a reference to them in the relevant operative provisions of the proposal.
- FR, AT, UK** reservations on the **Pres** approach in relation to the reference of the siblings in the operative provisions of the proposal, especially in Articles 8 and 12.
- <sup>39</sup> **DE:** reservation, preferring an age threshold of 16 years - the reservation is in connection with Article 6(2).
- <sup>40</sup> **DE** (for concerns about forced marriages) **ES, SE:** reservations on the qualification of the “unaccompanied minor” as “unmarried”; in this context **Pres** pointed out that the impact in the text from this qualification is rather minimal.

---

↓ new

☞ Council

☞ [...] ☞

☞ [...] ☞ (j) "representative" means ☞ [...] ☞ **a person or an organisation appointed by the competent bodies to act as ☞ legal guardian, ☞ [...] ☞ ☞ [...] ☞ ☞ [...] ☞ ☞ in order to assist and represent the unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the child's best interests and exercising legal capacity for the minor where necessary. Where an organisation acts as a representative, it shall appoint a person responsible for carrying out these duties. ☞**

☞<sup>41</sup>

---

<sup>41</sup> **FR:** this provision should be consistent with Art. 6(2); the role of the representative differs from the one entrusted to the assistant of the unaccompanied minors. Thus, the wording should be amended to "... in order to assist and / or represent the unaccompanied minors...). **EL, IT, PL, UK:** scrutiny reservations on the provision; **PL:** as this definition goes beyond the scope of Art. 6(2) it suggested reverting to the previous one. **Pres:** the objective of this compromise is to bring this definition in line with relevant provisions in other instruments; the tasks of the representative of the unaccompanied minors may extend to issues outside the Dublin framework. **SI:** reservation, a single definition on "representative" should be in the APD proposal; alternatively, it suggested replacing "procedures provided for in this Regulation" with "procedures for international protection". **BE:** questioned the added value of the definition (although it could go along with it), as it is an unnecessary restriction of the scope. **DE:** considers that the provision accommodates its requests but has concerns that the term legal guardian could be interpreted differently by the MS. In this regard, **NL** pointed out that the notion of legal guardian should be distinguished from that of legal representative; in the Dublin system, the person appointed is not a "legal guardian" because of lack of expertise, hence, the term "guardian" should be replaced by "representative". **NL** also suggested deleting the last sentence of the provision "Where an organization acts..." . **IT:** suggested referring to the "legal capacity to act" on behalf of the minor, as the key element for the appointee. **Cion:** although it could be improved, the compromise brings about greater consistency among the relevant instruments; it would not be necessary to appoint a person for each procedure, for every instrument.

↓ 343/2003/EC

⇒ new

⇒ Council

⇒ [...] (k) "residence document" means any authorisation issued by the authorities of a Member State authorising a third-country national ⇒ or a stateless person ⇐ to stay in its territory, including the documents substantiating the authorisation to remain in 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 responsible Member State as established in this Regulation or during examination of an application for ~~asylum~~ ⇒ international protection ⇐ or an application for a residence permit;

⇒ [...] (l) "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. The nature of the visa shall be determined in accordance with the following definitions:

- (i) "long-stay visa" means ⇒ [...] ⇒ an ⇐ authorisation or decision ⇒ issued by of one of the ⇐ ⇒ [...] Member ⇒ [...] ⇐ ⇒ States in accordance with its national law or EU law which is ⇐ required for entry for an intended stay in that Member State of more than three months;
- (ii) "short-stay visa" means ⇒ [...] ⇐ ⇒ an ⇐ authorisation or decision of a Member State ⇒ with a view to transit through or an intended stay in the territory of one, more or all the Member States of a duration of no more than three months in any six-month period from the date of first entry in the territory of the Member States; ⇐ ⇒ [...] ⇐

⇒ [...] ⇐

⇒ [...] ⇐ ⇒ (iii) ⇐ "airport transit visa" means ⇒ [...] ⇐ ⇒ a visa valid for transit through the international transit areas of one or more airports, of the Member States. ⇐ ⇒ [...] ⇐

↓ new

⇒ Council

⇒ [...] ⇐

↓ 343/2003/EC (adapted)

⇒ new

## CHAPTER II

### **GENERAL PRINCIPLES ☒ AND SAFEGUARDS ☒**

#### *Article 3*

#### **☒ Access to the procedure for examining an application for international protection ☒**

1. Member States shall examine ~~the~~ ☒ any ☒ application ⇒ for international protection ⇐ ~~of any~~ ☒ 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 ⇐ ~~their territory to any one of them for asylum~~. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III ☒ of this Regulation ☒ indicate is responsible.

---

↓ 343/2003/EC Article 13

⇒ new

2. Where no Member State responsible for examining the application for ⇒ international protection ⇐ ~~asylum~~ can be designated on the basis of the criteria listed in this Regulation, the first Member State with which the application for ~~asylum~~ ⇒ international protection ⇐ was lodged shall be responsible for examining it.

---

↓ 343/2003/EC

⇒ new

3. Any Member State shall retain the right, ~~pursuant to its national laws,~~ to send an asylum seeker to a ⇒ safe ⇐ third country, ~~in compliance with the provisions of the Geneva Convention~~ ⇒ subject to the rules and safeguards laid down in Directive 2005/85/EC ⇐.

---

↓ 343/2003/EC Article 3(4) (adapted)

⇒ new

↻ Council

Article 4

⊗ *Right to information* ⊗<sup>42</sup>

41. ⇒ As soon as an application for international protection is lodged ↻ in the meaning of Article 20(2) of this Regulation ☉, the competent authorities of Member States shall inform ⇐ ~~the asylum seeker shall be informed in writing in a language that he or she may reasonably be expected to understand regarding~~ ⊗ of ⊗ the application of this Regulation, ~~its time limits and its effects.~~ ⇒, and in particular of: ⇐

---

↓ new

↻ Council

(a) the objectives of this Regulation and the consequences of making another application in a different Member State ↻ **as well as the consequences of moving from a Member State to another one during the determination of the Member State responsible under this Regulation and during the examination of the application for international protection** ☉,<sup>43</sup>

---

<sup>42</sup> **ES:** reservation (the evaluation of these provisions should be linked with the APD debate on relevant issues), **SE, UK:** scrutiny reservations on the **Pres** compromise suggestions for Art. 4 (points (a), (b) and (bc) in general.

<sup>43</sup> **ES, FR, PT, SI, SK:** query about the scope of the obligation to inform the applicant with regard to the consequences of moving from one MS to another during the determination of the competent MS period. **Pres:** the obligation to inform the applicant about the aforementioned consequences was provided for in the previous versions of the text.

(b) the criteria for allocating responsibility, [...] the different steps of the procedure, and their duration [...];<sup>44</sup>

(bc) the possibility to request a personal interview pursuant to Article 5 and<sup>45</sup> to submit information regarding the presence of family members within the meaning of Article 2 (g) or other relatives including minor unmarried siblings in the Member States, including the means by which the applicant can submit such information;<sup>46</sup>

[...]

[...] (c) the possibility to challenge a transfer decision;

[...] (d) the fact that the competent authorities of Member States can exchange data on him/her for the sole purpose of implementing the obligations arising under this Regulation;

[...] (e) the right of access to data relating to him/her, and the right to request that inaccurate data relating to him/her be corrected or that unlawfully processed data relating to him/her be deleted, [...] as well as the procedures for exercising those rights [...] including the contact details of the authorities referred to in Article 33 and of the National Data Protection Authorities which shall hear claims concerning the protection of personal data.

---

<sup>44</sup> **ES:** reservation, **FR:** scrutiny reservation on the point. **BE, PT:** would prefer the previous version of the text with the provision of information about deadlines. **CY, IT:** consider that it would be difficult to estimate the duration, as many variables could factor in. **SK** suggested providing information about the duration of the procedure in the course of it, in order to avoid a wrong estimation from the outset.

<sup>45</sup> **BE:** suggest replacing "and" with "or", in order to avoid contradiction with Art. 5. **Pres:** there is no contradiction with Art. 5 (still under negotiation), whereby the applicant can request an interview.

<sup>46</sup> **EE, ES, IT:** reservations, **DE, SI, UK:** scrutiny reservations on the point; mainly in relation to their concerns about Art. 5. **ES:** query whether there is an obligation to provide this information to the applicant from the outset. **EE, FR, SI:** their final view depends on the eventual wording of Art. 5. **PT** suggested making an explicit reference to paragraph 1(a) of Article 5, under which the applicant would only be entitled to request an interview.

2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or may reasonably be presumed to understand. Member States shall use the common leaflet drawn up pursuant to paragraph 3 for that purpose.

Where necessary for the proper understanding of the applicant, the information shall also be supplied orally .

[...]

3. A common leaflet , as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1 shall be drawn up in accordance with the procedure referred to in Article 40(2).<sup>47</sup> This common leaflet shall also include information regarding the application of the Regulation [concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Regulation] (EC) No [.../...] and in particular the purpose for which the data of the asylum seeker concerned will be processed within EURODAC.

[...]

[...]

---

<sup>47</sup> CY, EL, AT: scrutiny reservations on the choice of the implementing acts procedure in the proposal.



## Article 5

### Personal interview<sup>48</sup>

1. The Member State carrying out the process of determining the Member State responsible under this Regulation, may<sup>49</sup> [...] conduct a personal interview [...] in order to facilitate the process of determining the Member State responsible.

**1A.** The Member State carrying out the process of determining the Member State responsible under this Regulation shall<sup>50</sup> conduct an interview [...] at the request of the applicant if he/she [...] wishes to provide information regarding the presence of family members within the meaning of Article 2 (g) or other relatives including minor unmarried siblings in the Member States, in order to facilitate the process of determining the Member State responsible.<sup>51</sup> [...] .<sup>52</sup>

**2.**<sup>53</sup> In cases where an applicant has requested an interview pursuant to paragraph 1 A, this interview may be omitted if:

(a) the applicant has absconded; or

(b) the applicant makes the request after the decision to transfer him/her to the responsible Member State was taken, pursuant to Article 25 (1); or

---

<sup>48</sup> **ES, IE:** reservations on the entire Article, **FR, IT, SI:** reservations in particular on the obligation for MS to grant an interview at the request of the applicant. **SE:** reservation on paragraph 1: preferring the original **Cion** proposal version of the text.

<sup>49</sup> **SI:** suggested replacing "may" with "shall conduct if necessary".

<sup>50</sup> **SI:** reservation on this paragraph; it suggested replacing "shall" with "may" and deleting "at the request of the applicant".

<sup>51</sup> **IT:** suggested having the possibility of submitting all relevant "information regarding the presence of family members ... by filling in the specific Dublin standard form duly integrated as in annex... of the Regulation for the implementation of this Regulation, in all the cases provided for in Art. 5."

<sup>52</sup> **FR, SE:** reservations on the paragraph.

<sup>53</sup> **AT:** reservation on this paragraph.

(c) after having received the information referred to in Article 4 the applicant was already given the opportunity to provide information regarding the presence of family members within the meaning of Article 2 (g) or other relatives including minor unmarried siblings in the Member States at a personal interview held in accordance with the guarantees set out in this Article or has already provided information by any other means.<sup>54</sup>

3. Where a Member State omits the interview pursuant to paragraph 2 (c) it shall provide the applicant with the opportunity to submit information regarding the presence of family members within the meaning of Article 2 (g) or other relatives including minor unmarried siblings in the Member States by any other means.<sup>55</sup>

[...]

4. The personal interview shall take place in a timely manner following the request of the applicant where applicable and, in any event, before any decision is taken to transfer the applicant to the responsible Member State pursuant to Article 25(1).

5. The personal interview shall take place in a language that the applicant understands or may reasonably be presumed to understand and in which he /she is able to communicate. Where necessary, Member States shall select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the personal interview.

---

<sup>54</sup> **FR, NL, SE, SI:** reservations on this point; **FR, SI** suggested replacing the first part of the sentence "after having... Article 4", with "according to this Article has already been conducted, or the applicant was given the opportunity..." **SE** has concerns how this paragraph would tally with paras 3 and 4 of Art. 5. **IT, UK:** scrutiny reservations on the point.

<sup>55</sup> **SE:** reservation on the paragraph.

➔ [...] ➔ 6. ➔ The personal interview shall take place under conditions which ensure appropriate confidentiality. ➔ **It shall be conducted by a qualified person under national law.** ➔<sup>56</sup>

➔ [...] ➔ 7. ➔ The Member State conducting the personal interview shall make a ➔ [...] ➔ written ➔ [...] ➔ **summary** ➔ containing ➔ at least ➔ the main information supplied by the applicant at the interview ➔ [...] ➔ ➔ **. This summary may either take the form of a report or a standard form. The Member State** ➔ shall ➔ ensure that the applicant and/or a legal advisor or other counsellor who is representing him/her have timely access to the ➔ [...] ➔ ➔ **summary** ➔ . ➔ [...] ➔ ➔<sup>57</sup>

#### Article 6

##### 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.

---

<sup>56</sup> **ES, FR, NL** (which suggested deletion of the last sentence of this paragraph): reservations on the scope of the term "qualified". In the same vein, **IE** underscored that this person has just to provide information and therefore no particular qualifications would be needed and suggested deletion of the obligation to have these qualifications provided for in national law, as excessive. **AT** although could live with the provision, stressed that reference to national law could be omitted. **Pres**: recalled that this wording was in Art 5(1) of the original **Cion** proposal. With regard to the scope of this notion, it pointed out that the person in question should have the necessary skills / training for this work.

<sup>57</sup> **FR, SE**: reservations on the paragraph; **FR**: in relation with the obligation to draw up a written summary, **SE**: because it considers that the added part about the form of the outcome of the interview is superfluous; it would prefer reverting to the previous wording of this provision. **Pres** pointed out that this wording, which offers less leeway to MS was chosen in order to provide them the guidance they sought. **IT**: scrutiny reservation on the paragraph.

2. Member States shall ensure that a representative represents and/or assists the unaccompanied minor with respect to all procedures provided for in this Regulation.  
☞ [...] ☞ ☞ The representative shall ☞ [...] ☞ have the necessary expertise in view of ensuring that the best interests of the minor are taken into consideration ☞ , **therefore he/she shall have access to the content of the specific leaflet for unaccompanied minors** ☞ . ☞<sup>58</sup>
3. 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 ☞ [...] ☞;
  - (c) safety and security considerations, in particular where there is a risk of the child being a victim of trafficking;
  - (d) the views of the minor, in accordance with his/her age and maturity.

☞ [...] ☞

---

<sup>58</sup> **SE:** scrutiny reservation on the added wording by way of **Pres** compromise.

4. [...] For the purpose of applying Article 8 of this Regulation, where there [...] is credible information<sup>59</sup> that [...] members of the unaccompanied minor's family [...] within the meaning of Article 2(g) or minor unmarried siblings, [...] or other relatives [...] as referred to in article 8.2 [...], [...] who can [...] take care of him/her may legally be [...] present on the territory of Member States [...], [...], the Member State where the application for international protection was lodged shall, as soon as possible after its lodging, start to trace them, where necessary with the assistance of international or other relevant organisations, whilst protecting [...] the minor's best interests. [...]

[...]

5. Procedures for implementing paragraph 4 shall be adopted in accordance with the procedure referred to in Article 40(2).<sup>60</sup>

---

<sup>59</sup> **Cion:** cannot agree with the **Pres** compromise (MS to start the tracing procedure only when there is “credible information”) because it would go below the standards of the current acquis in the Reception Conditions Directive.

<sup>60</sup> **AT** reservation, **EL, ES, SI:** scrutiny reservations on the implementing acts' procedure. **ES:** reservation on the possibility to adopt additional rules for the implementation of paragraph 4. **SI:** suggested referring to the provision in Article 40(2) in order to prevent **Cion** from adopting a draft implementing act where no opinion is delivered by the Committee in accordance with Article 5(4) of Regulation No 182/2011.

---

↓ 343/2003/EC (adapted)

⇒ new

## CHAPTER III

### ~~HIERARCHY OF CRITERIA~~

### ⊗ **CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE** ⊗

*Article ~~5~~ 7*

*⊗ 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 asylum seeker first lodged his/her application ⇒ for international protection ⇐ with a Member State.

---

↓ new

⇒ Council

⇒ [...] ⇐

⇒ 3. In view of the application of the criteria referred to in Article 8, 10 and 11, Member States shall take into consideration any available evidence regarding the presence ⇒ [...] ⇐ on the territory of a Member State of family members within the meaning of Article 2(g) or of other relatives , including minor unmarried siblings of the applicant for international protection, ⇒ [...] ⇐ on condition that such evidence is produced ⇒ [...] ⇐ before the acceptance of the request by another Member State to take charge or take back the person concerned, pursuant to Articles 22 and 24 respectively and that the previous applications for international protection of the asylum seeker have not yet been subject of a first decision regarding the substance. ⇐

---

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

*Article ~~6~~ 8*

*☒ Unaccompanied minors ☒*

1. Where the applicant ~~for asylum~~ is an unaccompanied minor, the Member State responsible for examining the application ⇒ for international protection ⇐ shall be that where a member of his or her family ⇒ within the meaning of Article 2(g), or his/her minor unmarried sibling<sup>61</sup> ⇐ is legally present, provided that this is in the best interests of the ⇒ unaccompanied ⇐ minor.

---

<sup>61</sup> UK reiterated its reservation on the Pres approach in relation to the reference to the siblings.

↓ 343/2003/EC Article 15(3) (adapted)  
 ⇒ new  
 ⇒ Council

~~23.~~ ~~¶~~ ~~☒~~ Where ~~☒~~ ⇒ the applicant ~~←~~ ~~asylum-seeker~~ is an unaccompanied minor who has a  
 ⇒ second-degree ~~☒~~ relative ⇒ ~~[...]~~ ~~☒~~ or ~~☒~~ ~~[...]~~ ~~☒~~ a third degree ~~☒~~ relative  
 who was previously responsible for his/her care <sup>62</sup> ~~☒~~ ~~or relatives~~ ⇒ legally ~~☒~~ ~~[...]~~ ~~☒~~  
 ⇒ resident or asylum seeker ~~☒~~ ~~☒~~ 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 States shall ⇒ unite the minor with his/her relative and ~~☒~~ ~~if~~  
~~possible unite the minor with his or her relative or relatives,~~ ⇒ be responsible for  
 examining the application, provided that ~~☒~~ ~~unless~~ this is ~~not~~ in the best interests of the  
 minor.<sup>63</sup>

<sup>62</sup> **CY, DE, ES, IE, AT, SE, SI, SK:** reservation on this provision, linked with their concerns about the scope of the family members' definition in Art. 2(g) and in particular, about the inclusion of the third-degree relatives on draft Art. 2(g)(c). **CZ, EE, EL, FI, FR, IT, LV:** scrutiny reservations on this provision linked with their concerns for the above provision. **DE** stressed that it could accept the inclusion of third-degree relatives, as long as they are of legal age. **SE:** has concerns about creating a protracted procedure, which would prevent national administrations from meeting the relevant deadlines. **NL:** would oppose reverting to the notion of "other relatives", which it considers having a larger scope, than the current compromise..

<sup>63</sup> **CY, AT, SI, UK:** reservations (against the inclusion of the asylum seekers). **FI** (preferred the previous version of the text) and **IT:** (because it considers that the scope of the provision is limited as it is against the deletion of the reference to the relatives "legally present"), scrutiny reservations on the **Pres** compromise for the provision. **Cion** cannot support the **Pres** compromise because it considers it counter to the best interest of the child as long it deprives it of the possibility to be taken care of by a relative on short-term visa, in the process of obtaining a longer-term residence permit.



---

↓ new

→ Council

3. Where → family ← members → or relatives as mentioned in paragraphs 1 and 2 ←  
→ [...] ← → [...] ← → [...] ← are → [...] ← → staying ← in more than one Member State,  
the Member State responsible for examining the application shall be decided on the basis  
of what is in the best interests of the → unaccompanied ← minor.<sup>64</sup>

---

↓ 343/2003/EC

⇒ new

→ Council

4. In the absence of a family member → or a relative as mentioned in paragraphs 1 and 2 ←  
→ [...] ← → [...] ← the Member State responsible for examining the application shall be  
that where the → unaccompanied ← minor has lodged his or her ⇒ → [...] ← → first ← ⇐  
application for ~~asylum~~ ⇒ international protection, provided that this is in the best interests  
of the → unaccompanied ← minor. ⇐<sup>65</sup>

→ [...] ←

---

<sup>64</sup> **CY, FI, IE, IT, AT, UK:** scrutiny reservations on the **Pres** compromise for the provision.  
**DE** suggested the following alternative wording: "Where family members or relatives as  
mentioned in paragraphs 1 and 2 are staying - while legally residents or asylum seekers - in  
more than one MS, the MS responsible for examining the application ...".

<sup>65</sup> **ES, IT:** reservations on the deletion of the principle of the most recent application, serving  
as a basis for the examination of the minor's application. **Cion:** in agreement with **IT**,  
prefers reference to the most recent application.

---

↓ 1103/2008/EC, pt. 3(1) of the Annex  
⇒ new  
⇒ Council

5. The ~~the~~ ~~Article~~ ~~paragraphs~~ ~~2~~ ~~and~~ ~~3~~ procedures for implementing ~~this Article~~ paragraphs 2 and 3 including, where appropriate, conciliation mechanisms for settling differences between Member States concerning the need to unite the persons in question, or the place where this should be done, shall be adopted in accordance with the procedure referred to in Article ~~27(3)~~ 40 (2).<sup>66</sup>

---

↓ 343/2003/EC (adapted)  
⇒ new  
⇒ Council

*Article 79*

*Family members who are persons granted international protection*

Where the asylum seeker has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a ~~refugee~~ ~~person granted international protection~~ in a Member State, that Member State shall be responsible for examining the application for ~~asylum~~ ~~international protection~~, provided that the persons concerned ~~so~~ expressed their ~~desire~~ in writing.

---

<sup>66</sup> **CY, EL, AT, SI:** scrutiny reservations on the choice of the implementing acts procedure in the proposal. **SI:** suggested referring to the provision in Article 40(2) in order to prevent **Cion** from adopting a draft implementing act where no opinion is delivered by the Committee in accordance with Article 5(4) of Regulation No 182/2011.

Article 810

Family members who are applicants for international protection

If the asylum seeker has a family member in a Member State whose application for international protection in 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 asylum international protection, provided that the persons concerned expressed their desire in writing.

Article 1511

Dependent relatives<sup>67</sup>

21. Where In cases in which person concerned an asylum seeker is dependent on the assistance of the other a first or second-degree relative, or a third degree relative who was previously responsible for his/her care, legally resident in one of the Member States, present in another Member State on account of pregnancy or a new-born child, serious illness, severe handicap or old age, Member States shall keep or bring together the asylum seeker with that relative, provided that family ties existed in the country of origin and that the persons concerned expressed their desire in writing.

<sup>67</sup> AT, SK, UK: reservations on this Article.

<sup>68</sup> CY, DE, ES, IE, AT, SE, SI, SK: reservations on this provision, most of them linked with their concerns about the scope of the family members' definition in Art. 2(g) and in particular, about the inclusion of the third-degree relatives at point g(c) thereof. DE, SK: prefer limiting the scope of this category of relatives to second-degree ones. Pres pointed out that the third-degree relatives included in this provision have already taken care of the applicant and have been living in the MS concerned. SE: it has concerns about a protracted procedure, which would prevent national administrations to meet deadlines. CZ, EE, EL, FI, FR, IT, LV: scrutiny reservations on this provision linked with their concerns on draft Art. 2(g)(c). NL: would oppose reverting to the notion of "other relatives", which it considers having a larger scope, than the current compromise.

2. Where the relative is legally [...] resident in another Member State than the one where the asylum seeker is present, the Member State responsible for examining the application shall be the one where the relative is legally [...] resident [...] unless the concerned asylum [...] seeker's health condition [...] prevents him/her [...] during a significant period of time from travelling to that Member State.<sup>69</sup>

Where the concerned asylum [...] seeker's health condition prevents him/her during a significant period of time from travelling to another Member State, the Member State responsible for examining his/her application shall be the one where he/she is present. [...] <sup>70</sup> [...] Becoming the Member State responsible [...] due to the applicant's inability to travel [...] does not [...] entail the obligation of bringing the relative to that Member State.

↓ 1560/2003 Article 11(1) (adapted)

~~Article 15(2) of Regulation (EC) No 343/2003 shall apply whether the asylum seeker is dependent on the assistance of a relative present in another Member State or a relative present in another Member State is dependent on the assistance of the asylum seeker.~~

<sup>69</sup> **SI:** scrutiny reservation on the point.

<sup>70</sup> **AT:** reservation linked to abuse and to the allegedly automatic obligation for MS to bring the relatives to their territory to join the dependent relative, under the Dublin system. **Pres / Cion:** there is no such obligation for the MS; abuse is unlikely because dependence and family links have to be proven. More detailed rules could be decided in the comitology / delegated acts framework.

---

↓ 1103/2008/EC, pt. 3(1) of the Annex  
⇒ Council

⇒ [...] ⇒ 3. ⇒ [...] ⇒ The ⇒ [...] ⇒ procedures for implementing ~~this Article~~  
⇒ [...] ⇒ this Article ⇒ including, where appropriate, conciliation mechanisms for  
settling differences between Member States concerning the need to unite the persons in  
question, or the place where this should be done, ⇒ [...] ⇒ shall ⇒ be adopted  
⇒ [...] ⇒ in accordance with the ⇒ [...] ⇒ procedure ⇒ [...] ⇒ referred to in Article  
~~27(3)~~ 40 ⇒ (2) ⇒ [...] ⇒.<sup>71</sup>

---

↓ 343/2003/EC (adapted)  
⇒ new  
⇒ Council

Article ~~14~~12

⊗ Family procedure ⊗

Where several members of a family ⇒ within the meaning of Article 2(g) ⇒ [...] ⇒ and/or  
minor unmarried siblings ⇒ submit applications for ~~asylum~~ ⇒ 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 them being separated, the  
Member State responsible shall be determined on the basis of the following provisions:

---

<sup>71</sup> **SI:** considers this provision unnecessary. **CY, EL, AT, SI:** scrutiny reservations on the choice of the implementing acts procedure in the proposal. **SI:** suggested referring to the provision in Article 40(2) in order to prevent **Cion** from adopting a draft implementing act where no opinion is delivered by the Committee in accordance with Article 5(4) of Regulation No 182/2011.

- (a) responsibility for examining the applications for ~~asylum~~ ⇒ international protection ⇐ of all the members of the family ⇒ within the meaning of Article 2(g) ⇒ [...] and/or minor unmarried siblings 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.

*Article 913*

*✕ Issuance of residence documents or visas ✕*

1. Where the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐.
2. Where the asylum seeker is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for ~~asylum~~ ⇒ 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 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on visas ⇒ [...]. In such a case, the ⇒ represented ⇒ [...] Member State shall be responsible for examining the application for ⇒ international protection ⇐ ~~asylum~~ ⇒ [...].

3. Where the asylum-seeker 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 ⇐ ~~asylum~~ 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) the Member State which issued the visa having the latest expiry date where the various visas are of the same type;
  - (c) where visas are of different kinds, 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 asylum seeker is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than six months previously and which enabled him/her actually to enter the territory of a Member State, paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the territories of the Member States.

Where the asylum seeker is in possession of one or more residence documents which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him/her actually to enter the territory of a Member State and where he has not left the territories of the Member States, the Member State in which the application ⇒ for international protection ⇐ is lodged shall be responsible.

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 a fraud was committed after the document or visa had been issued.

Article ~~10~~14

☒ Entry and/or stay ☒

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article ~~2218~~(3), including the data referred to in Chapter III of Regulation ☒ [concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Regulation ]☒ (EC) No [.../...] ~~2725/2000~~, that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐ . This responsibility shall cease 12 months after the date on which the irregular border crossing took place.
2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1, and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article ~~2218~~(3), that the asylum seeker - who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established - ~~at the time of lodging the application~~ has been ~~previously~~ living for a continuous period of at least five months in a Member State ☒ before lodging the application for international protection ☒, that Member State shall be responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐ .

If the applicant has been living for periods of time of at least five months in several Member States, the Member State where this has been most recently the case shall be responsible for examining the application ⇒ for international protection ⇐ .



*Article ~~11~~15*

*⊗ Visa waived entry ⊗*

1. If a third-country national ⇒ or a stateless person ⇐ enters into the territory of 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 ~~asylum~~ ⇒ international protection ⇐.
2. The principle set out in paragraph 1 does not apply, if the third-country national ⇒ or the stateless person ⇐ lodges his or her application for ~~asylum~~ ⇒ international protection ⇐ in another Member State, in which the need for him or her to have a visa for entry into the territory is also waived. In this case, the latter Member State shall be responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐.

*Article ~~12~~16*

*⊗ Application in an international transit area of an airport ⊗*

Where the application for ⇒ international protection ⇐ ~~asylum~~ is made in an 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 IV

### ~~HUMANITARIAN CLAUSE~~

#### ⊗ DISCRETIONARY CLAUSES ⊗

Article ~~15~~17

⊗ Discretionary clauses ⊗

↓ 343/2003/EC Article 3(2) (adapted)

⇒ new

↻ Council

1. ~~2~~ By way of derogation from Article 3 paragraph (1), each Member State may ~~↻ [...]~~ ⊗ decide to ⊗ examine an application for ~~asylum~~ ⇒ international protection ⇐ lodged with it by a third-country national ⇒ or a stateless person ⇐, even if such examination is not its responsibility under the criteria laid down in this Regulation. ~~↻ [...]~~ ↻<sup>72</sup>

<sup>72</sup> **Cion:** regrets the deletion of the reference to the consent of the asylum seeker, which it considers that it was meant to ensure a proper application of family unity criterion.

➤ [...] ➤ The Member State ➤ which decided to examine an application for international protection pursuant to this paragraph ➤ [...] ➤ shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where appropriate ☒ 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 or take back the applicant ➤ by using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003 ➤.

The Member State becoming responsible in accordance with this paragraph shall also forthwith indicate in EURODAC that it assumed responsibility pursuant to Article 17(6) of Regulation (EC) No [...] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation].

---

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

2. ~~± Any Member State, even where it is not responsible under the criteria set out in this Regulation,~~ ☒ The Member State in which an application for international protection is made 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 family ⇒ [...] ☒ members ⇒ within the meaning of Article 2(g) ☒, as well as other ~~dependent~~ relatives ⇒ including minor unmarried siblings ☒, on humanitarian grounds based in particular on family or cultural considerations, ⇒ even where this latter Member State is not responsible under the criteria laid down in Articles 8 to 12 of this Regulation ⇐ . ~~In this case that Member State shall, at the request of another Member State, examine the application for asylum of the person concerned.~~ The persons concerned must ☒ express their ☒ consent ☒ in writing ☒.

---

↓ 1560/2003 Article 13(2)

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

---

↓ 1560/2003 (adapted) Article 13(3)

⇒ new

⇒ Council

⊗ The requested Member State shall carry out ⊗ ~~the necessary~~ any necessary checks to establish, where applicable, humanitarian reasons, particularly of a family or cultural nature, the level of dependency of the person concerned or the ability or commitment of the other person concerned to provide the assistance desired. ⇒ to ⇒ [...] ⇒ examine ⇒ the humanitarian reasons cited, and shall give ⇒ [...] ⇒ **a reply to the requesting Member State** ⇒ within two months of the date on which the request was received ⇒ **by using the 'DubliNet' 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 it is based. ⇐<sup>73</sup>

---

↓ 343/2003/EC (adapted)

⇒ new

4 Where the ⊗ requested ⊗ Member State ~~thus approached accedes to~~ ⊗ accepts ⊗ the request, responsibility for examining the application shall be transferred to it.

---

<sup>73</sup> **SI:** reservation on the paragraph, suggested amending its last sentence as follows (because it considers that it will render the provision subject to legal challenge despite its discretionary nature): "... humanitarian reasons cited and shall reply to the requesting MS by using the DublinNet electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003 within two months of the date on which the request was received [...]".

---

↓ 343/2003/EC (adapted)

⇒ new

↻ Council

## CHAPTER V

### ~~TAKING CHARGE AND TAKING BACK~~

#### ⊗ OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE ⊗

##### *Article ~~16~~18*

##### *⊗ Obligations of the Member State responsible ⊗<sup>74</sup>*

1. The Member State responsible for examining an application for ~~asylum~~ ⇒ international protection ⇐ under this Regulation shall be obliged to:
  - (a) take charge, under the conditions laid down in Articles ~~21~~~~17~~ to ~~19~~, 22 and 28, of an asylum seeker who has lodged an application in a different Member State;
  - ~~(b)~~~~(c)~~ take back, under the conditions laid down in Articles 23, 24 and 28 ~~20~~, an applicant whose application is under examination and who ⇒ made an application in another Member State or who ⇐ is in the territory of another Member State without ~~permission~~ ⇒ a residence document ⇐;

---

<sup>74</sup> **IT:** reservation because it is not clear whether the MS which has asked another MS to take back the applicant is obliged to examine the application at any rate.

~~(c)~~(d) take back, under the conditions laid down in Articles 23, 24 and 28 ~~20~~, ~~[...]~~ ~~☉~~  
☉ third country national or stateless person ☉ who has withdrawn the application under examination and made an application in another Member State ☉ or who is in the territory of another Member State without a residence document ☉;

~~(d)~~(e) take back, under the conditions laid down in Articles 23, 24 and 28 ~~20~~, a third-country national ☉ or a stateless person ☉ whose application ~~is~~ has been rejected and who ☉ made an application in another Member State or who ☉ is in the territory of another Member State without permission ☉ a residence document. ☉

☒ 2. The Member State responsible shall ☒ ☉ in all circumstances referred to in paragraph 1 (a) ~~[...]~~ ☉ ☉ and (b) ☉ examine or ☉ ~~(b)~~ complete the examination of the application for ~~asylum~~ ☉ international protection made by the applicant, within the meaning of Article 2(d).

~~[...]~~ ☉ ☉ For the cases referred in paragraph 1 (c), when ☉ the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant ☉ before a decision on substance in first instance has been taken ☉ ☉ ~~[...]~~ ☉, it shall ☉ ~~[...]~~ ☉ ☉ ensure that the applicant is entitled to request that the examination of ☉ his/her ☉ ~~[...]~~ ☉ ☉ application is completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as defined in Directive [2005/85/EC] [Procedures Directive]. In such cases, Member States shall ensure that ☉ the examination of the application ☉ is completed ☉, within the meaning of Article 2(d)☉.<sup>75</sup>

---

<sup>75</sup> **AT:** reservation in order to provide for a time limit putting an end to the procedure, after which the case could not be reopened.  
**DE:** requests deletion of the second and the third sentence of paragraph 2.

⇒ For the cases referred to under paragraph 1 (d), where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has or has had, the opportunity to access an effective remedy, pursuant to Article 39 of Directive 2005/85/EC. ☹ ⇒ [...] ☹<sup>76</sup>

### Article 19

#### ☒ Cessation of responsibilities ☒

1. ~~2.~~ Where a Member State issues a residence document to the applicant, the obligations specified in Article 18 paragraph (1), shall be transferred to that Member State.
2. ~~3.~~ The obligations specified in Article 18 paragraph (1), shall cease where ⇒ the Member State responsible for examining the application can establish, when requested to take charge or take back an applicant or another person as referred to in Article 18(1) ☹ (c) or ☹ (d), that ⇐ the ~~third-country national~~ ☒ person concerned ☒ has left the territory of the Member States for at least three months, unless the ~~third-country national~~ ☒ person concerned ☒ is in possession of a valid residence document issued by the Member State responsible.

↓ new

An application lodged after such an absence shall be regarded as a new application giving rise to a new procedure for the determination of the Member State responsible.

---

<sup>76</sup> **CZ:** reservation on this subparagraph, suggested deleting it; has concerns related to the fact that the person concerned will not be in the territory of the MS (because he has absconded) and the notification cannot be made to him/her), therefore it is likely that courts may consider that he/she has no access to an effective remedy (see doc. 17073/1/10 for an analysis of the reservation grounds).



---

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

3. ~~4~~The obligations specified in ~~Article 18 paragraph (1)(c)(d) and (d)(e)~~, shall likewise cease ~~once~~ ☒ where ☒ the Member State responsible for examining the application ⇒ can establish, when requested to take back an applicant or another person as referred to in Article 18(1) ⇒ (c) or (d), that ⇐ ~~has adopted and actually implemented, following the withdrawal or rejection of the application, the provisions that are necessary before the third country national can go to his country of origin or to another country to which he may lawfully travel~~ ⇒ the person concerned has left the territory of the Member States in compliance with a return decision or removal order it issued following the withdrawal or rejection of the application. ⇐

---

↓ new

An application lodged after an effective removal shall be regarded as a new application giving rise to a new procedure for the determination of the Member State responsible.

---

↓ 343/2003/EC (adapted)

⇒ new

↻ Council

## CHAPTER VI

### ⊗ PROCEDURES FOR TAKING CHARGE AND TAKING BACK ⊗

#### ⊗ SECTION I: START OF THE PROCEDURE ⊗

##### *Article 420*

##### ⊗ *Start of the procedure* ⊗

1. The process of determining the Member State responsible under this Regulation shall start as soon as an application for ~~asylum~~ ⇒ international protection ⇐ is first lodged with a Member State.
2. An application for ~~asylum~~ ⇒ international protection ⇐ shall be deemed to have been lodged once a form submitted by the applicant ~~for asylum~~ or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

3. For the purposes of this Regulation, the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member set out in Article 2, point ~~...~~ shall be indissociable from that of his ~~/her family member~~ ~~...~~ and shall be a matter for the Member State responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐ of that ~~...~~ family member, ⇐, even if the minor is not individually an asylum seeker ⇒, provided that this is in his/her best interests ⇐. The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for ~~asylum~~ ⇒ international protection ⇐ is lodged with the competent authorities of a Member State by an applicant who is in the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for ~~asylum~~ ⇒ international protection ⇐ was lodged.

The applicant shall be informed in writing of this transfer and of the date on which it took place.

5. An asylum seeker who is present in another Member State [...] without a residence document or who there lodges an application for asylum international protection after withdrawing his first application made in a different Member State during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles 2023, 24 and 28, by the Member State with which that application for asylum international protection was firstly lodged, with a view to completing the process of determining the Member State responsible for examining the application for asylum international protection.

This obligation shall cease where the Member State requested to complete the process of determining the responsible Member State can establish that if the asylum seeker has in the meantime left the territories of the Member States for a period of at least three months or has obtained a residence document from another Member State.

---

↓ new

An application lodged after such an absence shall be regarded as a new application giving rise to a new procedure for the determination of the responsible Member State.

---

↓ 343/2003/EC (adapted)

⇒ new

↻ Council

## ⊗ SECTION II: PROCEDURES FOR TAKE CHARGE REQUESTS ⊗

### *Article ~~17~~21*

#### *⊗ Submitting a take charge request ⊗*

1. Where a Member State with which an application for ~~asylum~~ ⇒ international protection ⇐ has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within three months of the date on which the application was lodged within the meaning of Article ~~42~~20(2), ~~call upon~~ ⊗ request ⊗ the other Member State to take charge of the applicant.

↻ In case of a EURODAC hit with data recorded pursuant to Article 10 of Regulation (EC) No [.../...] concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation, the request shall be sent within two months of receiving that hit pursuant to Article 11(2) of that Regulation. ↻

Where the request to take charge of an applicant is not made within the period of three months ~~or two months respectively~~, responsibility for examining the application for ~~asylum~~  $\Rightarrow$  international protection  $\Leftarrow$  shall lie with the Member State in which the application was lodged.

2. The requesting Member State may ask for an urgent reply in cases where the application for ~~asylum~~  $\Rightarrow$  international protection  $\Leftarrow$  was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order and/or where the asylum seeker is held in detention.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. This period shall be at least one week.

3. In both cases, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article ~~18~~22(3) and/or relevant elements from the asylum seeker's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The rules on the preparation of and the procedures for transmitting requests shall be adopted in accordance with the procedure referred to in Article ~~40(2)~~ ~~27(2)~~<sup>77</sup>

---

<sup>77</sup> **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

Article ~~18~~22

~~☒~~ *Replying to a take charge request* ~~☒~~

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of the date on which the request was received.
2. In the procedure for determining the Member State responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐ established in this Regulation, elements of proof and circumstantial evidence shall be used.
3. In accordance with the procedure referred to in Article ~~27(2)~~ 40(2) two lists shall be established and periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria:<sup>78</sup>
  - (a) Proof:
    - (i) This refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary;
    - (ii) The Member States shall provide the Committee provided for in Article ~~27~~ 40 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs.

---

<sup>78</sup> **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

(b) Circumstantial evidence:

- (i) This refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them;
- (ii) Their evidentiary value, in relation to the responsibility for examining the application for ~~asylum~~ ⇒ international protection ⇐ shall be assessed on a case-by-case basis.

4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.
5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.
6. Where the requesting Member State has pleaded urgency, in accordance with the provisions of Article ~~17(2)~~ 21(2), the requested Member State shall make every effort to conform to the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give the reply after the time limit requested, but in any case within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.
7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the ~~provisions~~ ☒ obligation to provide ☒ for proper arrangements for arrival.



### SECTION III. PROCEDURES FOR TAKE BACK REQUESTS

Article ~~20~~ 23

Submitting a take back request when a new application has been lodged in the requesting Member State

1. Where a Member State with which a person as referred to in Article 18(1)(b), (c) or (d) lodged a new application for international protection, considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) and (d), it may request that other Member State to take back that person.

2. The request to take back the person concerned shall be made as quickly as possible and in any case within two months of receiving the EURODAC hit, pursuant to Article 6(5) of Regulation (EC) No [...] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation].

If the request to take back the person concerned is based on evidence other than data obtained from the EURODAC system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

3. Where the request to take back the person concerned is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged.
4. The request for the person concerned to be taken back shall be made using a standard form and including proof or circumstantial evidence and/or relevant elements from the person's statements, enabling the authorities of the requested Member State to check whether it is responsible.

The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 40(2). <sup>79</sup>

**➡ Article 23A**

*Submitting a take back request when no new application for international protection has been lodged in the requesting Member State*

1. Where a Member State on whose territory a person as referred to in Article 18(1)(b), (c) or (d), is staying without a residence document and with which no new application for international protection has been lodged, considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) and (d), it may request that Member State to take back that person.

---

<sup>79</sup> **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

2.<sup>80</sup> By derogation from Article 6(2) of Directive 2008/115/EC, where a Member State on whose territory a person is staying without a residence document decides to search the EURODAC system in accordance with article 13 of Regulation (EC) No [...] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation], the request to take back a person as referred to in Article 18 (1) (b) or (c), or a person as referred to in article 18 (1) (d) whose application for international protection not has been rejected by a final decision shall be made as quickly as possible and in any case within two months of receiving the EURODAC hit, pursuant to Article 13(4) of that Regulation.

If the request to take back the person concerned is based on evidence other than data obtained from the EURODAC system, it shall be sent to the requested Member State within three months of the date on which the requesting Member State becomes aware that another Member State may be responsible for the person concerned.

3. Where the request to take back the person concerned, is not made within the periods laid down in paragraph 2, the Member State on whose territory the person concerned is staying without a residence document shall give the person the opportunity to lodge a new application ➡ [...] Ⓒ.<sup>81</sup>

---

<sup>80</sup> **AT:** scrutiny reservation on the paragraph.

<sup>81</sup> **FI, SE:** scrutiny reservations on the paragraph.

4. Where a person as referred to in Article 18(1)(d) whose application for international protection has been rejected by a final decision in one Member State is on the territory of another Member State without a residence document, the second Member State may either request the first Member State to take back the person concerned or carry out a return procedure in accordance with Directive 2008/115/EC of the European Parliament and of the Council of 6 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

When the second Member State decided to request the first Member State to take back the person concerned, the rules laid down in Directive 2008/115/EC shall not apply.

5. The request for the person referred to in Article 18(1)(b), (c) or (d) to be taken back shall be made using a standard form and including proof or circumstantial evidence and/or relevant elements from the person's statements, enabling the authorities of the requested Member State to check whether it is responsible.

The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 40(2). <sup>82</sup>

---

<sup>82</sup> **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

---

↻ [...] ↻

↓ new  
↻ Council

↻ [...] ↻

↻ [...] ↻

↓ 343/2003/EC (adapted)  
↻ new  
↻ Council

Article 24

↻ *Replying to a take back request* ↻

(b)1. ~~The~~ ↻ requested ↻ Member State ~~called upon to take back the applicant shall be~~ obliged to make the necessary checks and ↻ shall give a decision on ↻ reply to the request ↻ to take back the person concerned ↻ addressed to it as quickly as possible and ~~under no circumstances exceeding a period of~~ ↻ in any event no later than ↻ one month from the ~~referral~~ ↻ date on which the request was received ↻ . When the request is based on data obtained from the Eurodac system, this time limit is reduced to two weeks.

~~(c)2. where the requested Member State does not communicate its decision~~ ☒ Failure to act ☒ within the one month period or the two weeks period mentioned in subparagraph ~~(b) (1)~~ ☒ shall be tantamount to accepting the request ☒ , ☐ and entail the obligation ☐ ~~it shall be considered to have agreed~~ to take back the asylum seeker ☒ person concerned ☒ ☐ , including the obligation to provide for proper arrangements for arrival ☐.

~~(d) a Member State which agrees to take back an asylum seeker shall be obliged to readmit that person to its territory. The transfer shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken by another Member State or of the decision on an appeal or review where there is a suspensive effect;~~

~~(e) the requesting Member State shall notify the asylum seeker of the decision concerning his being taken back by the Member State responsible. The decision shall set out the grounds on which it is based. It shall contain details of the time limit on carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case-by-case basis if the national legislation allows for this.~~

~~If necessary, the asylum seeker shall be supplied by the requesting Member State with a laissez passer of the design adopted in accordance with the procedure referred to in Article 27(2).~~

~~The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the asylum seeker or of the fact that he did not appear within the set time limit.~~

~~2. Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer or the examination of the application could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.~~

~~3. The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 27(2).~~

~~4. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 27(2).~~

## SECTION IV. PROCEDURAL SAFEGUARDS

### Article 1925

#### Notification of a transfer decision<sup>83</sup>

1. Where the requested Member State ~~accepts~~ agrees ~~that it should~~ to take charge ~~of~~ or to take back ~~an applicant~~ or another person as referred to in Article 18(1) ~~(c) or (d)~~, the requesting Member State ~~in which the application for asylum was lodged~~ shall ~~[...]~~ communicate to ~~the applicant~~ person concerned ~~of the decision not to examine the application, and of the obligation~~<sup>84</sup> ~~[...]~~ the decision to transfer him/her ~~the applicant~~ to the responsible Member State and, where applicable, of not examining his/her application for international protection ~~[...]~~. If a legal advisor or other counsellor is representing the person concerned, Member States may choose to provide the decision to him/her instead of to the person concerned.
2. The decision referred to in paragraph 1 shall be issued in writing and shall set out the grounds on which it is based: in fact and in law. ~~[...]~~

---

<sup>83</sup> **CZ:** maintained a reservation, suggesting excluding from the scope of this Article those third-country nationals to whom a return decision has already been issued, but have not been removed (concerns related with regard to the link between the Dublin and the Return Directive systems). **Cion:** against this proposal because the Dublin Regulation and the Return Directive constitute two different legal systems with different consequences and rights attached to them. The notification of a decision affecting a person is crucial in order to allow him/her be informed about this situation and exercise any effective remedies applicable.

<sup>84</sup> **CZ:** suggested reverting to the original language of the provision: "... communicate to the applicant the decision not to examine the application and of the obligation to transfer..." to ensure that the transfer decision is issued only in cases where the application for international protection has been lodged on the territory of the transferring MS. **SK:** supported this suggestion, **FI:** scrutiny reservation on it, preferring the current **Pres** compromise. **Cion:** cannot support this wording.



~~➔ The decision referred to in paragraph 1 shall also contain information on available legal remedies and the time-limits applicable for seeking such remedies, ➔ [...] details of the time limit for carrying out the transfer and shall, if necessary, contain information on the place where, and the date at which the applicant person concerned should appear, if he/she is travelling to the responsible Member State responsible by his/her own means. ➔ Member States shall also ensure that information on persons or entities that may provide ➔ [...] legal assistance to the person concerned is ➔ [...] communicated to the person concerned together with the decision referred to in paragraph 1, when the information has not been already communicated. ➔ [...] ➔~~

~~➔ [...] This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case-by-case basis if the national legislation allows for this.~~

➔ 3. When the person concerned<sup>85</sup> is not assisted or represented by a legal advisor or other counsellor, Member States shall ➔ [...] inform him/her ➔ [...] of the main elements of the decision, which shall always include information on available legal remedies and the time-limits applicable for seeking such remedies, in a language the person concerned understands or may be reasonably ➔ [...] presumed to understand. ➔

---

<sup>85</sup> CZ: suggested replacing “person concerned” with “applicant” throughout the text (see footnote 72).

---

↓ new

→ Council

*Article 26*

*Remedies*<sup>86</sup>

1. The applicant or another person as referred to in Article 18(1) (c) or (d)<sup>87</sup> shall have the right to an effective [...] remedy, in the form of an appeal or a review, in fact and in law, [...] against the transfer decision referred to in Article 25, before a court or tribunal.
2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his/her right to an effective [...] remedy pursuant to paragraph 1.
- 3.<sup>88</sup> In the event of an appeal or review concerning the transfer decision referred to in Article 25, and where the right to remain in the Member State concerned pending the outcome of [...] the appeal or review is not foreseen under national legislation [...], that Member [...] State shall give the person concerned the opportunity to request [...] a court or tribunal [...] to suspend the implementation of the transfer decision pending the outcome of his/her appeal or review.

---

<sup>86</sup> **IE:** reservations on Article 26.

<sup>87</sup> **CZ, SK:** suggested deleting “or another person... or (d)”.

<sup>88</sup> **BE:** scrutiny reservation on this paragraph due to the likely implications of the case law related to asylum acquis. **CZ, DE, EL, ES, IT, SI:** scrutiny reservation on this paragraph.

⇒ [...] ◌

⇒ The introduction of such a request ⇒ [...] ◌ ⇒ may have a suspensive effect on ◌ the implementation of the transfer ⇒ [...] ◌ ⇒ decision ◌ ⇒ [...] ◌ ⇒ [...] ◌ .

Member States' competent authorities may ⇒ [...] ◌ ⇒ decide acting ex officio ◌ ⇒ [...] ◌ to suspend the implementation of the transfer decision pending the outcome of the appeal or review, ⇒ [...] ◌ ⇒ [...] ◌ .<sup>89</sup>

The decision on whether to suspend the implementation of the transfer ⇒ decision ◌ , shall be taken within a reasonable period of time. ◌

⇒ [...] ◌ A decision ⇒ rejecting the request for the suspension of the implementation of the transfer decision ◌ ⇒ [...] ◌ ⇒ [...] ◌ pending the outcome of ⇒ the ◌ ⇒ [...] ◌ appeal or review shall state the reasons on which it is based.<sup>90</sup>

⇒ **3A. Where in the request for appeal or review the applicant claims that as a result of the transfer he/she will be exposed to treatment prohibited by Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 4 of the Charter of Fundamental Rights of the European Union the transfer of the applicant shall not take place before the court or tribunal delivers a decision on that claim. The decision shall be taken within a reasonable period of time. ◌<sup>91</sup>**

---

<sup>89</sup> SI prefers reverting to the wording before the last Pres compromise in subparagraphs (b) and (c) of para. 3.

<sup>90</sup> AT: reservation on this subparagraph.

<sup>91</sup> CZ, DE, ES, FI, FR, IE, NL, AT, PT, SE, SI, SK, UK: reservations, BE (see footnote 88 for the reasons of its scrutiny), EE, LT: scrutiny reservations on the new Pres compromise. Most of the above delegations cannot accept to provide for suspension simply upon the claim of the applicant, because it could entail abuse. In addition these delegations consider that the way the provision is worded might imply that MS do not comply with their obligations deriving from the Fundamental Rights acquis. DE pointed out that this provision is superfluous and should be deleted, whereas draft Recital 29 could be retained and improved. ES, UK: expressed concerns about the legal uncertainty of the term "reasonable time" and the lack of provision for consequences in case of its violation. CY, IT, Cion: could accept the Pres compromise.

➔ [...] 4. Member States shall ensure that the person concerned has access to legal assistance ➔ [...] and, where necessary, to linguistic assistance.

➔ [...] <sup>92</sup>5. Member States shall ensure that legal assistance ➔ [...] be granted ➔ on request ➔ [...] free of charge where the person concerned cannot afford the costs involved ➔ , and insofar as it is necessary to ensure his/her effective access to justice ➔ [...] . Member States may provide that, as regards fees and other costs the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance. ➔

➔ Without arbitrarily restricting access to legal assistance, Member States may limit free legal assistance to cases where the appeal or review is likely to succeed. ➔<sup>93</sup>

➔ [...] ➔

➔ [...] ➔ Legal assistance shall include at least the preparation of the required procedural documents and representation before the judicial authorities ➔ [...] ➔ and ➔ [...] may be restricted to legal advisors or counsellors specifically designated by national law to assist and represent asylum seekers.

➔ Procedures for access to legal assistance shall be laid down in national law. ➔

---

<sup>92</sup> **EL, MT:** reservations on the principle of free legal assistance, in the context of this provision, due to the administrative burden and the costs it will entail. **CZ:** the wording of this point shall be aligned with the Return Directive. **Pres:** the Return Directive refers to the APD.

<sup>93</sup> **CY, SE:** reservation suggesting deletion of the **Pres** compromise, **EL, FI:** scrutiny reservations on it.

## SECTION V.

### DETENTION FOR THE PURPOSE OF TRANSFER

#### Article 27

#### Detention<sup>94</sup>

☞ [...] ☞

☞ ☞ Without prejudice to other grounds for detention determined in national legislation ☞

Member States may detain persons<sup>95</sup> ☞ [...] ☞ ☞ in order to secure a ☞ transfer to the responsible Member State<sup>96</sup> in accordance with this Regulation when there is a risk of absconding.

97

---

<sup>94</sup> **FR, AT:** general reservations on all the provisions related to detention as they considered that this issue should not be dealt with in the asylum acquis. **DE:** reservations on the **Pres** approach, on the ground that it was non-transparent and on the basis that the combined effect of this draft Article and the proposed Articles 8 and 9 of the RCD was too restrictive in particular regarding the grounds for detention. **Cion:** cannot support the **Pres** compromise; there are no sufficient guarantees, including time-limits. **Cion:** is against the addition in the beginning of the sentence: "Without prejudice to other grounds...". **CLS** also considers this addition as redundant all the more because there is no legal basis to refer to detention for grounds outside Dublin in this draft Regulation.

<sup>95</sup> **DE:** suggested adding "or hold in detention". **Pres** pointed out that "detain" inevitably entails holding someone in detention, therefore the addition is redundant.

<sup>96</sup> **DE:** sought clarification on whether the transfer has to be already accepted by the requested Member State as a condition for detention.

<sup>97</sup> **DE:** suggested adding the following subparagraph: "In order to secure a transfer Member States may also detain or hold a person in detention, who has been arrested after an illegal entry, who is enforceably required to leave the country under national law and for whom there is evidence that another Member is responsible according to the criteria laid down in this Regulation.". **CLS** expressed strong concerns underlying that if this wording refers to the detention of a TCN to be transferred for whom there is a risk of absconding, the current draft text covers it; if however, the TCN has been arrested after illegal entry and cannot be detained under the grounds provided for in the current draft Article, then it is without legal basis and out of the scope of the proposal. In the same vein, **Pres** added that if the suggested wording refers to transfers to third countries the Return Directive is to be applied while if it refers to transfers to other MS, the current text is sufficient. **Cion** shared the views of **CLS**, **NL** considered the suggested addition superfluous. **Pres. CY, CZ, RO, SK** expressed their initial positive reaction towards the **DE** suggestion. **FI** pointed out that although preferring the current text, it could live with the **DE** approach if need be. **EL, MT, SE, SI, UK:** scrutiny reservations on the **DE** suggestion.

Member States shall lay down provisions on conditions for detention of and on guarantees applicable to persons detained [...] in order to secure a transfer to the responsible Member State in their national legislation.<sup>98</sup>

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

## ⊠ SECTION VI: TRANSFERS ⊠

### *Article ~~19~~28*

#### ⊠ *Modalities and time-limits* ⊠

~~13~~ The transfer of the applicant ⊠ or of another person as referred to in Article 18(1) ⊠ (c) or ⊠ (d) ⊠ from the ⊠ requesting ⊠ Member State ~~in which the application was lodged~~ to the ⊠ responsible ⊠ Member State ~~responsible~~ shall be carried out in accordance with the national law of the ⊠ requesting ⊠ ~~first~~ Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request ~~that charge be taken~~ ⊠ by another Member State to take charge or to take back the person concerned ⊠ or of the ⇒ final ⇐ decision on an appeal or review where ~~there is~~ ⇒ there is ⊠ a suspensive effect ⇒ [...] ⊠ ⇒ in accordance with Article 26(3) ⊠ ⇒ or (3A) ⊠ .<sup>99</sup>

<sup>98</sup> **FR:** questions the added value of this paragraph. **Pres:** it is there in order to establish the link with the RCD.

<sup>99</sup> The reservations / remarks made by **delegations** on the occasion of draft Art. 26(3)A (see footnote 91) also pertain to this provision.

If necessary, the asylum seeker shall be supplied by the requesting Member State with a *laissez passer* of the design adopted in accordance with the procedure referred to in Article 40(2) ~~27(2)~~.

The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the ~~asylum-seeker~~  person concerned  or of the fact that he/she did not appear within the set time limit.

~~24~~ Where the transfer does not take place within the six months' time limit,  the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State  ~~responsibility shall lie with the Member State in which the application for asylum was lodged~~. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the ~~asylum-seeker~~  person concerned  or up to a maximum of eighteen months if the ~~asylum-seeker~~  person concerned  absconds.

---

3. If a person has been transferred erroneously or a decision to transfer is overturned on appeal after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.

---

↓ 1103/2008/EC, pts. 3(2) and 3(3) of  
the Annex  
↻ Council

45. ↻ [...] ↻ The procedures for implementing this Article shall be adopted in accordance with the procedure referred to in Article 40(2). ↻<sup>100</sup>

---

↓ new  
↻ Council

#### Article 29




##### Costs of transfers

1. The costs necessary to transfer an applicant or another person as referred to in Article 18(1) ↻ (c) or ↻ (d) to the responsible Member State shall be met by the transferring Member State.
2. Where the person concerned has to be sent back to a Member State, as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.

---

<sup>100</sup> **EL, FR, AT:** scrutiny reservations on the choice of the implementing acts procedure for this Article. **CLS, Cion** considered that the modifications were in line with the principles for distinguishing between Articles 290 and 291 TFEU, but stressed the fact that the choice of the implementing acts instead of delegated acts procedure would affect the scope and the substance of the measures to be adopted under the proposed procedure.



3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.
4.  [...]  The procedures for implementing this Article shall be adopted in accordance with the procedure referred to in Article 40(2). <sup>101</sup>

---

<sup>101</sup> **EL, FR, AT:** scrutiny reservations on the choice of the implementing acts procedure for this Article. **SI:** suggested referring to the provision in Article 40(2) in order to prevent **Cion** from adopting a draft implementing act where no opinion is delivered by the Committee in accordance with Article 5(4) of Regulation No 182/2011; **SI** also has a reservation in relation to the inclusion of the costs of transfer to this provision because it maintains that these costs should be paid by the MS which will carry out the transfer, therefore no more rules are needed. **CLS, Cion** considered that the modifications were in line with the principles for distinguishing between Articles 290 and 291 TFEU, but stressed the fact that the choice of the implementing acts instead of delegated acts procedure would affect the scope and the substance of the measures to be adopted under the proposed procedure.

Article 30

*Exchange of relevant information before transfers being carried out*

☞ [...] ☺

☞ [...] ☺ ☞ 1. ☺ The Member State carrying out the transfer shall ☞ [...] ☺ communicate to the responsible Member State such personal data concerning the ☞ [...] ☺ ☞ person ☺ to be transferred as is appropriate, relevant and non-excessive for the sole purposes of ensuring that the competent ☞ [...] ☺ authorities ☞ in accordance with national law<sup>102</sup> ☺ in the responsible Member State are in a position to provide the ☞ [...] ☺ ☞ person concerned ☺ with adequate assistance, including the provision of ☞ [...] ☺ ☞ immediate health care required in order to protect the vital interest of the person concerned ☺ , and to ensure continuity in the protection and rights afforded by this Regulation and by ☞ other relevant asylum legal instruments. ☞ [...] ☺ This information shall be communicated to the responsible Member State within a reasonable period of time before a transfer is carried out, in order to ensure that the competent authorities ☞ in accordance with national law ☺ in the responsible Member State have sufficient time to take the measures required. ☺

☞ [...] ☺ ☞ 2. ☺ The transferring ☺ Member ☞ [...] ☺ ☞ State ☺ shall ☞ , insofar as such information is available to the competent authority ☞ in accordance with national law ☺ , transmit to the responsible Member State any information that it ☞ [...] ☺ ☞ is ☺ essential in order to safeguard the rights and immediate special needs of the person concerned, and ☺ in particular ☞ [...] ☺ ☺:

☞ (a) any immediate measures the responsible Member State ☞ [...] ☺ ☺ is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including ☞ [...] ☺ ☺ any immediate health care that may be required; ☺

---

<sup>102</sup> **DE** scrutiny reservation on the reference to the national law. In the same vein, **CLS, Cion:** have concerns about the purpose this addition is supposed to serve. **IT:** the added wording may help to clarify (for internal purposes) the authority which has to be the recipient of the information.

➤ [...] ➤ (b) ➤ contact details of family members ➤ within the meaning of Article 2(g) ➤ or of other relatives ➤ including minor unmarried siblings ➤ in the receiving Member State, where applicable;

➤ [...] ➤ (c) ➤ in the case of minors, information in relation to their ➤ [...] ➤ education;

➤ [...] ➤ (d) ➤ information about the ➤ assessment of the ➤ age of an applicant.

➤ [...] ➤

➤ [...] ➤ 3. ➤ The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 33 using the 'DubliNet' electronic communication network set-up under Article 18 of Regulation EC (No) 1560/2003. ➤ [...] ➤ The information exchanged shall only be used for the purposes set out in paragraph ➤ [...] ➤ 1 ➤ of this Article ➤ and shall not be further processed. ➤ ➤ [...] ➤

➤ [...] ➤

➤ 4. ➤ With a view to facilitating the exchange of information between Member States, a standard form for transferring the data required pursuant to this Article shall be adopted in accordance with the procedure laid down in Article 40(2).<sup>103</sup>

5. ➤ The rules laid down in Article 32(8) to (12) shall apply to the exchange of information pursuant to this Article. ➤

---

<sup>103</sup> IT: prefer the delegated acts procedure. CY, EL, AT: scrutiny reservations on the choice of the implementing acts procedure in the proposal.

Article 30 A [...]

*Exchange of health data before transfer is being carried out*

1. For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors and persons that have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, insofar as available to the competent authority in accordance with national law, transmit to the responsible Member State information about any special needs of the person to be transferred, which in specific cases may include information about the state of the physical and mental health of the person to be transferred.

**The information shall be transferred in a common health certificate with the necessary documents attached. This common health certificate shall be drawn up in accordance with the procedure referred to in Article 40(2).**<sup>104</sup> The responsible Member State shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

---

<sup>104</sup> **CY** (in relation to the comitology procedure), **FR, AT, SE**: scrutiny reservations on the new **Pres** compromise. **FR** expressed concerns about the practical implementation of the provision, i.e. translation issues, contacts with doctors, guarantee of confidentiality of personal data, etc. **Pres**: this form would be elaborated under the comitology procedure. **EE, NL, Cion**: could support the **Pres** compromise.

2. Any information mentioned in paragraph 1 shall only be transmitted by the transferring Member State to the responsible Member State after the explicit consent of the applicant and/or of the person representing him/her has been obtained or when this is necessary to protect the vital interests of the individual or of another person where he/she is physically or legally incapable of giving his/her consent. The lack of consent, including a refusal of consent, to transmitting any information referred to in paragraph 1 shall not be an obstacle to carrying out his/her transfer

[...]

3. The processing of personal health data referred to in paragraph 1 shall only be carried out by a health professional subject under national law or rules established by national competent bodies to the obligation of professional secrecy or by another person subject to an equivalent obligation of secrecy. [...]

4. The exchange of information under this Article shall only take place between the health professionals or other persons referred to in paragraph 3. The information exchanged shall only be used for the purposes set out in paragraph 1 of this Article and shall not be further processed.

---

<sup>105</sup> DE reservation, FR: scrutiny reservation on the deletion of the wording: "or to transmitting the information referred to in paragraph 1 provided that it necessary to protect the vital interests of the individual". CZ, FI, IE, LV, NL, AT, SE, Cion supported this proposal made by UK.

☞ [...] ☞

☞ [...] ☞ ☞ 5. ☞ [...] ☞ The procedures and practical arrangements for exchanging  
☞ [...] ☞ the information referred to in paragraph 1, ☞ shall be adopted in accordance  
with the procedure laid down in Article 40(2).<sup>106</sup>

☞ [...] ☞

☞ [...] ☞ ☞ [...] ☞ ☞ 6. ☞ The rules laid down in Article 32(8) to (12) shall apply to the  
exchange of information pursuant to this Article.

☞ [...] ☞

☞ [...] ☞<sup>107</sup>

☞ [...] ☞

---

<sup>106</sup> **IT:** prefer the delegated acts procedure. **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

<sup>107</sup> **CY, EL, ES, IT, MT:** reservations against the deletion of draft Article 31 which provided for an emergency mechanism where a MS is subject to an exceptional situation of strong and disproportionate pressure on its reception facilities and asylum system. They consider that this deletion does not take into account the ongoing developments in the Southern Neighbourhood for which solidarity among delegations is needed, nor does it adopt the appropriate strategy in view of the upcoming negotiations with the **EP** (which has manifested its strong support for such a mechanism). **CZ, DE, FI, FR, IE, LV, NL, AT, PL, SI, SK, UK,** supported the deletion on the grounds set out in doc 8136/11. **BE, BG, EE, LT, LU, SE:** supported the **Pres** approach but pointed out that they could be flexible in the course of the negotiations, if need be, in view of reaching a package compromise on the relevant legal instruments. In the same vein, **Cion** reaffirmed its support for a balanced package including the Dublin and EURODAC proposals and pointed out such a mechanism should be part of the solidarity tool box.

---

↓ 343/2003/EC (adapted)

⇒ new

↻ Council

## CHAPTER ~~VII~~VII

### ADMINISTRATIVE COOPERATION

Article ~~21~~32

⊠ Information sharing ⊠

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker as is appropriate, relevant and non-excessive for:
  - (a) the determination of the Member State responsible for examining the application for ~~asylum~~ ⇒ international protection; ⇐
  - (b) examining the application for ⇒ international protection; ⇐ ~~asylum~~;
  - (c) implementing any obligation arising under this Regulation.
2. The information referred to in paragraph 1 may only cover:
  - (a) personal details of the applicant, and, where appropriate, the members of his family ↻ within the meaning of Article 2(g), or other relatives, including minor unmarried siblings ↻ (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);

- (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);
- (c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EC) No 2725/2000 [.../...] [X] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation] [X];
- (d) places of residence and routes travelled;
- (e) residence documents or visas issued by a Member State;
- (f) the place where the application was lodged;
- (g) the date any previous application for **asylum** ⇨ international protection ⇨ was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, provided it is necessary for the examination of the application for **asylum** ⇨ international protection ⇨, the Member State responsible may request another Member State to let it know on what grounds the asylum seeker bases his application and, where applicable, the grounds for any decisions taken concerning the applicant. The Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm the essential interests of the Member State or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for **asylum** ⇨ international protection, obtained by the ⇨ [...] ⇨ requesting ⇨ Member State ⇨. [X] In this case, the applicant must know for what information he/she is giving his/her approval. [X]



4. Any request for information shall  $\Rightarrow$  only be sent in the context of an individual application for international protection. It shall  $\Leftarrow$  set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means asylum seekers enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to the individual asylum seeker.
5. The requested Member State shall be obliged to reply within ~~six~~  $\Rightarrow$  [...]  $\Leftarrow$   $\Rightarrow$  five  $\Leftarrow$  weeks.  $\Rightarrow$  Any delays in the reply shall be duly justified.  $\Rightarrow$  Non-compliance with the  $\Rightarrow$  [...]  $\Leftarrow$  five week time limit does not relieve the requested Member State of the obligation to reply.  $\Leftarrow$  If the research carried out by the requested Member State which did not respect the maximum time-limit, yield information which shows that it is responsible, that Member State may not invoke the expiry of the time-limit provided for in Articles 21 and 23 as a reason for refusing to comply with a request to take charge or take back.  $\Leftarrow$   $\Rightarrow$  In that case, the time-limits provided for in Articles 21 and 23 for submitting a request to take charge or take back shall be extended with a period of time which shall be equivalent to the delay in the reply by the requested Member State.  $\Leftarrow$

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission ⇒ in accordance with Article 33(1) ⇐ ~~which shall inform the other Member States thereof.~~
7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:
- (a) the determination of the Member State responsible for examining the application for ~~asylum~~ ⇒ international protection; ⇐
  - (b) examining the application for ~~asylum~~ ⇒ international protection; ⇐
  - (c) implementing any obligation arising under this Regulation.
8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that that Member State has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.
9. The asylum seeker shall have the right to be informed, on request, of any data that is processed concerning him/her.

If he finds that this information has been processed in breach of this Regulation or of Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (8), in particular because it is incomplete or inaccurate, he is entitled to have it corrected,  or  erased, ~~or blocked.~~

The authority correcting,  or  erasing ~~or blocking~~ the data shall inform, as appropriate, the Member State transmitting or receiving the information.

---

↓ new

↻ Council

The asylum seeker shall have the right to bring an action or a complaint before the competent authorities or courts of the Member State which refused the right of access to or the right of correction or  [...]  ~~erasure~~  of data relating to him/her.

---

↓ 343/2003/EC (adapted)

⇒ new

10. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/or in a register, of the transmission and receipt of information exchanged.
11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which it is exchanged.

12. Where the data is not processed automatically or is not contained, or intended to be entered, in a file, each Member State ~~should~~ ⇒ shall ⇐ take appropriate measures to ensure compliance with this Article through effective checks.

*Article ~~22~~33*

*⊗ Competent authorities and resources ⊗*

1. ⊗ Each ⊗ Member States shall notify the Commission ⇒ without delay ⇐ of the ⇒ specific ⇐ authorities responsible for fulfilling the obligations arising under this Regulation ⇒ , and any amendments thereto. ⇐ ⊗ They ⊗ ~~and~~ shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back asylum seekers.

---

↓ new

2. The Commission shall publish a consolidated list of the authorities referred to in paragraph 1 in the Official Journal of the European Union. Where there are amendments thereto, the Commission shall publish once a year an updated consolidated list.
3. The authorities referred to in paragraph 1 shall receive the necessary training with respect to the application of this Regulation.

---

↓ 343/2003/EC (adapted)

⇒ new

↻ Council

24. Rules relating to the establishment of secure electronic transmission channels between the authorities mentioned in paragraph 1 for transmitting requests ⇒, replies and all written correspondence ⇐ and ensuring that senders automatically receive an electronic proof of delivery shall be established in accordance with the procedure referred to in Article 40(2)~~27(2)~~.<sup>108</sup>

*Article ~~23~~34*

*⊗ Administrative arrangements ⊗*

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:
  - (a) exchanges of liaison officers;
  - (b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back asylum seekers;

---

<sup>108</sup> **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

- 2. Member States may also maintain the administrative arrangements concluded under Regulation (EC) No 343/2003. To the extent that such arrangements are not compatible with this Regulation, the Member States concerned shall amend the arrangements in such a way as to eliminate ➤ [...] ☹ any incompatibilities ➤ [...] ☹ observed. ☹
- 3. Before concluding or amending any arrangement referred to in paragraph 1(b), the Member States concerned shall consult the Commission as to the compatibility of the arrangement with this Regulation. ☹
- [...] ☹ ➤ 4. If the Commission considers the arrangements referred to in paragraph 1(b) to be incompatible with this Regulation, it shall, within a reasonable period, notify the Member States concerned. The Member States shall take all appropriate steps to amend the arrangement concerned within a reasonable period in such a way as to eliminate ➤ [...] ☹ any incompatibilities ➤ [...] ☹ observed. ☹
- 5. Member States shall notify the Commission of all arrangements referred to in paragraph 1, and of any denunciation thereof, or amendment thereto. ☹

## ⊗ CHAPTER VIII ⊗

### Conciliation

#### Article 435

#### ⊗ Conciliation ⊗

1. Where the Member States cannot resolve a dispute, ~~either on the need to carry out a transfer or to bring relatives together on the basis of Article 15 of Regulation (EC) No 343/2003, or on the Member State in which the person concerned should be reunited,~~ ⇒ on any matter related to the application of this Regulation, ⇐ they may have recourse to the conciliation procedure provided for in paragraph 2 ~~of this Article~~.
2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article ~~2740~~<sup>109</sup> ~~of Regulation (EC) No 343/2003~~. By agreeing to use the conciliation procedure, the Member States concerned undertake to take the utmost account of the solution proposed.

The Chairman of the Committee shall appoint three members of the Committee representing three Member States not connected with the matter. They shall receive the arguments of the parties either in writing or orally and, after deliberation, shall propose a solution within one month, where necessary after a vote.

<sup>109</sup> **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

The Chairman of the Committee, or his deputy, shall chair the discussion. He may put forward his point of view but he may not vote.

Whether it is adopted or rejected by the parties, the solution proposed shall be final and irrevocable.

---

↓ 343/2003/EC

⇒ Council

## CHAPTER ~~VIII~~

### TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

⇒ Article 35 A ⇒ [...] ⇐

#### Data security and data protection

Member States shall take all appropriate measures to ensure the security of transmitted personal data ⇒ [...] ⇐ and in particular to avoid unlawful or unauthorized access or disclosure, alteration or loss of personal data processed.

Each Member State shall provide that the national supervisory authority or authorities designated pursuant to Article 28(1) of Directive 95/46/EC shall monitor independently, in accordance with its respective national law, the lawfulness of the processing, in accordance with this Regulation, of personal data by the Member State in question.



*Article 35 B ↻ [...] ⌂*

*Confidentiality*

Member States shall ensure that the authorities referred to in Article 33 are bound by the confidentiality principle as defined in national law, in relation to any information they obtain in the course of their work. ⌂

---

↓ new

*Article 36*

*Penalties*

Member States shall take the necessary measures to ensure that any misuse of data processed in accordance with this Regulation is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.

---

↓ 343/2003/EC (adapted)

→ Council

*Article ~~24~~37*

*⊠ Transitional measures ⊠*

~~1. This Regulation shall replace the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 (Dublin Convention).~~

~~2. However, to ensure continuity of the arrangements for determining the Member State responsible for an application for asylum, wWhere an application has been lodged after the date mentioned in the second paragraph of Article ~~29~~44, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date, with the exception of the events mentioned in Article 14(2). ~~10~~(2).~~

~~3. Where, in Regulation (EC) No ~~2725~~/2000 reference is made to the Dublin Convention, such reference shall be taken to be a reference made to this Regulation.~~

Article ~~25~~38

~~⊗~~ Calculation of time-limits ~~⊗~~

~~1.~~ Any period of time prescribed in this Regulation shall be calculated as follows:

- (a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;
- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
- (c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

~~2. Requests and replies shall be sent using any method that provides proof of receipt.~~

Article ~~26~~39

~~⊗~~ Territorial scope ~~⊗~~

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

Article ~~27~~40

~~⊗~~ Committee ~~⊗~~<sup>10</sup>

1. The Commission shall be assisted by a committee. ~~⊗~~ That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. ~~⊗~~
2. Where reference is made to this paragraph, Article 5 ~~⊗~~ of Regulation (EU) No 182/2011 ~~⊗~~ ~~⊗~~ [...] ~~⊗~~ shall apply.

~~⊗~~ [...] ~~⊗~~

↓ 1103/2008/EC, pt. 3(4) of the Annex  
⊗ Council

~~⊗~~ [...] ~~⊗~~

---

<sup>110</sup> **CY, EL, FR, AT, SI:** scrutiny reservations on the choice of the implementing acts procedure in the proposal; **SI** in relation with its request to have a wording added in this provision to the effect of preventing **Cion** from adopting a draft implementing act when no opinion is delivered by the Committee (in accordance with Article 5(4) of Regulation No 182/2011) as regards the implementing acts procedures in Articles 6(5), 8(5) and 11(3).

---

↓ 343/2003/EC (adapted)

☞ Council

☞ [...] ☞

☞ [...] ☞

☞ [...] ☞

☞ [...] ☞<sup>111</sup>

☞ [...] ☞

*Article ~~28~~41*

*☒ Monitoring and evaluation ☒*

At the latest three years after the date mentioned in the first paragraph of Article ~~44~~ ~~29~~, the Commission shall report to the European Parliament and the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

☒ After ~~☒ H~~ having submitted that report, the Commission shall report to the European Parliament and the Council on the application of this Regulation at the same time as it submits reports on the implementation of the Eurodac system provided for by Article ~~4(5)~~ ~~28~~ of Regulation (EC) No ~~2725/2000~~ [...] ☒ [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation] ☒.

---

<sup>111</sup> **EL, FR, AT:** scrutiny reservations for the deletion of former Articles 40A, 40B and 40C.

---

↓ new

*Article 42*

*Statistics*

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council, Member States shall communicate to the Commission (Eurostat), statistics concerning the application this Regulation and of Regulation (EC) No 1560/2003.

---

↓

*Article 43*

*Repeal*

Regulation (EC) 343/2003 is repealed.

Articles 11(1), 13, 14 and 17 of Commission Regulation (EC) No 1560/2003 are repealed.

References to the repealed Regulation or Articles shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

---

↓ 343/2003/EC(adapted) (adapted)

⇒ new

*Article ~~2944~~*

*⊗ Entry into force and applicability ⊗*

This Regulation shall enter into force on the ~~20th~~ twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply to ~~asylum~~ applications ⇒ for international protection ⇐ lodged as from the first day of the sixth month following its entry into force and, from that date, it will apply to any request to take charge of or take back asylum seekers, irrespective of the date on which the application was made.

The Member State responsible for the examination of an ~~asylum~~ application ⇒ for international protection ⇐ submitted before that date shall be determined in accordance with the criteria set out in ~~the~~ ⊗ Regulation (EC) No 343/2003 ⊗ ~~Dublin Convention~~.

This Regulation shall be binding in its entirety and directly applicable in the Member States in conformity with the Treaty establishing the European Community.

Done at [...]

*For the European Parliament*

*For the Council*

*The President*

*The President*

[...]

[...]



**ANNEX I**

**REPEALED REGULATION (REFERRED TO IN ARTICLE 43)**

Council Regulation (EC) No 343/2003

(OJ L 50, 25.2.2003)

Commission Regulation (EC) No 1560/2003 only Articles 11(1), 13, 14 and 17

(OJ L 222, 5.9.2003)

---



## ANNEX II

### CORRELATION TABLE

Regulation (EC) 343/2003	This Regulation
Article 1	Article 1
Article 2(a)	Article 2(a)
Article 2(b)	deleted
Article 2(c)	Article 2(b)
Article 2(d)	Article 2(c)
Article 2(e)	Article 2(d)
Article 2(f)	Article 2(e)
Article 2(g)	Article 2(f)
-	Article 2(g)
Article 2(h) to (k)	Article 2(h) to (k)
-	Article 2(l)
Article 3(1)	Article 3(1)
Article 3(2)	Article 17(1)
Article 3(3)	Article 3(3)
Article 3(4)	Article 4(1), introductory wording
-	Article 4(1)(a) to (g)
-	Article 4(2) and (3)
Article 4 (1) to (5)	Article 20 (1) to (5)
-	Article 20 (5), third sub-paragraph
-	Article 5
-	Article 6

Article 5(1)	Article 7(1)
Article 5(2)	Article 7(2)
-	Article 7(3)
Article 6, first paragraph	Article 8(1)
-	Article 8(3)
Article 6, second paragraph	Article 8(4)
Article 7	Article 9
Article 8	Article 10
Article 9	Article 13
Article 10	Article 14
Article 11	Article 15
Article 12	Article 16
Article 13	Article 3(2)
Article 14	Article 12
Article 15(1)	Article 17(2), first sub-paragraph
Article 15(2)	Article 11(1)
Article 15(3)	Article 8(2)
Article 15(4)	Article 17(2), fourth sub-paragraph
Article 15(5)	Articles 8(5) and Article 11(2);
Article 16(1)(a)	Article 18(1)(a)
Article 16(1)(b)	Article 18(2)
Article 16(1)(c)	Article 18(1)(b)
Article 16(1)(d)	Article 18(1)(c)
Article 16(1)(e)	Article 18(1)(d)
Article 16(2)	Article 19(1)
Article 16(3)	Article 19(2), first sub-paragraph

-	Article 19(2), second sub-paragraph
Article 16(4)	Article 19(3)
	Article 19(3), second sub-paragraph
Article 17	Article 21
Article 18	Article 22
Article 19(1)	Article 25(1)
Article 19(2)	Article 25(2) and Article 26(1)
-	Article 26(2) to (6)
Article 19(3)	Article 28(1)
Article 19(4)	Article 28(2)
-	Article 28(3)
Article 19(5)	Article 28(4)
Article 20(1), introductory wording	Article 23(1)
-	Article 23(2)
-	Article 23(3)
-	Article 23(4)
Article 20(1)(a)	Article 23(5), first sub-paragraph
Article 20(1)(b)	Article 24(1)
Article 20(1)(c)	Article 24(2)
Article 20(1)(d)	Article 28(1), first sub-paragraph
Article 20(1)(e)	Article 25(1), (2), Article 26(1), Article 28(1), second and third sub-paragraphs;
Article 20(2)	Article 28(2)
Article 20(3)	Article 23(5), second sub-paragraph
Article 20(4)	Article 28(4)
-	Article 27

-	Article 29
-	Article 30
-	Article 31
Article 21(1) to (9)	Article 32(1) to (9) first to third sub-paragraph
	Article 32(9) fourth sub-paragraph
Article 21(10) to (12)	Article 32(10) to (12)
Article 22(1)	Article 33(1)
-	Article 33(2)
-	Article 33(3)
Article 22(2)	Article 33(4)
Article 23	Article 34
Article 24(1)	deleted
Article 24(2)	Article 37
Article 24(3)	deleted
Article 25(1)	Article 38
Article 25(2)	deleted
Article 26	Article 39
Article 27(1), (2)	Article 40 (1), (2)
Article 27(3)	deleted
Article 28	Article 41
Article 29	Article 44
-	Article 35
-	Article 36
-	Article 42
-	Article 43

Regulation (EC) 1560/2003	This Regulation
Article 11(1)	Article 11(1)
Article 13(1)	Article 17(2), first sub-paragraph
Article 13(2)	Article 17(2), second sub-paragraph
Article 13(3)	Article 17(2), third sub-paragraph
Article 13(4)	Article 17(2), first sub-paragraph
Article 14	Article 35
Article 17(1)	Articles 9, 10, 17(2), first sub-paragraph
Article 17(2)	Article 32(3)