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THE EUROPEAN UNION**

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NOTE

from: Presidency
to: JHA Counsellors
on: 29 February 2012

No. Cion prop.: 16929/08 ASILE 26 CODEC 1758

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

Delegations will find in the annex to this note certain compromise suggestions made by the Presidency concerning the above draft Regulation, with a view to the discussion at the JHA Counsellors' meeting on 29 February 2012.

The Presidency suggests changes to Article 6, 26, 27 and 31. The suggested changes reflect the discussions on the meetings of 23 January, 3 February and 23 February 2012.

On Article 6, the Presidency suggests to change the wording in order to obtain a clearer view of the obligations in light of Article 8. The wording of Article 6 states that the *Member State in which the application for international protection was lodged by the unaccompanied minor shall, as soon as possible, and on account of indications making it possible to identify the family member or other relatives on the territory of the Member States collect and follow up on such information for the purpose of applying Article 8 of this Regulation.* Thereby the Presidency believes that it has been made clearer that Article 6 has as its main purpose to collect information in order to apply Article 8.

On the discussion of Article 26, the Presidency suggests in Paragraph 3 to move both the notion that a decision shall be taken within a reasonable period of time and the notion that a decision rejecting the request for the suspension of the implementation the transfer decision shall state the reasons on which it was based. Also it has been added that no transfer may take place until a decision has been taken. In Paragraph 5, the Presidency suggests to align the wording with the wording of the draft asylum procedures directive Article 20.

Detention, which is regulated in Article 27, should not be conducted for the sole reason that the person in question is an applicant for international protection. The Presidency therefore suggests reinserting this principle in the beginning of the text, bearing in mind that this principle already prevails in the Member States. On the basis of the discussion of JHA Counsellors' meeting on 23 February 2012, the Presidency suggests to amend the text in line with the proposals put forward by more delegations, thereby stating that detention shall be as short as possible and no longer than the time reasonably necessary to fulfil the required administrative procedures until the transfer is carried out. In their national legislation, Member States shall lay down provisions on conditions for detention of and guarantees applicable to persons detained.

The discussion on Article 31 was conducted in the light of an amended proposal issued as a room document from the Commission. The version included in the annex takes into account the text of this room document and the concerns expressed by Member States during the meeting of 23 February 2012 on an active role for the Council, which has been included in a separate paragraph, which gives the Council the possibility to oversee the entire process, while maintaining the reference to solidarity measures. The previous wording on the role of the Council in Paragraph 2, could raise questions as to the role of the Council in situations where a crisis management plan exists.

The new Presidency compromise text in the annex has been highlighted in **bold and underlined**.

Presidency Compromise text proposals
Dublin-Regulation

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.
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 relevant documents in the applicant's file-including the specific leaflet for unaccompanied minors.
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.

4. ~~**For the purpose of applying Article 8 of this Regulation, ¶**~~The Member State **in which where** the application for international protection was lodged by the unaccompanied minor shall, **as soon as possible, and on account** if the minor is in possession of **indications information** making it possible to identify the family member within the meaning of Article 2(g) or other relatives **within the meaning of as referred to** in Article 2 (ga) on the territory of Member States, ~~**as soon as possible after its lodging, collect and follow up on**~~ such information, ~~**for the purpose of applying Article 8 of this Regulation for example, by sharing information with other Member States, as outlined in Article 32,**~~ 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).

Article 26

Remedies

1. The applicant or another person as referred to in Article 18(1) (c) or (d) 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. 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. The introduction of such a request may have a suspensive effect on the implementation of the transfer decision.

The decision on whether to suspend the implementation of the transfer decision, shall be taken within a reasonable period of time. No transfer shall take place before this decision is taken.

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.

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.

~~**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.**~~

4. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.
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 **and without hindering the applicant's access to justice**, Member States may **provide limit that** free legal assistance **not be granted to cases** where the appeal or review is **considered by a court or tribunal to have no tangible prospect of success likely to succeed**.

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.

Article 27

Detention

1. **Member States shall not hold a person in detention for the sole reason that he/she is an applicant for international protection who is subject to the procedure established by this Regulation.**

Member States may detain persons in order to secure ~~a~~ transfer **procedures** to the responsible Member State in accordance with this Regulation when there is a ~~serious~~ risk of absconding, on the basis of an individual assessment and only in so far as detention is proportional, if other less coercive alternative measures cannot be applied effectively.

Detention shall be as short as possible and no longer than the time reasonably necessary to fulfill the required administrative procedures until the transfer under this Regulation is carried out for carrying out the responsibility determination under this Regulation.

Member States shall lay down **in their national legislation** 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** in accordance with relevant EU and international instruments, as applicable.

A mechanism for Early warning, and preparedness and crisis management

1. Where, based in particular on the information gathered by EASO pursuant to **Articles 9 and 11 of Regulation (EU) 439/2010 or the assessment of the needs of a Member State pursuant to Article 9(1) of Regulation (EU) 439/2010, a situation of particular pressure on a Member State's asylum system is identified and/or where** the Commission identifies problems in the functioning of the asylum system of a Member State which may jeopardise the ~~future~~ application of this Regulation, the Commission, in cooperation with EASO, shall address recommendations to that Member State inviting it to draw up a preventive action plan designed to counter the problems identified. The Member State concerned shall inform the Council and the Commission whether it intends to present a preventive action plan following the Commission's recommendations.

A Member State may **upon its own discretion and initiative** draw up a preventive action plan **of its own initiative**.

When drawing up a preventive action plan, the Member State In this regard, it may call for the assistance of the Commission and EASO.

2. a) _____ Where a preventive action plan is drawn up, the Member State concerned shall submit it as well as regular reports on its implementation to the Council and the Commission. Where necessary, the Commission shall submit reports on its implementation to the Council.
- b) **Where the implementation of the preventive action plan does not remedy the deficiencies identified or where there is a serious risk that the asylum situation in that Member State develops into a crisis, the Commission may request the adoption of a crisis response action plan and necessary subsequent revisions thereof.**

The Council may request further information on this subject and provide political guidance, including on the necessity to adopt a crisis management action plan and any other measures of solidarity as it deems appropriate.

3. a) Following the request from the Commission, ~~T~~the Member State concerned shall, in cooperation with the Commission and EASO, elaborate a crisis management action plan ~~if the preventive action plan does not lead to an improvement of the situation. Before the plan becomes operational, the Council shall have a political discussion on the crisis management action plan.~~
- b) The Member State concerned shall submit ~~the crisis management action plan and at least every three months~~ reports ~~at least every three months~~ on ~~its the~~ implementation ~~of the crisis management action plan~~ to the Commission ~~and, EASO and other EU-agencies as appropriate. The Commission shall inform the European Parliament and the Council on progress. Based on a discussion in the Council, the Commission may, in cooperation with the Member State concerned and after informing EASO, amend the crisis management action plan to take into account any developments revealed by the regular reports.~~
4. The Council will regularly follow the situation and may request further information and provide political guidance throughout the entire process, including on any measures of solidarity as it deems appropriate.

This Article is without prejudice to Articles 258, 259 and 260 of the Treaty on the Functioning of the European Union.