



Council of the
European Union

Brussels, 20 November 2014
(OR. en)

15567/14

**Interinstitutional File:
2014/0202 (COD)**

LIMITE

**ASILE 33
CODEC 2257**

NOTE

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| From: | Presidency |
| To: | Delegations |
| No. Cion doc.: | 11864/14 ASILE 19 CODEC 1626 |
| Subject: | Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State |

In view of the meeting of the Asylum Working Party on 26 November 2014, delegations will find in Annex a new Presidency compromise text. The changes compared to the previous Presidency compromise text (15120/14) are indicated in **bold**.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(e) thereof,

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

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

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

- (2c) In particular, in order to ensure that **applications for international protection made by unaccompanied minors are examined promptly, the Member State responsible should be one have prompt access to the procedure for determining international protection, if a Member State** which has already taken a decision on the application for international protection on ~~the basis of an adequate and complete examination of~~ its substance in line with the requirements of Directive 2011/95/EU, ~~that Member State should be the Member State responsible~~. However, in view of protecting the best interests of the minor, the respective Member States should ensure a swift completion of the Dublin procedure, including, where applicable, of any appeal against a transfer decision, and of the actual implementation of the transfer, **while taking into account specific circumstances, such as the necessity to carry out age assessment procedures.**
- (2d) Member States should also ensure that the unaccompanied minor is given an effective opportunity to explain why he or she has left the Member State which has already taken a decision at first instance on his or her application for international protection, and due account of his or her views in line with his or her age and maturity should be taken, including by consulting with his ~~or her~~ ~~her~~ representative.
- (2e) **As acknowledged by Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, Unaccompanied minors seeking international protection are particularly more vulnerable than adults and therefore their to abuse and exploitation. Their** secondary movements in several Member States can put them at risk, **including of becoming victims of trafficking in human beings.** In view of ensuring that their best interests are protected and that the asylum procedure is not misused, it is important to discourage and prevent such movements and exploitation.

- (3) The situation of an unaccompanied minor with no family member legally present in the territory of a Member State, who has lodged asylum applications in one or more Member States, and who is present in the territory of a Member State without having lodged an application there, has not been addressed by the judgment. In order to ensure a coherent provision on unaccompanied minors in this Regulation and avoid legal uncertainty, the criterion for establishing the Member State responsible in such a situation should equally be provided for.
- (4) According to the judgment, the Member State responsible should inform accordingly the Member State with which the first application has been lodged. Since the asylum application is required to be examined only by a single Member State, the Member State responsible should inform of its decision the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge or take back the minor, as the case may be.
- (5) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation.]
- (6) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (7) Regulation (EU) No 604/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

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

- "4a. Where the unaccompanied minor has no family member, sibling or relative legally present in a Member State as referred to in paragraphs 1 and 2, the Member State responsible shall be the one where the unaccompanied minor has lodged an application for international protection and is present, provided that this is in the best interests of the minor.
- 4b. By way of derogation from paragraph 4a, the Member State responsible shall be the one that has already taken a decision at first instance **regarding the ~~on the basis of an adequate and complete examination of its~~ substance of the application for international protection** in line with the requirements of Directive 2011/95/EU, unless this is not in the best interests of the minor.
- 4c. Where a Member State with which an application for international protection has been lodged by an unaccompanied minor and where the minor is present considers that the Member State responsible is, in application of paragraph 4b of this Article, the Member State which has already taken a decision at first instance regarding the substance of the application for international protection, the period for submitting a take back request shall not exceed one month from the lodging of the application for international protection.**

Member States may, in duly justified circumstances related to the assessment of the best interests of the minor, exceed this time limit by a maximum of one more month.

The requesting Member State shall ask for an urgent reply to the take back request. This reply shall be given within two weeks of receipt of the request.

The transfer of the unaccompanied minor from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible and at the latest within four months of acceptance of the responsibility by the requested Member State. Member States shall ensure that, within this period, the applicant can exercise his or her right to an effective remedy, including receiving a final decision on the appeal or review where there is a suspensive effect in line with Article 27(3) of this Regulation.

Where the requesting Member State fails to comply with the time limits of one or two months laid down in subparagraphs 1 and 2 for submitting a take back request, the responsibility shall be transferred to the requesting Member State.

Where the requested Member State fails to reply within the period of two weeks laid down in subparagraph 3 to the take back request, this shall be tantamount to accepting the request and entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for arrival, unless the requested Member State demonstrates that it is not in the best interests of the minor to be sent back there. In all circumstances, a minor shall not be transferred in the absence of an explicit agreement between the requesting Member State and the responsible Member State on the specific transfer modalities.

Where the transfer of the minor does not take place within the period of four months laid down in subparagraph 4, the responsibility shall be transferred to the requesting Member State. The responsible Member State shall prioritize the examination of the application for international protection, in line with Directive 2013/32/EU.

~~4c. Paragraph 4b shall only apply provided that:~~

- ~~i) by way of derogation from Article 34(5), the period for the requested Member State to reply to a request for information concerning point (g) of Article 34(2) does not exceed one week from the receipt of such request; and~~
- ~~ii) by way of derogation from Article 23(2), the period for submitting a take back request does not exceed one month from the lodging of an application and the requesting Member State asks for an urgent reply in these cases; and~~
- ~~iii) by way of derogation from Article 25(1), the reply of the requested Member State does not exceed two weeks from the receipt of the request.~~

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

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

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

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

Where the unaccompanied minor referred to in the first subparagraph lodges an application in the Member State where he or she is present, the rules provided for in paragraphs 4a, 4b and 4c apply.

Where the unaccompanied minor referred to in the first subparagraph does not lodge an application in the Member State where he or she is present, the Member State responsible shall be the one where the unaccompanied minor has lodged his or her most recent application **and which, where applicable, has already taken a decision at first instance regarding the substance of the application for international protection**, unless this is not in the best interests of the minor.

- 4e. The Member State, which is responsible pursuant to paragraph 4a, shall inform the following Member States, as applicable, thereof:
- (a) the Member State where the unaccompanied minor previously lodged an application for international protection;
 - (b) the Member State previously responsible;
 - (c) the Member State conducting a procedure for determining the Member State responsible;
 - (d) the Member State which has been requested to take charge of the unaccompanied minor;

(e) the Member State which has been requested to take back the unaccompanied minor.

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

Article 2

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

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President
