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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	16694/14 ASILE 39 CODEC 2471
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Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State - Preparation for the first informal dialogue

Introduction

1. On 26 June 2014, the Commission submitted a 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.

2. The Commission did not undertake specific consultations and an impact assessment for this narrowly targeted proposal because constitutes a follow-up to the comprehensive consultation and impact assessment accomplished in preparation of its proposal COM (2008)820 final to recast Council Regulation (EC) No 343/2003. Consequently, in the context of this proposal, Council's preparatory bodies did not conduct an impact assessment discussion.
3. The proposal aims to clarify the determination of the Member State responsible for examining the applications for international protection of unaccompanied minors. This issue was left unresolved between the Council and the European Parliament when, in June 2013, the Dublin III Regulation was adopted. At that time, both co-legislators invited the Commission, without prejudice to its right of initiative, to submit a proposal once the Court of Justice had ruled in case C-648/11 MA and Others vs Secretary of State for the Home Department.
4. The Asylum Working Party and the Justice and Home Affairs Counsellors have examined the proposal at several meetings. In light of the outcome of the meeting of the Justice and Home Affairs Counsellors on 26 January 2015, the Presidency submits a new suggestion for a compromise text in Annex I. Changes to the previous text as reflected in document 5018/14 are indicated in **bold**.
5. On 22 January 2015, the rapporteur of the European Parliament presented her draft report to the LIBE Committee. Except for some clarifications, the rapporteur proposes a position of the European Parliament which follows the proposal of the Commission. This approach received broad support within the LIBE Committee.

Main outstanding issue

6. Within Council's preparatory bodies, there is broad support for the principle to make the Member State where the unaccompanied minor has lodged his or her application for international protection and where he or she is present responsible for examining the application.
7. There is also broad support for making a derogation to that principle and allowing an unaccompanied minor applicant to be transferred to a Member State that has already taken a first instance decision on the substance of the application provided that this is in the best interests of the minor and certain conditions are respected. A transfer within the Dublin system could be considered to be in the best interests of an unaccompanied minor in case it would result in earlier certainty about his or her right to international protection.
8. However, delegations' views differ with regard to time-limits to such transfers. Time-limits are important because in case a Member State, which has requested another Member State to take back an unaccompanied minor, does not succeed in accomplishing the transfer within the set time-limits, it will become responsible for examining the application.
9. On the one hand, some delegations oppose time limits that could enable unaccompanied minors to lodge applications for international protection in several Member States with the aim to obtain a protection status in the Member State that offers the best conditions, so-called asylum shopping. These delegations expressed doubts whether they would be able to accomplish in all cases the transfer of the unaccompanied minor within the maximum time limits, in particular if this time limit would include the time needed for an appeal on the transfer decision. In this context, specific concerns were expressed in relation to absconding of unaccompanied minor applicants during the procedure to decide on a transfer to another Member State. Unaccompanied minors that disappear until after the time-limits, would oblige the Member State where they are present to examine their application.

10. On the other hand, several delegations would prefer not to allow transfers of unaccompanied minors at all. These delegations consider this not to be in the best interests of the child. They could however consider transfers of unaccompanied minors provided that the period for deciding on the transfer remains as short as possible.
11. The Commission takes a similar view considering it essential to ensure that unaccompanied minors do not remain in the Dublin procedure for a longer time than what is strictly necessary in view of determining the Member State best placed to examine or continue to examine the minor's application. Against that background, the Commission does not want the Dublin procedure to be longer than 6 months, which is maximum period for examining an application for international protection laid down in Article 31 of the Asylum Procedures Directive.
12. With a view to finding a compromise between these diverging views, the Presidency suggests an amendment to Article 6(4a) and the corresponding recital (2c) allowing Member States to transfer an unaccompanied minor provided that the period for transferring him or her is not longer than 6 months from the lodging of the application. This initial period of 6 months may be extended in exceptional cases, such as absconding of the minor or pending appeal procedures, for the shortest time necessary which shall not exceed the maximum of three months. This period includes the time needed for the applicant to exercise his or her right to an effective remedy against the transfer decision.

Conclusion

13. The Permanent Representatives Committee is invited to agree that the text as it appears in Annex I can serve as a mandate for the Presidency for opening negotiations with representatives of the European Parliament. The aim of these negotiations would be to reach a first reading agreement on this proposal as soon as possible.

2014/0202 (COD)

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. .

Whereas³:

- (1) Regulation (EU) No 604/2013 of the European Parliament and of the Council⁴ 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) 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.
- (2a) It is in the interest of unaccompanied minors not to prolong unnecessarily the procedure for determining the Member State responsible, and to ensure that unaccompanied minors have prompt⁵ access to the procedure for determining the international protection status.
- (2b)⁶ 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 views in accordance with his or her age and maturity, including his or her background.

³ **BG, HR** suggested to replace throughout the text "asylum" with "international protection".

⁴ 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).

⁵ **RO, SI** (both in recital 2b and recital 2c) considered the use of "prompt" not necessary given that recital (5) of the Dublin III Regulation already uses the phrase "to determine rapidly the Member State responsible".

⁶ **BG, HR** suggested to insert after "prompt" the phrase "and effective".

Scrutiny reservation: **RO**

(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 which has already taken a decision on the application for international protection on its substance in line with the requirements of Directive 2011/95/EU.⁷ 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 transfer⁸. To achieve this objective, **while the standard rules of procedures for take back requests contained in Regulation (EU) No 604/2013 remain applicable**, an appropriate maximum time limit should be established for completing the process of determining the Member State responsible and transferring of the minor to the Member State responsible, which should be shorter than the maximum time limit applicable to the other applicants. Member States should have the possibility to extend the maximum time limit in **exceptional cases such as** an unaccompanied minor **absconding or pending appeal procedures absconds with the aim to avoid transfer to the Member State responsible**. Furthermore, ~~while the standard rules on procedures for take back requests contained in Regulation (EU) No 604/2013 remain applicable~~, a **different** time limit **than the ones foreseen in Article 25(1) of Regulation (EU) 604/2013** should be established to reply to a take back request of unaccompanied minors covered by this Regulation.

⁷ Scrutiny reservation **SI** on first sentence.

⁸ **RO** considered the last sentence superfluous.
Scrutiny reservation: **SI**

- (2cbis) The time limits established by this Regulation should be applied to all cases where Member States transfer unaccompanied minors to a Member State on the basis of the fact that it has already taken a decision on the application for international protection on its substance in line with the requirements of Directive 2011/95/EU. Throughout the transfer procedure, Member States should continue to take into account the best interests of the minor and the receiving Member State should provide for proper arrangements for arrival.
- (2d)⁹ 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 decision¹⁰ 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 representative.
- (2e)¹¹ 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, minors are more vulnerable than adults and therefore 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.

⁹ **SI** suggested to delete this recital because it entails a new obligation, whereas no corresponding provision is included in the body of the text.
RO considered that this recital adds requirements to the obligation that is already upon Member States to conduct a personal interview.

¹⁰ **BG, HR** suggested to insert "on substance".

¹¹ Scrutiny reservation in relation to reference to trafficking: **UK**.
RO noted that this recital does not have a corresponding provision in the body of the text.

- (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 State¹² 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 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, the United Kingdom has notified its wish to take part in the adoption and application of this Regulation.
- (5a) In accordance with Articles 1,2 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, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

¹² **BG, HR** suggested to replace "previously responsible" with "where the application has been previously lodged".

- (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:¹³

"4a. Where paragraphs (1) or (2) are not applicable, 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."¹⁴

¹³ **ES, CY, SI** expressed the position that the consideration of the best interest of a child would always make the Member State where the unaccompanied minor is present responsible for the examination of his or her asylum application. Therefore, these delegations could accept Article 1 paragraph 4a but not Article 1 paragraphs 4b and 4c.

CY expressed concerns about the legality of the paragraphs 4b and 4c and suggested to make the paragraphs 4b and 4c optional ("may" clauses).

CY, SI take a reservation on these paragraphs, whereas **ES** could consider the overall Presidency compromise.

¹⁴ Reservation **SI** on the phrase "provided that this is in the best interests of the minor" considering this a mandatory element of the decision and therefore open to appeal. **SI** expressed similar concerns as regards paragraph 4b. **SI** suggested to include a new subparagraph: "Member States shall consider the principle of the best interests of the minor when applying this Article" or, alternatively, to have a more general reference as in Article 6(1) of the Dublin III Regulation. **SI** considered that this would also eliminate the need to refer to the best interests of the minor in every (sub) paragraph.

4b. ¹⁵ 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 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. ¹⁶ 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 and 4b apply.

¹⁵ Reservation: **CY** proposing to replace paragraph (4b) with the following text: "By way of derogation from paragraph 4a, ~~the Member State responsible shall be the one where the minor is present~~ may submit a take back request to the Member State that has already taken a negative decision at first instance regarding the 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. **The Member State responsible shall accept the responsibility after taking all the information provided by the requesting Member State and evaluating that this is in the best interest of the child.**"

In this context, the **Cion** confirmed that the Dublin Regulation is not applicable to situations where an applicant has been granted international protection status. Furthermore, **CY** suggested to specify that the requesting Member State must attach to the take back request an assessment of the best interests of the child in order to inform the requested Member State properly. The **Cion** explained that this is something that could be envisaged in the framework of the revision of the Dublin Implementing Regulation.

¹⁶ Reservation: **SI** on obligation to inform the unaccompanied minor of the right to make an application suggesting to delete the phrase "shall inform the unaccompanied minor of the right to make an application".

Scrutiny reservation **PL** on time frames.

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 that has already taken a decision at first instance regarding the substance of the application for international protection, and, in the absence of such decision, the one where the unaccompanied minor has lodged his or her most recent application, unless this is not in the best interests of the minor.

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

In Regulation (EU) No 604/2013 new paragraphs 4a and 4b are added to Article 6 as follows¹⁷:

¹⁷ Scrutiny reservation: **FR, RO, UK** on making changes to Article 6 of the Dublin III Regulation.

4a. ¹⁸¹⁹ For the purpose of applying Article 8(4b), the period for transferring the minor to the Member State responsible shall not exceed six months from the lodging of the application for international protection in the Member State where the minor is present. Member States shall ensure that, within this period, the applicant can exercise his or her right to an effective remedy, in accordance with Article 27 of this Regulation. ~~This time limit may be extended by a maximum of three months if the minor absconds.~~ **In exceptional cases, such as absconding of the minor or pending appeal procedures, this time limit may be extended for the shortest period necessary which shall not exceed the maximum of three months.** Where the transfer of the minor does not take place within the time limits mentioned in this paragraph, Article 8(4a) shall apply.

¹⁸ The **Cion** explained that if, for whatever reason, including the applicant absconding, the requesting Member State cannot comply with the maximum time limits, then the requesting Member State (the Member State where the unaccompanied minor lodged the most recent application and where he/she is present) remains the Member State responsible and paragraph 4a is applicable.

¹⁹ Reservation: **AT, RO, SI** suggesting to further simplify the text and to refrain from references to concrete time limits. **AT, RO** indicated that, in case time limits are used, 6+3 could be acceptable provided that this time limit would start running from the moment the reply to a take back request is received.

Scrutiny reservation on including time limits: **UK**

Reservation: **CY** proposing to add as a ground for extension of the time limit: "or a decision on an appeal or review against a transfer is pending before a court of tribunal". **SK, UK** could support this proposal.

Reservation: **DE, EL, HR, PL, SK** preferring a 9 months' time limit. However, **DE**, supported by **HR, SK, UK**, could consider 6+3 months if extension would be allowed "in exceptional cases, such as absconding". **PL** could accept this **DE** suggestion provided that this time limit would start running from the moment the reply to a take back request is received as suggested by **AT**.

ES, FR, PT, MT would prefer not to have Dublin transfers of unaccompanied minors in derogation from Article 8(4a). However, with a view to reducing the risk of asylum shopping and provided that the best interests of the child are respected, except for **ES**, these delegations can support the Presidency compromise.

In order to comply with the principles laid down in Court ruling in case C-648/11, the **Cion** stressed that it is essential to ensure that unaccompanied minors do not remain in the Dublin procedure more than what is strictly necessary in view of determining the Member State best placed to examine/continue to examine the minor's application. In particular, the Dublin procedure should not be longer than 6 months (which is maximum period for examining an application for international protection laid down in Article 31 of the Asylum Procedures Directive).

The responsible Member State shall prioritize the examination of the application for international protection, in line with Directive 2013/32/EU.²⁰

4b.²¹ In order to ensure a swift processing of cases provided for in paragraph 4a, the requesting Member State shall ask for an urgent reply to the take back request. ~~By way of derogation from Article 25(1) of Regulation (EU) No 604/2013, the~~ The reply shall be given within three weeks of the receipt of the request.

Where the requested Member State fails to reply within the period of three weeks laid down in the first subparagraph to the take back request, this shall be tantamount to accepting the request and, provided that it is in the best interests of the minor, entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for arrival.²²

²⁰ Scrutiny reservation: **SI** opposing prioritisation and the reference to Directive 2013/32/EU. In response, **Cion** indicated that this poses no legal problem because the Dublin III Regulation is a *lex specialis* to the Asylum Procedures Directive.

²¹ **HR** noted that Article 2 paragraph 4b only relates to take back requests, and that, consequently, the time limits for take back requests of unaccompanied minors differ from the time limits of take charge requests of unaccompanied minors. In order to align these time limits, **HR** suggested either to provide that the time limits for take back and take charge requests are the same or to delete paragraph 4b.

²² Scrutiny reservation: **PL** whether 3 weeks would be enough to determine the best interests of the child.

Scrutiny reservation: **FI, SE, SI** on phrase "provided that it is in the best interests of the child".

Article 3

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
