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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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)

I. Introduction

1. Further to the Coreper meeting of 11 April 2018, discussions continued on the Dublin file in the Friends of the Presidency format on 11-13 April 2018. Good progress was made in streamlining the text and in identifying some key political issues in Chapters I to VI of the Dublin regulation as set out in the annex to this note and which are now referred to Coreper level for discussion and guidance. The key issues presented in this note should not be seen in isolation but as part of **several sets of building blocks**. In line with the common understanding that emerged from the last Coreper meeting, the Presidency is taking forward and intensifying the work on all the "building blocks" of the asylum and migration system in parallel to the work on the Dublin proposal. That work is essential for further creating the pre-conditions required for agreeing on the Dublin reform.

2. **First**, the *broader migration agenda*, notably as concerns reinforced border management, return and the external dimension, is a key element to be taken into account in the discussions on the Dublin reform. A crisis response mechanism, codifying the tools and actions taken during the migration crisis, needs to flank the reformed Dublin system. This ensures that lessons are learnt from the experience of the crisis, that preventive tools are developed to avoid another crisis and that Europe will be prepared to handle any possible difficult situations in the future. Work is taken forward by the Presidency on all these different strands.
3. **Second**, a *comprehensive reform of the Common European Asylum System* is on the table. The Dublin reform needs to be seen in relation to the ongoing negotiations on the other six proposals that make up the reform package and which aim at harmonising, as much as possible, our procedures and rules, at preventing secondary movements, at providing support to genuine asylum seekers and at being tough on abuse. Political agreement has already been reached with the European Parliament in the negotiations on the EU Asylum Agency, and Coreper reached general or partial approaches with regard to the draft Eurodac Regulation, the draft Receptions Conditions Directive, the draft Qualifications Regulation, and the draft Resettlement Regulation. Work is being intensified also on the Asylum Procedures Regulation. In our work on the Dublin Regulation, all delegations need to factor in the results achieved so far on the wider asylum reform, with many of the elements being interrelated and interlinked.
4. **Third**, current elements included in the annex from Chapters I to VI need to be seen as *part of the balanced compromise we will need to achieve across the revised Dublin Regulation*. The Presidency is aware, and understands, that the positions and readiness to compromise on the side of most delegations on chapters I to VI will depend on the compromise solutions to be found on the remainder of the revised Regulation, notably on Chapter VIa concerning measures and additional criteria in response to challenging circumstances and severe crises.

5. As requested by delegations, the Presidency will ensure an in-depth discussion by Coreper on all key issues. Therefore, in addition to today's discussion on the key issues belonging to Chapters I to VI, the Presidency will, as already announced, refer Chapter VIa to Coreper on 2 May and will present compromise suggestions on the key issues of the revised Regulation as a whole, taking into account the state of discussions at that stage, on 15 May.
6. It is with all of the above elements in mind that the main issues from Chapters I to VI of draft Dublin Regulation, as included in the annex to this paper, need to be assessed. The main objectives of these first six chapters are to:
 - (1) ensure quick access of the asylum applicants to an asylum procedure and the examination of the application in substance by a single clearly determined Member State;
 - (2) create a system where one Member State shall be determined efficiently and effectively as responsible for the examination of every application; and
 - (3) discourage abuses and prevent secondary movements of the applicants within the EU, in particular by including clear obligations for applicants to apply in the Member State of first entry and to remain in the Member State that has been determined as responsible under the Dublin list of criteria.
7. The objective of the Presidency is to give delegations a sense of the direction of the compromise proposals on the political elements in the first six chapters. The Presidency believes the attached compromise proposals, as part of the wider compromise and work taken forward on all the different strands, represent a bridging point between the different views expressed by the Member States.

Therefore, the Presidency invites all delegations to engage in the discussions constructively to allow Coreper to give the necessary guidance for work to continue making progress at the technical level on the main elements contained within Chapters I to VI.

II. State of play of negotiations on chapters I-VI of the Dublin Regulation

8. Chapters I to VI of the revised Dublin Regulation have been discussed at the meetings of SCIFA in the Friends of the Presidency format on 15-16 January, 1-2 February and 11-13 April 2018. Following the first examination of the entire Regulation a revised version was issued on 13 March (WK 3030/18), with some amendments in WK 3030/1/18 REV 1.
9. Chapters I to VI (articles 1-33) set the scope and general principles of the Regulation as well as provide for the criteria and procedures for determining the Member State responsible, the application of the rules for dependent persons and discretionary clause. These chapters also regulate the obligations of the Member State responsible, the obligations of the applicants and the consequences if they do not fulfil those obligations, as well as guarantees and specific rules for unaccompanied minors. During the discussions at expert level, a lot of progress has been achieved in streamlining the text, ensuring faster and more efficient determination of the Member State responsible for examination of the application and ensuring effective prevention of secondary movements.
10. The Presidency has also introduced several new articles under these chapters with a view to ensuring convergence of Member States' positions, including amendments to the legal text to reflect ideas expressed at political level. New definitions have also been introduced in Art. 2, new rules on pre-Dublin checks have been provided for under Art. 3, a new Art. 9a on stable responsibility was proposed, a new criterion for determining the Member State responsible was inserted under Art. 9b and a new Art. 32a on exchange of security-relevant information before normal Dublin transfers was also introduced. A great amount of other amendments have been introduced in order to improve the text and ensure consistency.

11. Broad support was received at expert level on most of the amendments proposed under Art. 1-33 of the Regulation. However, the following have been identified as key issues under these six chapters that need additional guidance at Coreper level:

- pre-Dublin checks (Art.3);
- stable responsibility (Art. 9a);
- the list of criteria for determining the member state responsible with focus on the deletion of siblings within the family members criterion and expanding the application of the criterion based on visas and residence permits (Art. 9b to 17);
- the inclusion of the beneficiaries in the scope of the Regulation (Art. 20 (1)(e));
- amended rules for remedies (Art. 28);
- new rules for detention for the purposes of transfer (Art. 29).

III. Pre-Dublin checks

12. The revised Dublin Regulation provides for pre-Dublin checks, which are a completely new element in the Dublin recast with no equivalent under the current Dublin III Regulation. These pre-Dublin checks allow the first Member State in which an application for international protection is lodged to check whether the grounds for inadmissibility related to the first country of asylum or safe third country apply. If the application is indeed found to be inadmissible, and the applicant is effectively returned to the first country of asylum or safe third country, the first Member State will be the Member State responsible and, consequently, the normal application of the Dublin criteria and the ensuing Dublin transfer to another Member State, will not take place. Furthermore, the first Member State may examine the application in an accelerated procedure when it has established that an application was lodged by an applicant coming from a safe country of origin or whether the applicant presents a security risk.

13. The original Commission proposal envisaged, before the start of the process of determining the Member State responsible, a general obligation for the Member State of application to check whether the application is inadmissible on the grounds that the applicant comes from a first country of asylum or a safe third country. If this is the case, the applicant will be returned to that first country or safe third country and the Member State who made the inadmissibility check will be considered responsible for that application. The Member State of application must also check whether the applicant comes from a safe country of origin or presents a security risk, in which case, the Member State of application will be responsible and has to examine the application in accelerated procedure. The respective Commission proposal took into account the proposed automatic corrective allocation mechanism.
14. In light of the changes made in chapter 6A and the introduction of the three-stage approach, the Presidency proposes the rules for access to the procedure for examining the application set in Art. 3 to be differentiated according to the different stages. The proposed amendments take also into account the fact that, on one hand, the Pre-Dublin checks put additional burden on the front-line Member States but, on the other hand, they might be useful in order to differentiate the flows by referring the persons to the appropriate procedures. The Presidency considers that in normal circumstances in some cases these procedures might have negative effects as these may increase the time for the procedures without significant added value.
- Thus the Presidency compromise text proposes to keep pre-Dublin checks optional both during the challenging circumstances and when a Member State is beyond 160 % but to make them obligatory only after the Council adopts the implementing decision in the second sub-phase, where the asylum systems should be reorganised in order to apply the set of measures to better address the pressure.**

IV. Stable responsibility

15. The current Dublin III Regulation sets wide variety of possibilities for cessation and shift of responsibility, including in case of absconding. During the 2015 crisis, it became obvious that the existing rules are not only inefficient, but also contributed significantly to asylum shopping and created an incentive for secondary movements. The Commission's original proposal introduced permanent responsibility, that is, no possibilities for cessation of responsibility. However, from the discussions under the MT and EE Presidencies on the effective solidarity, it emerged that there was a broad support for transforming this type of permanent responsibility into stable responsibility. The basic objective of this type of responsibility shall be to ensure a sufficient period of time without cessation of responsibility, thus mitigating the negative consequences of the current system while at the same time. providing for certain conditions for shifting or ceasing of responsibility.

16. In light of this, **the Presidency has introduced a new Article 9a highlighting the stable responsibility as a general principle of the Regulation (in the current Dublin III Regulation, the rules for cessation and shifting of responsibility are scattered within the text with the main article put under the obligations of the Member State responsible and several other possibilities dispersed within the rest of the text). The Presidency proposal introduces, as a general rule, the responsibility to be linked to the data storage within Eurodac (10 years according to the recent Council text which is currently under negotiations with the European Parliament). Therefore, responsibility would cease after ten years since after such time period, it would no longer be possible to check applicants' biometric data in the system. In addition to that, the proposal envisages cessation of responsibility in case of effective return and shifts the responsibility in case another Member State has issued a residence permit on to the applicant.**

17. Doing away with the shift of responsibility will obviously remove a strong incentive for applicants for absconding. At the same time, it is intrinsically linked to any allocation measures set out in Chapter VIA, as stable responsibility is a necessary condition in order to have a stable calculation basis to measure the burden on a given Member State. The burden that is constituted by the number of persons whose asylum applications any given Member States has to process, can be measured accurately only if the number of applicants any given Member State is responsible for does not shift because of secondary movements and double counting of applications is avoided.

V. List of criteria

18. The list of criteria to determine the Member State responsible is set under Articles 10-17 of the current Dublin III Regulation. The criteria set in this list are used in a hierarchical way in order to determine the responsibility. The hierarchy of criteria as set out in the Dublin III Regulation does not take into account the capacity of the Member States, nor does it aim for a balance of efforts.
19. In practice the criteria most often applied as grounds for transfer were those relating to documentation and entry (Art. 12 and especially Art. 13 under Dublin III), resulting in placing a substantial share of responsibility on Member States at the external border. This has led applicants to seek to avoid being fingerprinted, contributing to secondary movements.
20. The Commission original proposal on the recast preserved the criteria and introduced only one main amendment, that is, the inclusion of the siblings under the definition of family members, thus enlarging the scope of application of Art. 11 “Family members who are beneficiaries of international protection”, as this would relieve some of the pressure on Member States of first entry.

21. On the other hand, this inclusion may lead to unwanted incentives for indefinite number of people to claim family relations in Member States. Applicants may have several siblings located in more than one Member State, which makes it difficult to determine which sibling the applicant should be reunited with. It could also cause a 'multiplier-effect' and a considerable challenge to the competent authorities in verifying alleged or claimed family relations of applicants.
22. In addition, the practice under the existing rules also showed that Eurodac and Visa Information System (VIS) data are accepted as proof by nearly all Member States, and this is the evidence most often relied on when determining responsibility. However, the current text of the Dublin Regulation gives little prominence to the existence of such information, limiting the right to use such information as a proof to 2 years for residence permits and 6 months for visas, after they have expired. This despite the fact that the data storage period for such kind of data is longer under the VIS Regulation.
23. **Against this background, the Presidency has proposed the following amendments in the list of criteria:**
- **introduction of new article 9b setting the responsibility for resettled persons as the first criteria to be applied – this is a new criterion to be introduced in the Dublin Regulation stating that the Member State who takes the decision for the resettlement shall be responsible for this concrete person; this criterion will come at the top of the hierarchy of the list of criteria;**
 - **deletion of 'siblings' as part of the family members criteria (Art. 11);**
 - **amendment in the criterion on the expired visas and residence permits to 5 years, which would be coherent with the move towards more stable responsibility and also takes account of the storage period for data on visa applicants in the VIS (Art. 14);**
 - **strengthening the text in the illegal entry criterion, highlighting that the Member State responsible is the first Member State thus entered (Art. 15);**
 - **streamlining the text regarding the entry of applicants from visa-waived countries by introducing the rule that the responsibility in these cases shall be borne by the Member State of first entry (Art. 16).**

24. In addition, during the discussions at expert level, IT and NL made proposals for including two additional criteria.
25. The Italian proposal is based on the fact that the persons saved in international waters during SAR operations, legally speaking, have not crossed illegally any border. It is therefore clear that migrants rescued in international waters do not fall within the scope of Art. 15. Moreover, these SAR operations take place in accordance with obligations under international law.
26. The Dutch proposal envisages a new criterion for Dublin responsibility based on previous irregular stay in another Member State. There is a similar possibility in the current Dublin III Regulation under Art. 13 (2), which was deleted in the Commission recast proposal due to the fact that it was complicated, hardly used in the practice and difficult to prove. The new Dutch proposal makes a direct link to the Eurodac data to be used as a proof. However, this proposal would require amending the Eurodac Regulation as regards the objective of registration of irregular stay. The Presidency considers that these proposals require further reflections at the technical level.

VI. Inclusion of beneficiaries within the scope of Dublin Regulation

27. The current Dublin III Regulation covers only applications that have been lodged by persons seeking international protection and does not cover applicants who have been granted international protection. This stems from the fact that the Dublin Regulation is an instrument for allocating responsibility among Member States as to the processing of applications for international protection. Once such application has been granted, there is no more responsibility to allocate. However, this means that there is currently little means to ensure that a person who has been granted international protection stays in the Member State by whom he has been granted that status. Therefore the Commission has proposed to include beneficiaries in the scope of the Dublin Regulation, which allows to add an obligation for the Member State responsible to take back a beneficiary of international protection who is irregularly present in another Member State. This is a necessary legal tool to limit secondary movements.

28. **The Presidency proposes keeping the original Commission text under this provision as it contributes to one of the overall key objectives of the CEAS reform to limit secondary movements.**
29. As in the previous cases, this is also an element to be seen as part of the wider balance in the system, including the solidarity support measures to be provided to Member States confronted with challenges/crisis situations.

VII. Remedies

30. According to the current Dublin III Regulation, remedies are available against a transfer decision in all Member States. Most frequently, Member States favour judicial remedies to administrative courts. In the process of appeals, and in spite that, the interpretation of what constitutes a ‘reasonable period of time’ greatly varies, ranging from 3 to 60 days all Member States have introduced time limits for an applicant to exercise their right to an effective remedy. The suspensive nature of such appeal also varies among Member States, with some of them automatically suspending the transfer whilst others use it only upon request by the applicant.
31. The Commission proposed the rules on remedies to be amended in order to considerably speed up and harmonise the appeal process. In addition to establishing specific, short time limits, making use of a remedy automatically suspends the transfer. A new remedy was introduced for cases where no transfer decision is taken, and the applicant claims that a family member or, in the case of minors, also a relative, is legally present in another Member State.
32. During the discussions at expert level, the automatic suspensive effect of appeals and introduction of such short deadlines, or even a deadline at all, on national courts, seemed problematic for a number of delegations. The Presidency compromise text now provides that suspensive effect shall not be automatic, but only upon request within a certain short deadline; a decision of whether or not to grant that suspension request shall be made within 30 days. Only where such request was indeed granted it is provided that the decision on substance shall be deemed to take further 30 days.

33. **The Presidency compromise solution on the one hand provides procedural safeguards to the applicant in line with Union law and on the other hand, gives the necessary flexibility to Member States' judicial systems as it does not impede on a swift Dublin procedure.**

VIII. Detention

34. In order to secure transfer procedures, Member States can place an applicant in detention under the conditions set out in Article 28 of Dublin III Regulation. According to the current rules, only an applicant presenting a 'significant risk of absconding' can be placed in detention. In its proposal, the Commission, in line with the objective of streamlining the procedures, has shortened the time-limits applicable to take charge procedures and for carrying out transfers of persons in detention.
35. **Following expert-level discussions, the reference to 'significant' risk of absconding has been deleted, allowing for different detention regimes across Member States and for better harmonisation with the return directive. Time limits have been slightly prolonged to make them feasible for Member States' authorities and several clarifications in the text were made, for example, with regard to the definition of the final transfer decision. In the Presidency's view, the changes made accommodate the concerns of all delegations and will make the Dublin procedure more effective.**

*Article 3***Access to the procedure for examining an application for international protection****Possible recital on different steps in the procedure**

In order to prevent that applicants with inadmissible claims or who are likely not to be in need of international protection, or who represent a security risk are transferred among the Member States, it is necessary to ensure that pre-checks to the actual Dublin determination are done. Thus, the Member State of first application should always be able to check whether the cases for inadmissibility of the application apply, namely first country of asylum or safe third country. That possibility should become an obligation when an implementing decision is adopted in challenging circumstances. If the cases for the inadmissibility of the application apply, the Member State should be considered the Member State responsible and the application should be counted for its share. Similarly, the Member State of first application should always be able to check whether the applicant comes from a safe country of origin or presents a security risk. That possibility should become an obligation when an implementing decision is adopted in challenging circumstances. If the applicant comes from a safe country of origin or presents a security risks, the Member State should be considered the Member State responsible and the application should be counted for its share. If none of the above cases apply, the procedures in this Regulation should apply. The first Member State in which the application for international protection was lodged, in normal circumstances may, and in challenging circumstances should check, before applying the criteria for determining a Member State responsible, whether some of the cases for inadmissibility stipulated in the Regulation (EU) No. XXX/XXX (Asylum Procedures Regulation) of the application apply, namely first country of asylum or safe third country. If that is the case and the applicant is effectively returned to the first country of asylum or safe third country, the Member State would be considered the Member State responsible.

~~The first Member State in which the application for international protection was lodged may, in normal circumstances and should in challenging circumstances, examine, before applying the criteria for determining a Member State responsible, in the accelerated procedure an application lodged by an applicant coming from a safe country of origin or presenting a security risk. If after examining the application under the accelerated procedure the person is effectively returned to its country of origin or it is established that the person is a danger to the national security or public order, that Member State should be considered the Member State responsible. If none of the above cases apply, the Member State of first application should apply the criteria for determining a Member State responsible and all time limits under this Regulation shall start to run.~~

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in [☞ Chapters III and VIA](#) [☞](#) indicate is responsible.
2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

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

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible.

↓ new

↻ Council

~~3. Any Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Directive 2013/32/EU.~~

3. ↻ Without prejudice to Article 8(1), **the first Member State in which the application for international protection was lodged may, when that Member State finds itself in normal circumstances or in challenging circumstances regarding which the Council has not adopted an implementing decision in accordance with Article 34e(1) or (5), before [...] applying the criteria for determining a Member State responsible in accordance with Chapters III [...], the first Member State in which the application for international protection was lodged may: [...]** ↻

(a) ↻ **decide on the inadmissibility of an application in accordance with Article 36(1a) points (a) and (b) of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation)** ↻
↻ [...] ↻ ; and

(b) ↻ **examine the application in accelerated procedure pursuant to Article 40 of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation)** ↻ ↻ [...] ↻ **when the following grounds apply:**

(i) ↻ **a third country may be considered as a safe country of origin for the applicant within the meaning of the Regulation (EU) No XXX/XXX (Asylum Procedures Regulation)** ↻ ↻ [...] ↻ ; or

(ii) ↻ **there are reasonable grounds to consider the applicant as** ↻ ↻ [...] ↻ **a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of** ↻ **national** ↻ ↻ [...] ↻ **security or public order under national law.**

➔ 3a. Without prejudice to Article 8(1), **the first Member State in which the application for international protection was lodged shall, when that Member State finds itself** in challenging circumstances **regarding which** and when the Council has adopted an implementing decision in accordance with Article 34e(1) or (5), ~~the first Member State in which the application for international protection was lodged shall~~ apply points (a) and (b) of paragraph 3 before applying the criteria for determining a Member State responsible in accordance with Chapter III. ☹

4. Where the Member State ➔ **decides that** ~~considers~~ an application **is** ☹ inadmissible or examines an application in accelerated procedure pursuant to ➔ paragraphs 3 or 3a ☹, that Member State shall be considered the Member State responsible.

➔ 5. Where a third country as referred to in Articles 44(1) and 45(1) of Regulation (EU) No. XXX/XXX (Asylum Procedures Regulation) does not admit or readmit the applicant to its territory;

(a) without prejudice to Chapter VIA, the Member State referred to in paragraph 1 of this Article shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible, and

(b) the time-limit for submitting a take charge request pursuant to Article 24 of this Regulation shall start to run from the date when the Member State referred to in paragraph 1 of this Article received a reply from the third country concerned ~~confirmation that the applicant will not be admitted or readmitted by that third country~~ **within three months from the date when the Member State requests the third country to admit or to readmit the applicant to its territory, or, in case of a readmission agreement, from the date when the deadline set in the respective readmission agreement has expired.** ☹

➔ [...] ☹

➤ Article 9a ◀

➤ Stable responsibility of a Member State ◀

Possible recital (amended recital 25 of the Commission proposal)

(25) In order to prevent secondary movements, the Member State which is determined as responsible under this Regulation should remain responsible for examination of any further application of that applicant, including any subsequent application, in accordance with Article 40, 41 and 42 of Regulation (EU) XXX/XXXX (Asylum Procedures Regulation) until the conditions for cessation of the responsibility under this Regulation are fulfilled. Any new application lodged by the applicant after the responsibility has ceased should be regarded as a new application under this Regulation, but should be subject to the procedure for subsequent applications under Article 42 of Regulation (EU) XXX/XXXX (Asylum Procedures Regulation) by the Member State responsible which examines the application in substance. Provisions in Regulation (EU) 604/2013 which had provided for the shift of responsibility in certain circumstances, including when deadlines for the carrying out of transfers had elapsed for a certain period of time, had created an incentive for absconding, and should therefore be removed.

➤ 1. Once the responsibility of a Member State has been determined in accordance with this Regulation, that Member State shall remain responsible to examine any application, including subsequent applications, by the same applicant, including in the cases referred to in Article 3(3) and (3a). ◀

➤ 2. The responsibility referred to in paragraph 1 shall cease where:

(a) the period set out in Article 17(1) of Regulation (EU) No. XXX/XXX (Eurodac Regulation) has expired, unless the Member State responsible has granted international protection;

b) the Member State responsible can establish, **on the basis of the update of the data set referred to in Article 11(d) of Eurodac**, that the applicant has left the territory of the Member States, **either forced or voluntarily**, in compliance with a return decision or removal order **issued following the withdrawal or rejection of the application, including under a Voluntary Assisted Return Programme**.

An application lodged after the cessation of responsibility pursuant to this paragraph shall be regarded as a new application for the purposes of this Regulation giving rise to a new procedure for determining the Member State responsible. ☺

☺ 3. Where another Member State issues a residence permit or decides to apply Article 19, that Member State shall become the Member State responsible and shall assume the obligations set out in Article 20. ☺

☺ Section 2

List of criteria ☺

☺ *Article 9b* ☺

☺ **Resettled persons** ☺

☺ Where a resettled person applies for international protection, the Member State which admitted that person shall be responsible for examining the application for international protection. ☺

Article 8 10

Minors

☒ 1. ☺ Without prejudice to Article 9b, where ☺ [...] ☺ the applicant is an unaccompanied minor, only the criteria set out in this article shall apply, in the order in which they are set out in paragraphs 2 to 5. ☒

~~12.~~ Where the applicant is an unaccompanied minor, ~~the~~ The Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, ~~☉ unless it is demonstrated [...]~~ unless it is demonstrated [...] that it is not in the best interests of the child [...]. Where the applicant is a married minor, ~~provided that the marriage is recognised by law or by the practice of that Member State,~~ ~~☉~~ whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

~~23.~~ Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, ~~☉ unless it is demonstrated [...]~~ unless it is demonstrated [...] that it is not in the best interests of the child [...].

~~34.~~ Where family members ~~☉~~ , siblings ~~☉~~ ~~☉~~ siblings or relatives as referred to in paragraphs ~~1~~ 2 and ~~2~~ 3, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.

~~45.~~ In the absence of a family member ~~☉~~ , a sibling ~~☉~~ ~~☉~~ a sibling or a relative as referred to in paragraphs ~~1~~ 2 and ~~2~~ 3, the Member State responsible shall be that where the unaccompanied minor ~~⇒ first ⇐~~ has lodged his or her application for international protection, ~~provided that it is ☒~~ unless it is demonstrated that this is not ~~☒~~ in the best interests of the ~~☉~~ child [...].

~~56.~~ The Commission ~~shall be ☒~~ is ~~☒~~ empowered to adopt delegated acts in accordance with Article ~~45~~ 57 concerning the identification of family members ~~☉~~ , siblings ~~☉~~ ~~☉~~ siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article ~~6~~ 8(3).

~~6~~7. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States ~~including through the involvement of EU Asylum Agency liaison officers where appropriate~~ ~~C~~ . Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ ~~56~~(2).

Article ~~9~~ 11

Family members who are beneficiaries of international protection

Where the applicant 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 beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article ~~10~~ 12

Family members who are applicants for international protection

If the applicant 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 international protection, provided that the persons concerned expressed their desire in writing.

Article ~~11~~ 13

Family procedure

Where several family members ~~and/or minor unmarried siblings~~ submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined on the basis of the following provisions:

- (a) responsibility for examining the applications for international protection of all the family members 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 ~~12~~ 14

Issue of residence documents or visas

1. Where the applicant is in possession of a valid residence document ~~[...]~~, the Member State which issued the document shall be responsible for examining the application for international protection.

2. Where the applicant is in possession of a valid visa ~~☞ [...] ☹~~ , the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009 of the European Parliament and of the Council, ~~of 13 July 2009, establishing a Community Code on Visas~~¹. In such a case, the represented Member State shall be responsible for examining the application for international protection.

3. Where the applicant is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:

(a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;

(b) 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 applicant is in possession only of one or more residence documents or visas which have expired less than two years before the date of the lodging of the application [...], paragraphs 1, 2 and 3 shall apply. ☹~~

~~☞ Where the applicant is in possession of one or more residence documents or visas which have expired more than two years before the date of the lodging of the application [...], the Member State in which the application for international protection is first lodged shall be responsible. ☹~~

¹ Regulation (EC) No 810/2009 of the European Parliament and of the Council, of 13 July 2009, establishing a Community Code on Visas (OJ L 243, 15.9.2009, p. 1).

☞ 4a. Where the applicant is in possession of one or more residence documents or one or more visas which have expired **less than five years before the lodging of the application**, paragraphs 1, 2 and 3 shall apply. ☞

~~4. Where the applicant 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 or 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 applicant 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 or 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. ~~54.~~ 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 ~~13~~ 15

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 ~~22(3)~~ 25(4) of this Regulation, including the data referred to in Regulation [Proposal for a Regulation recasting Regulation (EU) No 603/2013], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the ~~the~~ first Member State thus entered shall be responsible for examining the application for international protection. ~~That 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 of this Article and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3), that the applicant — who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established — has been 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 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 he or she has been living most recently shall be responsible for examining the application for international protection.~~

Article ~~14~~ 16

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 ~~the~~ first Member State ~~of entry~~ shall be responsible for examining his or her application for international protection.

~~2. The principle set out in paragraph 1 shall not apply if the third-country national or the stateless person lodges his or her application for 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 that case, that other Member State shall be responsible for examining the application for international protection.~~

Article ~~15~~ 17



Application in an international transit area of an airport


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

Article ~~18~~ 20



Obligations of the Member State responsible



1. The Member State responsible under this Regulation shall be obliged to:
 - (a) take charge, under the conditions laid down in Articles ~~21~~ 24, ~~22~~ 25 and ~~29~~ 30, of an applicant who has lodged an application in a different Member State;



- (b) take back, under the conditions laid down in Articles ~~23, 26 24, 25~~ and ~~29 30~~, an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document;
- (c) take back, under the conditions laid down in Articles ~~23, 26 24, 25~~ and ~~29 30~~, a third-country national or a stateless person who has withdrawn the application under examination and made an application in another Member State or who is on the territory of another Member State without a residence document;
- (d) take back, under the conditions laid down in Articles ~~23, 26 24, 25~~ and ~~29 30~~  of this Regulation, a third-country national or a stateless person whose application has been rejected, or whose status has been withdrawn [...]  and who made an application in another Member State or who is on the territory of another Member State without a residence document~~;~~.



 new



 Council



- (e) take back, under the conditions laid down in Articles 26 and 30 a beneficiary of international protection  or a resettled person, who made an application in a [...] Member State other than the one [...] which granted him or her international [...] protection or admitted him or her in accordance with Regulation No. XXX/XXX (Resettlement Regulation) [...] or who is irregularly present on the territory of a [...] Member State other than the one [...] which granted him or her international [...] protection or admitted him or her in accordance with Regulation No. XXX/XXX (Resettlement Regulation) [...]. .



2.  In situations referred to in paragraph 1, the Member State responsible shall examine or complete the examination of the application for international protection in accordance with Regulation (EU) XXX/XXX [Asylum Procedures Regulation]. [...] 


 3. [...] 

 4. [...] 

 5. [...] 

 6. [...] 

 7. [...] 

 604/2013 (adapted)

 Council

~~2. In the cases falling within the scope of paragraph 1(a) and (b), the Member State responsible shall examine or complete the examination of the application for international protection made by the applicant.~~

~~In the cases falling within the scope of paragraph 1(e), when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in Directive 2013/32/EU. In such cases, Member States shall ensure that the examination of the application is completed.~~

~~In the cases falling within the scope of 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 seek an effective remedy pursuant to Article 46 of Directive 2013/32/EU.~~

Article ~~27~~ 28

Remedies

Possible recital:

In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred. The scope of the effective remedy should be limited to an assessment only of whether applicants' fundamental rights to respect of family life, the rights of the child, or the prohibition of inhuman and degrading treatment risk to be infringed upon.

1. The applicant or another person as referred to in Article ~~18~~ 20(1)(c), ~~or~~ (d) ⇒ or (e) ⇐ shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.
2. Member States shall provide for a ~~reasonable~~ period of ~~time~~ ⇒ ⇐ 10 7 ⇐ days after the notification of a transfer decision ⇐ within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

3. ⇒ Appeals against, or reviews of, transfer decisions shall not suspend the implementation of the transfer, except where: ☹

⇒ (a) the person concerned has requested a court or tribunal to suspend the implementation of that transfer decision pending the outcome of his or her appeal or review, and ☹

⇒ (b) that request was granted, following an individual assessment, by that court or tribunal within 30 days of the request. ☹

⇒ A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based. ☹

⇒ If suspensive effect was granted, the court or tribunal shall endeavour to decide on the substance of the review within 30 days after the decision to grant suspensive effect. ☹

For the purposes of appeals against, or reviews of, transfer decisions, ~~Member States shall provide in their national law that: ⇒ the court or tribunal shall decide within a period of 15 days **from when the remedy is lodged** on the substance of the appeal or review. No transfer shall take place before this decision on the appeal or review is taken. ⇐~~

~~(a) the appeal or review confers upon the person concerned the right to remain in the Member State concerned pending the outcome of the appeal or review; or~~

~~(b) the transfer is automatically suspended and such suspension lapses after a certain reasonable period of time, during which a court or a tribunal, after a close and rigorous scrutiny, shall have taken a decision whether to grant suspensive effect to an appeal or review; or~~

~~(c) the person concerned has the opportunity to request within a reasonable period of time a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within a reasonable period of time, while permitting a close and rigorous scrutiny of the suspension request. A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.~~

~~4. Member States may provide that the competent authorities may decide, acting *ex officio*, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.~~

↓ new

⇒ Council

4. The scope of the effective remedy laid down in paragraph 1 shall be limited to an assessment of ⇒ [...] the existence of a risk of inhuman or degrading treatment or, **where the person concerned is taken charge of pursuant to Article 20(1)(a)**, whether ⇄ Articles 10 to 13 and 18 are infringed upon.

⇒ [...] ⇄

↓ 604/2013 (adapted)

⇒ new

⇒ Council

56. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.

67. Member States shall ensure that legal assistance is granted on request free of charge where the person concerned cannot afford the costs involved. 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 provide that free legal assistance and representation not be granted where the appeal or review is considered by the competent authority or a court or tribunal to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority other than a court or tribunal, Member States shall provide the right to an effective remedy before a court or tribunal to challenge that decision. ➡ [...] ⬅

In complying with the requirements set out in this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

Legal assistance shall include at least the preparation of the required procedural documents and representation before a court or tribunal and may be restricted to legal advisors or counsellors specifically designated by national law to provide assistance and representation.

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

SECTION VI

DETENTION FOR THE PURPOSE OF TRANSFER

Article ~~28~~ 29

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.
2. When there is a ~~⊕~~ [...] ~~⊖~~ risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.
3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where a person is detained pursuant to this Article, the period for submitting a take charge ~~or take back~~ request ~~⇒~~ or a take back notification ~~⇐~~ shall not exceed ~~one month~~ ~~⊕~~ ~~⇒~~ ~~20~~ ~~15~~ days ~~⇐~~ ~~⊖~~ ~~⊕~~ [...] ~~⊖~~ from the lodging of the application. ~~⊕~~ Where a person is detained at a later stage than the lodging of the application, the period for submitting a take charge request or a take back notification shall not exceed 15 days from the date when the person was detained. ~~⊖~~ The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply ~~in such cases~~ ~~⇒~~ on a take charge request ~~⇐~~. Such reply shall be given within ~~two~~ ~~⊕~~ ~~⇒~~ ~~14~~ ~~10~~ days ~~⇐~~ ~~⊖~~ ~~⊕~~ [...] ~~⊖~~ of receipt of the ~~⇒~~ take charge ~~⇐~~ request. Failure to reply within the ~~two-week~~ ~~⊕~~ ~~⇒~~ ~~14~~ ~~10~~ -day ~~⇐~~ ~~⊖~~ ~~⊕~~ [...] ~~⊖~~ period shall be tantamount to accepting the ~~⇒~~ take charge ~~⇐~~ request and shall entail the obligation to take ~~⇒~~ the person in ~~⇐~~ charge ~~or take back the person~~, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting ~~and notifying~~ Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within ~~six~~ ~~weeks~~ **40 30 days** from the date when the [...] transfer decision **is taken, where no appeal or review has been lodged against such decision, or from the moment when the appeal or review no longer has a suspensive effect in accordance with Article 28(3)** is no longer subject to remedy before a court or tribunal of first instance ~~of the implicit or explicit acceptance of the request by another Member State to take charge or to take back the person concerned or of the moment when the appeal or review no longer has a suspensive effect in accordance with Article 27(3).~~

When the requesting Member State fails to comply with the deadlines for submitting a take charge ~~or take back~~ request ~~or take back notification~~ or where the transfer does not take place within the period of ~~six~~ ~~weeks~~ **30 days** referred to in the third subparagraph, the person shall no longer be detained. Articles ~~21 24, 23, 26 24~~ and ~~29 30~~ shall continue to apply accordingly.

4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply.