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NOTE

From:	Presidency
To:	Delegations
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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)

Delegations will find below the revised texts of chapters I to III of the Dublin Regulation. The suggested modifications are based on the outcome of multilateral and bilateral discussions held under the Slovak, Maltese and Estonian Presidencies, and on the on oral and written comments made by Member States in the Asylum Working Party during the first examination of the proposal between May and October 2016. The revision also seeks to take account of comments made during the thematic discussions held in the first half of 2017.

In Chapter I (Subject Matter and Definitions), several amendments are being proposed in Article 2 (Definitions). Points (b), (d), (e), (k), (n), (q) and (r) have been revised in order to be aligned with the definitions which were already agreed or thoroughly discussed in other legislative proposals, namely the Qualification Regulation, the Resettlement Regulation, the Asylum Procedure Regulation and the Reception Conditions Directive.

New definitions are being proposed in points (s), (t) and (u) in order to address the three-phase model broadly agreed by Member States during the consultations on the effective application of the principles of solidarity and responsibility.

In Chapter II (General principles and safeguards), the main amendments concern Article 3 where the rules for access to the procedure for examining the application are differentiated according to the different stages.

Articles 4 and 5 have been revised in order to address Member States' concerns raised during the thematic discussion on secondary movements. Additional amendments are being introduced in Articles 6-8.

In Chapter III (Criteria for determining the Member State responsible), new Articles 9a and 9b are being introduced setting out rules for stable responsibility as a general principle. The concept of the stable responsibility was broadly supported during the discussions on the effective solidarity. Additional amendments were made in Articles 14 and 16 in order to make the provisions clearer.

It is understood that all delegations have general scrutiny reservations on the whole proposal. The following delegations have indicated previously that they also have parliamentary scrutiny reservations: CZ, ES, HR, HU, LT, LV, PL, SI, UK.

Suggested modifications are indicated as follows: new text compared to the Commission proposal is indicated with ➞ **addition in bold and underlined** Ⓞ and the deleted text is indicated in ~~**strikethrough (bold)**~~. Text already introduced in the previous documents discussed under the thematic approach (documents 8043/17, 8044/1/17 and 9221/17) is indicated with ➞ **addition in bold** Ⓞ, while text deleted in these previous documents is indicated in ~~strikethrough~~.

2016/0133 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

↓ 604/2013 (adapted)

⇒ new

↻ Council

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down the criteria and mechanisms for determining the ☒ single ☒ 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 ('the Member State responsible').

Article 2

Definitions

For the purposes of this Regulation:

(a) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not national of a State which participates in this Regulation by virtue of an agreement with the ~~European~~ Union;

(b) ‘application for international protection’ means ~~☞ a request made by a third-country national or a stateless person for protection from a Member State, who can be understood as seeking refugee status or subsidiary protection status an application for international protection as defined in Article 2(h) of Directive 2011/95/EU ☞~~ ;

(c) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

(d) ‘examination of an application for international protection’ means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with ~~☞ Regulation (EU) No XXX/XXX (Asylum Procedures Regulation) and Regulation (EU) No XXX/XXX (Qualification Regulation) Directive 2013/32/EU and Directive 2011/95/EU ☞~~ , except for procedures for determining the Member State responsible in accordance with this Regulation;

(e) ‘withdrawal of an application for international protection’ means the actions by which the applicant terminates the procedures initiated by the submission of his or her application for international protection, ~~☞ in accordance with Directive 2013/32/EU, ☞~~ either explicitly or ~~☞ implicitly tacitly ☞~~ ;

(f) 'beneficiary of international protection' means a third-country national or a stateless person who has been granted international protection as defined in Article 2(a) of Directive 2011/95/EU;

(g) 'family members' means, insofar as the family already existed \Rightarrow before the applicant arrived on the territory of the Member States \Leftarrow ~~in the country of origin~~, the following members of the applicant's family who are present on the territory of the Member States:

- the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,
- the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,
- when the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,
- when the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present⁵.

↓ new

↻ Council

– ↻ ~~the sibling or siblings of the applicant;~~ ©

↓ 604/2013

↻ Council

(h) 'relative' means the applicant's adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;

(i) 'minor' means a third-country national or a stateless person below the age of 18 years;

(j) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;

~~↻ (k) 'representative' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out its duties in respect of the minor, in accordance with this Regulation;~~ ©

(l) 'residence document' means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;

(m) 'visa' means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:

- 'long-stay visa' means an authorisation or decision issued by one of the Member States in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than three months,
- 'short-stay visa' means an authorisation or decision of a Member State with a view to transit through or an intended stay on the territory of one or more or all the Member States of a duration of no more than three months in any six-month period beginning on the date of first entry on the territory of the Member States,
- 'airport transit visa' means a visa valid for transit through the international transit areas of one or more airports of the Member States;

(n) 'risk of absconding' means the existence of reasons in an individual case, which are based on objective criteria defined by ~~the~~ national law, to believe that an applicant ~~or a third-country national or a stateless person~~ or a beneficiary of international protection who is subject to a transfer procedure may abscond;

↓ new

(o) 'benefitting Member State' means the Member State benefitting from the corrective allocation mechanism set out in Chapter VII of this Regulation and carrying out the allocation of the applicant;

(p) 'Member State of allocation' means the Member States to which an applicant will be allocated under the allocation mechanism set out in Chapter VII of this Regulation;

(q) 'resettled person' means a person subject to the ~~process of~~ resettlement, **humanitarian admission or emergency admission as provided for in Regulation (EU) No XXX/XXX (Resettlement Framework Regulation) whereby, on a request from the United Nations High Commissioner for Refugees ('UNHCR') based on a person's need for international protection, third-country nationals are transferred from a third country and established in a Member State where they are permitted to reside with one of the following statuses:**

~~(i) 'refugee status' within the meaning of point (e) of Article 2 of Directive 2011/95/EU;~~

~~(ii) 'subsidiary protection status' within the meaning of point (g) of Article 2 of Directive 2011/95/EU; or~~

~~(iii) any other status which offers similar rights and benefits under national and Union law as those referred to in points (i) and (ii);~~

(r) 'European Union Agency for Asylum' means the Agency as established by Regulation (EU) ~~↻ No XXX/XXX (EU Asylum Agency Regulation); [Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010].~~ ☹

↻ (s) 'fair share' means the number of applicants for which a Member State is responsible, as determined in accordance with this Regulation; ☹

↻ (t) 'normal circumstances' means a situation in which the number of applicants in a Member State is equal to or below its fair share; ☹

↻ (u) 'challenging circumstances' means a situation in which the number of applicants in a Member State is above its fair share. ☹

↓ 604/2013

CHAPTER II

GENERAL PRINCIPLES AND SAFEGUARDS

Article 3

Access to the procedure for examining an application for international protection

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 Chapter III 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. ➔ **In normal circumstances, before** Before ➔ applying the criteria for determining a Member State responsible in accordance with Chapters III and IV, the first Member State in which the application for international protection was lodged ➔ **may shall:** ➔

(a) ~~to decide on the inadmissibility of an application in accordance with Article 36(1) points (a) and (b) of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation) examine whether the application for international protection is inadmissible pursuant to Article 33(2) letters b) and c) of Directive 2013/32/EU when a country which is not a Member State is considered as a first country of asylum or as a safe third country for the applicant~~ ~~;~~ and

(b) ~~to accelerate the examination of~~ examine the application ~~in accelerated procedure~~ pursuant to Article ~~40 of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation) 31(8) of Directive 2013/32/EU~~ ~~;~~ when the following grounds apply:

(i) ~~to~~ ~~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) has the nationality of a third country, or he or she is a stateless person and was formerly habitually resident in that country, designated as a safe country of origin in the EU common list of safe countries of origin established under Regulation [Proposal COM (2015) 452 of 9 September 2015]~~ ~~;~~ or

(ii) ~~to~~ ~~there are reasonable grounds to consider the applicant as the applicant may, for serious reasons, be considered~~ ~~;~~ a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of ~~to~~ ~~national public~~ ~~;~~ security or public order under national law.

~~to~~ ~~3a. In challenging circumstances 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 Chapters III and IV.~~ ~~;~~

4. Where the Member State considers an application inadmissible or examines an application in accelerated procedure pursuant to paragraph ~~to~~ ~~3a~~ ~~;~~ ~~;~~, that Member State shall be considered the Member State responsible.

⇒ ~~5. The Member State which has examined an application for international protection, including in the cases referred to in paragraph 3, shall be responsible for examining any further representations or a subsequent application of that applicant in accordance with Article 40, 41 and 42 of Directive 2013/32/EU, irrespective of whether the applicant has left or was removed from the territories of the Member States.~~ ☹

Article 4

Obligations of the applicant

1. ⇒ ~~Where a~~ **A third country national or stateless person who intends to make an application for international protection** ~~has entered irregularly into the territory of the Member States, shall make and lodge that an application for international protection the application shall be made~~ ☹ **in the Member State of first entry.**

⇒ **1a. By derogation from paragraph 1, where** ~~Where a third country national or stateless person who intends to make an application for international protection is~~ **legally present in a Member State on the basis of a valid residence permit or visa or a residence permit which has expired less than two years before lodging the first application or a visa which has expired less than six months before lodging the first application, the application shall be made** ~~he or she shall make and lodge that an application for international protection in the that Member State that issued the residence permit or visa.~~ ☹

2. The applicant shall ⇒ **fully cooperate with the competent authorities of the Member States and** submit as soon as possible, and at the latest during the interview pursuant to Article 7, all the elements **available to him or her** and information relevant for determining the Member State responsible and ~~cooperate with the competent authorities of the Member States.~~ **Where the applicant is not in a position to submit evidence to substantiate elements provided at the time of the interview, the competent authority may set a deadline within the period referred to in Article 24 (1) for submitting such evidence** ☹ .

- ⇒ 2a. **The applicant shall be required to be present in:**
 - ⇒ (a) **the Member State referred to in paragraph 1 pending the determination of the Member State responsible and the implementation of the transfer procedure, if applicable;**
 - ⇒ (b) **the Member State responsible** ~~pursuant to a transfer;~~
 - ⇒ ~~{(c) the Member State of allocation pursuant to a transfer, where the allocation mechanism set out in Chapter VII of this Regulation applies.}~~

3. The applicant shall:

- ⇒ (aa) **remain on ~~not leave~~ the territory of the Member State where he or she is required to be present under paragraph 2a and be available to the competent authorities of that Member State;**
- (a) comply with a transfer decision notified to him or her in accordance with paragraphs 1 and 2 of Article 27 [and point (b) of Article 38] ⇒ ÷.
- ⇒ (b) ~~be present and available to the competent authorities in the Member State of application, respectively in the Member State to which he or she is transferred.~~

Article 5

Consequences of non-compliance

- 1. If an applicant does not comply with the obligation set out in Article 4(1) ⇒ , **(1a) and (3) of this Regulation, depending on the case one of the following consequences shall follow:**
 - ⇒ (a) the Member State responsible ~~in accordance with this Regulation~~ may shall examine the application in an accelerated procedure, in accordance with **Article 40(1)(g) (1)(g) of Regulation (EU) XXX/XXX (Asylum Procedures Regulation) Article 31(8) of Directive 2013/32/EU;**

➤ **(b) Member State responsible shall reject the application as implicitly withdrawn as provided for in Article 39 of Regulation (EU) XXX/XXX (Asylum Procedures Regulation).** ☹

2. ➤ **If an applicant does not comply with the obligation set out in Article 4 (2a)(a) and makes an application for international protection in another Member State, the applicant will be sent back to the Member States where the applicant first lodged his or her application and shall be obliged to be present in that Member State pending the determination of the Member State responsible and the implementation of the transfer procedure, if applicable in which the applicant is obliged to be present shall continue the procedures for determining the Member State responsible even when the applicant leaves the territory of that Member State without authorisation or is otherwise not available for the competent authorities of that Member State.** ☹

3. ➤ **In accordance with Article 17a of Directive (EU) XXX/XXX (Reception Conditions Directive), the applicant shall not be entitled to the reception conditions set out in Articles 14 to 17 of that Directive (EU) XXX/XXX (Reception Conditions Directive), Directive 2013/33/EU, with the exception of emergency health care, during the procedures under this Regulation in any Member State other than the one in which he or she is required to be present pursuant to Article 4(2a) of this Regulation. This is without prejudice to the provision of reception conditions pursuant to Article 17a (2) and (3) of that Directive.** ☹

4. ➤ **The competent authorities shall take into account elements Elements and information relevant for determining the Member State responsible only insofar as these were submitted after within the deadline set out in Article 4(2) shall not be taken into account by the competent authorities.** ☹

↓ 604/2013 (adapted)

⇒ new

Article ~~4~~ 6

Right to information

1. As soon as an application for international protection is lodged within the meaning of Article ~~20~~ 21(2) in a Member State, its competent authorities shall inform the applicant of the application of this Regulation ⇒ and of the obligations set out in Article 4 as well as the consequences of non-compliance set out in Article 5 ⇐ , and in particular ~~of~~:

↓ new

↻ Council

- (a) that the right to apply for international protection does not encompass ↻ a ~~any~~ choice by ~~of~~ the applicant in relation to ↻ which Member State shall be responsible for examining the application for international protection;

↓ 604/2013 (adapted)

⇒ new

↻ Council

- (ab) ☒ of ☒ the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of ~~moving from one Member State to another~~ ⇒ leaving the Member State where he or she is ↻ **required** obliged ☒ to be present ⇐ during the phases in which the Member State responsible under this Regulation is being determined and the application for international protection is being examined ⇒ ↻ , ~~in particular the consequences of non-compliance set out in Article 5(3)~~ that the applicant shall not be entitled to the ~~reception conditions set out in Articles 14 to 19 of Directive 2013/33/EU in any Member State other than the one where he or she is required to be present, with the exception of emergency health care~~ ☒ ⇐ ;
- (bc) ☒ of ☒ the criteria ⇒ and the procedures ⇐ for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration, ~~including the fact that an application for international protection lodged in one Member State can result in that Member State becoming responsible under this Regulation even if such responsibility is not based on those criteria;~~
- (ed) ☒ of ☒ the personal interview pursuant to Article ~~5~~ 7 and the ~~possibility~~ ⇒ obligation ⇐ of submitting ⇒ and substantiating ↻ **orally or through the provision of documents** ☒ ⇐ information regarding the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information;

- (de) ~~of~~ ~~the~~ possibility to challenge a transfer decision ~~and, where applicable, to apply for a suspension of the transfer~~ ⇒ **within the time limit set out in Article 28(2) within 10 working days after notification** and of the fact that this challenge shall be limited to an assessment of whether Articles 3(2) in relation to the existence of a risk of inhuman or degrading treatment, or Articles 10 to 13 and 18 are infringed upon; ↵
- (ef) ~~the fact~~ that the competent authorities of Member States ⇒ **and the European Union Agency for Asylum shall** process personal data of the applicant including for the ↵ ~~an~~ exchange ~~of~~ ~~the~~ data on him or her for the sole purpose of implementing their obligations arising under this Regulation;

↓ new

- (g) of the categories of personal data concerned;

↓ 604/2013 (adapted)
⇒ new

- (fh) ~~of~~ ~~the~~ right of access to data relating to him or her and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article ~~35~~ 47 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data ⇒ , and of the contact details of the data protection officer; ↵ ~~and~~

↓ new

- [(i) where applicable, of the allocation procedure set out in Chapter VII.]

↓ 604/2013 (adapted)

⇒ new

↻ Council

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

Where necessary for the proper understanding of the applicant, the information shall also be supplied orally, for example in connection with the personal interview as referred to in Article ~~5~~ 7.

3. The Commission shall, by means of implementing acts, draw up a common leaflet, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1 of this Article. This common leaflet shall also include information regarding the application of Regulation (EU) [*Proposal for a Regulation recasting Regulation No 603/2013*] and, in particular, the purpose for which the data of an applicant may be processed within Eurodac. The common leaflet shall be established in such a manner as to enable Member States to complete it with additional Member State-specific information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ 56(2) of this Regulation.

Article ~~5~~ 7

Personal interview

1. In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant ⇒ , unless the applicant has absconded or the information provided by the applicant pursuant to Article 4(2) is sufficient for determining the Member State responsible ⇐ . The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article ~~4~~ 6.

~~2. The personal interview may be omitted if:~~

~~(a) the applicant has absconded; or~~

~~(b) after having received the information referred to in Article 4, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).~~

~~3. The personal interview shall take place in a timely manner and, in any event, before any decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1) ⇒ take charge request pursuant to Article 24 is made ⇐ .~~

~~4. The personal interview shall be conducted in a language that the applicant understands or is reasonably supposed to understand and in which he or she is able to communicate. Where necessary, Member States shall have recourse to an interpreter who is able to ensure appropriate communication between the applicant and the person conducting the personal interview.~~

54. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law.

55. The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. This summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant and/or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.

Article ~~6~~ 8

Guarantees for minors



1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.

2. ~~Each~~ ~~Member States~~ ~~where an unaccompanied minor is~~ ~~obliged to be~~ ~~present~~ shall ensure that ~~he or she is represented and assisted by a temporary representative or a representative or a person suitable to assist him or her until a representative is designated as provided for in Article 22(2) of Regulation (EU) XXX/XXX (Asylum Procedures Regulation) represents and/or assists an~~ ~~the~~ ~~unaccompanied minor~~ with respect to ~~all~~ ~~the relevant~~ ~~procedures provided for in this Regulation. The~~ ~~temporary representative or~~ ~~representative~~ ~~or a person suitable to assist him or her until a representative is designated~~ shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such ~~temporary representative or~~ ~~representative~~ ~~or a person suitable to assist him or her until a representative is designated~~ shall have access to the content of the relevant documents in the applicant's file including the specific leaflet for unaccompanied minors.

~~This paragraph shall be without prejudice to the relevant provisions in Article 25 of Directive 2013/32/EU.~~

3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:
- a) family reunification possibilities;
 - b) the minor's well-being and social development;
 - c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
 - d) the views of the minor, in accordance with his or her age and maturity.
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↓ new

4.  Before transferring an unaccompanied minor to the Member State responsible or, where applicable, to the Member State of allocation, the transferring Member State shall **notify** make sure that the Member State responsible or the Member State of allocation **of the transfer of the unaccompanied minor** takes the measures referred to in Articles 14 and 24 of Directive 2013/33/EU and Article 25 of Directive 2013/32/EU without delay. Any decision to transfer an unaccompanied minor shall be **based on preceded by** an assessment of his or/ her best interests **taking into account the**. ~~The assessment shall be done by staff who have the appropriate knowledge of the rights and special needs of minors and shall be based on the~~ factors listed in paragraph 3. The assessment shall be done swiftly by staff with the qualifications and expertise to ensure that the best interests of the minor are taken into consideration. 

45. For the purpose of applying Article 810, the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members ~~☉~~ **siblings** ~~☉~~ ~~siblings~~ or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

To that end, that Member State may call for the assistance of international or other relevant organisations, and may facilitate the minor's access to the tracing services of such organisations.

The staff of the competent authorities referred to in Article 3547 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.

56. With a view to facilitating the appropriate action to identify the family members ~~☉~~ ~~siblings~~ ~~☉~~ ~~siblings~~ or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph 45 of this Article, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 4456(2).

CHAPTER III

CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Article ~~7~~ 9

Hierarchy of criteria

1. **Without prejudice to Article 9a, the** criteria for determining the Member State responsible shall be applied \Rightarrow only once, \Leftarrow in the order in which they are set out in this Chapter.

2. The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State.

~~3. In view of the application of the criteria referred to in Articles 8, 10 and 16, Member States shall take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant, on condition that such evidence is produced before another Member State accepts the request to take charge or take back the person concerned, pursuant to Articles 22 and 25 respectively, and that the previous applications for international protection of the applicant have not yet been the subject of a first decision regarding the substance.~~

⇒ Article 9a ◌

⇒ Stable responsibility of a Member State ◌

⇒ 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 by the same applicant, including in the cases referred to in Article 3(3), until expiry of the period set out in Article 17(1) of Regulation (EU) No XXX/XXX (Eurodac Regulation). ◌

⇒ That responsibility shall cease if the applicant has left or was removed from the territories of the Member States or another Member State issues a residence permit. ◌

⇒ Article 9b ◌

⇒ Resettled persons ◌

⇒ Where an applicant has been resettled to a Member State in accordance with Regulation (EU) No XXX/XXX (Resettlement Regulation) or under a national resettlement scheme, the Member State which resettled the applicant shall be responsible for examining the application for international protection. ◌

Article ~~9~~ 10

Minors

⊗ 1. **⇒ Without prejudice to Article 9b, where ~~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, provided that it is in the best interests of the minor. Where the applicant is a married minor 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, provided that it is in the best interests of the minor.

~~34.~~ Where family members ~~or~~ , **siblings** ~~or~~ 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 ~~or~~ , **a sibling** ~~or~~ 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~~ in the best interests of the minor.

~~56.~~ The Commission ~~shall be~~ is empowered to adopt delegated acts in accordance with Article ~~45~~ 57 concerning the identification of family members ~~or~~ , **siblings** ~~or~~ 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. 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~~ **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 ~~☞~~ ⇒ **or a residence document which has expired less than two years before lodging the first application** ~~☞~~ ☞, 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 ~~☞~~ ⇒ **or a visa expired less than six months before lodging the first application** ~~☞~~ ☞, 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.

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).

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 which have expired less than two years previously or one or more visas which have expired less than six months previously, paragraphs 1, 2 and 3 shall apply. ☺

⇒ 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, the Member State in which the application for international protection is lodged shall be responsible. ☺

~~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.~~

~~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 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 **first** Member State 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.