



Council of the
European Union

Brussels, 14 May 2018
(OR. en)

**Interinstitutional File:
2016/0133 (COD)**

**8591/1/18
REV 1**

LIMITE

**ASILE 17
CODEC 684**

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)

1. INTRODUCTION

Since the beginning of its term, the Presidency has conducted extensive work on the reform of the Dublin system, in parallel to the comprehensive work undertaken on all the other building blocks of a well-functioning asylum and migration system, from protecting the external borders, tackling migratory flows outside the EU, strengthening return policies, and putting together and further reinforcing all the different elements of a solid crisis prevention and management mechanism.

As of January 2018 the Presidency has held six two or three-day meetings at expert level within the SCIFA Friends of Presidency format on the legal text, one strategic discussion at SCIFA level focused on the functioning of the new Chapter VIA and three discussions at Coreper level dedicated to identifying the different building blocks of the Dublin reform. During these meetings the Presidency proposed different legal solutions as well as presentations, graphics and simulations in order to explain better the future functioning of the new Dublin Regulation.

The discussions so far confirmed that the Dublin system needs to be designed in such a way so as to ensure a right balance between responsibility and solidarity. On the one side, there is convergence of views that the reformed Dublin system has to prevent pull factors and limit secondary movements, ensure much more efficient procedures to facilitate the Dublin transfers as well as prevent that the system is one of a "free choice" for asylum seekers. On the other side, there is convergence of views that the reformed system must have a strong preventive component, limiting as much as possible the crisis situations but that, at the same time, when unforeseen events arise or the burden on a Member State is disproportionate, the Union must have at its disposal effective tools guaranteeing that solidarity kicks in. There is finally common understanding that the reformed Dublin system needs to ensure a three-phase approach model, providing adequate responses to the different levels of pressure put on Member States' asylum systems.

The Presidency worked intensively to confirm these overall consensual objectives and translate them into specific legal provisions. In this respect, broad support has been received by the delegations on most of the provisions included in the legal text. However, many delegations highlighted that their final positioning on the agreement will depend on the overall balance achieved between the solidarity and responsibility parts of the Regulation and its overall efficiency.

It is now important that all Member States show understanding for the fact that the different elements of the compromise are an interlocked set of measures aimed to take into account the individual interests of each Member State and the common interest of the Union as a whole. It is therefore expected that all sides engage constructively and show flexibility enabling an agreement on the key components of the legal text, the main elements of which are highlighted below.

2. RESPONSIBILITY

The responsibility part of the Dublin reform is crucial for the future functioning of the new EU asylum system. It is important not only as regards preventing abuse and asylum shopping but also in light of the new solidarity rules: for the future system to work a stable calculation basis is needed to measure the burden in the respective Member States; if the responsibility is unclear or shifts too often or the rules provide for double counting of applicants the new Dublin automated system would not be able to function properly.

Therefore the Presidency proposes the following responsibility elements for the future Dublin system:

- stable responsibility of 5 years after the final decision;
- strengthened rules for the application of the criteria for determining the Member State responsible;
- inclusion of the beneficiaries of international protection in the scope of the Dublin Regulation;
- shorten deadlines for conducting all stages of the Dublin procedures;
- introduction of take back notifications.

The questions of stable responsibility and the inclusion of the beneficiaries of international protection into the scope of the Regulation have turned to be the most contested elements.

As regards the *stable responsibility* the initial Presidency compromise envisaged the responsibility period to be linked to the data storage in Eurodac (10 years according to the recent Council text which is currently under negotiations with the European Parliament).

During the discussions on that proposal a significant group of Member States made it very clear that this period was too long and could not be the basis for an overall compromise, whereas others strongly supported this period. In addition some Member States expressed preferences for shortening the period without significantly deviating from the principle of stable responsibility and some were positive on 10 year-period but without direct link to Eurodac.

These positions should be seen against the background of the current complex rules in Dublin III Regulation. In fact the current Dublin Regulation is built on the general principle of permanent responsibility but at the same time it sets wide variety of possibilities for cessation and shift of responsibility, including in case of absconding, with different set time limits not linked however to any objective ground. Dublin III regulates neither short, nor long periods. It only sets rules which create ample possibilities for legal uncertainty and disputes between Member States.

During the 2015 crisis, in particular, it became obvious that the existing rules are not only highly inefficient, but also contributed significantly to asylum shopping and created strong incentives for secondary movements and abuses of the system. These provisions are indeed one of the main factors enabling asylum seekers to decide the Member State of their choice and allow those not in need of international protection to unduly prolong their stay in the Union.

In order to bridge the positions of different Member States while at the same time ensuring that the deadlines for cessation of responsibility will contribute to the imperious need to fight effectively abuses in the reformed Common European Asylum System, the Presidency has proposed a new approach: 5 years after the final decision. The Presidency believes that this is a balanced compromise, ensuring, on the one hand, that asylum procedures and decisions on the merits of the applications are taken swiftly and, on the other hand, that there are no undue incentives for asylum seekers to abscond and abuse the system.

As regards the *beneficiaries of international protection* the Presidency would like to recall that their inclusion in the scope of the Regulation will lead to 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 not only to limit secondary movements but also to provide for a clearer picture of the overall asylum burden born by the individual Member States.

During the discussions so far on this particular issue a vast majority of the Member States supported the inclusion of the beneficiaries in the scope of the new Dublin Regulation while eight Member States remain skeptical pointing out 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. For legal reasons, most of those eight Member States believe that the rules applicable for beneficiaries should be addressed in different EU instruments, e.g the Qualification Regulation or the Return Directive.

The Presidency believes that a reformed Dublin system should not tolerate any abuse, be it by asylum seekers or by beneficiaries of international protection and that the issue of secondary movements must be addressed comprehensively within the Dublin Regulation. Moreover, this is a necessary legal tool not only to limit secondary movements but also to provide for a clearer picture of the overall asylum burden born by the individual Member States.

In addition to that the Presidency also intends to adapt the text to open for the possibility to *start the Dublin procedure after the registration*, which will also be coherent with the changes discussed at technical level with regard to the Asylum Procedure Regulation and Eurodac Regulation.

Determining the Member State responsible at an early stage will additionally contribute to streamlining the process and to provide certain sequence in the implementation of the respective procedures.

3. **SOLIDARITY**

The solidarity part of the future Dublin IV Regulation include for the first time a mechanism for measuring the burden borne by individual Member States and establishes a proportionate and timely response to the challenges faced by the respective Member States. The solidarity measures within the future Dublin system are of paramount importance not only as regards ensuring adequate mechanisms to provide EU solidarity where unforeseen events arise or where the burden on a single Member State becomes disproportionate but also as regards the need to provide for faster and more efficient procedures for better managing of the flows both outside of the EU and within the EU.

In order to achieve these objectives the Presidency proposes the following solidarity elements for the future Dublin system:

- fair measurement of the asylum burden of every Member State;
- automatic financial support (per capita for applicants, beneficiaries and returnees);
- automatic expert, technical and operational support in the areas of asylum and return;

- targeted support for external dimension directed to third countries of origin and transit, as well as first countries of asylum and neighbouring countries;
- targeted allocation as necessary and primarily on a voluntary basis, with strong incentives, and with Council Implementing Decision as last resort and effective guarantee of triggering.

The question of allocation was most intensely discussed among these measures. Vast majority of delegations support the targeted use of allocation as a measure to alleviate the Member States under pressure. However, several delegations still remain skeptical towards systematic use of this measure. Broad majority of Member States strongly support all forms of allocation. In addition some Member States showed flexibility to accept the use of mandatory allocation provided that the use of the voluntary allocation is additionally strengthened in the text. Five Member States opposed any mandatory element even as a measure of last resort.

Many ideas have been presented on how to improve the EU resilience to migratory crisis and all of those that fall in the scope of the Dublin Regulation have been incorporated in the legal text. At the same time, not many alternative solutions have been expressed as regards to what kind of measures could be applied for alleviating the Member States under pressure when, despite all measures being effectively taken to manage the flows, such Member States reach a certain level of disproportionate pressure.

In light of this, the Presidency believes that it is the duty of the Union and of each individual Member State to alleviate the affected Member State, including, if needed, with allocations. At the same time in order to bridge the positions of different delegations starting from automatic allocation and going to no allocation at all the Presidency suggests a *targeted use of allocation* with a focus put on the added value of voluntary allocations. In particular:

- The system is designed in such a way so that, if applied effectively from the very first stages of a Member State reaching 120% of its fair share, it can relieve the disproportionate pressure from the affected Member States based on voluntary contributions of the other Member States. Moreover, the voluntary phase is further strengthened by providing a lot of incentives for the Member States who would use this phase;

- At the same time, the affected Member States will always have the guarantee that the lack of sufficient voluntary contributions will be compensated by a structured allocation system. In particular, when a Member State is really in need and the voluntary contributions did not suffice, there is the guarantee that Council will, as a measure of last resort, act by reversed qualified majority voting;
- To ensure a stable and predictable measurement for each Member State's fair share a reference key based on GDP and population has been broadly agreed between Member States.
- Moreover, the allocation mechanism is accompanied with several layers of checks and safeguards ensuring that the reformed system cannot be abused while guaranteeing also its flexibility. In particular:
 - Only persons likely to be in need of international protection will be allocated on a mandatory basis. This will prevent that allocation becomes a pull factor;
 - A cap/upper limit for the allocations is established for a two year period. This will ensure predictability for all Member States on the maximum number of applicants they can receive while also being flexible enough to guarantee that needs on the ground will be covered;
 - Finally, in line with discussions also under the previous Presidencies, alternative measures to allocation are included allowing for flexibility in how to provide solidarity.

The Presidency believes that the current compromise proposal provides for enough predictability of the system while at the same time leaving the flexibility needed to address in a targeted way the real needs on the ground.

4. THE BALANCE BETWEEN RESPONSIBILITY AND SOLIDARITY

The balance between responsibility and solidarity should be seen against the background of the main objectives of the Dublin reform and the overall outcome for the Common European Asylum System. The different responsibility and solidarity parts are mutually reinforcing and not excluding each other. They should be assessed against the lessons learnt during the last migratory crisis and in the light of consensually identified need to reform Dublin III in order to close the gaps in the current system and to provide for future-proof and crisis-resilient EU asylum system.

Any use of support measures despite their form and nature should be based on reliable information about the burden borne by individual Member States. Stemming the flows, which starts with more efficient management, necessitates resolute actions both as regards solidarity and responsibility.

Strengthening solidarity without closing the gaps within responsibility would not empower Union with the necessary tool to stop asylum abuses, which would continue to be a strong pull factor. In addition the lack of clarity about the real burden borne by individual Member States would hamper the use of the solidarity measures.

Strengthening the responsibility part without ensuring effective solidarity measures to be triggered in proportionate and speedy manner would lead to continuous pressure on the asylum systems of several Member States only and would not enable Union to regain the control of the flows. The lack of appropriate solidarity measures would leave the Union unprepared for different level of pressures. No structured and coordinated response would be possible at EU level thus making the whole system vulnerable and dependent on individual efforts.

The Presidency believes that the current compromise proposal strikes a fair balance between the two concepts while at the same time remaining open to explore further possibilities to improve the legal text.

The Presidency would like to recall in this respect that the work on the Dublin Regulation is taken forward in parallel to the intense work undertaken on the other building blocks of the asylum and migration system. Together, they all aim to sustainably change the current dynamics and to equip EU and individual Member States with the necessary tools to stem irregular migratory flows and to better manage the asylum applications.

Against this background the Presidency would like to invite Coreper to express its views on the balance achieved so far. Any suggestions for further streamlining the balance should be presented in light of the main objectives of the reform as well as in the context of the added value for the EU asylum system. Since all the components of the compromise on responsibility and solidarity are an interlinked set of measures, which only altogether make a balanced approach, changes on one side of the compromise will require changes on the other side too.

Main objectives of the reform

- ✳ Curbing secondary movements
- ✳ Alleviating burden from the front-line MS

To be applied by individual MS

RESPONSIBILITY	SOLIDARITY
<i>stable responsibility of 5 years after the final decision</i>	<i>fair measurement of the asylum burden of every MS</i>
<i>strengthened rules for application of the criteria for determining the responsible MS</i>	<i>automatic financial support (applicants, beneficiaries, returns)</i>
<i>inclusion of the beneficiaries into the scope</i>	<i>automatic expert, technical and operational support</i>
<i>shortened deadlines for all stages of the procedure</i>	<i>targeted support for the external dimension</i>
<i>introduction of take back notification</i>	<i>targeted allocation at all stages</i>

Overall outcome for the EU asylum system:

- ✳ Efficient and effective determination of responsible MS;
- ✳ Streamlined asylum procedures eliminating asylum shopping;
- ✳ Clear obligations for applicants and rigid consequences for non-compliance;
- ✳ Fully-fledged crisis mechanism for managing the system when under pressure;
- ✳ Clear criteria for levels of pressure on a MS's asylum system;
- ✳ Mechanisms for EU solidarity

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)

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 [...] 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 Union;
- (b) ‘application for international protection’ means **a request for protection made to a Member State by a third-country national or a stateless person, who can be understood as seeking refugee status or subsidiary protection status** [...];
- (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)** [...], 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 Regulation (EU) No. XXX/XXX (Asylum Procedures Regulation)** [...] either explicitly or **implicitly** [...];

- (f) ‘beneficiary of international protection’ means a third-country national or a stateless person who has been granted international protection as defined in **Regulation (EU) No. XXX/XXX (Qualification Regulation)** [...];
- (g) ‘family members’ means, insofar as the family already existed before the applicant arrived on the territory of the Member States, 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 present;
 - [...]
- (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) [...]
- (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 **national** law, to believe that **a person** [...] who is subject to a transfer procedure may abscond;
- (na) **'absconding' means the deliberate action by which an applicant does not remain available to the competent administrative or judicial authorities or leaves the territory of a Member State without authorisation from the competent authorities;**
- (o) 'benefitting Member State' means the Member State benefitting from the **measures** [...] set out in Chapter **VIA** [...] of this Regulation [...];
- (p) 'Member State of allocation' means the Member States to which an applicant will be allocated under **the procedure for allocation set out in Chapter VIA of this Regulation** [...];
- (q) 'resettled person' means a person **admitted to a Member State in accordance with Regulation (EU) No XXX/XXX (Resettlement Regulation) or under a national resettlement scheme** [...];
- (r) '[...] Asylum Agency' means the **European Union Agency for Asylum** as established by Regulation (EU) No **XXX/XXX (EU Asylum Agency Regulation)**; [...]
- (s) **'fair share' means the number of applicants for which a Member State is responsible, which corresponds to 100% of its reference number in accordance with Article 34g**
- (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 higher than 120% of its fair share;**
- (v) **"situation of severe crisis" means a situation in which the number of applicants is higher than 140 % of its fair share and the maximum number referred to in Article 34e(5) second subparagraph has been reached.**

CHAPTER II

GENERAL PRINCIPLES AND SAFEGUARDS

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 present a security risk are transferred among the Member States, it is necessary to ensure that pre-checks to the actual determination of the Member States responsible 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. If the cases for the inadmissibility of the application apply, the Member State of first application should be considered the Member State responsible and the application should be counted as part of 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. If the applicant comes from a safe country of origin or presents a security risks, the Member State of first application should be considered the Member State responsible and the application should be counted as part of its share. If none of the above cases apply, the procedures in this Regulation for identification and transfer to the Member State responsible should apply.

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, **following the exercise of the remedy in accordance with Article 28**, it is impossible to transfer an applicant to the Member State primarily designated as responsible, 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.

- 2a. **Before applying the criteria for determining a Member State responsible in accordance with Chapter III, the first Member State in which the application for international protection was lodged shall examine the application in accelerated procedure pursuant to Article 40 of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation) where:**
 - (a) **there are reasonable grounds to consider the applicant as a danger to the national security or public order of that Member State; or**
 - (b) **the applicant has been forcibly expelled for serious reasons of national security or public order under national law.**

3. **Without prejudice to Article 8(1), the first Member State in which the application for international protection was lodged may, before [...] applying the criteria for determining a Member State responsible in accordance with Chapter III [...],**
 - (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 [...] 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) [...].**
4. Where the Member State **decides that** [...] an application **is** inadmissible or examines an application in accelerated procedure pursuant to paragraphs **2a or 3**, that Member State shall become [...] 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:**
 - i) **from the date when the Member State referred to in paragraph 1 of this Article received, within three months from the date when that Member State requests the third country concerned to admit or to readmit the applicant to its territory, a reply from that third country that the applicant will not be admitted or readmitted by that third country, or,**

- ii) in case of a readmission agreement, from the date when the deadline set in the respective readmission agreement has expired. [...]

A recital to be added elaborating on the preventive measure to be undertaken in normal circumstances especially the use of the vulnerability assessment under EBCGA Regulation and the monitoring mechanism under the EUAA Regulation

Article 3a

~~Preventive measures under normal circumstances~~

~~With a view to preventing situations in which Member States' asylum and reception systems would be rendered ineffective as a result of disproportionate pressure as well as with a view to preventing possible crises at Member States' external borders, the Commission shall continuously monitor the situation of Member States in normal circumstances, as regards:~~

- ~~(a) — the situation of asylum in Member States, including through the monitoring mechanism for the operational and technical application of the Common European Asylum System led by the Asylum Agency in accordance with Regulation (EU) No. XXX/XXX (EUAA Regulation); and~~
- ~~(b) — the management of the external borders, including through the vulnerability assessment carried out by Frontex in accordance with Regulation (EU) 2016/1624 with the aim of assessing the capacity and readiness of the Member States to face threats and challenges at their external borders.~~

Article 3b

Union support for external dimension under normal circumstances

Where the number of applicants for which a Member State is responsible is below 100 % but the data in the automated system shows unusual increase in the number of applications and significant deviation from the average number of applications over a six-month period, the Commission may recommend, in consultation with that Member State, measures to be taken to reinforce the cooperation with third countries of origin and transit, including first countries of asylum and neighbouring countries.

Article 4

Obligations of the applicant

- 1. A third country national or stateless person who intends to make an application for international protection shall make and lodge that application in the Member State of first entry. [...]**
- 1a. By derogation from paragraph 1, where a third country national or stateless person is in possession of a valid residence permit or a valid visa he or she shall make and lodge that application in the Member State that issued the residence permit or visa.**

Where a third country national or stateless person who intends to make an application for international protection is in possession of a residence permit or a visa which has expired, he or she shall make and lodge that application in the Member State where he or she is present.

- 2. The applicant shall fully cooperate with the competent authorities of the Member States in matters covered by this Regulation, in particular by:**

- (a) **submitting** 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 [...]. **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;**
- (b) **providing biometric data in accordance with Regulation (EU) No. XXX/XXX (Eurodac Regulation).**

2a. The applicant shall be required to be present in:

- (a) **the Member State referred to in paragraph 1 and 1a pending the determination of the Member State responsible and the implementation of the transfer procedure, if applicable;**
- (b) **the Member State responsible;**
- (c) **the Member State of allocation pursuant to a transfer, where Chapter VIA.**

3. The applicant shall [...] 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 34i [...].

[...]

Article 5

Consequences of non-compliance

1. If an applicant does not comply with the obligation **to provide biometric data** set out in Article 4(2)(b), **to be present in the relevant Member State set out in Article 4(2a) or to comply with a transfer decision set out in Article 4(3) of this Regulation [...]**, the Member State responsible [...] shall **reject the application as implicitly withdrawn as provided for in Article 39(1) and (1a) of Regulation (EU) XXX/XXX (Asylum Procedures Regulation)** [...].

2. [...]
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 [...] 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.**
4. [...] **Elements** and information relevant for determining the Member State responsible [...] submitted **after** [...] the deadline set out in Article 4(2) **shall not be taken into account by the competent authorities.**

Article 6

Right to information

1. As soon as an application for international protection is lodged [...] 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:
 - (a) that the right to apply for international protection does not encompass a [...] choice **by** [...] the applicant **in relation to either the** [...] Member State [...] responsible for examining the application for international protection **or the Member State of allocation;**
 - (b) of the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of leaving the Member State where he or she is **required** [...] to be present **in accordance with Article 4(2a),** [...];
 - (c) 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;

- (d) **of the aim** of the personal interview pursuant to Article 7 and the 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;
 - (e) of the possibility to challenge a transfer decision **within the time limit set out in Article 28(2)** [...] and of the fact that **the scope of** this challenge shall be limited **as set out in Article 28(1)**;
 - (f) that the competent authorities of Member States and the **Asylum Agency shall** process personal data of the applicant including for the exchange of data on him or her for the sole purpose of implementing their obligations arising under this Regulation;
 - (g) of the categories of personal data concerned;
 - (h) 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 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;
 - (i) where applicable, of the allocation procedure set out in Chapter **VIA**[...].
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 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) No. XXX/XXX (**Eurodac Regulation**) [...] 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 56(2) of this Regulation.

Article 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 [...]. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article 6.
 - 1a. **The personal interview may be omitted if:**
 - (a) **the applicant has absconded; or**
 - (aa) **the applicant has not attended the personal interview and has not provided justified reasons for his or her absence; 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.**
2. The personal interview shall take place in a timely manner and, in any event, before any take charge request pursuant to Article 24 is made .

3. 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.
4. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law.
5. 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 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 State where an unaccompanied minor is [...] present shall ensure that **he or she is represented and assisted by a representative or a person suitable to assist him or her until a representative is designated as provided for in Article 22 of Regulation (EU) XXX/XXX (Asylum Procedures Regulation)** [...] with respect to the relevant procedures provided for in this Regulation. The 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 **child** [...] are taken into consideration during the procedures carried out under this Regulation. Such 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.

[...]

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.
4. Before transferring an unaccompanied minor [...], the transferring Member State shall **notify** [...] the Member State responsible or the Member State of allocation **of the transfer of the unaccompanied minor** [...]. Any decision to transfer an unaccompanied minor shall be **based on** [...] an assessment of his **or** [...] her best interests **taking into account the** [...] factors listed in paragraph 3. [...]
5. For the purpose of applying Article 10, 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** 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 47 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.

6. With a view to facilitating the appropriate action to identify the family members, **siblings** or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph 5 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 56(2).

CHAPTER III

CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Section 1

General principles

Article 9

Hierarchy of criteria

1. **Without prejudice to Article 9a**, the [...] criteria for determining the Member State responsible shall be applied only once, in the order in which they are set out in **section 2** of this Chapter.
2. The Member State responsible in accordance with the criteria set out in **section 2** of 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.

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 **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, regardless of whether this application is considered a subsequent application under Regulation (EU) XXX/XXXX (Asylum Procedures Regulation) by the Member State responsible [...]. 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 by the same applicant.**
- 2. The responsibility referred to in paragraph 1 shall cease five years after a final decision on the application has been taken, unless:**
 - a) the Member State responsible has granted international protection; or**
 - b) it can be established, 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.**

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, unless the person has already been granted international protection.

Article 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.**

2. 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** [...] 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 the law 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.
3. Where the applicant 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** [...] that it is **not** in the best interests of the **child** [...].
4. Where family members, **siblings** or relatives as referred to in paragraphs 2 and 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.
5. In the absence of a family member, **a sibling** or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be that where the unaccompanied minor first has lodged his or her application for international protection, unless it is demonstrated that this is not in the best interests of the **child** [...].
6. The Commission is empowered to adopt delegated acts in accordance with Article 57 concerning the identification of family members, **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 8(3).

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 56(2).

Article 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 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 13

Family procedure

Where several family members 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 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 Council¹. 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.
- 3a. 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. 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 14a

Disembarkation following a search and rescue operation

Where a third-country national or a stateless person is disembarked in the territory of a Member State following a search and rescue operation in international waters, the Member State where the disembarkation takes place shall be responsible for examining his or her application for international protection.

Article 15

Entry

Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 25(4) of this Regulation, including the data referred to in Regulation (EU) No. XXX/XXX (Eurodac Regulation), that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the **first** Member State thus entered shall be responsible for examining the application for international protection.

Article 16

Visa waived entry

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 **of entry** shall be responsible for examining his or her application for international protection.

Article 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.

CHAPTER IV

DEPENDENT PERSONS AND DISCRETIONARY CLAUSES

Article 18

Dependent persons

1. Where, on account of pregnancy, a new-born child, serious illness, severe disability or old age, an applicant is dependent on the assistance of his or her child, sibling or parent legally resident in one of the Member States, or his or her child, sibling or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, sibling or parent, provided that family ties existed **before the applicant arrived on the territory of the Member States** [...], that the child, sibling or parent or the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing.

In order to apply the first subparagraph and before making a take charge request, the Member State where such dependent is present shall verify that no child, sibling or parent who can take care of that dependant legally resides on its territory.

- 1a. **In order to apply paragraph 1, a Member State with which an application was lodged shall provide the requested Member State with all necessary and relevant documentary evidence concerning the existence of dependence grounds and of a child, sibling or parent who can take care of that dependant referred to in that paragraph. The requested Member State shall justify the refusal of taking charge of the applicant on the basis of documentary evidence concerning the inexistence of dependence grounds or of a child, sibling or parent who can take care of that dependant referred to in that paragraph.**

2. Where the child, sibling or parent referred to in paragraph 1 is legally resident in a Member State other than the one where the applicant is present, the Member State responsible shall be the one where the child, sibling or parent is legally resident unless the applicant's health prevents him or her from travelling to that Member State for a significant period of time. In such a case, the Member State responsible shall be the one where the applicant is present. Such Member State shall not be subject to the obligation to bring the child, sibling or parent of the applicant to its territory.
3. The Commission is empowered to adopt delegated acts in accordance with Article 57 concerning the elements to be taken into account in order to assess the dependency link, the criteria for establishing the existence of proven family links, the criteria for assessing the capacity of the person concerned to take care of the dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time.
4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).

Article 19

Discretionary clauses

Possible recital:

A Member State's decision to derogate from the binding criteria laid down in this Regulation may undermine the effectiveness and sustainability of the system. Therefore, a Member State should be able to derogate from the responsibility criteria only in exceptional cases, in particular on humanitarian grounds, for family reasons, for security reasons, or for reasons of procedural efficiency where, in case of rejection of the application, return by that Member State is considered to be more efficient . This discretion should be solely for the Member State to exercise and the applicant should have no right to request its exercise.

1. By way of derogation from Article 3(1) [...], each Member State may decide **in exceptional cases or for reasons of procedural efficiency** to examine an application for international protection lodged with it by a third-country national or a stateless person [...], even if such examination is not its responsibility under the criteria laid down in this Regulation.

The Member State which decides to examine an application for international protection pursuant to this paragraph shall become the Member State responsible and shall assume the obligations associated with that responsibility. Where applicable, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of the **applicant or has received a take back notification**.

The Member State which becomes responsible pursuant to this paragraph shall forthwith indicate it in Eurodac in accordance with Regulation (EU) No. XXX/XXX (Eurodac Regulation) [...] by adding the date when the decision to examine the application was taken.

The applicant shall have no right to request that its application be examined by a Member State in accordance with this discretionary clause.

2. The Member State in which an application for international protection is **lodged** [...] and which is carrying out the process of determining the Member State responsible may, [...] before a Member State responsible has been determined, request, **in exceptional cases**, another Member State to take charge of an applicant **based on family considerations** [...], even where that other Member State is not responsible under the criteria laid down in Articles 10 to 13 and 18, **or where the applicant provides new elements in relation to the application of Articles 10 to 12, which he or she could not have already brought forward pursuant to Article 4(2)(a)**. The persons concerned must express their consent in writing.

The request to take charge shall contain all the material in the possession of the requesting Member State to allow the requested Member State to assess the situation.

The requested Member State shall carry out any necessary checks to examine the **considerations** [...] cited, and shall reply to the requesting Member State within one month of receipt. A reply refusing the request shall state the reasons on which the refusal is based.

Where the requested Member State accepts the request, **it shall become the Member State responsible.**

CHAPTER V

OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

Article 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 24, 25 and 30, of an applicant who has lodged an application in a different Member State;
 - (b) take back, under the conditions laid down in Articles 26 and 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 26 and 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 26 and 30, 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;
- (e) take back, under the conditions laid down in Articles 26 and 30, a beneficiary of international protection who made an application **for international protection or who is irregularly present in a Member State other than the Member State which granted him or her international protection** [...];
- (f) **take back, under the conditions laid down in Articles 26 and 30, a resettled person who made an application for international protection or who is irregularly present in a Member State other than the Member State which 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) with the exception of applications by beneficiaries of international protection. [...]**

3. [...]

4. [...]

5. [...]

6. [...]

7. [...]

CHAPTER VI

PROCEDURES

SECTION I

START OF THE PROCEDURE

Article 21

Start of the procedure

1. **Without prejudice to Article 3 and chapter VIA, the Member State with which an application for international protection is first lodged shall start the process of determining the Member State responsible without delay. [...]**
- 1a. **The Member State where the applicant first lodged his or her application or the Member State of allocation shall continue the procedures for determining the Member State responsible if the applicant leaves the territory of that Member State without authorisation or is otherwise not available for the competent authorities of that Member State.**
2. [...]
3. For the purposes of this Regulation, the situation of a minor who is accompanying the applicant and meets the definition of family member shall be indissociable from that of his or her family member and shall be a matter for the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, provided that it is in the minor's best interests. The same treatment shall be applied to children born after the applicant arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for international protection is lodged with the competent authorities of a Member State by an applicant who is on the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for international protection was lodged.

The applicant shall be informed in writing of this change in the determining Member State and of the date on which it took place.

5. An applicant who is present in another Member State without a residence document or who there lodges an application for international protection [...] during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles 26 and 30, by the Member State with which that application for international protection was first lodged.
6. **When the procedures referred to in paragraphs 1 and/or 1a of this Article have been concluded, the Member State which has conducted the procedures for determining the Member State responsible shall, without delay, indicate in the electronic file referred to in Article 22(2) the Member State responsible. The procedures in paragraph 5 shall apply until this indication has been added. The Member State which becomes responsible pursuant to Article 19 or Article 9a(3) shall indicate in the electronic file referred to in Article 22(2) that it is the Member State responsible.**

SECTION II

Article 22

[...]

Article 23

[...]

SECTION III

PROCEDURES FOR TAKE CHARGE REQUESTS

Article 24

Submitting a take charge request

1. Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it shall, **without delay** [...] and in any event within **two** [...] months of the date on which the application was lodged [...], request that other Member State to take charge of the applicant. **The time limit for submitting the request to take charge of the applicant who is an unaccompanied minor shall be three months.**

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 of Regulation (EU) No. XXX/XXX (**Eurodac Regulation**) [...] or of a VIS hit with data recorded pursuant to Article 21 [...] of Regulation (EU) 767/2008, the request **to take charge** shall be sent within **one month** [...] of receiving that hit.

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged.

- 1a. The requesting Member State may ask for an urgent reply in cases where the application for international protection was lodged after issuing a decision to refuse entry or a return decision.**

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. That period shall be at least one week.

- 1b. Where the time limit for submitting a take charge request starts to run as referred to in Article 3(5), the requesting Member State shall include the reply from the third country concerned or, in case of readmission request, include the request made stating the date in its request.**

2. In the cases referred to in paragraphs **1, 1a and 1b**, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 25(4) and/or relevant elements from the applicant's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, adopt uniform conditions on the preparation and submission of take charge requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).

Article 25

Replying to a take charge request

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within **two** [...] months of receipt of the request.
2. Notwithstanding the first [...] paragraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 of Regulation (EU) No. XXX/XXX (**Eurodac Regulation**) [...] or of a VIS hit with data recorded pursuant to Article 21(2) of Regulation (EU) 767/2008, the requested Member State shall give a decision on the request **to take charge** within **one month** [...] of receipt of the request.
3. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.
4. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).
 - (a) Proof:
 - (i) this refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary;
 - (ii) the Member States shall provide the Committee provided for in Article 56 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs;

(b) Circumstantial evidence:

- (i) this refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them;
- (ii) their evidentiary value, in relation to the responsibility for examining the application for international protection shall be assessed on a case-by-case basis.

5. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.
6. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.
- 6a. Where the requesting Member State has asked for an urgent reply in accordance with Article 24(1a), the requested Member State shall reply within the time limit requested or, in the absence thereof, within 10 days of receipt of the request.**

In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may reply after the time limits referred to in the first subparagraph, but in any event within one month. In this case, the requested Member State shall, within the time limit originally requested or, in absence thereof, within 10 days, inform the requesting Member State of its decision to postpone its reply.

7. Where the requested Member State does not object to the request within the **two** [...] -month period **set out** [...] in paragraph 1 by a **reasoned** reply which gives **full and detailed** [...] **reasons**, or where applicable within the **one-month** [...] period **set out** [...] in paragraphs 2 and 6a, **by a reply which gives full and detailed reasons**, this shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

SECTION IV

PROCEDURES FOR TAKE BACK NOTIFICATIONS

Article 26

Submitting a take back notification

1. In a situation referred to in Article 20(1)(b), (c) (d), (e) **or (f)** the Member State where the person is present shall make a take back notification **without delay and in any event within one month** [...] after receiving the Eurodac hit [...].
2. A take back notification shall be made using a standard form and shall include **the unique application number referred to in Article 22(2) and the Eurodac search result** [...].
3. The Member State responsible shall **acknowledge** [...] immediately the receipt of the notification to the Member State which made the notification.
4. The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back notifications. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).

SECTION V

PROCEDURAL SAFEGUARDS

Article 27

Notification of a transfer decision

1. Where the requested Member State accepts to take charge of an applicant, the requesting Member State shall notify the applicant in writing without **undue** delay of the decision to transfer him or her to the Member State responsible and, where applicable, of not examining his or her application for international protection.
2. Where the applicant or another person referred to in Article 20(1) (c), (d), (e) **or (f)** is to be taken back, the Member State where the person concerned is present shall notify the person concerned in writing without [...] delay the decision to transfer him or her to the Member State responsible **and, where applicable, of not examining his or her application for international protection.**
3. If a legal advisor or other counsellor is representing the person concerned, Member States may choose to notify the decision to such legal advisor or counsellor instead of to the person concerned and, where applicable, communicate the decision to the person concerned.
4. The decision referred to in paragraphs 1 and 2 shall contain information on the legal remedies available and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned should appear, if that person is travelling to the Member State responsible by his or her own means.

Member States shall ensure that information on persons or entities that may provide legal assistance to the person concerned is communicated to the person concerned together with the decision referred to in paragraphs 1 and 2, when that information has not been already communicated.

5. When the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall inform him or her of the main elements of the decision, which shall always include information on the legal remedies available and the time limits applicable for seeking such remedies, in a language that the person concerned understands or is reasonably supposed to understand.

Article 28

Remedies

Possible recital (to replace recital 24 of the Commission proposal):

The maintaining of an area of freedom, security and justice within the Union, and in particular the swift and effective application of the close cooperation between Member States set out in this Regulation which is an essential instrument within an area without internal border controls, is based on mutual trust and a presumption of compliance by all Member States with Union law, and in particular with fundamental rights as guaranteed by the Charter of Fundamental Rights of the European Union and with the detailed harmonised provisions of the Common European Asylum System.

In order to fulfil the objective of this Regulation to rationalise the treatment of applications for international protection, to increase legal certainty and to avoid forum shopping by quickly designating the Member State responsible through a swift and effective cooperation between Member States, a refusal to transfer an applicant to the Member State primarily designated as responsible should be limited, in accordance with the case law of the Court of Justice, to exceptional cases where there are substantial grounds for believing that there is a real and proven risk, on the basis of objective, reliable, specific and properly updated evidence, that the transfer of the applicant would entail a manifest breach of the prohibition ~~are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a real and proven risk~~ of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.

In order to guarantee effective protection of the fundamental rights of the persons concerned, an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established in compliance with Article 47 of the Charter. However, in order to ensure the fulfilment of the objectives of this Regulation as an instrument of cooperation governing relations between Member States which is not aimed at granting substantive rights to the applicants save as regards respect of Article 4 of the Charter and of the criteria related to minors, family and dependents, the scope of such remedy should be limited only to assessing whether the transfer would result for the person concerned in a real and proven risk of inhuman or degrading treatment or whether the criteria related to minors, family and dependents as set out in Articles 10 to 13 and 18, which are aimed at protecting the rights of the child and respect for family life, were infringed upon.

1. The applicant or another person as referred to in Article 20(1)(c), (d), (e) **or (f)** 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.

The scope of this remedy shall be limited to an assessment of whether the transfer would result for the applicant or the person concerned in a real and proven risk of inhuman or degrading treatment or, where the person concerned is taken charge of pursuant to Article 20(1)(a), whether the criteria related to minors, family and dependents as set out in Articles 10 to 13 and 18 are infringed upon.

2. Member States shall provide for a period of **10** [...] 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.

[...]

4. [...]

5. [...]

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

7. 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 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 request or a take back notification shall not exceed **20 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 on a take charge request. Such reply shall be given within **14 days** [...] of receipt of the take charge request. Failure to reply within the **14-day** [...] period shall be tantamount to accepting the take charge request and shall entail the obligation to take the person in charge, 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 **40 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)** [...].

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

SECTION VII

TRANSFERS

Article 30

Modalities and time limits

1. The determining Member State whose take charge request referred to in Article 20(1) (a) was accepted or who made a take back notification referred to in Article 20(1) (b) to (f) [...] shall take a transfer decision at the latest within **10 days** [...] of acceptance or notification and transfer the applicant or the person concerned to the Member State responsible.

The transfer of the applicant or of another person as referred to in Article 20(1)(c), (d), (e) or (f) from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within **60 days** [...] from **the date when the transfer decision is no longer subject to remedy before a court or tribunal of first instance** [...].

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

If necessary, the applicant shall be supplied by the requesting Member State with a *laissez passer*. The Commission shall, by means of implementing acts, establish the design of the *laissez passer*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).

The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

2. If a person has been transferred erroneously or a decision to transfer is overturned on appeal or review after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.
3. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).

Article 31

Costs of transfer

1. The costs necessary to transfer an applicant or another person as referred to in Article 20(1)(c), (d), (e) **or (f)** to the Member State responsible shall be met by the transferring Member State.
2. Where the person concerned has to be transferred back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal or review after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.
3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.

Exchange of relevant information before a transfer is carried out

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 20(1)(c) or (d) shall communicate to the Member State responsible such personal data concerning the person to be transferred as is adequate, relevant and limited to what is necessary for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, and to ensure continuity in the protection and rights afforded by this Regulation and by other relevant asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in accordance with national law have sufficient time to take the necessary measures.
2. The transferring Member State shall, in so far as such information is available to the competent authority in accordance with national law, transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:
 - (a) any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care that may be required;
 - (b) contact details of family members, relatives or any other family relations in the receiving Member State, where applicable;
 - (c) in the case of minors, information on their education;
 - (d) an assessment of the age of an applicant.

3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 47 of this Regulation using the ‘DubliNet’ electronic communication network set-up under Article 18 of Regulation (EC) No 1560/2003. The information exchanged shall only be used for the purposes set out in paragraph 1 of this Article and shall not be further processed.
4. With a view to facilitating the exchange of information between Member States, the Commission shall, by means of implementing acts, draw up a standard form for the transfer of the data required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 56(2).
5. The rules laid down in Article 46(8) shall apply to the exchange of information pursuant to this Article.

Article 32a

Exchange of security-relevant information before a transfer is carried out

Where the Member State carrying out the transfer is in possession of information that indicates that there are reasonable grounds to consider the applicant a danger to the national security or public order, that Member State shall also communicate that information to the Member State responsible.

Exchange of health data before a transfer is carried out

1. For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, in so far as it is available to the competent authority in accordance with national law, transmit to the Member State responsible information on any special needs of the person to be transferred, which in specific cases may include information on that person's physical or mental health. That information shall be transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

The Commission shall, by means of implementing acts, draw up the common health certificate. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 56(2).

2. The transferring Member State shall only transmit the information referred to in paragraph 1 to the Member State responsible after having obtained the explicit consent of the applicant and/or of his or her representative or when such transmission is necessary to protect public health and public security, or, if the applicant is physically or legally incapable of giving his or her consent, to protect the vital interests of the applicant or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.
3. The processing of personal health data referred to in paragraph 1 shall only be carried out by a health professional who is subject, under national law or rules established by national competent bodies, to the obligation of professional secrecy or by another person subject to an equivalent obligation of professional secrecy.

4. The exchange of information under this Article shall only take place between the health professionals or other persons referred to in paragraph 3. The information exchanged shall only be used for the purposes set out in paragraph 1 and shall not be further processed.
5. The Commission shall, by means of implementing acts, adopt uniform conditions and practical arrangements for exchanging the information referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 56(2).
6. The rules laid down in Article 46(8) shall apply to the exchange of information pursuant to this Article.

CHAPTER VIA

Measures and additional criteria in response to challenging circumstances and severe crises

Article 34

General principles

Possible recital:

Where a Member State is in challenging circumstances or in a situation of severe crisis, the relevant Union institutions, agencies and bodies as well as all Member States should make every effort towards alleviating the pressure on the Member State concerned. They should cooperate closely as early as possible and to the extent that is capable of addressing the main causes of the problem, in order to get back to the normal functioning of Member States' asylum and reception systems and avoid the possible deterioration of the situation.

1. The measures set out in this Chapter shall be available where a Member State is in challenging circumstances or in a situation of severe crisis.
2. The measures and additional criteria shall include, as appropriate and adapted to the specific needs of the Member State in challenging circumstances or in a situation of severe crisis:
 - (a) technical and operational assistance as provided for in Article 14(1) and (2) of Regulation (EU) 2016/1624² as well as coordination of and support to return in accordance with Section 4 of Chapter II of that Regulation;
 - (b) operational and technical assistance as provided for in Article 16 of Regulation (EU) No. XXX/XXX (EU Asylum Agency);
 - (c) financial support by the Union pursuant to Article 34a;
 - (ca) Union support for external dimension pursuant to Article 34d;
 - (d) allocation of applicants from the benefitting Member State pursuant to Articles 34ba, 34c or 34e;
 - (ea) assistance as provided for in Council decision 1313/2013/EU³;
 - (f) other support measures that can contribute to alleviating the situation in the Member State concerned.

² OJ L251, 16.9.2016

³ Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism, OJ L 347, 20.12.2013, p. 924.

Section 1

Measures in response to challenging circumstances

Sub-section 1

Measures in response to challenging circumstances where the number of applicants in a Member State is between 120% and 140% of its fair share

Possible recital:

The financial support provided under this Regulation should be without prejudice to other financial support provided by the Union to Member States for return, for the integration of beneficiaries of international protection or for the strengthening and development of the Common European Asylum System under the relevant financial instruments.

Article 34a

Financial support by the Union

- 1. In accordance with Regulation xx/xxxx (Union budget), a Member State shall receive an amount of EUR 10 000:**
 - (a) per applicant for whom that Member State is responsible and who is above that Member State's fair share and if that Member State is in challenging circumstances;**
 - (b) per applicant allocated to that Member State who is above the benefitting Member State's fair share and for whom the Member State of allocation becomes the Member State responsible and if that Member State is in challenging circumstances, ~~even if the benefitting Member State is not in challenging circumstances.~~**

- 1a. In accordance with Regulation xx/xxxx (Union budget), the benefitting Member State shall be refunded by a lump sum of EUR 500 for each applicant transferred pursuant to Article 34i(c) or 34j(g), where applicable, to cover the transfer of the applicant.
2. In accordance with Regulation xx/xxx (Union budget) a Member State shall receive an additional amount of EUR 20 000 per applicant referred to in paragraph 1 and who was granted international protection for ~~after~~ the implementation of integration measures.
3. In accordance with Regulation xx/xxx (Union budget) a Member State referred to in paragraph 1 shall receive an additional amount of EUR 10 000 per person whose application has been rejected and for whom the Member State can establish, on the basis of the update of the data set referred to in Article 11(d) of Regulation xx/xxxx (Eurodac) that the person has left the territory of the Member States, either forced or voluntarily, in compliance with a return decision or a removal order.
4. In accordance with Article 34d(4), Union and bilateral projects in the countries of origin and transit submitted for financial support by a Member State shall be assessed with priority.

Article 34aa

Union assessment of the situation

1. If a Member State is in challenging circumstances the Commission shall, in consultation with that Member State, make an assessment of the situation within two weeks after the number of applicants for which that Member State is responsible exceeds 120% of its fair share and corresponds to more than 0,1 % of its population, as well as identify the needs of that Member State and the measures to be taken. Such assessment shall be based on information provided by, in particular the Member State in challenging circumstances, the Asylum Agency, Frontex, Europol and the EEAS.

2. **The assessment referred to in paragraph 1 shall cover in particular:**
 - (a) **the cause, nature, composition and trends of flows, including of the migration pressure, as well as the EU-wide recognition rates of the applicants concerned;**
 - (b) **whether there is a need for deployment of additional experts and technical equipment in the Member State concerned;**
 - (c) **the level of the cooperation with the countries of origin and transit, as well as first third countries of asylum and neighbouring countries.**

3. **In consultation with the Member State in challenging circumstances, the assessment referred to in paragraph 1 shall be accompanied, where appropriate, by:**
 - (aa) **measures to be taken by the relevant Union agencies and bodies;**
 - (a) **a recommendation to the Member States with measures referred to in Article 34(2)(d) to be taken on a voluntary basis;**
 - (b) **concrete measures to be taken in accordance with Article 34d in the area of return and resettlement, reinforcing cooperation with relevant countries of origin and transit, in particular possible use of leverages;**
 - (c) **concrete measures to improve the fight against migrant smuggling;**
 - (d) **other support measures that can contribute to alleviating the situation in the Member State concerned.**

4. **The Commission shall present the assessment referred to in paragraph 1 to the Council. Where the Commission has presented recommendations and measures under paragraph 3, the Commission shall report to the Council on the implementation of these recommendations and measures every three months.**

Article 34b

Possible recital in response to questions from MS on how disproportionate pressure under EUAA and challenging circumstances under Dublin relate

In accordance with its mandate, the European Union Agency for Asylum should provide operational and technical assistance to Member States, in particular where their asylum and reception systems are subject to disproportionate pressure. A situation of disproportionate pressure could be characterized by a sudden and massive influx of third-country nationals, including applicants for international protection or those likely to be in need of international protection, or a high risk of such influx to the extent that it places extreme burden even on well-prepared asylum and reception systems and requires immediate action. A Member State facing disproportionate pressure may also be in challenging circumstances within the meaning of this Regulation because the number of applicants for which it is determined to be responsible after a check of the criteria under this Regulation is above a certain threshold. A Member State may also be in challenging circumstances without necessarily facing disproportionate pressure. Under this Regulation, the European Union Agency for Asylum should prioritize the operational and technical assistance provided to a Member State in challenging circumstances both where such assistance has already been provided under the terms of Regulation (EU) No XXX/XXX (EUAA Regulation) and where this has not or not yet been the case.

Support by the Union agencies

The Asylum Agency and Frontex shall prioritise the needs of a Member State in challenging circumstances according to the request or agreement of that Member State pursuant to Article 34(2)(a) and (b).

Article 34ba

Support on bilateral basis

- 1. If a Member State is in challenging circumstances, support measures may be agreed with other Member States on a bilateral basis, including the allocation of applicants pursuant to Article 34(2)(d). The supporting Member State shall inform the Commission every month about the implementation of such measures.**
- 2. A Member State which intends to allocate applicants pursuant to paragraph 1 shall indicate the number of applicants who can be swiftly allocated to its territory and any other relevant information. Based on this information, the benefitting Member State shall identify the individual applicants who could be allocated. The Member States concerned shall agree among each other which parts of the procedure set out in Articles 34i to 34l shall apply.**

Article 34c

Voluntary allocation

- 1. In case the Commission has presented a recommendation under Article 34aa(3)(a) Member States shall notify to the Commission within two weeks the measures they will take and inform the Commission every month about the implementation of these measures.**

2. A Member State which intends to allocate applicants pursuant to paragraph 1 shall indicate the number of applicants who can be swiftly allocated to its territory and any other relevant information. Based on this information, the benefitting Member State shall identify the individual applicants who could be allocated. For the remaining part of the procedure, Articles 34i to 34l shall apply. If a Member State has indicated a number of applicants who may be allocated to it, this number of allocations shall be deemed as carried out on a voluntary basis, regardless of whether they are carried out before or after the adoption of a Council decision pursuant to Article 34e.
3. The amount set out in Article 34a(1)(b) shall be doubled for the allocations carried out in accordance with this Article as well as for the allocations carried out in accordance with Article 34ba.

Article 34d

Union support for external dimension

Possible recital:

Comprehensive migration management should be ensured by a variety of measures, including measures which make the EU return policy more effective and ensure that persons who are the subject to return decisions are effectively returned. These measures should include in particular strengthening the assisted voluntary return programmes, cooperation on return with the authorities of third countries, including through the EU delegations in these countries, notably as regards the acquisition of travel documents and the possible use of leverages, providing appropriate assistance to Member States in conducting their return and readmission activities, as well as strengthening and streamlining the existing relevant networks, the European Migration Liaison Officers and the Liaison Officers of the EBCG to third countries. Targeted resettlement should be undertaken to reduce irregular flows into the Member State in challenging circumstances; this may include measures to address emergency situations.

Measures referred to in Article 34aa(3)(b) shall consist of targeted initiatives to be undertaken in the following areas, as appropriate:

- (a) Measures in the area of return shall be focused in particular on strengthening the assisted voluntary returns, enhancing return operations to countries of origin, readmission to third countries and transit and reinforcing the cooperation with the neighbouring third countries, including through EU migration liaison officers and EU delegations in these countries.
- (b) Measures in the area of resettlement shall be focused in particular on the third countries generating the migration flow as provided for in the assessment pursuant to Article 34aa(2)(a).
- (c) Measures for reinforcing the cooperation with the third countries of origin and transit, including first countries of asylum and neighbouring countries may also include measures at Union and bilateral level for capacity building and training in areas such as border management, asylum and migration management as well as other measures to strengthen the cooperation of these third countries.

Sub-section 2

Measures in response to challenging circumstances where the number of applicants in a Member State exceeds 140 % of its fair share

Article 34da

Additional measures in response to challenging circumstances

1. **If the number of applicants for which the Member State is responsible exceeds 140 % of its fair share and corresponds to more than 0,15 % of its population, the Commission shall, in consultation with that Member State:**

- (a) **make an assessment of the application of the measures taken under sub-section 1 when presenting the report pursuant to Article 33aa(4), and**
 - (b) **recommend:**
 - (i) **enhanced application of measures taken under Article 34(2), and/or**
 - (ii) **measures under Article 34(2) which were not yet taken.**
2. **The Commission shall act in accordance with paragraph 1 within two weeks from the date when the Member State in challenging circumstances has exceeded 140 % of its fair share and corresponds to more than 0,15 % of its population. It shall inform the Council thereof.**

Article 34e

Allocation

1. **Without prejudice to Article 34da, if the number of applicants for which the Member State is responsible exceeds 140 % of its fair share and corresponds to more than 0,15 % of its population, the Council, on a proposal from the Commission, shall adopt an implementing decision on the participation of each Member State in the measures referred to in Article 34(2)(d) on the basis of the reference key referred to in Article 34g.**

The proposal from the Commission shall be made in consultation with the Member State in challenging circumstances and shall be presented to the Council two weeks after the Member State in challenging circumstances has exceeded 140 % of its fair share, and corresponds to more than 0,15 % of its population.

The contribution each Member State implemented pursuant to Articles 34ba and 34c as regards allocation of applicants and 34c shall be deducted from the measures decided pursuant to the first paragraph that a Member State needs to take on the basis of the reference key referred to in Article 34g. Contributions already indicated pursuant to Articles 34ba and 34c as regards allocation of applicants but not yet implemented shall be implemented pursuant to Article 34h.

2. Each Member State shall receive at least a number of applicants through allocation which corresponds to 50 % of the number of applicants for which that Member State shall become a Member State of allocation, except the benefitting Member State(s).

Where a Member States decides to receive fewer applicants than corresponds to the number of applicants for which that Member State shall become a Member State of allocation, it shall take alternative measures pursuant to Article 34f (1).

3. A Member State may indicate its readiness to have more applicants allocated to it than what would correspond to the number of applicants for which that Member State shall become a Member State of allocation, or to have applicants allocated to it even where that Member State is above its fair share. The amount set out in Article 34a(1)(b) shall be doubled for the allocations carried out in accordance with this paragraph.
4. In case the Council has not adopted an implementing decision in accordance with paragraph 1 and the number of applicants for which a Member State is responsible reaches more than 160 % of its fair share, that decision shall be deemed to be adopted by the Council as proposed by the Commission unless the Council decides by a qualified majority to reject the proposal within two weeks from the moment the 160 % threshold is reached as notified pursuant to article 34g(6).

5. Allocation shall continue until the moment that the benefitting Member State is below its fair share.

The Council implementing decision shall remain in force for a period of three months following that moment. During that period, allocation shall be activated in case the share of the benefitting Member State exceeds 140% of its fair share.

The maximum number of persons that may be allocated pursuant to Articles 34c and 34e for a two year period shall not exceed 0,05 % of the EU population at the time of the Council decision.

6. That maximum number per Member State shall be determined pursuant to the reference key referred to in Article 34g(1), without prejudice to Article 34e(3).

Article 34f

Alternative measures by a Member State

1. Alternative measures shall consist of either targeted resettlement or targeted humanitarian admission pledged in accordance with (Resettlement Regulation) or a financial contribution to the Union budget or combination of the two.
2. Where, in accordance with Article 34e (2), a Member State chooses to replace a part of the number of applicants for which that Member State will be indicated by the automated system as a Member State of allocation with resettlement, it may do so only up to a maximum of 50 % of that number. One person admitted in accordance with (Resettlement Regulation) shall be counted as if one person had been allocated.
3. Where, in accordance with Article 34e (2), a Member State chooses to replace a part of the number of applicants for which that Member State shall become a Member State of allocation with a financial contribution, it shall pay into the Union budget an amount as set out below.

If a Member State chooses to use the possibility referred to in paragraph 2 up to 25% of the part of the number of applicants for which that Member State will be indicated by the automated system as a Member State of allocation, the amount shall be EUR 25 000 per person not allocated. For any other applicants not allocated, the amount shall be EUR 35 000 per person not allocated. The amount thus to be paid shall be calculated retroactively and every 6 months.

The financial contributions made available under this paragraph shall be used for enhancing measures in migration management, in particular for the Member State in challenging circumstances as well as for the purposes of point (c) of Article 34d.

4. Where a Member State chooses alternative measures referred to in paragraphs 2 and/or 3, it shall indicate to the Council, before the adoption of the Council implementing decision referred to in Article 34e(1) and (4), which of these measures it will take and for which part of the number of applicants for which that Member State shall become a Member State of allocation in accordance with Article 34e(6). The Council implementing decision may include a possibility for Member States to alter, every six months, the alternative measures they have indicated.

Article 34fa

Reporting and monitoring of the implementation of the additional measures

1. When additional measures in response to challenging circumstances as referred to in Article 34da and 34e have been adopted, Member States shall inform the Commission about the implementation of these measures on a monthly basis, including, where appropriate, possible alternative measures as referred to in Article 34f.
2. The Commission shall report to the Council every 3 months on the implementation of these measures in addition to the report pursuant to Article 34aa(4) .

The Commission shall base that report on the information provided by the Member States pursuant to paragraph 1 of this Article as well as on the data entered into the automated system established in accordance with Article 44.

Article 34g

Determination of the reference number

- 1. For the application of Article 34e, the reference number for each Member State shall be determined by a key.**
- 2. The reference key referred to in paragraph 1 shall be based on the following criteria for each Member State, according to Eurostat figures:**
 - (a) the size of the population (50 % weighting);**
 - (b) the total GDP (50% weighting);**
- 3. The criteria referred to in paragraph 2 shall be applied by the formula as set out in Annex I.**
- 4. The reference number of a Member State shall be determined by applying the reference key to the total number of applicants in the Union for which a Member State responsible has been entered in the automated system during the preceding 12 months. For the purpose of this paragraph, the total number of applicants shall include the total number of persons admitted under the Regulation EU (No.) XXX/XXX (Resettlement Regulation), except where a Member State has used Article 34f(1).**
- 5. The automated system shall send information to Member States and the Commission once per week on the Member States' respective shares in applicants for which they are the Member State responsible.**

6. **The automated system shall continuously monitor whether any of the Member States is above the thresholds referred to in Articles 34(1) and 34e(1), and if so, notify the Member States, the Council and the Commission of this fact, indicating the number of applicants above these thresholds.**
7. **The European Union Agency for Asylum shall calculate the reference key and adapt the figures of the criteria for the reference key as well as the reference key referred to in paragraph 2 annually, based on Eurostat figures. It shall also calculate the population number referred to in Article 34e(1) and in Article 34e(5) second subparagraph and adapt the figures annually, based on Eurostat figures.**

Article 34h

Application of the reference key

1. **When the Council implementing decision referred to in Article 34e has entered into force, the automated system shall apply the reference key referred to in Article 34g to those Member States with a number of applications for which they are the Member States responsible below their fair share and notify the Member States thereof.**
2. **Applicants who lodged their first application in the benefitting Member State after the notification referred to in Article 34g(6) shall be subject to allocation in accordance with the provisions of this Regulation. Applicants who lodged their first application after the notification referred to in Article 34g(6) in a Member State other than the benefitting Member State and in relation to whom the benefitting Member State has accepted a take charge request based on Article 15, shall be directly transferred by that Member State to the Member State of allocation.**
3. **Applicants whose application is being examined under the procedure referred to in Article 3(2a) shall not be subject to allocation pursuant to Article 34e.**

Applicants for whom the benefitting Member State is determined to be the Member State responsible pursuant to Article 34i (-a) and (-b) shall not be subject to allocation.

- 3a. The Asylum Agency shall, with the assistance of the determining authority, carry out an allocation check of whether or not an application is likely to be well-founded.**

The allocation check shall include, as appropriate, a check on whether the applicant comes from a safe third country or a first country of asylum or whether 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), as well as an initial assessment of the application.

Based on the results of this allocation check, the Asylum Agency shall indicate in the automated system whether the applicant may be allocated or not. Applicants shall be subject to allocation pursuant to Article 34e when the allocation check has indicated that their application is likely to be well-founded.

Applicants may be subject to allocation on a voluntary basis in agreement with the benefitting Member State when the allocation check has indicated that their application is not likely to be well-founded. Such allocations shall be deducted from the reference number of the Member State of allocation.

- 4. On the basis of the application of the reference key pursuant to paragraph 1 of this Article, the automated system shall indicate randomly and proportionately to the reference key set out in Article 34g(2) the Member State of allocation and communicate this information not later than 72 hours after the entry in the automated system referred to in Article 22(1) to the benefitting Member State and to the Member State of allocation, and add the Member State of allocation in the electronic file referred to in Article 23(2). Family members to whom the procedure for allocation applies shall be allocated to the same Member State.**

Article 34i

**Obligations of the benefitting Member State
in relation to the allocation of applicants**

The benefitting Member State shall:

- (-a) Search the VIS pursuant to Article 21 of Regulation (EU) 767/2008 with a view to determining whether another Member State is responsible pursuant to Article 14 and search Eurodac pursuant to Article xx of Regulation (Eurodac) with a view to determining whether another Member State is responsible pursuant to Article 15 of this Regulation**
- (-b) Determine whether it is the Member State responsible pursuant to the criteria set out in Articles 10 to 14 and Article 18.**
- (a) take a decision to transfer the applicant to the Member State of allocation or, where a Member State is responsible pursuant to Article 14 or Article 15, to that Member State;**
- (b) notify without delay the applicant of the decision to transfer him or her to the Member State of allocation or the Member State responsible pursuant to Article 14 or 15;**
- (c) transfer the applicant to the Member State of allocation or the Member State responsible pursuant to Article 14 or 15, at the latest within 30 days from the date when the transfer decision is no longer subject to remedy before a court or tribunal.**

The limits set out in Article 28(1) of this Regulation with regard to the scope of the remedy shall apply to the remedy concerning decisions under point (a).

Article 34j

Obligations of the Member State of allocation

The Member State of allocation shall:

- (a) acknowledge to the benefitting Member State the receipt of the allocation communication and indicate the competent authority to which the applicant shall report following his or her transfer;**
- (b) communicate to the benefitting Member State the arrival of the applicant or the fact that he or she did not appear within the set time limit;**
- (c) receive the applicant and carry out the personal interview pursuant to Article 7, where applicable;**
- (d) examine his or her application for international protection as Member State responsible, unless, according to the criteria set out in Articles 10 to 13, with the exception of Article 10(5), and 16 to 19, a different Member State is responsible for examining the application;**
- (e) where, according to the criteria set out in Articles 13, with the exception of Article 10(5), and 16 to 19 a different Member State is responsible for examining the application, the Member State of allocation shall request that other Member State to take charge of the applicant;**
- (f) where applicable, communicate to the Member State responsible the transfer to that Member State;**
- (g) where applicable, transfer the applicant to the Member State responsible;**
- (h) where applicable, enter in the electronic file referred to in Article 23(2) that it will examine the application for international protection as Member State responsible.**

Article 34k

Exchange of relevant information for security verification in case of allocation

- 1. Member States shall actively cooperate and exchange relevant information, including relevant personal data, in order to ensure that applicants to be allocated that may be considered a danger to the national security or public order are identified and appropriate measures are taken.**
- 2. In particular, where a transfer decision according to point (a) of Article 34i is taken, the benefitting Member State shall transmit to the Member State of allocation, at the same time and for the sole purpose of verifying whether the applicant may for serious reasons be considered a danger to the national security or public order, all the relevant information concerning that applicant, including relevant personal data collected notably pursuant to Regulation (EU) No. XXX/XXX (Eurodac Regulation).**
 - 2a. The Member State of allocation may, in cooperation with the benefitting Member State, carry out further security verifications, including personal interview with the applicant, within two weeks of the decision taken pursuant to Article 34i.**
- 3. Where, following a security verification, information on an applicant reveals that he or she is for serious reasons considered to be a danger to the national security or public order, concrete information, including relevant personal data, on the nature of and underlying elements for the alert shall be shared with the law enforcement authorities or other competent authorities in the benefitting Member State and shall not be communicated via the electronic communication channels referred to in Article 47(4).**

The Member State of allocation shall inform the benefitting Member State of the existence of such alert, specifying the competent authorities in the benefitting Member State that have been fully informed, and record the existence of the alert in the automated system pursuant to Article 11(g) of Regulation (EU) No. XXX/XXX (Eurodac Regulation), within one week of receipt of the information concerning the applicant concerned pursuant to paragraph 2.

4. Where the outcome of the security verification confirms that the applicant may for serious reasons be considered a danger to the national security or public order, the benefitting Member State shall be the Member State responsible and shall examine the application in accelerated procedure pursuant to Article xx (Asylum Procedures Regulation).
5. The information exchanged, including personal data, shall only be used for the purposes set out in paragraph 1 and shall not be further processed.

Article 34l

Procedure for allocation

Possible recital:

Specific procedures are laid down in Chapter VIa in relation to the allocation of applicants as regards steps to be taken within defined deadlines. The general procedures laid down in Chapters V and VI should apply only where no such specific procedures are regulated in Chapter VIa.

Chapters V and VI shall apply *mutatis mutandis*. By way of derogation from Article 28 (3), transfers may take place before the decision on the appeal or review is taken.

Section 2

Measures in response to situations of severe crisis

Possible recital:

If the Union is in a situation of severe crisis, following a discussion and political direction given by the European Council on the situation and on possible additional actions that may be necessary to remedy that situation the Commission should ensure the follow-up to that political direction, including, where appropriate, a proposal for an implementing decision to continue with allocation, as well as, where appropriate, a proposal pursuant to Article 78(3) of the Treaty with any further measures identified.

Article 34m

Union support for situation of severe crisis

- 1. The Commission shall present a report to the Council with assessment of the implementation of the measures implemented under Article 34d. The report shall also cover a new assessment of the cause, the nature, composition and trends of flows. The analysis shall include additional measures to be taken in the area of return and resettlement, as well as measures to be taken to further reinforce cooperation with relevant countries of origin and transit, in particular an assessment of possible use of leverages.**
- 2. By way of derogation from Article 34e(5) second subparagraph, where a Member State is in a situation of severe crisis and the implementation of any Council implementing decision(s) pursuant to Article 34e proves insufficient to address the crisis, the Council may, on a proposal from the Commission, which shall substantiate the number of allocations needed, based on, inter alia, reports from the EU-AA, adopt a new implementing decision pursuant to Article 34e(1) or (4) to allocate applicants for the remaining part of the two years period referred to in Article 34e(5) second subparagraph.**

CHAPTER VIII

Article 44

[...]

Article 45

[...]

Article 46

Information sharing

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the applicant as is adequate, relevant and limited to what is necessary for:
 - (a) determining the Member State responsible;
 - (b) examining the application for international protection;
 - (c) implementing any obligation arising under this Regulation.
2. **The** information referred to in paragraph 1 may only cover:
 - (a) personal details of the applicant, and, where appropriate, his or her family members, relatives or any other family relations (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);
 - (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);

- (c) other information necessary for establishing the identity of the applicant, including **biometric data** [...] taken of the applicant by the Member State, in particular for the purposes of Article **34k** [...] in accordance with Regulation (EU) No **XXX/XXXX** (**Eurodac Regulation**) [...];
 - (d) places of residence and routes travelled;
 - (e) residence documents or visas issued by a Member State;
 - (f) the place where the application was lodged;
 - (g) the date on which any previous application for international protection was lodged, the date on which the present application was lodged, the stage reached in the proceedings and the decision taken, if any.
3. Furthermore, provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for international protection, obtained by the requesting Member State. In that case, the applicant must know for what specific information he or she is giving his or her approval.

4. Any request for information shall only be sent in the context of an individual application for international protection. It shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to an individual applicant.
5. The requested Member State shall be obliged to reply within **three** [...] weeks. Any delays in the reply shall be duly justified. Non-compliance with the **three** [...] week time limit shall not relieve the requested Member State of the obligation to reply. If the research carried out by the requested Member State which did not respect the maximum time limit withholds information which shows that it is responsible, the time limits provided for in Article 24 for submitting a request to take charge shall be extended by a period of time which shall be equivalent to the delay in the reply by the requested Member State.
6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission in accordance with Article 47(1).
7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:
 - (a) determining the Member State responsible;
 - (b) examining the application for international protection;
 - (c) implementing any obligation arising under this Regulation.

- 7a. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that it has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.**
8. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/or in a register, of the transmission and receipt of information exchanged.

Article 47

Competent authorities and resources

1. Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. The Member States shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge, take back notifications and, if applicable, complying with their obligations under **Chapter VIA** [...].
2. The Commission shall publish a consolidated list of the authorities referred to in paragraph 1 in the *Official Journal of the European Union*. Where there are amendments thereto, the Commission shall publish once a year an updated consolidated list.
3. The authorities referred to in paragraph 1 shall receive the necessary training with respect to the application of this Regulation.

4. The Commission shall, by means of implementing acts, establish secure electronic transmission channels between the authorities referred to in paragraph 1 [...] for transmitting information, **biometric** [...] data taken in accordance with Regulation (EU) No **XXX/XXXX (Eurodac Regulation)** [...], requests, notifications, replies and all written correspondence and for ensuring that senders automatically receive an electronic proof of delivery **and between those authorities and the European Union Agency for Asylum for transmitting information as provided for in this Regulation**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).

Article 48

Administrative arrangements

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:
 - (a) exchanges of liaison officers;
 - (b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back applicants.
2. Member States may also maintain the administrative arrangements concluded under Regulation (EC) No 343/2003 and Regulation (EU) No 604/2013. To the extent that such arrangements are not compatible with this Regulation, the Member States concerned shall amend the arrangements in such a way as to eliminate any incompatibilities observed.

Article 49

Network of Dublin units

The European Union Agency for Asylum shall set up and facilitate the activities of a network of the competent authorities referred to in Article 47 (1), with a view to enhancing practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance.

Article 49a

Conciliation

- 1. In order to facilitate the good functioning of the mechanisms set up under this Regulation and resolve difficulties in the application thereof, where two or more Member States encounter difficulties in their cooperation under this Regulation or in its application between them, the Member States concerned shall, upon request by one or more of them, hold consultations without delay with a view to finding appropriate solutions within a reasonable time, in accordance with the principle of sincere cooperation.**

As appropriate, information about the difficulties encountered and the solution found may be shared with the Commission and with the other Member States within the Committee referred to in Article 56.

- 2. Where no solution is found under paragraph 1 or the difficulties persist, one or more Member States concerned may request the Commission to hold consultations with the Member States concerned with a view to finding appropriate solutions. The Commission shall hold such consultations without delay. The Member States concerned shall actively participate in the consultations and, as well as the Commission, take all appropriate measures to promptly resolve the matter. The Commission may adopt recommendations addressed to the Member States concerned indicating the measures to be taken and the appropriate deadlines.**

As appropriate, information about the difficulties encountered, the recommendations made and the solution found may be shared with the other Member States within the Committee referred to in Article 56.

3. This Article shall be without prejudice to the powers of the Commission to oversee the application of Union law under Articles 258 and 260 TFEU. It shall be without prejudice to the possibility for the Member States concerned to submit their dispute to the Court of Justice in accordance with Article 273 TFEU or to bring the matter to it in accordance with Article 259 TFEU.

CHAPTER IX

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

Article 50

Data security and data protection

1. Member States shall implement appropriate technical and organisational measures to ensure the security of personal data processed under this Regulation and in particular to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed.
2. The competent supervisory authority or authorities of each Member State shall monitor the lawfulness of the processing of personal data by the authorities referred to in Article 47 of the Member State in question, including of the transmission to and from the automated system and to the authorities competent for carrying out checks referred to in Article 34k [...].

3. The processing of personal data by the European Union Agency for Asylum shall be subject to Regulation (EC) No 45/2001 and the provisions on data protection laid down in [*Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010*].

Article 51

Confidentiality

Member States shall ensure that the authorities referred to in Article 47 are bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Article 52

Penalties

Member States shall lay down the rules on penalties, including administrative and/or criminal penalties in accordance with national law, applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 53

Transitional measures

Where an application has been lodged after [*the first day following the entry into force of this Regulation*], the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date.

By way of derogation from Article **34** [...], during the first **six** [...] months after entry into force of this Regulation, the **measures and additional criteria in challenging circumstances and severe crises** [...] shall not be triggered. By way of derogation from Article **34g(4)** [...], after the expiry of the **six** [...] month period following the entry into force of this Regulation and until the expiry of one year following the entry into force of this Regulation, the reference period shall be the period which has elapsed since the entry into force of this Regulation.

Article 54

Calculation of time limits

Any period of time prescribed in this Regulation shall be calculated as follows:

- (a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;
- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
- (c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

Article 55

Territorial scope

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

Article 56

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 57

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 10(6) and 18(3) shall be conferred on the Commission for a period of 5 years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 10(6) and 18(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 10(6) and 18(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 58

Review, monitoring and evaluation

By [18 months after entry into force] and from then on annually, the Commission shall review the functioning of the **measures and additional criteria** [...] set out in Chapter VIA [...] of this Regulation [...].

By [three years after entry into force], the Commission shall report to the European Parliament and to the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

After having submitted that report, the Commission shall report to the European Parliament and to the Council on the application of this Regulation at the same time as it submits reports on the implementation of the Eurodac system provided for by Article 42 of Regulation [*Proposal for a Regulation recasting Regulation (EU) No 603/2013*].

Article 59

Statistics

1. In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council⁴, Member States shall communicate to the Commission (Eurostat), statistics concerning the application of this Regulation and of Regulation (EC) No 1560/2003.
2. The European Union Agency for Asylum shall publish at quarterly intervals the information transmitted pursuant to Article 34h(4).

Article 60

Repeal

Regulation (EU) No 604/2013 is repealed for the Member States bound by this Regulation [...].

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 61

Entry into force and applicability

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

⁴ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection (OJ L 199, 31.7.2007, p. 23).

It shall apply to applications for international protection lodged as from ... [the first day **of the twelfth month** following its entry into force]. The Member State responsible for the examination of an application for international protection submitted before that date shall be determined in accordance with the criteria set out in Regulation 604/2013.

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President

Dublin automated system - Eurodac integration

To be included in the draft Eurodac Regulation:

Article 4a (new)

Dublin automated system

1. For the purposes of registering and monitoring the share of applicants for international protection and for the application of the measures and additional criteria set out in Chapter VIA of Regulation xx/xxxx (Dublin Regulation), an automated system ("Dublin automated system") shall be established as an integral part of the Central Unit.
2. The Dublin automated system shall indicate in real time:
 - (a) the number of applicants in the Union and in each Member State;
 - (b) the number of applications lodged in the Union and in each Member State;
 - (c) the number of resettled persons by each Member State;
 - (d) the actual number of applicants whose applications are to be examined by each Member State as Member State responsible as well as the share this number represents compared to that Member State's fair share ;
 - (e) the fair share of each Member State.
3. The Dublin automated system shall send information to the Member States and the Commission and shall monitor thresholds as set out in Article 34g(5) and (6) and shall allocate applicants as set out in Article 34h (4) of Regulation xx/xxxx (Dublin Regulation).

4. **In order to perform the tasks indicated under paragraphs 2 and 3, the Dublin automated system shall be automatically updated with the relevant Eurodac data as soon as a Member State has entered or updated these.**
5. **The Asylum Agency shall have access to the Dublin automated system in order to perform the tasks pursuant to Articles 34g(7) and 34h(3a) of Regulation (EU) No XXX/XXX [Dublin Regulation].**
6. **The Asylum Agency shall enter the updated figures of the criteria for the reference key and the updated reference key pursuant to Article 34g(7) of Regulation (EU) No XXX/XXX [Dublin Regulation] once per year.**
7. **As soon as it has completed the allocation check in accordance with Article 34h(3a) of Regulation (EU) No XXX/XXX [Dublin Regulation], the Asylum Agency shall enter the result thereof into the Dublin automated system by adding whether or not an application is likely to be well-founded.**

Changes to Article 11 Eurodac:

Article 11

Information on the status of the data subject

The following information shall be sent to the Central System in order to be stored in accordance with Article 17 (1) **for the purposes referred to in Article 4a(1) and** for the purpose of transmission under Articles 15 and 16:

- (-a) as soon as the Member State responsible has been determined in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation], **including when a Member State has voluntarily allocated an applicant pursuant to Articles 34ba and 34c of that Regulation** the [Member State conducting the procedures for determining the Member State responsible] shall update its data set recorded in conformity with Article 12 of this Regulation relating to the person concerned by adding the Member State responsible;

- (a) when an applicant for international protection or another person as referred to in Article 20 (1) (b), (c), (d), (e) **or (f)** of Regulation (EU) No XXX/XXX [Dublin Regulation] arrives in the Member State responsible following a transfer pursuant to a take back notification as referred to in Article 26 thereof, the Member State responsible shall update its data set recorded in conformity with Article 12 of this Regulation relating to the person concerned by adding his or her date of arrival;
- (b) when an applicant for international protection arrives in the Member State responsible following a transfer pursuant to a decision acceding to a take charge request according to Article 24 of Regulation (EU) No XXX/XXX [Dublin Regulation], the Member State responsible shall send a data set recorded in conformity with Article 12 of this Regulation relating to the person concerned and shall include his or her date of arrival;
- (c) when an applicant for international protection arrives in the Member State of allocation pursuant to Articles **34ba or 34c** of Regulation (EU) No. XXX/XXX [Dublin Regulation] [...], that Member State shall send a data set recorded in conformity with Article 12 of this Regulation relating to the person concerned and shall include his or her date of arrival and record that it is the Member State of allocation;
- (ca) as soon as the Dublin automated system has indicated the Member State of allocation pursuant to Article 34h (4) of Regulation (EU) No. XXX/XXX [Dublin Regulation], the data set recorded in conformity with Article 12 of this Regulation shall be updated automatically relating to the person concerned by adding the Member State of allocation.**
- (d) as soon as the Member State of origin ensures that the person concerned whose data was recorded in Eurodac in accordance with Article 12 of this Regulation has left the territory of the Member States in compliance with a return decision or removal order issued following the withdrawal or rejection of the application for international protection as provided for in Article 9a(2b) of Regulation (EU) No 604/2013, it shall update its data set recorded in conformity with Article 12 of this Regulation relating to the person concerned by adding the date of his or her removal or when he or she left the territory;

- (e) the Member State which becomes responsible in accordance with [Article 9a(3) of Regulation (EU) No XXX/XXX [Dublin Regulation]] shall update its data set recorded in conformity with Article 12 of this Regulation relating to the applicant for international protection by adding the date when the decision to examine the application was taken;
- (f) **as soon as the first Member State in which the application for international protection was lodged has completed the assessment referred to in Article 3(2a) of Regulation (EU) No XXX/XXX [Dublin Regulation], that Member State shall update its data set recorded in conformity with Article 12 of this Regulation by adding the security status of the applicant resulting from that assessment;**
- (g) **as soon as the Member State of allocation has completed the security verification referred to in Article 34k of Regulation (EU) No XXX/XXX [Dublin Regulation], that Member State shall update its data set recorded in conformity with Article 12 of this Regulation by adding the security status of the applicant resulting from that assessment.**

Changes to Article 12 Eurodac:

Article 12

Recording of data

Only the following data shall be recorded in the Central System:

- (a) fingerprint data;
- (b) a facial image;
- (c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;
- (d) nationality(ies)

- (e) place and date of birth;
- (f) Member State of origin, place and date of the application for international protection; in the cases referred to in Article 11(b), the date of application shall be the one entered by the Member State who transferred the applicant;
- (h) where available, type and number of identity or travel document; three letter code of the issuing country and expiry date;
- (ha) where available, a scanned colour copy of an identity or travel document along with an indication of its authenticity or, where unavailable, another document which facilitates the identification of the third-country national or stateless person along with an indication of its authenticity;
- (i) reference number used by the Member State of origin;
- (ia) the result of the security check pursuant to Articles 3, and 34k of Regulation (EU) No XXX/XXX [Dublin Regulation]**
- (ib) the result of the allocation check pursuant to Article 34h (3a) of Regulation (EU) No XXX/XXX [Dublin Regulation]**
- (ic) the Member State of allocation in accordance with Articles 11(c) and 11(ca);**
- (id) the Member State responsible in accordance with Article 11(-a);**
- j) [...]
- (ja) [...]
- (k) [...]
- (l) date on which the biometric data were taken;
- (m) date on which the data were transmitted to the Central System;

- (n) operator user ID;
 - (o) where applicable in accordance with Article 11(a), the date of the arrival of the person concerned after a successful transfer;
 - (p) where applicable in accordance with Article 11(b), the date of the arrival of the person concerned after a successful transfer;
 - (q) where applicable in accordance with Article 11(c), the date of the arrival of the person concerned after a successful transfer;
 - (r) where applicable in accordance with Article 11(d), the date when the person concerned left or was removed from the territory of the Member States;
 - (s) where applicable in accordance with Article 11(e), the date when the decision to examine the application was taken.
-