



Brussels, 17 May 2017  
(OR. en)

9221/17

LIMITE

ASILE 34

**NOTE**

---

From:	Presidency
To:	Delegations
Subject:	Theme: 'Limiting abuse and secondary movements' - Dublin Regulation

---

In the framework of the theme "Limiting abuse and secondary movements", delegations will find attached modifications suggested by the Presidency in relation to Articles 4, 5, 6 and 20 of the Dublin Regulation, already discussed under the theme 'Limiting secondary movements' at the Asylum WP meeting on 15 March based on document 6942/17. Modifications suggested by the Presidency in relation to Articles 21, 24, 25 and 26 (limiting abuse) are also put forward for discussion.

The changes in the text are marked as follows: new text is marked in **bold** and underline, with deleted text in ~~**bold**~~, and text compared to the Commission proposal is marked in **bold** and single ~~strikethrough~~.

Comments made by delegations on the Commission proposal text, orally and in writing, appear in the footnotes of the Annex. It is understood that delegations' reservations relating to their disagreement with the principle of permanent responsibility (Art. 3(5) of the Dublin Regulation) apply also to other provisions which are linked to this principle.

Dublin Regulation<sup>1</sup>

## Article 4

Obligations of the applicant<sup>2</sup>

1. ~~Where a~~ **A third country national or stateless person who intends to make an application for international protection** ~~has entered irregularly into the territory of the Member States,~~ **shall make and lodge that an application for international protection** ~~the application shall be made~~ in the Member State of first entry. Where a **third country national or stateless person who intends to make an application for international protection** is legally present in a Member State **on the basis of a residence permit or visa,** ~~the application shall be made~~ **he or she shall make and lodge that an application for international protection** ~~in the that~~ Member State **that issued the residence permit or visa.**<sup>3</sup>

---

<sup>1</sup> **ES:** scrutiny reservation on new suggestions presented by the Presidency in doc. 6942/17.

<sup>2</sup> **SI:** reservation; the provision is not clear, it should be placed in the APR. **BG, EL, SE:** scrutiny reservation.

<sup>3</sup> **EL, SE:** what if the visa or residence permit has expired? **EL:** a provision should be added for cases of mass influx when full lodging of the application is difficult. **CY:** clarifications as what will happen in case of unforeseen circumstances in a Member State are needed, e.g. in the unlikely event of the outbreak of severe financial crisis or war. **CY** suggests adding at the end of the first sentence: "unless there is a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union in that Member State". In the second sentence, reference should only be made to *valid* residence permit or visa. **ES:** substantive reservation.

2. The applicant shall **cooperate with the competent authorities of the Member States and** submit as soon as possible, and at the latest during the interview pursuant to Article 7, all the elements and information relevant for determining the Member State responsible ~~and cooperate with the competent authorities of the Member States.~~ **Where the applicant is not in a position to submit evidence to substantiate elements provided at the time of the interview, the competent authority may set a deadline within the period referred to in Article 24 (1) for submitting such evidence.**<sup>4</sup>

2a. **The applicant shall be required to be present in:**<sup>5</sup>

(a) **the Member State referred to in paragraph 1;**

(b) **the Member State responsible pursuant to a transfer;**

(c) **the Member State of allocation pursuant to a transfer, where the allocation mechanism set out in Chapter VII of this Regulation applies.]**

---

<sup>4</sup> **CZ:** add the following provision: "Member State of first application for international protection shall not take into account the elements and information relevant for determining the Member State responsible submitted by the applicant after the interview pursuant to Article 7." Reasoning: We find as necessary to explicitly determine that MS shall not take into account the information submitted by the applicant after the interview otherwise we are afraid that future jurisprudence would lead to conclusion that MS shall take into account all available information regardless the moment of submitting the information. **DE:** an obligation to provide biometric data should be added. **SE:** the last sentence is not flexible enough as it only gives more time to provide evidence. In reality, there are situations, perfectly legitimate, that information on family members in other MS are not known until after the interview. It is important that family can stay together also in that kind of situation. **EL:** If the applicant needs time in order to present evidence to substantiate his case, this will reduce the deadline for the determining authority. Furthermore, what are the consequences if the evidence is presented by the applicant at the appeals' stage? Is the responsible authority expected not to take them into consideration? Wouldn't this be a significant blow to the notion of effective remedy? (ex nunc examination). **BE:** delete the last sentence.

<sup>5</sup> **HU:** support new text of paragraphs (2a) and (3); however, it does not in itself lead to the effective control of secondary movement. In order to secure the presence of the applicant in the territory of the Member State, it should be possible to assign a place of residence. In case the applicant does not fulfill its obligation to be present, the possibility to detain shall be ensured. **FI:** not all situations are covered, e.g. when it is not possible to designate the MS responsible as provided for under Art. 3(2). **ES:** reservation; the provision places a lot of responsibilities on the applicant.

3. The applicant shall:

(aa) not leave the territory of the Member State where he or she is present and be available to the competent authorities of that Member State;<sup>6</sup>

(a) comply with a transfer decision notified to him or her in accordance with paragraphs 1 and 2 of Article 27 [and point (b) of Article 38];

~~(b) be present and available to the competent authorities in the Member State of application, respectively in the Member State to which he or she is transferred.~~

#### Article 5

#### Consequences of non-compliance<sup>7</sup>

1. If an applicant does not comply with the obligation set out in Article 4(1) **of this Regulation**, the Member State responsible in accordance with this Regulation **may shall** examine the application in an accelerated procedure, in accordance with **Article 40(1)(g) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation]** Article 31(8) of Directive 2013/32/EU.<sup>8</sup>

---

<sup>6</sup> **DE, ES, SE:** the provision seems to overlap with paragraph 2a.

<sup>7</sup> **BG, DK, EL, SE, UK:** scrutiny reservation. **IE:** possibilities for Member States to apply this provision are provided for under instruments which Ireland has not opted into. Our position on this article will be informed by the negotiations to follow on the APR proposal. **AT, BE, CY, HU:** favour stricter sanctions to strongly discourage secondary movements such as detention to secure the transfer to the MS responsible. **AT:** add a new paragraph 3a: "The applicant shall enjoy the rights according to Directive 2011/51/EU only 8 years after a status has been granted."

<sup>8</sup> **ES:** scrutiny reservation. **IE:** drafting suggestion: non-compliance can also result in the implicit withdrawal of the application by the determining authorities as provided for under article 39 of the APR proposal. **AT:** add the following wording at the end: "and detain the applicant to secure the transfer to the Member State responsible according to Art. 29(4)".

2. **The Member States where the applicant first lodged his or her application** ~~in which the applicant is obliged to be present~~ shall continue the procedures for determining the Member State responsible even when the applicant leaves the territory of **that the** Member State without authorisation or is otherwise not available for the competent authorities of **that the** Member State.<sup>9</sup>
3. **In accordance with Article 17a of Directive (EU) XXX/XXX (Reception Conditions Directive), The the** applicant shall not be entitled to the reception conditions set out in Articles 14 to 17 ~~49 of that Directive (EU) XXX/XXX (Reception Conditions Directive), Directive 2013/33/EU, with the exception of emergency health care,~~ during the procedures under this Regulation in any Member State other than the one in which he or she is required to be present **pursuant to Article 4(2a) of this Regulation. This is without prejudice to the provision of reception conditions pursuant to Article 17a (2) and (3) of that Directive.**<sup>10</sup>

---

<sup>9</sup> **HU, IT:** scrutiny reservation. **EL:** substantive reservation. How does this obligation interrelate with the provisions of the APR on implicit withdrawal of applications (art.39(2))? If the applicant is not available to provide evidence for his case, how is it possible for the determining authority to continue the determination procedure? **HU:** Preliminary procedural steps preceding the Dublin procedure, such as accelerated procedure or inadmissibility shall not be regulated in the framework of this regulation. Furthermore, the continuation of the procedure after the applicant leaves the territory of the Member State would impose unnecessary administrative burden on the authorities. The absence of the applicant makes the implementation of the transfer decision impossible.

<sup>10</sup> **AT, DE, ES, IE, IT SE, SI:** scrutiny reservation. **AT, SI:** consequences on the access to health care for persons not residing in the MS where they are required to be present need to be clarified. **FR:** reference to emergency health care should be kept in the text. **DE, IT:** doubts on the wording "during the procedures under this Regulation" as different stages of the procedure can be involved, including when the reception conditions under the RCD are not yet guaranteed. **IT:** doubts also on the reference to Art. 14 RCD.

4. The competent authorities shall take into account elements and information relevant for determining the Member State responsible only insofar as these were submitted within the deadline set out in Article 4(2).<sup>11</sup>

---

↓ 604/2013 (adapted)

⇒ new

#### Article ~~4~~ 6

### Right to information<sup>12</sup>

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

---

↓ new

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

---

<sup>11</sup> **SE**: see comment under Art. 4(2). **EL**: The responsible authority is obliged to take into consideration documents, evidence or claims that are presented even at the appeals stage. It is essential to guarantee an effective remedy (ex nunc examination).

<sup>12</sup> **DE, FR, UK**: concerns over the possible costs relating to e.g. translation. **NL**: obligation to inform the applicant should be linked to Eurodac or to making the application. **IT**: scrutiny reservation.

---

↓ 604/2013 (adapted)

⇒ new

- (~~a~~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 ~~moving from one Member State to another~~ ⇒ leaving the Member State where he or she is **required obliged** to be present ⇐ during the phases in which the Member State responsible under this Regulation is being determined and the application for international protection is being examined ⇒ , in particular **the consequences of non-compliance set out in Article 5(3) that the applicant shall not be entitled to the reception conditions set out in Articles 14 to 19 of Directive 2013/33/EU in any Member State other than the one where he or she is required to be present, with the exception of emergency health care** ⇐ ;
- (~~b~~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, ~~including the fact that an application for international protection lodged in one Member State can result in that Member State becoming responsible under this Regulation even if such responsibility is not based on those criteria;~~<sup>13</sup>
- (~~c~~d) ☒ of ☒ the personal interview pursuant to Article ~~5~~ 7 and the ~~possibility~~ ⇒ **obligation** ⇐ of submitting ⇒ and substantiating **orally**<sup>14</sup> **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;

---

<sup>13</sup> **DE, FI:** scrutiny reservation in relation to the suspensive effect of appeal. **RO:** reservation.

<sup>14</sup> **BE:** inserting orally brings uncertainty as to how far investigations should go.

- (de) ~~of~~ of ~~the~~ the possibility to challenge a transfer decision<sup>15</sup> ~~and, where applicable, to apply for a suspension of the transfer~~ ⇒ within **10 7-working** days<sup>16</sup> after notification and of the fact that this challenge shall be limited to an assessment of whether Articles 3(2) in relation to the existence of a risk of inhuman or degrading treatment, or Articles 10 to 13 and 18 are infringed upon; ⇐
- (ef) ~~the fact~~ that the competent authorities of Member States ⇒ and the European Union Agency for Asylum **shall** process personal data of the applicant including for the ⇐ ~~can~~ exchange ~~of~~ of ~~the~~ data on him or her for the sole purpose of implementing their obligations arising under this Regulation;<sup>17</sup>

⇓ new

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

⇓ 604/2013 (adapted)  
⇒ new

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

<sup>15</sup> **EL:** proposed wording: “to challenge a decision determining the responsible member state and the respective transfer decision”.

<sup>16</sup> **EL:** this deadline may be too short for an applicant to prepare his case. **HU, SK:** scrutiny reservation.

<sup>17</sup> **DE:** scrutiny reservation.



---

↓ new

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

---

↓ 604/2013 (adapted)

⇒ new

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

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

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

**Obligations of the Member State responsible<sup>18</sup>**

1. The Member State responsible under this Regulation shall be obliged to:<sup>19</sup>
  - (a) take charge, under the conditions laid down in Articles ~~21~~ 24, ~~22~~ 25 and ~~29~~ 30, of an applicant who has lodged an application in a different Member State;
  - (b) take back, under the conditions laid down in Articles ~~23~~ 26 ~~24, 25~~ and ~~29~~ 30, an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document;
  - (c) take back, under the conditions laid down in Articles ~~23~~ 26 ~~24, 25~~ and ~~29~~ 30, a third-country national or a stateless person who has withdrawn the application under examination and made an application in another Member State or who is on the territory of another Member State without a residence document;
  - (d) take back, under the conditions laid down in Articles ~~23~~ 26 ~~24, 25~~ and ~~29~~ 30 **of this Regulation**, a third-country national or a stateless person whose application has been rejected, **or whose status has been withdrawn in accordance with Articles [14 or 20] of Regulation (EU) XXX/XXX [Qualification Regulation], or whose status has lapsed in accordance with Article [52(5)] of Regulation (EU) XXX/XXX [Asylum Procedures Regulation]** and who made an application in another Member State or who is on the territory of another Member State without a residence document~~;~~

---

<sup>18</sup> **HU, IT:** scrutiny reservation. **DE:** a new category of persons admitted pursuant to the Resettlement Regulation who are unlawfully residing in the territory of a Member State other than the resettlement MS should be added to paragraph 1.

<sup>19</sup> **BG:** scrutiny reservation on paragraph 1.

(e) take back, under the conditions laid down in Articles 26 and 30 a beneficiary of international protection, who made an application in ~~another~~ Member State **other** than the ~~one Member State responsible~~ which granted **him or her international** ~~that~~ protection, ~~status~~ or who is **irregularly present** on the territory of ~~another~~ Member State **other** than the ~~one Member State responsible~~ which granted **him or her international** ~~that~~ protection **without a residence document**<sup>20</sup>.

2. In a situation referred to in point (a) of paragraph 1, the Member State responsible shall examine ~~or complete the examination of~~ the application for international protection.

3. In a situation referred to in point (b) of paragraph 1, the Member State responsible **may shall** examine or complete the examination of the application for international protection in an accelerated procedure in accordance with **Article 40(1)(g) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation]** ~~Article 31 paragraph 8 of Directive 2013/32/EU~~.<sup>21</sup>

<sup>20</sup> **DE, ES, SK:** scrutiny reservation. **BG, ES:** reservation on the extension of the scope to beneficiaries of international protection. **CZ:** delete the words "without a residence document" and add the word "irregularly". We are afraid that current text "without a residence document" together with definition of "residence document" in article 2 point 1) would cause the take back transfers of the persons who travelled legally to other Schengen states ("90 in 180 days" principle). **CY, EL:** reservation; since the main purpose of the Regulation is to examine the claim for international protection and these cases are already being dealt with under Article 6 par. 2 of the Return Directive which foresees their returned back to the MS which issued the residence permit, we see no place of such provision within the framework of the Dublin Regulation. This will also add to the administrative and financial burden of the MSs which are already under pressure.

<sup>21</sup> **ES, FI, IE, FR, SE:** scrutiny reservation relating to the need to consider paragraphs 3 to 5 in light of the other proposals on the CEAS. **DE:** suggest that the cooperation of the applicant during transfer procedure could be positively reflected in the further handling of his/her case.

4. [In a situation referred to in point (c) of paragraph 1, the Member State responsible shall treat ~~any further representations or~~ a new application by the same applicant as a subsequent application in accordance with **Article 42 of Regulation (EU) XXX/XXX [Asylum Procedures Regulation] Directive 2013/32/EU.**<sup>22]</sup>
- ~~5. In a situation referred to in point (d) of paragraph 1, the decision taken by the responsible authority of the Member State responsible to reject the application shall no longer be subject to a remedy within the framework of Chapter V of Regulation (EU) XXX/XXX [Asylum Procedures Regulation] Directive 2013/32/EU.~~
6. Where a Member State issues a residence document to the applicant, the obligations referred to in paragraph 1 shall be transferred to that Member State.<sup>23</sup>
- [7. The Member State conducting the procedures for determining the Member State responsible shall, without undue delay, indicate in the electronic file referred to in Article 22(2) ~~the fact that it is~~ the Member State responsible.]

---

<sup>22</sup> **EL, IE, PL, SE:** scrutiny reservation. **CZ, EL:** relation between subsequent applications in the APR (Art. 42(1)) and this proposal should be examined in detail. In a situation referred to in (c) there is no decision on merits, while in APR the application can be a “subsequent application” only when the first application has been examined on its merits. **FR:** relation between this paragraph and Art. 3(5) is unclear. **SE** seeks clarification: when referring to 20(1)(c), does “withdrawn the application” mean explicit as well as implicit withdrawal? SE understands the purpose of the proposal but the right for an applicant to have his or her asylum claim examined on its merit must be guaranteed, as well as the respect for non-refoulement principle. When reading this paragraph together with article 42 in the APR proposal, this right could be questioned.

<sup>23</sup> **NL:** this obligation should also be added to Eurodac.

---

↓ 604/2013 (adapted)

⇒ new

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

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

~~In the cases falling within the scope of paragraph 1(d), where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has or has had the opportunity to seek an effective remedy pursuant to Article 46 of Directive 2013/32/EU.~~

**Start of the procedure<sup>24</sup>**

1. The process of determining the Member State responsible shall start as soon as an application for international protection is first lodged with a Member State ⇒ , provided that **a the Member State of first application is not already the Member State responsible for examining the application for international protection has not already been determined pursuant to Article 3(4) or (5)<sup>25</sup> ⇐** .
- ~~2. An application for international protection shall be deemed to have been lodged once a form submitted by the applicant or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.~~

---

<sup>24</sup> **CY**: reservation on paragraphs 1 and 2; Dublin procedure should start when an application for international protection is registered in the Dublin automated system, as foreseen in Article 22, especially because the fingerprinting and facial image, pursuant to the Eurodac Regulation will, by then, be completed. Taking of fingerprints and facial image is a precondition for launching the Dublin procedure and/or sending any take charge/back request. **ES, IT, PT, FI, SI**: scrutiny reservation. **NL, BE, CZ, DE, DK, IT, LU, UK**: need clear and consistent rules regarding the start of the procedure (consistent use of the terms ‘making an application’ and ‘lodging an application’), taking into account the links with the Eurodac Regulation and APR.

<sup>25</sup> **BG, EL, HU, PL, RO**: reservation on the addition in the COM proposal. **DE, ES**: scrutiny reservation.

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 after withdrawing his or her first application made in a different Member State during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles ~~23, 26~~ ~~24, 25~~ and ~~29~~ ~~30~~, by the Member State with which that application for international protection was first lodged, ~~with a view to completing the process of determining the Member State responsible.~~<sup>26</sup>

~~That obligation shall cease where the Member State requested to complete the process of determining the Member State responsible can establish that the applicant has in the meantime left the territory of the Member States for a period of at least three months or has obtained a residence document from another Member State.~~

---

<sup>26</sup> ES: scrutiny reservation.

~~An application lodged after the period of absence referred to in the second subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.~~<sup>27</sup>

Article ~~21~~ 24

**Submitting a take charge request**<sup>28</sup>

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 ~~may~~ ⇒ shall<sup>29</sup> ⇐ , **without undue delay as quickly as possible** and in any event within ~~three~~ ⇒ **two one**<sup>30</sup> ⇐ months of the date on which the application was lodged within the meaning of Article ~~20~~ 21(2), request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 of Regulation [*Proposal for a Regulation recasting Regulation (EU) No 603/2013*] ⇒ or of a VIS hit with data recorded pursuant to Article 21(2) of Regulation (EU) 767/2008 ⇐ , the request shall be sent within ~~two months~~ ⇒ **one month weeks** ⇐ of receiving that hit ~~pursuant to Article 15(2) of that Regulation.~~

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.<sup>31</sup>

---

<sup>27</sup> **BG, CY, EL, ES, PL, RO:** object to the deletion of cessation of responsibility.

<sup>28</sup> **EL:** substantive reservation; the take charge request only follows after the pre-Dublin check provided for in art 3(3). **LU, HU:** scrutiny reservation.

<sup>29</sup> **CZ:** prefers keeping "may", in view of the discretionary clause.

<sup>30</sup> **AT, CY, IE, UK:** concern in particular in cases of reunification of an unaccompanied minor with a family member/relative, taking into account that the vast majority of unaccompanied minors are undocumented and that they are often subject to age determination procedure, and that the proposal foresees an obligatory assessment on the minor's best interest. A more flexible provision could be added.

<sup>31</sup> **EL:** a MS should not be considered responsible, when it cannot respect these tight deadlines.



**1a. The requesting Member State may ask for an urgent reply in cases where the application for international protection was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order.**

**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.**

~~2. The requesting Member State may ask for an urgent reply in cases where the application for international protection was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order.~~

~~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.~~

~~2.~~ In the cases referred to in paragraphs 1 **and 1a** ~~and 2~~, 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 ~~22(3)~~ 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 ~~44~~ 56(2).

**Replying to a take charge request<sup>32</sup>**

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~~ ⇒ **two one** ⇐ months~~s~~ of receipt of the request.

---

↓ new

2. Notwithstanding the first ~~sub~~paragraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 of Regulation [*Proposal for a Regulation recasting Regulation (EU) No 603/2013*] 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 within **one month** ~~two weeks~~ of receipt of the request.

---

↓ 604/2013 (adapted)

⇒ new

- ~~23~~. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.
- ~~24~~. 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 ~~44~~ ~~56~~(2).

---

<sup>32</sup> LU: scrutiny reservation.

- (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 ~~44~~ 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.

45. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.

56. 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 pleaded urgency in accordance with the provisions of Article 24(1a) ~~21(2)~~, the requested Member State shall make every effort to comply with the time limit requested. 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 give its reply after the time limit requested, but in any event within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.**

- ~~6. Where the requesting Member State has pleaded urgency in accordance with the provisions of Article 21(2), the requested Member State shall make every effort to comply with the time limit requested. 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 give its reply after the time limit requested, but in any event within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.~~
7. ~~Failure to act~~ ⇨ Where the requested Member State does not object to the request ⇨ within the ~~two-month~~ ⇨ **two one-month**<sup>33</sup> ⇨ period **set out mentioned** in paragraph 1 ~~and the one-month period mentioned in paragraph 6~~ ⇨ by a reply which gives substantiated reasons, or where applicable within the **one-month two-weeks** period **set out mentioned** in paragraphs 2 **or 6a**, 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.

---

<sup>33</sup> **EL**: substantive reservation. **BE**: there should also be a time limit if a MS objects to the request.

## SECTION ~~III~~ IV

### PROCEDURES FOR TAKE BACK ~~REQUESTS~~ ☒ NOTIFICATIONS ☒

#### Article ~~23~~ 26

#### Submitting a take back ☒ notification<sup>34</sup> ☒ ~~request when a new application has been lodged in the requesting Member State~~

- ~~Where a Member State with which a person as ☒ In a situation ☒ referred to in Article 18 20(1)(b), (c), or (d) ⇒ or (e) ⇐ has lodged a new application for international protection considers that another ☒ the ☒ Member State where the person is present is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person where the person is present ⇒ shall make a take back notification **without undue delay and in any event within one month at the latest within two weeks**<sup>35</sup> after receiving the Eurodac hit<sup>36</sup>, and transfer that person to the Member State responsible **in accordance with Article 30**.<sup>37</sup> ⇐ .~~

---

<sup>34</sup> **EL, HU, IT, PL, RO:** object to replacing regular take back procedure by take back notification. Regular procedure requires receiving acceptance by the requesting MS before the transfer of the person. **ES, HU:** scrutiny reservation. **COM:** strong view that take back cases (where the MS responsible has already been determined, which, under the new rules would entail permanent responsibility of the MS) should be subject to strong procedural facilitations. As there is nothing to assess or no validity to be checked (the automated system indicates which MS is responsible) the system should be one of notification and not of request.

<sup>35</sup> **DE:** no need to have time limits since there are no consequences of not respecting them.

<sup>36</sup> **CZ, FR, UK:** delete words "after receiving the Eurodac hit" since the take back situation can be based not only on the Eurodac hit but also on other proof. Moreover par. 2 assumes this situation.

<sup>37</sup> **CZ:** delete last part of the sentence after comma as it evokes the obligation to transfer the person concerned to responsible MS within the time limit. **BE:** the terminology should be consistent with Eurodac and APR.

~~2. A take back request shall be made as quickly as possible and in any event within two months of receiving the Eurodac hit, pursuant to Article 9(5) of Regulation (EU) No 603/2013.~~

~~If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).~~

~~3. Where the take back request is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged.<sup>38</sup>~~

~~4. A take back request ⇔ notification ⇐ shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article ~~22(3)~~ 25(4) and/or relevant elements from the statements of the person concerned, 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.<sup>39</sup>~~

---

<sup>38</sup> **EL:** object the deletion of the shift of responsibility. All MS should be bound by deadlines with relevant consequences in case of non-compliance.

<sup>39</sup> **EL:** object the deletion of the possibility of the MS to check the circumstantial evidence.  
**DE:** it should not be necessary to present proof for take back notifications. **SE:** What if notification is sent to a wrong MS?

---

↓ new

3. The Member State responsible shall **acknowledge** ~~confirm~~ immediately the receipt of the notification to the Member State which made the notification.<sup>40</sup>
- 

↓ 604/2013

⇒ new

4. The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back ⇒ notifications ⇐ ~~requests~~. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ 56(2).
- 

---

<sup>40</sup> **CZ:** replace "confirm immediately" by "acknowledge within one week". Clearer time limit would result in more efficient practical cooperation. **CY:** problematic provision, linked to reservation of CY on the deletion of Article 19 (cessation of responsibilities). Provided that the cessation clause will be included in the text, we suggest that the receiving MS will have the option of accepting or not a take back request.