



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 9 July 2012

12168/12

**Interinstitutional File:
2008/0243 (COD)**

LIMITE

**ASILE 101
CODEC 1832**

NOTE

from: Presidency
to: Permanent Representatives Committee (Part II)
on: 11 July 2012

No. Cion prop.: 16929/08 ASILE 26 CODEC 1758

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 [First reading]
- State-of-play on the ongoing negotiations

The Permanent Representatives Committee will find attached, in Annexes I and II, a copy of the correspondence between the former Danish Presidency and the European Parliament Rapporteur responsible for this proposal, for information.

ANNEX I

THE PERMANENT REPRESENTATION OF DENMARK to the European Union Brussels

MEP Cecilia Wikström
European Parliament
Bât. Altiero Spinelli, 14G102
60, rue Wiertz
1047 Brussels

Rue d'Arden 73
B-1040 Bruxelles
Telefon (02) 233.08.11
Telefax (02) 230.93.84
E-mail: brusep@om.dk
www.eu.um.dk



PAR PORTEUR

| Enclosure | File | Department |
|-----------|------------|------------|
| 1 | 400.Y.3-0. | |

25 June 2012

Dear Cecilia,

At its meeting on 21 June 2012, the Permanent Representatives' Committee considered the European Parliament's offer presented to the Presidency of the Council at the trilogue on 19 June 2012 concerning the *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 (the Dublin Regulation)*. That offer does not of course cover the comitology related provisions to which it has been agreed that Parliament and Council will need to return.

At the conclusion of its consideration, the Committee signalled that this text would be acceptable for the Council subject to the following modifications as laid out in the annex:

- Article 8(4) on the determination of the responsible Member State for unaccompanied minors in the absence of a family member, a sibling or a relative, where the Committee suggests reverting to the same legal situation as in Article 6.2. of the Dublin Regulation now in force and combine it with a declaration to be adopted by both Council and Parliament asking the Commission to consider if a revision of the clause would be necessary once the decision of the Court of Justice in C-648/11 MA and Others vs. Secretary of State for the Home Department is known in order to align the regulation with that decision .
- Article 27 on detention, where the Committee suggests replacing the word "established" with the word "significant" in Paragraph 2 (as also previously suggested by the European Parliament) and in

Paragraph 3 to alter the period of the deadline of transfer to two months and not just one. Furthermore, the Committee suggests adjusting the wording of the last sentence of Paragraph 3.

I am therefore now in a position to state that, should the European Parliament agree with such changes, it will be proposed that Council confirms partial agreement on this proposal.

On behalf of the Council, I also wish to thank you for your close cooperation and to express the hope that we will be able to reach agreement on this dossier at first reading along the lines set out above.

Yours sincerely



Jeppe Tranholm-Mikkelsen
Ambassador, Permanent Representative

ANNEX :

Article 8 (4) : Determination of the responsible Member State for unaccompanied minors in the absence of a family member, a sibling or a relative

In the absence of a family member, a sibling or a relative as mentioned in paragraphs 1 and 2, the Member State responsible for examining the application shall be that where the unaccompanied minor has lodged his/her application for international protection ~~and where he/she is present, provided that this is in the best interests of the minor. In case the minor has not lodged an application in the Member State where he/she is present, the Member State where he/she lodged his/her first application shall be responsible for examining the application, provided that it is in the best interests of the child.~~

Article 6 (2) of Dublin Regulation (343/2003/EC):

In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum.

Article 27: Detention

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

Where a person is detained in the application of the current article, the period for submitting a take charge or take back request shall not exceed a month from the moment the application was lodged. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply in such cases, which shall not exceed 2 weeks for replying to a take charge or take back request.

Where a person is detained, the transfer of that person from the requesting Member State to the responsible Member State shall be carried out as soon as practically possible, and at the latest within ~~one~~ **two** months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 26(3).

When the requesting Member States fails to comply with either of the above mentioned deadlines the person shall no longer be detained.

4. As regards conditions for detention of and on guarantees applicable to persons detained, in order to secure the transfer procedures to the responsible Member State, Articles 9, 10 and

11 of Directive [.../.../EU] [laying down minimum standards for the reception of asylum seekers], shall apply.

ANNEX II



28 June 2012, Brussels

TO: Ambassador Jeppe Tranholm-Mikkelsen
CC: Commissioner Cecilia Malmström

Dear Mr Ambassador,

Thank you for the letter sent to me on 25 June 2012 with your modifications on Article 8.4 and Article 27 in the recast of the Dublin II-regulation.

In the trilogue on 19 June I presented to the Danish Presidency of the Council a compromise package, which was the basis for an agreement, and which was as far as the European Parliament could go. We therefore deeply regret that our compromise package which was well balanced was not fully endorsed by Coreper on 21 June.

As we are so close to an agreement, I, as the Rapporteur, commit to do my utmost to bring our institutions closer to each other in order to find an agreement on the two remaining Articles (Article 8(4) and Article 27). However, the proposals for modification as they stand in your letter did not get sufficient support from the political groups and need therefore to be reworded. As we have almost come to the end of your Presidency we will have to continue our work with the Cypriot Presidency.

We recognize the efforts made by the Danish Presidency as well as the remarkable job you have done to bring this file forward. I regret that we have not been able to reach an agreement together, but the substance of the regulation has to remain in focus. It would not be responsible to rush into a conclusion on this file.

I want to take this opportunity to thank you for the great cooperation we have had during the past six months.

Sincerely,

Cecilia Wikström, MEP
Rapporteur of the Dublin II regulation