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No Cion proposal: 16929/08 ASILE 26 CODEC 1758

Subject: 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. At its meeting on 22-23 July 2009 the Working Party examined Presidency compromise proposals concerning Articles 2(i)(iii) and (iv), 4-6, 11, 18, 20, 25, 30, 30a, 32 and 34.
2. The results of the discussions are set out in the Annex I to this Note, with delegations' comments in the footnotes.

N.B. New text is indicated in **bold** and by underlining the insertion and including it within Council tags: ☞_☞;
Deleted text is indicated within underlined square brackets as follows:
☞ [...] ☞.

↓ 343/2003/EC

⇒ new

↻ Council

2008/0243 (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 ~~asylum~~ application ⇒ for international protection ⇐ lodged in one of the Member States by a third-country national ⇒ or a stateless person ⇐

HAVE ADOPTED THIS REGULATION¹:

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 ~~asylum~~ ⇒ international protection² ⇐ lodged in one of the Member States by a third-country national ⇒ or a stateless person ⇐.

Article 2

⊠ Definitions ⊠

For the purposes of this Regulation:

¹ **DE, IE, MT, AT, UK:** general reservations. **CY, IT, PL, SE:** general scrutiny reservations. **EE, MT, LT, PL, UK:** parliamentary scrutiny reservations.

² **CY:** scrutiny reservation on the latest Presidency compromise text (doc 12006/09). **IE:** in relation to recital 8 and the extension of scope to subsidiary protection, query about cases where an applicant is transferred to a second Member State which does not distinguish between applications for subsidiary protection and for refugee status. **Cion:** an "asylum" application should be examined both on the grounds of the Geneva Convention and for subsidiary protection, applying the Asylum Procedures Directive throughout the national procedures. **Cion** will reflect on whether it is necessary to further clarify the matter.

(a) "third-country national" means ~~anyone~~ ☒ any person ☒ who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community ⇒ and who is not ☞ [...] ☞ ☞ **national of a state which participates in this Regulation by virtue of an agreement with the European Community.** ☞
☞;

~~(b) "Geneva Convention" means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;~~

~~(c) "application for asylum" means the application made by a third-country national which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless a third-country national explicitly requests another kind of protection that can be applied for separately;~~

↓ new

(b) "application for international protection" means an application for international protection as defined in Article 2(g) of Directive 2004/83/EC;

↓ 343/2003/EC (adapted)

⇒ new

☞ Council

~~(c)(d)~~ "applicant" or "asylum seeker" means a third country national ⇒ or a stateless person ☞ who has made an application for ~~asylum~~ ⇒ international protection ☞ in respect of which a final decision has not yet been taken;

~~(d)~~^(e) "examination of an ~~asylum~~ application ~~⇒ for international protection ⇐~~" means any examination of, or decision or ruling concerning, an application for ~~asylum~~ ~~⇒ international protection ⇐~~ by the competent authorities in accordance with ~~national law~~ ~~⇒ Council Directive 2005/85/EC¹, ⇐~~ except for procedures for determining the Member State responsible in accordance with this Regulation ~~⇒~~, and Directive 2004/83/EC ~~⇐~~;

~~(e)~~^(f) "withdrawal of ~~the~~ ~~an~~ ~~asylum~~ application ~~⇒ for international protection ⇐~~" means the actions by which the applicant ~~for asylum~~ terminates the procedures initiated by the submission of his/her application for ~~asylum~~ ~~⇒ international protection ⇐~~, in accordance with ~~national law~~ ~~⇒ Directive 2005/85/EC, ⇐~~ either explicitly or tacitly;

~~(f)~~^(g) "~~refugee~~ ~~⇒ person granted international protection ⇐~~" means ~~any~~ ~~a~~ ~~third-country national~~ ~~⇒ or a stateless person recognised as~~ ~~...~~ ~~entitled to~~ ~~international protection as defined in Article 2(a) of Directive 2004/83/EC ⇐~~ ~~qualifying for the status defined by the Geneva Convention and authorised to reside as such on the territory of a Member State;~~

↓ new

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

¹ OJ L 326, 13.12.2005, p.13.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

(h) "unaccompanied minor" means ~~unmarried persons below the age of eighteen~~ ⇒ a minor who ~~arrive~~ arrives in the territory of the Member States unaccompanied by an adult responsible for ~~...~~ ~~him/her~~ whether by law or by custom, and for as long as ~~...~~ ~~he/she~~ ~~...~~ ~~is~~ not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of ~~the~~ Member States;

(i) "family members" means, insofar as the family already existed in the country of origin, the following members of the applicant's family who are present in the territory of the Member States:

- (i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;
- (ii) the minor children of couples referred to in point (i) or of the applicant, on condition that they are unmarried ~~and dependent~~ and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

↓ new

⇒ Council

⇒ [...] ⇒

⇒ (iii) the father, mother¹ or another adult ⇒ [...] ⇒ responsible for the applicant ⇒ whether ⇒ by ⇒ [...] ⇒ law or ⇒ [...] ⇒ ⇒ by the national practice² of the Member State where the adult is present, ⇒ when the applicant or a person granted international protection is a minor and unmarried. ⇒³

↓ 343/2003/EC

⇒ Council

⇒ [...] ⇒

⇒ (iv) the minor unmarried siblings ⇒ [...] ⇒ ⇒ when the ⇒ applicant ⇒ [...] ⇒ ⇒ or the person granted international protection ⇒ is a minor and unmarried. ⇒⁴

↓ new

⇒ Council

⇒ [...] ⇒

¹ **HU:** replace "father and mother" with "parents".

² **AT:** want clarification of the term "national practice". **EL, IT:** suggested deleting this term, because "practice" may change continuously at national level. In the same sense, **RO** expressed also concern about the term because the practice of more than one Member States might be involved.

³ **UK:** scrutiny reservation on the point. **DE, NL, RO:** the text shall be reworded in order to differentiate properly between cases where the unmarried minor is an applicant (where the law and national practice of the Member State where the adult is staying shall be taken into account) and those where the minor has been granted international protection (where the law and national practice of the Member State where the minor is staying shall be applicable).

⁴ **BU, IE, FR, LT, LV:** reservations, **DE, FI, AT, UK:** scrutiny reservations, **EE:** Parliamentary scrutiny reservation, on the extension of the notion of family member, beyond the nuclear family. **EL, Cion:** regret the narrowing down of the scope of the family (which is quite close to the nuclear family) as results from the compromise.

⇒ (i) A "representative" means a person acting on behalf of an organisation representing the unaccompanied minor as legal guardian, a person acting on behalf of a national organisation which is responsible for the care and well-being of minors, or any other appropriate representation appointed to ensure his/her best [...] interests . .¹

↓ 343/2003/EC

⇒ new

(j) "residence document" means any authorisation issued by the authorities of a Member State authorising a third-country national ⇒ or a stateless person ⇐ to stay in its territory, including the documents substantiating the authorisation to remain in 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 responsible Member State as established in this Regulation or during examination of an application for ~~asylum~~ ⇒ international protection ⇐ or an application for a residence permit;

(k) "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:

(i) "long-stay visa" means the authorisation or decision of a Member State required for entry for an intended stay in that Member State of more than three months;

(ii) "short-stay visa" means the authorisation or decision of a Member State required for entry for an intended stay in that State or in several Member States for a period whose total duration does not exceed three months;

¹ **CY, FI, IT:** scrutiny reservations on the point. **BG, ES, RO:** suggested replacing “national organization” with “national authority”, **PT:** replace it with “entity”. **SI:** entered a reservation on the issue.

EL: add in the definition “in accordance with national law”.

(iii) "transit visa" means the authorisation or decision of a Member State for entry for transit through the territory of that Member State or several Member States, except for transit at an airport;

(iv) "airport transit visa" means the authorisation or decision allowing a third-country national specifically subject to this requirement to pass through the transit zone of an airport, without gaining access to the national territory of the Member State concerned, during a stopover or a transfer between two sections of an international flight;

↓ new

↻ |...| ↻

↓ 343/2003/EC (adapted)

⇒ new

CHAPTER II

GENERAL PRINCIPLES ~~AND~~ SAFEGUARDS ~~AND~~

Article 3

~~Access to the procedure for examining an application for international protection~~

1. Member States shall examine ~~the~~ any application ~~for international protection~~ of any ~~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 ~~their~~ territory ~~to any one of them for asylum~~. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III ~~of this~~ Regulation ~~indicate~~ is responsible.

↓ 343/2003/EC Article 13

⇒ new

2. Where no Member State responsible for examining the application for ⇒ international protection ⇐ asylum can be designated on the basis of the criteria listed in this Regulation, the first Member State with which the application for asylum ⇒ international protection ⇐ was lodged shall be responsible for examining it.

↓ 343/2003/EC

⇒ new

3. Any Member State shall retain the right, pursuant to its national laws, to send an asylum seeker to a ⇒ safe ⇐ third country, in compliance with the provisions of the Geneva Convention ⇒ subject to the rules and safeguards laid down in Directive 2005/85/EC ⇐.

↓ 343/2003/EC Article 3(4) (adapted)

⇒ new

☉ Council

Article 4

⊗ Right to information ⊗

- 41¹. ⇒ As soon as an application for international protection is lodged ☉ **in the meaning of Article 20(2) of this Regulation** ☉, the competent authorities of Member States shall inform ⇐ the asylum seeker ~~shall be informed in writing in a language that he or she may reasonably be expected to understand regarding~~ ⊗ of ⊗ the application of this Regulation, ~~its time limits and its effects.~~ ⇒ , and in particular of: ⇐

¹ UK: scrutiny reservation on the paragraph.

↓ new

→ Council

(a) the objectives of this Regulation and the consequences of making another application in a different Member State;

(b) the criteria for allocating responsibility, → [...] → **the possible outcomes of the procedure and their consequences as well as → [...] → the time limits to be followed by the Member States** ◯ ◯¹

→ [...] ◯

→ [...] ◯

→ [...] ◯ → (c) ◯ the possibility to challenge a transfer decision;

→ [...] ◯ → (d) ◯ the fact that the competent authorities → **of Member States** ◯ can exchange data on him/her for the sole purpose of implementing the obligations arising under this Regulation;

→ [...] ◯ → (e) ◯ → [...] ◯ the right of access to data relating to him/her, and the right to request that inaccurate data relating to him/her be corrected or that unlawfully processed data relating to him/her be deleted, → [...] ◯ → **as well as** ◯ the procedures for exercising those rights → [...] ◯ → **including** ◯ the contact details → **of the authorities referred to in Article 33** ◯ and of the National Data Protection Authorities which shall hear claims concerning the protection of personal data.²

¹ **FR, IE, AT:** against any obligation to provide possible outcomes of the procedure / time limits to be followed. **DE:** scrutiny reservation on the point. **Cion:** will further reflect on the provision; it clarified that the information on the possible outcomes could be nothing than general wording.

MT: scrutiny reservation on the point.

HU: shall clarify at the brochure that the applicant can ask for a (second) interview if he/she has a family member in another Member State.

² **IT:** scrutiny reservation on the point, concerning the right to request correction of data in the context of a remedy before the National Data Protection Authorities. **Cion:** clarified that this

2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant **understands or may** reasonably **be presumed** 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, at the interview organised pursuant to Article 5.¹

[...]

3. A common leaflet **, as well as a specific leaflet for unaccompanied minors,** containing at least the information referred to in paragraph 1 shall be drawn up in accordance with the procedure referred to in Article 40(2).²

[...]

provision refers to the contact details of the competent authorities and not to the exercise of remedies for which Article 26 of the proposal makes provision.

¹ **FR:** reservation on the paragraph. **LU:** replace “shall” with “may”; this choice will have a bearing on the burden of proof regarding the need to supply the oral information.

² **FR:** against any binding form / contents of the leaflet, would oppose the drafting of the leaflet under the Comitology procedure; instead it would prefer to do it in the context of the EASO remit or under other practical co-operation. **DE:** supports the idea of tasking EASO for this purpose. **IE, UK, Cion** support the current wording and prefer drawing up the leaflet in the context of Comitology.

HU: provide that the leaflet shall be translated in the most commonly used languages by asylum seekers who arrive at the European Union. **Cion:** could support the suggestion.

Article 5

Personal interview¹

1. The Member State carrying out the process of determining the Member State responsible under this Regulation, shall **at the request of the applicant² or [...] where it is deemed necessary, [...] conduct a personal interview with the applicant. The interview shall be conducted by** a qualified person under national law [...]

³2. In cases where an applicant has requested an interview, this interview may be omitted if:

(a) the applicant has absconded; or

(b) the applicant makes the request after the decision to transfer him/her to the responsible Member State was taken, pursuant to Article 25; or

(c) a personal interview according to this Article has already been conducted,⁴ unless the applicant can submit new information regarding the presence of family members or other relatives in the Member States.

¹ **IE, IT:** reservations on the Article as a whole, the latter with regard to disputes which might be generated from the procedural framework it establishes.

² **FR, AT:** delete “at the request of the applicant”. **EL, Cion:** object the suggestion. **LU, UK:** the provision should be split: an obligation for the Member States to conduct an interview (“shall”) when it is requested by the applicant and an option (“may”) in all other cases, i.e. if they deem it necessary. **Cion:** will further reflect on the suggestion.

³ **LU:** no interview should be granted if the applicant has already done multiple applications. **Cion:** these cases should not automatically be excluded because new information for family members could emerge.

UK: scrutiny reservation on the paragraph; suggests providing for a general exemption clause (“the interview could be refused for good or compelling reasons”) or enumerate all exemptions such as illness, multiple applications, etc. **Cion:** objects the suggestion for a general clause.

⁴ **NL, AT:** delete the rest of the sentence. **Cion:** will further reflect on the issue.

➔ [...] ➔ **3** The personal interview shall be for the purpose of facilitating the process of determining the Member State responsible, in particular for allowing the applicant to submit relevant information necessary for the correct identification of the responsible Member State, and ➔ **, where necessary** ➔ **especially where the applicant is an unaccompanied minor,** for the purpose of informing the applicant orally about the application of this Regulation.

➔ [...] ➔ **4** The personal interview shall take place in a timely manner following ➔ **[...] ➔ the request of the applicant where applicable** and, in any event, before any decision is taken to transfer the applicant to the responsible Member State pursuant to Article 25(1).¹

➔ [...] ➔ **5** The personal interview shall take place in a language that the applicant ➔ **understands or may** ➔ [...] reasonably ➔ [...] ➔ **be presumed** to understand and in which he ➔ **/she** is able to communicate. Where necessary, Member States shall select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the personal interview.

➔ [...] ➔ **6** The personal interview shall take place under conditions which ensure appropriate confidentiality.

➔ [...] ➔ **7** The Member State conducting the personal interview shall make a short written report containing the main information supplied by the applicant at the interview and shall ➔ **ensure that the applicant and/or a legal advisor or other counsellor who is representing him/her have timely**² **access to the report.** ➔ [...] ➔³






¹ FR, AT: scrutiny reservations on the paragraph.

² LU: “timely” vague term without legal certainty.

³ EL, FR, AT (the latter prepares at any rate an outcome of the interview): against the obligation to draft a special written report on the interview. EL: alternatively, a copy of the interview notes could be handed to the applicant or his/her representative.

Article 6

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. Member States shall ensure that a representative represents and/or assists the unaccompanied minor with respect to all procedures provided for in this Regulation.
  **The representative shall be impartial¹ and have the necessary expertise in view of ensuring that the best interests of the minor are taken into consideration.** ²
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 child being a victim of trafficking;
 - (d) the views of the minor, in accordance with his/her age and maturity.

¹ **DE, FI, IE, IT, LU, NL, AT, SI, SK, UK:** concerns about the term "impartial", considering it without added value, taking into account that the representative shall defend the applicant and therefore it would be difficult to remain "impartial".. **Cion:** want to highlight that it should not be somebody representing an authority; could replace "impartial" with "independent". **EL:** query about the required "impartiality" is reconciled with cases where a representative of the Public Authority (e.g. a District Attorney) is nominated as temporary guardian of the unaccompanied minor.

² **LV:** paragraph 2 could be transferred to the definition of "representative" under Article 2.

⇒ **4. Member States shall endeavour to trace, where necessary with the assistance of international or other relevant organisations, the members of the unaccompanied minor's family or other relatives ⇒ legally ☹ present on the territory of Member States as soon as possible after the lodging of the application for international protection, whilst protecting his/her best interests. ☹¹**

⇒ [...] ☹

⇒ **5. (new) Within the framework of ⇒ the ☹ application of this Regulation and under the conditions laid down in Article 17 of Directive 2005/85/EC, Member States may use medical examinations to determine the age of ⇒ [...] ☹ ⇒ an applicant. ☹ ☹**

⇒ [...] ☹

⇒ **Any medical examination shall be performed in full respect of the individual's dignity, selecting the least invasive examinations. ☹²**

¹ **DE, SI:** reservations, **FR:** scrutiny reservation on the point.
BE, HU (both highlighted that the important question is whether the relative is able to support the minor in the future rather than being supportive in the past), **FI, IE, LU** (which stressed that should not downgrade the Member States' obligation any further than the text suggested by NL), **AT, NL, SI, SK, UK:** suggest replacing paragraph 4 with the following: **"If there are indications that there are members of the unaccompanied minor's family, or other relatives who have been responsible previously for his/her care, legally present on the territory of Member States, the Member State where the application for international application has been filed shall endeavour to trace them as soon as possible..."** **DE:** scrutiny reservation on the NL text. **CZ, Cion:** object the NL suggestion because it narrows down excessively the scope of the provision; the obligation exists for all unaccompanied minors. **IE:** the restriction contained in the NL text applies only to relatives and not to family members, therefore, the scope of the provision is not that much narrowed down. **EL:** the NL suggestion looks good but it does not cover cases where the unaccompanied minor has left from the country of origin and try to unite for the first time with a relative who has been living at a Member State. **IT:** common criteria shall be determined in order to assess the impact of the provision
Cion: agrees with **BE/HU**, taking care of the applicant at the past is irrelevant, the important test is whether this can happen in the future. **NL:** with regard to the concept of "other relatives" the scope of the provision shall be limited somehow (the criterion of the ability to provide care for the future is not sufficiently clear).
HU: the wording of the Receptions Conditions Directive shall be taken into account for paragraphs 4 and 5.

² **AT:** against the last sentence, it could lead to further discussions about the age determination. **IT:** need uniform criteria to determine the age of the applicant.

↓ 343/2003/EC (adapted)

⇒ new

CHAPTER III

~~HIERARCHY OF CRITERIA~~

⊗ CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE ⊗

Article ~~5~~ 7

⊗ Hierarchy of criteria ⊗

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.
2. The Member State responsible in accordance with the criteria ⊗ set out in this Chapter ⊗ shall be determined on the basis of the situation obtaining when the asylum seeker first lodged his/her application ⇒ for international protection ⇐ with a Member State.

↓ new

⇒ Council

3. By way of derogation from paragraph 2, in order to ensure respect for the principle of family unity and of the best interests of the child, the Member State responsible in accordance with the criteria laid down in Articles 8 [...] ,10 and 11 shall be determined on the basis of the situation obtaining when the asylum seeker lodged his/her most recent application for international protection. This paragraph shall apply on condition that the previous applications of the asylum seeker have not yet been subject of a first decision regarding the substance.¹

↓ 343/2003/EC (adapted)

⇒ new

Article ~~6~~ 8

Unaccompanied minors

1. Where the applicant ~~for asylum~~ is an unaccompanied minor, the Member State responsible for examining the application for international protection shall be that where a member of his or her family is legally present, provided that this is in the best interests of the minor.

¹ **DE** (asked for deletion of the paragraph), **ES, NL, AT, SI, UK** (the latter asked for deletion too): enter reservations / maintain serious concerns about the provision. **EL, HU, IT, LV, PT**: scrutiny reservations.

↓ 343/2003/EC Article 15(3) (adapted)
⇒ new

23. If ⊗ Where ⊗ ⇒ the applicant ⇐ ~~asylum-seeker~~ is an unaccompanied minor who has a relative ~~or relatives~~ ⇒ legally present ⇐ in another Member State who can take care of him or her, ⊗ that ⊗ Member States shall ~~if possible~~⁺ ~~unite the minor with his or her relative or relatives,~~ ⇒ be responsible for examining the application, provided that ⇐ ~~unless~~ this is ~~not~~ in the best interests of the minor.

↓ new

3. Where members of the applicant's family or his/her other relatives are legally present in more than one Member State, the Member State responsible for examining the application shall be decided on the basis of what is in the best interests of the minor.

↓ 343/2003/EC
⇒ new
⇒ Council

4. In the absence of a family member ⇒ or of another relative ⇐ , the Member State responsible for examining the application shall be that where the minor has lodged his or her ⇒ ⇒ most recent ⇐ ⇐ application for ~~asylum~~ ⇒ international protection, provided that this is in the best interests of the minor. ⇐

⇒ **This paragraph shall apply on condition that the previous applications of the asylum seeker have not yet been subject of a first decision regarding the substance.** ⇐²³

¹ NL: against the deletion of "if possible".

² BE, DE, HU, NL, AT, PT, RO, SI, UK: delete this point.

³ EL: seek clarification (the query refers also to Article 10) about which Member State shall be responsible to obtain the written confirmation. Cion: will further reflect on the issue.

↓ 1103/2008/EC, pt. 3(1) of the Annex
⇒ new

5. The conditions and procedures for implementing ~~this Article paragraphs 2~~ and 3 ~~including, where appropriate, conciliation mechanisms for settling differences between Member States concerning the need to unite the persons in question, or the place where this should be done~~, shall be adopted by the Commission. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article ~~27(3)~~ 40(3).

↓ 343/2003/EC (adapted)
⇒ new
→ Council

Article ~~79~~

⊗ Family members who are persons granted international protection ⊗

Where the asylum seeker 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 ~~refugee~~ ⇒ person granted international protection ⇐ in a Member State, that Member State shall be responsible for examining the application for ~~asylum~~ ⇒ international protection, ⇐ provided that the persons concerned ~~so~~ ⊗ expressed their ⊗ desire ⊗ in writing ⊗.

Article 9~~10~~

~~⊗~~ Family members who are applicants for international protection ~~⊗~~

If the asylum seeker 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 ~~asylum~~ ~~⇒~~ international protection ~~⇐~~, provided that the persons concerned ~~so~~ ~~⊗~~ expressed their ~~⊗~~ desire ~~⊗~~ in writing ~~⊗~~.

Article ~~15~~11¹

~~⊗~~ Dependent relatives ~~⊗~~

~~21.~~ ~~⇒ [...] ⇐~~ ~~⊗~~ Where ~~⊗~~ ~~In cases in which~~ ~~⇒ [...] ⇐~~ ~~person concerned~~ ~~⊗~~ ~~⇒ an ⇐~~ asylum seeker ~~⊗~~ is dependent on the assistance of ~~the other~~ ~~⊗~~ ~~⇒ [...] ⇐~~ ~~⇒ [...] ⇐~~ ~~⇒ a ⇐~~ relative ~~⇒ legally resident in one of the Member States,~~² ~~⇐~~ ~~⊗~~ ~~present in another Member State~~ on account of pregnancy or a new-born child, serious illness, severe handicap or old age, ~~⊗~~ or where ~~⇒ [...] ⇐~~ ~~⇒ that ⇐~~ relative ~~⊗~~ ~~present in another Member State~~ ~~⊗~~ is dependent on the assistance of the asylum seeker ~~⊗~~ ~~⇒~~ for the same reasons, ~~⇒ [...] ⇐~~ ~~⇒ Member States shall keep or bring together the asylum seeker with that relative,~~ ~~⇐~~ provided that family ties existed in the country of origin ~~⇒~~ and that the persons concerned expressed their desire in writing. ~~⇒ [...] ⇐~~ ~~⇐~~.

¹ **AT, UK:** reservation on the Article; they prefer the current version of Article 15. **DE, EE:** scrutiny reservations on the Article. **HU:** prefers the previous version of the compromise (included in doc. 10600/09) because it was less restrictive on the reunification of the asylum seeker with his/her family.

² **CZ:** scrutiny reservation on the term “legally resident”. In reply to **NL, Pres** clarified that an asylum seeker (“legally present”) is not included in the scope of the term “legally resident”.

⇒ 2. Where the relative is legally ⇒ [...] ⇄ ⇒ resident ⇄ in another Member State than the one where the asylum seeker is present, the Member State responsible for examining the application shall be the one where the relative is legally ⇒ [...] ⇄ ⇒ resident provided ⇄ that the concerned asylum ⇒ [...] ⇄ ⇒ seeker's health condition allows him/her ⇄ to travel to that Member State. ⇄¹

⇒ Where the concerned asylum ⇒ [...] ⇄ ⇒ seeker's health condition prevents him/her from travelling ⇄ to another Member State, the Member State responsible for examining his/her application shall be the one where he/she is present. ⇒ [...] ⇄ ⇄

↓ 1560/2003 Article 11(1) (adapted)

~~Article 15(2) of Regulation (EC) No 343/2003 shall apply whether the asylum seeker is dependent on the assistance of a relative present in another Member State or a relative present in another Member State is dependent on the assistance of the asylum seeker.~~

↓ 1103/2008/EC, pt. 3(1) of the Annex
⇒ Council

⇒ [...] ⇄ ⇒ 3: ⇄ ⇒ [...] ⇄ ⇒ Further ⇄ conditions and procedures for implementing ~~this Article paragraph 1~~ including, where appropriate, conciliation mechanisms for settling differences between Member States concerning the need to unite the persons in question, or the place where this should be done, ⇒ [...] ⇄ ⇒ [...] ⇄ ⇒ shall ⇄ be adopted by the Commission. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article ~~27(3)~~ 40(3).

¹ **AT:** clarify that the inability to travel shall be permanent. **IT:** provide for a medical certificate which would confirm the inability to travel.

Article ~~14~~12

⊗ Family procedure ⊗

Where several members of a family submit applications for ~~asylum~~ ⇒ 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 them being separated, the Member State responsible shall be determined on the basis of the following provisions:

- (a) responsibility for examining the applications for ~~asylum~~ ⇒ international protection ⇐ of all the members of the family shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of family members;
- (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 ~~9~~13

⊗ Issuance of residence documents or visas ⊗

1. Where the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐.

2. Where the asylum seeker is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐, unless the visa was issued when acting for or on the written authorisation of another Member State. In such a case, the latter Member State shall be responsible for examining the application for ⇒ international protection ⇐ ~~asylum~~. Where a Member State first consults the central authority of another Member State, in particular for security reasons, the latter's reply to the consultation shall not constitute written authorisation within the meaning of this provision.
3. Where the asylum-seeker 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 ⇐ ~~asylum~~ shall be assumed by the Member States in the following order:
- (a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;
 - (b) the Member State which issued the visa having the latest expiry date where the various visas are of the same type;
 - (c) where visas are of different kinds, the Member State which issued the visa having the longest period of validity, or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.
4. Where the asylum seeker is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than six months previously and which enabled him/her actually to enter the territory of a Member State, paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the territories of the Member States.

Where the asylum seeker is in possession of one or more residence documents which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him/her actually to enter the territory of a Member State and where he has not left the territories of the Member States, the Member State in which the application \Rightarrow for international protection \Leftarrow is lodged shall be responsible.

5. 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 ~~10~~14

\boxtimes Entry and/or stay \boxtimes

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article ~~2218~~(3), including the data referred to in Chapter III of Regulation \boxtimes [concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Regulation] \boxtimes (EC) No [.../...] ~~2725/2000~~, that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for ~~asylum~~ \Rightarrow international protection \Leftarrow . This responsibility shall cease 12 months after the date on which the irregular border crossing took place.
2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1, and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article ~~2218~~(3), that the asylum seeker - who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established - ~~at the time of lodging the application~~ has been ~~previously~~ living for

a continuous period of at least five months in a Member State \boxtimes before lodging the application for international protection \boxtimes , that Member State shall be responsible for examining the application for ~~asylum~~ \Rightarrow international protection \Leftarrow .

If the applicant has been living for periods of time of at least five months in several Member States, the Member State where this has been most recently the case shall be responsible for examining the application \Rightarrow for international protection \Leftarrow .

Article ~~11~~15

\boxtimes *Visa waived entry* \boxtimes

1. If a third-country national \Rightarrow or a stateless person \Leftarrow enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for ~~asylum~~ \Rightarrow international protection \Leftarrow .
2. The principle set out in paragraph 1 does not apply, if the third-country national \Rightarrow or the stateless person \Leftarrow lodges his or her application for ~~asylum~~ \Rightarrow international protection \Leftarrow in another Member State, in which the need for him or her to have a visa for entry into the territory is also waived. In this case, the latter Member State shall be responsible for examining the application for ~~asylum~~ \Rightarrow international protection \Leftarrow .

Article ~~12~~16

\boxtimes *Application in an international transit area of an airport* \boxtimes

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

CHAPTER IV

~~HUMANITARIAN CLAUSE~~

⊠ DISCRETIONARY CLAUSES ⊠

Article ~~15~~17

⊠ Discretionary clauses ⊠¹

↓ 343/2003/EC Article 3(2) (adapted)
⇒ new
⇒ Council

1. ~~2.~~ By way of derogation from Article 3, paragraph (1), each Member State may ⇒ in particular for humanitarian and compassionate reasons,² ⇐ ⊠ decide to ⊠ examine an application for ~~asylum~~ ⇒ 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, ⇒ [...] ⇐ ⇒ **unless the applicant opposes to it.** ⇐

¹ **DE, IE:** reservations concerning mainly the first paragraph; **FR, AT:** scrutiny reservations / concerns on the Article, (**AT** along with **UK** in particular concerns about applicants' right to oppose the decision regarding the examination provided for in paragraph 1). **IE** further pointed out that if the applicant opposed a decision to examine his/her application he should not be entitled to appeal the transfer decision, which would inevitably follow.

² **NL:** suggested placing the reference to "humanitarian and compassionate reasons" to a recital. **Cion:** this suggestion merits further consideration.

In such an event, that Member State shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where ~~appropriate~~ ☒ 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 or take back the applicant ⇒ by using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003 ⇐.

The Member State becoming responsible in accordance with this paragraph shall also forthwith indicate in EURODAC that it assumed responsibility pursuant to Article 17(6) of Regulation (EC) No [.../...] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation].

↓ 343/2003/EC (adapted)

⇒ new

↻ Council

~~2¹. 1 Any Member State, even where it is not responsible under the criteria set out in this Regulation,~~ ☒ The Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, or the Member State responsible, ☒ may, ⇒ at any time ↻ **before a first decision regarding the substance is taken** ↻, request another Member State to take charge of an applicant in order to ⇐ bring together family members, as well as other ~~dependent~~ relatives, on humanitarian grounds based in particular on family or cultural considerations, ⇒ even where this latter Member State is not responsible under the criteria laid down in Articles 8 to 12 of this Regulation ⇐ . ~~In this case that Member State shall, at the request of another Member State, examine the application for asylum of the person concerned.~~ The persons concerned must ☒ express their ☒ consent ☒ in writing ☒.

¹ UK: scrutiny reservation on the paragraph.

↓ 1560/2003 Article 13(2)

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.

↓ 1560/2003 (adapted) Article 13(3)

⇒ new

⊗ The requested Member State shall carry out ~~⊗ the necessary~~ any necessary checks to establish, where applicable, humanitarian reasons, particularly of a family or cultural nature, the level of dependency of the person concerned or the ability or commitment of the other person concerned to provide the assistance desired. ⇒ to substantiate the humanitarian reasons cited, and shall give a decision on the request within two months of the date on which the request was received. A decision refusing the request shall state the reasons on which it is based ⇐

↓ 343/2003/EC (adapted)

⇒ new

~~4~~ Where the ⊗ requested ~~⊗~~ Member State ~~thus approached accedes to~~ ⊗ accepts ~~⊗~~ the request, responsibility for examining the application shall be transferred to it.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

CHAPTER V

~~TAKING CHARGE AND TAKING BACK~~

⊗ OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE ⊗

Article ~~16~~18

⊗ Obligations of the Member State responsible ⊗

1. The Member State responsible for examining an application for ~~asylum~~ ⇒ international protection ⇐ under this Regulation shall be obliged to:
 - (a) take charge, under the conditions laid down in Articles ~~21~~~~17 to 19~~, 22 and 28, of an asylum seeker who has lodged an application in a different Member State;
 - ~~(b)~~~~(e)~~ take back, under the conditions laid down in Articles ~~23, 24 and 28~~ ~~20~~, an applicant whose application is under examination and who ⇒ made an application in another Member State or who ⇐ is in the territory of another Member State without ~~permission~~ ⇒ a residence document. ⇐;
 - ~~(c)~~~~(d)~~ take back, under the conditions laid down in Articles ~~23, 24 and 28~~ ~~20~~, an applicant who has withdrawn the application under examination and made an application in another Member State ⇒ or who is in the territory of another Member State without a residence document ⇐;
 - ~~(d)~~~~(e)~~ take back, under the conditions laid down in Articles ~~23, 24 and 28~~ ~~20~~, a third-country national ⇒ or a stateless person ⇐ whose application ~~is~~ has been rejected and who ⇒ made an application in another Member State or who ⇐ is in the territory of another Member State without ~~permission~~ ⇒ a residence document ⇐

⊗ 2. The Member State responsible shall ~~⊗~~ ⇒ in all circumstances referred to in paragraph 1 (a) ~~⊗ [...]~~ ~~⊗~~ **and (b)** ~~⊗~~ examine or ~~⊗~~ ~~(b)~~ complete the examination of the application for ~~asylum~~; ⇒ international protection made by the applicant, within the meaning of Article 2(d). When the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant, it shall ~~⊗ [...]~~ ~~⊗ [...]~~ ~~⊗~~ **ensure that the applicant is entitled to request that his/her case be reopened. In such cases, Member States shall ensure that** ~~⊗~~ the examination of the application ~~⊗~~ **is completed** ~~⊗~~, within the meaning of Article 2(d)⇐.¹

⊗ For the cases referred to under paragraph 1 (d), where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has the opportunity to access an effective remedy, pursuant to Article 39 of Directive 2005/85/EC. When a negative decision was notified to the person concerned in his/her absence, the Member State responsible shall notify again the decision to the person concerned once the transfer has taken place. In this case, the time-limit for appeal shall start to run on the date of this notification. ~~⊗~~²

¹ **IT:** scrutiny reservation.

CZ, FI, AT, NL, SI: suggest adding: "... in accordance with the administrative procedures under the relevant national legislation, the application for international protection will be reopened **or** a subsequent application will be examined." and delete the rest of the sentence as well as the second subparagraph. **BE, ES:** agree with **NL** that a new application has to be made under this provision. **UK:** could in principle agree with the **NL** suggestion except for the deletion of subparagraph (b). **DE, EL:** could also consider positively the **NL** suggestion but the re-opening of the application / new application shall be at the request of the applicant. **IE:** the Member State concerned should have the last word on the reopening of the case.

² **CZ, DE, EL, ES, FI, HU, IT, RO, SI:** reservations, **BE, EE, FR, NL, SK, UK:** scrutiny reservations regarding the remedy which is provided, pursuant the new compromise, against a negative decision which entered into force a long time ago after being notified to the person concerned while he/she was absent at his/her own initiative. This remedy is not available to the rest of the negative decisions after the lapse of the relevant time-limit, thus the principle of equality with other applicants, as well as the principle of legal certainty are violated. **Cion:** the wording of this provision is derived from the Asylum Procedures Directive but the relevant Article of this Directive is not directly applicable; the person concerned should not be penalized disproportionately for moving - without knowing the circumstances - to another Member State for various reasons. There is no new case to examine, the original application was never examined by any Member State. **Pres:** the consequences of moving could be mentioned in the leaflet provided for under Article 4.

Article 19

⊗ Cessation of responsibilities ⊗

1. ~~2.~~ Where a Member State issues a residence document to the applicant, the obligations specified in Article 18 paragraph (1), shall be transferred to that Member State.
2. ~~3.~~ The obligations specified in Article 18 paragraph (1), shall cease where ⇒ the Member State responsible for examining the application can establish, when requested to take charge or take back an applicant or another person as referred to in Article 18(1)(d), that ⇐ the ~~third-country national~~ ⊗ person concerned ⊗ has left the territory of the Member States for at least three months, unless the ~~third-country national~~ ⊗ person concerned ⊗ is in possession of a valid residence document issued by the Member State responsible.¹

↓ new

An application lodged after such an absence shall be regarded as a new application giving rise to a new procedure for the determination of the Member State responsible.

¹ **DE, EL, LU, AT, UK:** query on burden of proof concerning the verification of time of absence from the territory of the Member State concerned. **AT:** It might confirm it through the interview procedure or via co-operation with other Member States. **Cion:** there are inherent difficulties concerning the burden of proof, but the relevant provisions have not been amended in the new proposal.

EL: if the third-country national returns within the three-month period would it be considered a new or an old application? **Cion:** After the cessation of responsibility under paragraphs (2) and 3, the consequence is a new examination of the criteria and a new responsibility built on it; see also Article 20 (5).

↓ 343/2003/EC (adapted)

⇒ new

3. ~~4.~~The obligations specified in ~~Article 18 paragraph (1)(c)(d) and (d)(e)~~, shall likewise cease ~~one~~ ⇨ where ⇨ the Member State responsible for examining the application ⇨ can establish, when requested to take back an applicant or another person as referred to in Article 18(1)(d), that ⇨ ~~has adopted and actually implemented, following the withdrawal or rejection of the application, the provisions that are necessary before the third-country national can go to his country of origin or to another country to which he may lawfully travel~~ ⇨ the person concerned has left the territory of the Member States in compliance with a return decision or removal order it issued following the withdrawal or rejection of the application ⇨¹
-

↓ new

An application lodged after an effective removal shall be regarded as a new application giving rise to a new procedure for the determination of the Member State responsible.

¹ **HU:** add the case where the responsibility ceases if the Member State concerned proves that the third-country national has left the territory of the MS voluntarily. **AT:** voluntary return cases shall fall under paragraph 3 and not 2. **Cion:** voluntary return on the own will of the returnee cases are addressed at paragraph 2 whereas paragraph 3 deals with the modalities under which a return decision was implemented. **FR:** returning under paragraph 2 is implementation of a return decision in a voluntary way rather than “genuine” voluntary departure. **NL:** quote the Return Directive relevant definitions.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

CHAPTER VI

⊗ PROCEDURES FOR TAKING CHARGE AND TAKING BACK ⊗

⊗ SECTION I: Start of the procedure ⊗

Article ~~4~~20

⊗ *Start of the procedure* ⊗

1. The process of determining the Member State responsible under this Regulation shall start as soon as an application for ~~asylum~~ ⇒ international protection ⇐ is first lodged with a Member State.
2. An application for ~~asylum~~ ⇒ international protection ⇐ shall be deemed to have been lodged once a form submitted by the applicant ~~for asylum~~ 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.

3. For the purposes of this Regulation, the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member set out in Article 2, point (i) shall be indissociable from that of his parent or ~~...~~ **another adult responsible for the minor whether by law or by ... the national practice of the Member State where the adult is present** and shall be a matter for the Member State responsible for examining the application for ~~asylum~~ international protection of that parent or ~~...~~ **another adult responsible for the minor whether by law or by ... the national practice of the Member State where the adult is present**, even if the minor is not individually an asylum seeker, provided that this is in his/her best interests. The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for ~~asylum~~ international protection is lodged with the competent authorities of a Member State by an applicant who is in 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 ~~asylum~~ international protection was lodged.

The applicant shall be informed in writing of this transfer and of the date on which it took place.

5. An asylum seeker who is present in another Member State ~~...~~ **without a residence document or who** there lodges an application for ~~asylum~~ international protection after withdrawing his ~~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 ~~2023, 24 and 28~~, by the Member State with which that application for ~~asylum~~ international protection was firstly lodged, with a view to completing the process of determining the Member State responsible for examining the application for ~~asylum~~ international protection.

This obligation shall cease ~~if~~ \Rightarrow where the Member State requested to complete the process of determining the responsible Member State can establish that ~~if~~ \Leftarrow the asylum seeker has in the meantime left the territories of the Member States for a period of at least three months or has obtained a residence document from \boxtimes another \boxtimes Member State.

\Downarrow new

An application lodged after such an absence shall be regarded as a new application giving rise to a new procedure for the determination of the responsible Member State.

\Downarrow 343/2003/EC (adapted)

\Rightarrow new

\boxtimes Section II: Procedures for take charge requests \boxtimes

Article ~~47~~21

\boxtimes Submitting a take charge request \boxtimes

1. Where a Member State with which an application for ~~asylum~~ \Rightarrow international protection \Leftarrow has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within three months of the date on which the application was lodged within the meaning of Article ~~420~~420(2), ~~call upon~~ \boxtimes request \boxtimes the other Member State to take charge of the applicant.

Where the request to take charge of an applicant is not made within the period of three months, responsibility for examining the application for ~~asylum~~ \Rightarrow international protection \Leftarrow shall lie with the Member State in which the application was lodged.

2. The requesting Member State may ask for an urgent reply in cases where the application for ~~asylum~~ \Rightarrow international protection \Leftarrow 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 and/or where the asylum seeker is held in detention.

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

3. In both cases, 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 ~~18~~22(3) and/or relevant elements from the asylum seeker'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 rules on the preparation of and the procedures for transmitting requests shall be adopted in accordance with the procedure referred to in Article 40(2) ~~27(2)~~.

Article ~~18~~22

⊠ 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 the date on which the request was received.
2. In the procedure for determining the Member State responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐ established in this Regulation, elements of proof and circumstantial evidence shall be used.
3. In accordance with the procedure referred to in Article ~~27(2)~~ 40(2) two lists shall be established and periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria:

(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 ~~27~~ 40 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 ~~asylum~~ ⇒ international protection ⇐ shall be assessed on a case-by-case basis.

4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.
5. 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.
6. Where the requesting Member State has pleaded urgency, in accordance with the provisions of Article ~~17(2)~~ 21(2), the requested Member State shall make every effort to conform to 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 the reply after the time limit requested, but in any case 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 within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the ~~provisions~~ ⊗ obligation to provide ⊗ for proper arrangements for arrival.

⌘ Section III. Procedures for take back requests ⌘

Article ~~20~~ 23

⌘ Submitting a take back request ⌘

↓ 343/2003/EC (adapted)

⇒ new

1. ~~An asylum seeker shall be taken back~~ ⇒ Where a Member State with which a subsequent application for international protection has been lodged or on whose territory an applicant or another person as referred to in Article 18(1)(d) is staying without a residence document, considers that another Member State is responsible ⇐ in accordance with Article 420(5) and Article 1618(1) ~~(e)(b), (e)(c) and (e)(d), as follows:~~ ⇒ it may request that other Member State to take back that person. ⇐

↓ new

2. In case of a subsequent application for international protection, the request to take back the person concerned shall be made as quickly as possible and in any case within two months of receiving the EURODAC hit, pursuant to Article 6(5) of Regulation (EC) No [.../...] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation].

If the request to take back the applicant who lodged a subsequent application for international protection 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).¹

¹ **DE, MT:** query whether the subsequent application is considered as a second application or not.

3 Where there is no subsequent application for international protection, and in case the requesting Member State decides to search the EURODAC system in accordance with Article 13 of Regulation (EC) No [...] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation], the request to take back the person concerned shall be made as quickly as possible and in any case within two months of receiving the EURODAC hit, pursuant to Article 13(4) of that Regulation.

If the request to take back the person concerned 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 requesting Member State becomes aware that another Member State may be responsible for the person concerned.

4. Where the request to take back of an applicant or another person as referred to in Article 18(1)(d) is not made within the periods laid down in paragraphs 2 and 3, responsibility for examining the application for international protection shall lie with the Member State in which the application was subsequently lodged or on whose territory the person is staying without a residence document.¹

↓ 343/2003/EC (adapted)

⇒ new

↻ Council

5 ~~(a)~~ The request for the applicant ~~to~~ or for another person as referred to in Article 18(1)(d) ~~to~~ be taken back ~~shall~~ shall be made using a standard form and including proof or circumstantial evidence and/or relevant elements from the person's statements, ~~which~~ ~~must~~ ~~contain information~~ enabling the ~~to~~ authorities of the ~~to~~ requested Member State to check ~~that~~ ~~to~~ whether ~~to~~ it is responsible.

¹ **BE, FI:** should provide for exemptions from the two-month deadline in certain cases, e.g. where there are more than one EURODAC hits. **Cion:** In principle against exemptions, would prefer a three-month deadline for all cases or leave it as it is.

~~3.~~ The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article ~~27(2)~~40(2).

Article 24

~~⊗~~ *Replying to a take back request* ~~⊗~~

~~(b)1.~~ ~~The~~ ~~⊗~~ requested ~~⊗~~ Member State ~~called upon to take back the applicant~~ shall be obliged to make the necessary checks and ~~⊗~~ shall give a decision on ~~⊗~~ reply to the request ~~⊗~~ to take back the person concerned ~~⊗~~ addressed to it as quickly as possible and ~~under no circumstances exceeding a period of~~ ~~⊗~~ in any event no later than ~~⊗~~ one month from the ~~referral~~ ~~⊗~~ date on which the request was received ~~⊗~~. When the request is based on data obtained from the Eurodac system, this time limit is reduced to two weeks~~;~~

~~(c)2.~~ ~~where the requested Member State does not communicate its decision~~ ~~⊗~~ Failure to act ~~⊗~~ within the one month period or the two weeks period mentioned in ~~sub~~ paragraph ~~(b) (1)~~, ~~⊗~~ shall be tantamount to accepting the request ~~⊗~~, ~~⇒~~ and entail the obligation ~~⇐~~ ~~it shall be considered to have agreed~~ to take back the ~~asylum seeker~~ ~~⊗~~ person concerned ~~⊗~~ ~~⇐~~, including the obligation to provide for proper arrangements for arrival ~~⇐~~.¹

~~(d) a Member State which agrees to take back an asylum seeker shall be obliged to readmit that person to its territory. The transfer 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 six months of acceptance of the request that charge be taken by another Member State or of the decision on an appeal or review where there is a suspensive effect;~~

¹ AT: query on the scope of the term “arrival”; suggested to follow the provisions for take charge i.e. Article 22(7) whereby failure to reply in time amounts to tacit consent.

~~(e) the requesting Member State shall notify the asylum seeker of the decision concerning his being taken back by the Member State responsible. The decision shall set out the grounds on which it is based. It shall contain details of the time limit on carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case-by-case basis if the national legislation allows for this.~~

~~If necessary, the asylum seeker shall be supplied by the requesting Member State with a laissez-passer of the design adopted in accordance with the procedure referred to in Article 27(2).~~

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

~~2. Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer or the examination of the application could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.~~

~~3. The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 27(2).~~

~~4. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 27(2).~~

Section IV. Procedural safeguards

Article 1925

Notification of a transfer decision

1. Where the requested Member State ~~accepts~~ agrees that it should to take charge of or to take back an applicant or another person as referred to in Article 18(1)(d), the requesting Member State ~~in which the application for asylum was lodged~~ shall [...] **communicate to** the applicant person concerned of the ~~decision not to examine the application, and of the obligation~~ of the decision to transfer him/her ~~the applicant~~ to the responsible Member State and, where applicable, of not examining his/her application for international protection [...] **as soon as possible after¹** the [...] receipt of the reply from the requested Member State. **If a legal advisor or other counsellor is representing the person concerned, Member States may choose to provide the decision to him/her instead of to the person concerned.**
- 2². The decision referred to in paragraph 1 shall **be issued in writing and shall** set out the grounds on which it is based: **in fact and in law** [...] **,including,** **where applicable, a short summary of the interview³ conducted under Article 5.** [...]

¹ **DE, IE, UK:** against the objective of an early notification of the decision, which might increase the risk of absconding of the person concerned and consequently could lead to an avoidable detention; thus, reservation on the term "as soon as possible". **AT:** could accept this time constraint insofar as exceptions from it are provided. **Cion:** a swift communication of the decision would contribute to the efficient functioning of the procedure.

² **SI:** reservation, **EE:** scrutiny reservation on the paragraph.

³ **FR, HU, IE, IT, SI** (the decision could simply refer to the interview): reservations against the summary of the interview being sent to the person concerned. **EL** (add: "or a copy of the summary following a request of the person concerned"), **UK:** scrutiny reservations on the same grounds. **Cion:** will further reflect on the issue.

⇒ **The decision referred to in paragraph 1** shall **also** contain information on available legal remedies and the time-limits applicable for seeking such remedies, ⇒ [...] details of the time limit for carrying out the transfer and shall, if necessary, contain information on the place where, and the date on which the applicant person concerned should appear, if he/she is travelling to the responsible Member State by his/her own means. ⇒ **Member States shall also ensure that information on persons or entities that may provide specific legal assistance to the person concerned is attached to the decision.**¹

⇒ The time-limits for carrying out the transfer shall be set in order to allow the person a reasonable period of time to seek a remedy in accordance with Article 26.² ⇐ ~~This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case-by-case basis if the national legislation allows for this.~~³

⇒ **3. When the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall provide him/her with a written or oral translation of the main elements of the decision, which shall always include information on available legal remedies and the time-limits applicable for seeking such remedies, in a language the person concerned understands or may be reasonably** ⇒ [...] **presumed to understand.**⁴

¹ ES, HU, LU, LV, AT, RO, SI (reference to the legal assistance could be made in the common leaflet): delete the last sentence of this subparagraph ("Member States shall also ensure..."). **Cion:** will further reflect on the issue.

² DE, IE: delete the last sentence of paragraph 2 ("The time limits for..."). **Cion:** against the suggested deletion. ES: query about the notion of "reasonable period of time".

³ LU: suggest adding the following sub-paragraph: "Another Member State is obliged to take back the applicant according to Article 18, unless the applicant can submit information regarding either cessation of responsibilities according to Article 19 or the presence of family members or other relatives in the responsible Member State".

⁴ UK: scrutiny reservation on the paragraph. IE: clarify that if the person concerned refuses legal assistance should not be entitled to obtain the translation.

Article 26

Remedies¹

1. The applicant or another person as referred to in Article 18(1)(d) shall have the right to an effective judicial remedy, in the form of an appeal or a review, in fact and in law, of the transfer decision referred to in Article 25, before a court or tribunal.
2. Member States shall provide for a reasonable period² of time within which the person concerned may exercise his/her right to an effective judicial remedy pursuant to paragraph 1.
- 3³ In the event of an appeal or review concerning the transfer decision referred to in Article 25⁴, the authority referred to in paragraph 1 of this Article shall, acting ex-officio⁵, decide, as soon as possible, and in any case no later than seven working days⁶ from the lodging of an appeal or of a review, whether or not the person concerned may remain on the territory of the Member State concerned pending the outcome of his/her appeal or review.

¹ **EE, ES, IE, SI, UK:** reservations (the last three also in relation to draft recital 17 of the proposal). **HU, MT, PL, RO:** scrutiny reservations. **FR** suggested deleting Article 26 because it runs counter to the efficiency of the Dublin system. **IE, AT** expressed concerns about the proposed two-step system which could entail considerable delay. **Cion** pointed out that, taking into account that what the person concerned is appealing against is the Member State responsible to examine his application, a transfer during the period the remedy is examined would make it difficult for him to follow this appeal.

² **AT:** clarify the term: "reasonable period of time".

³ **DE** delete this paragraph. **LV:** reservation. **FI:** scrutiny reservation.

⁴ **SE:** add: "**the implementation of the transfer shall not be suspended except when the authority referred to in paragraph 1 of this Article so decide, on a case-by-case basis. [...]** **The decision ... or review shall be made** as soon as possible...".

⁵ **BE, EL, LU, NL** pointed out that, alternatively, Member States could provide for a procedure following an application by the person concerned and not ex officio. **Cion** replied that this suggestion could be further examined, provided that proper information and legal assistance is provided to the person concerned.

⁶ **NL:** reservation. **SK:** scrutiny reservation on this provision, and in particular on the seven-day deadline. **AT** queried about the consequences of the authorities failing to take a decision within seven days.

4. No transfer shall take place¹ before the decision referred to in paragraph 3 is taken.² A decision not to allow the person concerned to remain on the territory of the Member State concerned pending the outcome of his/her appeal or review, shall state the reasons on which it is based.³

5. Member States shall ensure that the person concerned has access to legal assistance and/or representation and, where necessary, to linguistic assistance.⁴

6⁵. Member States shall ensure that⁶ legal assistance and/or representation be granted free of charge where the person concerned cannot afford the costs involved.⁷

Procedures for access to legal assistance and/or representation shall be laid down in national law.

¹ NL: add: "in principle".

² SE: delete the first sentence.

³ DE: delete this paragraph. CZ: reservation, SE: scrutiny reservation because of concerns that this provision will prolong procedures.

⁴ SE: scrutiny reservation. EL, MT suggested to use wording from the Return Directive.

⁵ LT: scrutiny reservation.

⁶ SE: add "the necessary" and amend as follows [...] is granted on request free of charge [...] in accordance with relevant national legislation or rules regarding legal aid and may provide that such free legal assistance and/or representation is subject to conditions as set out in Article 15(3) to (6) of Directive 2005/85/EC. [...].

⁷ DE, EL, UK: reservations on the provisions related to legal aid and suggested referring to national law, along the lines of the Return Directive, or Council Directive 2005/85/EC on minimum standards on procedures for granting and withdrawing refugee status. UK suggested that the likelihood of success of the remedy should be considered before the granting of the free legal aid. AT expressed concern on the administrative and financial burden this provision is likely to cause. SE: reservation indicating that legal assistance should not be provided unconditionally and that unaccompanied minors should always be provided with such assistance.

Section V. Detention for the purpose of transfer

Article 27

Detention¹

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for international protection in accordance with Directive 2005/85/EC.
- 2.²³ Without prejudice to Article 8(2) of Directive [...]/.../EC [laying down minimum standards for the reception of asylum seekers], when it proves necessary, on the basis of an individual assessment of each case, and if other less coercive measures cannot be applied effectively, Member States may detain an asylum-seeker or another person as referred to in Article 18(1)(d), who is subject of a decision of transfer to the responsible Member State, to a particular place only if there is a significant⁴ risk of him/her absconding.

¹ **DE, IE, NL, SI, UK:** reservations. **AT, ES, LT:** scrutiny reservations. **PL:** scrutiny reservation on paragraphs 1 to 4 and reservation on paragraphs 5 to 12. **SE** entered a scrutiny reservation and **BE, DE, FR, IE, SK** expressed concerns about the inclusion of an Article on detention in this Regulation. **UK** pointed out it considered in particular the paragraphs 4 (because the detention is restricted to the risk of absconding), 6 (because of incoherency with the UK judicial system) and 8 (because in the UK judicial system a review on the request of the applicant is always possible) were not acceptable. **NL** pointed out that it could only accept paragraphs 1, 8 and 9.

² **DE:** suggest deleting this paragraph, indicating that the reference to Article 8(2) is not sufficient to cover detention before the decision and the notification of the transfer. **AT** indicated there can also be a risk of absconding *before* a decision of transfer is made. **IE** indicated that this paragraph goes beyond the requirements provided in its judicial system.

³ **SE:** delete "who is subject of a decision of transfer to the responsible Member State"; instead it proposed providing for two specific grounds for detention i.e. "(a) the person concerned is subject to a decision of transfer to the responsible Member State or where it is probable that such a decision will be made and there is a risk of him/her absconding, or (b) the person concerned avoids or hampers the preparation of the implementation of the transfer".

⁴ **DE, FI, NL, SE** suggested to delete "significant" while **BE** requested clarification on its meaning. **NL** indicated that risk of absconding is considered a public order issue and, for that reason, the second part of this paragraph is not needed. **Cion** expressed doubts as to in what way absconding could be considered a threat to public order.

3. When assessing the application of other less coercive measures for the purpose of paragraph 2, Member States shall take into consideration alternatives to detention such as regular reporting to the authorities, the deposit of a financial guarantee, an obligation to stay at a designated place or other measures to prevent the risk of absconding.¹
4. Detention pursuant to paragraph 2 may only be applied from the moment a decision of transfer to the responsible Member State has been notified to the person concerned in accordance with Article 25, until that person is transferred to the responsible Member State.²³
5. Detention pursuant to paragraph 2 shall be ordered for the shortest period possible. It shall be no longer than the time reasonably necessary to fulfil the required administrative procedures for carrying out a transfer.
- 6⁴. Detention pursuant to paragraph 2 shall be ordered by judicial⁵ authorities. In urgent cases it may be ordered by administrative authorities, in which case the detention order shall be confirmed by judicial authorities within 72 hours⁶⁷ from the beginning of the detention. Where the judicial authority finds detention to be unlawful, the person concerned shall be released immediately.

¹ HU requested clarification of the "alternatives to detention". SI expressed doubts about the effectiveness of alternatives to detention.

² DE, SE: suggested deletion of the paragraph. IE: reservation. LU suggested to distinguish between the taking charge of asylum seekers and the returning of refused asylum seekers. DE: *see comment on paragraph 2*.

³ HU, SI requested clarification whether a person could be detained as long as the administrative procedures are not finalised.

⁴ LU: suggested to use the wording of the Return Directive. BE, FI, LV, SK, SI, SE: reservations requesting that also administrative authorities can order detention.

⁵ SE: replace by "**administrative or judicial authorities. When detention has been ordered by administrative authorities, Member States shall: (a) either provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention or (b) grant the person concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case, Member States shall immediately inform the person concerned about the possibility of taking such proceedings.**"

⁶ IE, SK entered reservations finding 72 hours not acceptable. DE proposed "maximum 72 hours". LT, LV proposed "as soon as possible".

⁷ SE: amend the last phrase as follows: "[...] The person concerned shall be released immediately **if the detention is not lawful**".

7. Detention pursuant to paragraph 2¹ shall be ordered in writing with reasons in fact and in law,² in particular specifying the reasons on the basis of which it is considered that there is a significant risk of the person concerned absconding as well as the time period of its duration.

Detained persons shall immediately be informed of the reasons for detention, the intended duration of the detention³ and the procedures laid down in national law for challenging the detention order, in a language they are reasonably supposed to understand.

8. In every case of a detained person pursuant to paragraph 2, the continued detention shall be reviewed by a judicial authority⁴ at reasonable intervals of time either on request by the person concerned or ex-officio. Detention shall never be unduly prolonged.

9. Member States shall ensure access to legal assistance and/or representation in cases of detention pursuant to paragraph 2 that shall be free of charge where the person concerned cannot afford the costs involved.⁵

Procedures for access to legal assistance and/or representation in such cases shall be laid down in national law.

10⁶. Minors shall not be detained unless it is in their best interests, as prescribed in Article 7 of this Regulation and in accordance with an individual examination of their situation in accordance with Article 11(5) of Directive [...]/.../EC [laying down minimum standards for the reception of asylum seekers].⁷

11. Unaccompanied minors shall never be detained.⁸

¹ **DE:** *see comments on paragraph 2.*

² **SE:** delete the rest of the phrase.

³ **SE:** delete the "intended duration of the detention".

⁴ **SE:** delete "by judicial authority".

⁵ **MT** requested clarification whether legal assistance referred to first instance or appeal. **SE:** add at the end of the phrase: "unless such access is manifestly unnecessary".

DE *see comment on Article 26(6).*

⁶ **NL** referring to paragraphs 10 and 11 and **DE** referring to paragraph 11 only: under certain conditions, it should be possible to detain minors.

⁷ **SE:** replace paragraph 10 with the following: "Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time".

⁸ **SE:** delete paragraph 11.

12. Member States shall ensure that asylum-seekers detained in accordance with this Article enjoy the same level of reception conditions for detained applicants as those laid down in particular in Articles 10 and 11 of Directive [...]/.../EC [laying down minimum standards for the reception of asylum seekers].

↓ 343/2003/EC (adapted)

⇒ new

⊗ Section VI: Transfers ⊗

Article ~~19~~28

⊗ Modalities and time-limits ⊗

~~13.~~ The transfer of the applicant ⊗ or of another person as referred to in Article 18(1)(d) ⊗ from the ⊗ requesting ⊗ Member State ~~in which the application was lodged~~ to the ⊗ responsible ⊗ Member State ~~responsible~~ shall be carried out in accordance with the national law of the ⊗ requesting ⊗ ~~first~~ Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request ~~that charge be taken~~ ⊗ 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 ⇒ is granted in accordance with Article 26(3) ⇐.

If necessary, the asylum seeker shall be supplied by the requesting Member State with a *laissez passer* of the design adopted in accordance with the procedure referred to in Article 40(2) ~~27(2)~~.

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

24. Where the transfer does not take place within the six months' time limit, ⇨ the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State ⇨ ~~responsibility shall lie with the Member State in which the application for asylum was lodged~~. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the ~~asylum-seeker~~ ⇨ person concerned ⇨ or up to a maximum of eighteen months if the ~~asylum-seeker~~ ⇨ person concerned ⇨ absconds.¹

⇩ new

3. If a person has been transferred erroneously or a decision to transfer is overturned on appeal after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.

⇩ 1103/2008/EC, pts. 3(2) and 3(3) of the Annex

45. The Commission may adopt supplementary rules on carrying out transfers. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article ~~27(3)~~40(3).

¹ **BE, DE, AT, NL:** add the case of illness (**BE** also pregnancy, etc) for the extension of the transfer period over six months. **Cion:** not always a clear situation, in cases of grave illnesses the humanitarian clause might apply.
AT: in case of family members who are supposed to arrive to the responsible Member State at different times, the deadline should not start before the last applicant is approved to be transferred. **Cion:** will further reflect on the issue.
EL: make obligatory to transfer the whole family simultaneously, if possible.

↓ new

↻ Council

Article 29

Costs of transfers

1. The costs necessary to transfer an applicant or another person as referred to in Article 18(1)(d) to the responsible Member State shall be met by the transferring Member State.
2. Where the person concerned has to be sent back to a Member State, as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal 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.¹
4. Supplementary rules relating to the obligation of the sending Member State to meet the costs of transfers may be adopted in accordance with the procedure referred to in Article 40(2).

Article 30

Exchange of relevant information before transfers being carried out²

↻ [...] ↻

-
- ¹ **EL:** add at the end “unless these third-country nationals wish to pay”. **Cion:** they should not be asked to pay but not prevented either.
DE: if they have illegally gone to another Member State and if they have sufficient means they should be asked to cover the costs. **Cion:** will further reflect on it.
 - ² **IE, HU, UK:** scrutiny reservations on the Article. **EE, AT:** insert a general clause whereby national authorities should give only the data which is already available.

➔ [...] ➔ 1. ➔ The Member State carrying out the transfer shall ➔ **in a due time¹ before the transfer is effected** ➔ communicate to the responsible Member State such personal data concerning the ➔ [...] ➔ ➔ **person** ➔ to be transferred as is appropriate, relevant and non-excessive for the sole purposes of ensuring that the competent ➔ [...] ➔ authorities in the responsible Member State are in a position to provide the ➔ [...] ➔ ➔ **person concerned** ➔ with adequate assistance, including the provision of ➔ [...] ➔ ➔ **immediate health care required in order to protect the vital interest of the person concerned** ➔ , and to ensure continuity in the protection and rights afforded by this Regulation and by ➔ **other relevant asylum legal instruments.** ➔ ➔ [...] ➔ ²

➔ [...] ➔ ➔ 2. ➔ ➔ **The transferring** ➔ Member ➔ [...] ➔ ➔ **State** ➔ shall in particular ➔ [...] ➔ ➔ **transmit** ➔ the following information ➔ **in so far such information is available** ➔ :

➔ **(a) any immediate measures the responsible Member State shall take³ in order to ensure that the special needs of the person to be transferred are adequately addressed, including** ➔ [...] ➔ ➔ **in** ➔ **particular any immediate health care that may be required;** ➔

➔ [...] ➔ ➔ **(b)** ➔ contact details of family members or of other relatives in the receiving Member State, where applicable;

➔ [...] ➔ ➔ **(c)** ➔ in the case of minors, information in relation to their level of education;⁴

➔ [...] ➔ ➔ **(d)** ➔ information about the age of an applicant;⁵

¹ AT, UK: “in due time” could be deleted as it has no added value. **Cion:** “due time” should amount to a sufficiently long time for the preparation of transfer.

² NL: reservation on the paragraph, mainly in relation to the provision of immediate health care. **Cion:** clarified that only practical information shall be transmitted, e.g. the need for a wheel chair.

³ IE: query whether this wording entails an obligation for the Member State to take measures.

⁴ CZ, NL, AT: consider it superfluous, could create practical problems, due to lack of same criteria to assess the level of education. **Cion:** it might be useful to know if e.g. the person concerned followed some language course etc at the transferring Member State.

IE: could replace “level of education” with “educational history”.

⁵ CZ: this data is already known at this stage. **Cion:** it might be useful to know roughly the age of the person concerned.

➔ [...] ➔ (e) ➔ any other information that the sending Member State deems essential in order to safeguard the rights and ➔ **immediate** ➔ special needs of the ➔ [...] ➔ ➔ **person** ➔ concerned.

➔ [...] ➔ ➔ **3.** ➔ The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 33 using the 'DubliNet' electronic communication network set-up under Article 18 of Regulation EC (No) 1560/2003. ➔ [...] ➔ ➔ **The authorities and persons receiving and processing this information shall be bound by professional secrecy.** ➔ The information exchanged shall only be used for the purposes set out in paragraph ➔ [...] ➔ ➔ **1** ➔ of this Article ➔ **and shall not be further processed. It shall be deleted as soon as it is no longer necessary for the purpose laid down in paragraph 1.** ➔¹

➔ **4. With a view to facilitating the exchange of information between Member States, a standard form for transferring the data required pursuant to this Article shall be adopted in accordance with the procedure laid down in Article 40(2).** ➔²

➔ **5. The rules laid down in Article 32(8) to (12) shall apply to the exchange of information pursuant to this Article.** ➔

¹ **CZ:** use the same wording as in Article 30a(2) (“Once the transfer has been completed, this information shall be deleted... pursuant to the rules laid down in its national law”).

² **FR:** delete “in accordance with the procedure laid down in Article 40(2). The EASO could be tasked to set up this standard form. **Cion:** disagree with the suggestion, because EASO will not have the expertise and legally binding decision-making competence.

➤ Article 30A ◀

➤ Exchange of health data before transfer is being carried out ◀¹

➤ [...] ◀ ➤ 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 that have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall transmit information about any special needs of the ➤ [...] ◀ ➤ **person** ◀ to be transferred, which in specific cases may include information about the state of the physical and mental health of the ➤ [...] ◀ ➤ **person** ◀ to be transferred. The responsible Member State shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

¹ **NL:** reservation, **EE, IE, HU** scrutiny reservations on the Article.
NL query about how could the doctors, who are the only persons having access to the medical files, be obliged to grant a right to use to the competent authorities. **Pres:** only the information available to the authorities should be transmitted. **Cion:** it might be necessary to insert the term “where available” concerning the relevant data, in order to cover cases where it is not possible for the authorities to transfer the data from the medical file.
NL: query about who are included in the term “health professionals” mentioned in paragraphs 3 and 4. **Cion:** term taken from the Data Protection Directive, it could be further clarified at the Comitology framework.

☞ [...] ☞ 2: ☞ Any information mentioned in paragraph ☞ [...] ☞ ☞ 1 ☞ shall only be transmitted by the transferring Member State to the responsible Member State after the explicit consent of the applicant and/or of ☞ [...] ☞ ☞ **the person representing him/her** ☞ has been obtained or when this is necessary to protect the vital interests of the individual or of another person where he/she is physically or legally incapable of giving his/her consent. ☞ **The lack of consent¹ to transmitting any information referred to in paragraph 1 shall not be an obstacle to carrying out his/her transfer or to transmitting the information referred to in paragraph 1 provided that is necessary to protect the vital interests of the individual.** ☞ Once the transfer has been completed, this information shall be deleted ☞ [...] ☞ by the transferring Member State, ☞ **pursuant to the rules laid down in its national law.** ☞

☞ [...] ☞ ☞ 3. ☞ The processing of personal health data ☞ **referred to in paragraph 1** ☞ shall only be carried out by a health professional 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 secrecy. These health professionals and persons receiving and processing this information shall receive ☞ [...] ☞ training regarding the appropriate processing of sensitive personal data relating to health.

☞ [...] ☞ ☞ 4. ☞ The exchange of information under this Article shall only take place between the ☞ [...] ☞ ☞ **health professionals or other persons referred to in paragraph 3, who have been communicated to the Commission in accordance with Article 33(1).** ☞ The information exchanged shall only be used for the purposes set out in paragraph ☞ [...] ☞ ☞ 1 ☞ of this Article.²

¹ **IE:** add “including refusal of consent”. **AT:** delete the obligation to obtain consent. **Cion:** this obligation cannot be avoided due to data protection considerations.

IT: suggest clarifying that the consent should be in writing.

² **DE, IE, AT, UK:** considers the framework of the exchange of medical information and the relevant communication of data to the **Cion** as too bureaucratic. **Cion:** the provision refers to appointed contact points who need to be identified and who shall deal with the relevant stream of information.

5. Each Member State shall take appropriate measures to ensure the security of transmitted health data and its processing in full compliance with Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and in particular to avoid unlawful or unauthorized access or disclosure, alteration or loss of personal data processed.

6. Supplementary rules on the exchange of information referred to in paragraph 1, in particular the practical arrangements for exchanging such information, shall be adopted in accordance with the procedure laid down in Article 40(2).

7. The rules laid down in Article 32(8) to (12) shall apply to the exchange of information pursuant to this Article.

Section VII: Temporary suspension of transfers

Article 31¹

1. When a Member State is faced with a particularly urgent situation which places an exceptionally heavy burden on its reception capacities, asylum system or infrastructure, and when the transfer of applicants for international protection in accordance with this Regulation to that Member State could add to that burden, that Member State may request that such transfers be suspended.

The request shall be addressed to the Commission. It shall indicate the grounds on which it is based and shall in particular include:

¹ CZ, DE, EL, FI, FR, IE, NL, PT, UK: reservations on the Article and BE, LU, LV, PL, SE, SI, SK: scrutiny reservations. FI, NL, UK expressed doubts whether this Article would lead to reduction of pressures and questioned the competences attributed to Cion. AT suggested to delete this Article. DE questioned whether this Article is the most appropriate legal way to address the burden sharing problem. MT considered that this Article does not go far enough yet in addressing the issues contained therein.

- (a) a detailed description of the particularly urgent situation which places an exceptionally heavy burden on the requesting Member State's reception capacities, asylum system or infrastructure, including relevant statistics and supporting evidence;
- (b) a substantiated forecast of the likely evolution of this situation in the short-term;
- (c) a substantiated explanation of the further burden that the transfer of applicants for international protection in accordance with this Regulation could add to the requesting Member State's reception capacities, asylum system or infrastructure, including relevant statistics and other supporting evidence.

2¹. When the Commission considers that the circumstances prevailing in a Member State may lead to a level of protection for applicants for international protection which is not in conformity with Community legislation, in particular with Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers and with Directive 2005/85/EC, it may decide in conformity with the procedure laid down in paragraph 4, that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.

3.² When a Member State is concerned that the circumstances prevailing in another Member State may lead to a level of protection for applicants for international protection which is not in conformity with Community legislation, in particular with Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers and with Directive 2005/85/EC, it may request that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.

The request shall be addressed to the Commission. It shall indicate the grounds on which it is based and shall in particular include detailed information on the situation in the concerned Member State pointing to a possible lack of conformity with Community legislation, in particular Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers and Directive 2005/85/EC.

¹ **HU:** delete this paragraph.

² **HU:** delete this paragraph. **AT** requested clarification how a Member State could know that the circumstances prevailing in another Member State may lead to insufficient protection.

4.¹ Following the receipt of a request pursuant to paragraphs 1 or 3, or upon its own initiative pursuant to paragraph 2, the Commission may decide that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended. Such decision shall be taken as soon as possible and at the latest one month following the receipt of a request. The decision to suspend transfers shall state the reasons on which it is based and shall in particular include:

(a) an examination of all the relevant circumstances prevailing in the Member State towards which transfers could be suspended;

(b) an examination of the potential impact of the suspension of transfers on the other Member States;

(c) the proposed date on which the suspension of transfers shall take effect;

(d) any particular conditions attached to such suspension.

5.² The Commission shall notify the Council and the Member States of the decision to suspend all transfers of applicants in accordance with this Regulation to the Member State concerned. Any Member State may refer the decision of the Commission to the Council within one month from the receipt of the notification. The Council, acting by qualified majority, may take a different decision in one month from the date of the referral by a Member State.

6.³⁴ Following the decision of the Commission to suspend transfers to a Member State, the other Member States in which the applicants whose transfers have been suspended are present, shall be responsible for examining the applications for international protection of those persons.

¹ **DE, EE, UK** indicated that only the Council should be allowed to suspend transfers. **BE, EL, IE** expressed concerns about such a competence for **Cion**.

² **AT** requested clarification on the Council decision would have retroactive effect. **IE** requested clarification regarding to what extent the Council can take a different decision than the Commission and to which role the European Parliament could have.

³ **AT, HU** requested clarification what should happen when the applicant resides in another Member State and what would happen with family members.

⁴ **AT** found the suspension period too long. **EE** proposed to allow an extension of *maximum* 6 months.

The decision to suspend transfers to a Member State shall take due account of the need to ensure the protection of minors and of family unity.

7. A decision to suspend transfers to a Member State pursuant to paragraph 1 shall justify the granting of assistance for the emergency measures laid down in Article 5 of Decision No 573/2007/EC of the European Parliament and of the Council¹, following a request for assistance from that Member State.
8. Transfers may be suspended for a period which cannot exceed six months. Where the grounds for the measures still persist after six months, the Commission may decide, upon a request from the Member State concerned referred to paragraph 1 or upon its own initiative, to extend their application for a further six months period. Paragraph 5 applies.
9. Nothing in this Article shall be interpreted as allowing Member States to derogate from their general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations arising out of the Community legislation on asylum, in particular this Regulation, Directive [...]/.../EC] laying down minimum standards for the reception of asylum seekers, and Directive 2005/85/EC.

¹ OJ L 144, 6.6.2007, p.1.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

CHAPTER ~~VII~~

ADMINISTRATIVE COOPERATION

Article ~~2132~~

Information sharing¹

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker as is appropriate, relevant and non-excessive for:
 - (a) the determination of the Member State responsible for examining the application for ~~asylum~~ ⇒ international protection; ⇐
 - (b) examining the application for ⇒ international protection ⇐ ~~asylum~~;
 - (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, the members of his family (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.);

¹ **EL:** add a sentence whereby it would be obligatory to transmit the consent of the person concerned to the requested Member State.

- (c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EC) No 2725/2000 [...] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin 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 any previous application for **asylum** ⇒ **international protection** ⇐ was lodged, the date 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 **asylum** ⇒ **international protection** ⇐, the Member State responsible may request another Member State to let it know on what grounds the asylum seeker bases his application and, where applicable, the grounds for any decisions taken concerning the applicant. The Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm the essential interests of the Member State 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 **asylum** ⇒ **international protection**, obtained by the ⇨ [...] ⇩ **requesting** ⇩ Member State ⇐. ☒ In this case, the applicant must know for what information he/she is giving his/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 asylum seekers 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 the individual asylum seeker.
5. The requested Member State shall be obliged to reply within ~~six~~ ⇒ four ⇐ weeks. ⇒ Any delays in the reply shall be duly justified. ➔ **Non-compliance with the four weeks time limit does not relieve the requested Member State of the obligation to reply.**¹ ☹ If the research carried out by the requested Member State which did not respect the maximum time-limit, yield information which shows that it is responsible, that Member State may not invoke the expiry of the time-limit provided for in Articles 21 and 23 as a reason for refusing to comply with a request to take charge or take back. ⇐
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 33(1) ⇐ ~~which shall inform the other Member States thereof.~~
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:

¹ **DE** (which asked for a flexible wording regarding the deadline), **EL, IT**: reservations on the four-week deadline considering it too short. **ES**: preferred six weeks but could live with the current provision. **ES** suggests that if penalties are to be brought about they should be proportionate with the length of the delay of the Member State in question.

(a) the determination of the Member State responsible for examining the application for ~~asylum~~ ⇨ international protection; ⇨

(b) examining the application for ~~asylum~~ ⇨ international protection; ⇨

(c) implementing any obligation arising under this Regulation.

8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that that Member State 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.

9.¹ The asylum seeker shall have the right to be informed, on request, of any data that is processed concerning him/her.

If he finds that this information has been processed in breach of this Regulation or of Directive 95/46/EC ~~of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (8)~~, in particular because it is incomplete or inaccurate, he is entitled to have it corrected ~~or~~ or erased ~~or blocked~~.

The authority correcting ~~or~~ or erasing ~~or blocking~~ the data shall inform, as appropriate, the Member State transmitting or receiving the information.

↓ new

The asylum seeker shall have the right to bring an action or a complaint before the competent authorities or courts of the Member State which refused the right of access to or the right of correction or deletion of data relating to him/her.

¹ **UK:** scrutiny reservation on the paragraph, suggesting bringing its language into line with the Data Protection Directive, in particular concerning the derogations from the right to access to data. In this vein, **UK** suggested referring to the Data Protection Directive or to the national law (which includes the above Directive).

UK: replace “deletion” with “erasure” for reasons of coherence.

Cion: will reflect on both suggestions.

↓ 343/2003/EC (adapted)

⇒ new

10. 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.
11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which it is exchanged.
12. Where the data is not processed automatically or is not contained, or intended to be entered, in a file, each Member State ~~should~~ ⇒ shall ⇐ take appropriate measures to ensure compliance with this Article through effective checks.

Article ~~22~~33

⊗ Competent authorities and resources ⊗

1. ⊗ Each ⊗ Member States shall notify the Commission ⇒ without delay ⇐ of the ⇒ specific ⇐ authorities responsible for fulfilling the obligations arising under this Regulation ⇒ , and any amendments thereto. ⇐ ⊗ They ⊗ ~~and~~ 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 of and requests to take back asylum seekers.

↓ new

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.¹

↓ 343/2003/EC (adapted)

⇒ new

↻ Council

24. Rules relating to the establishment of secure electronic transmission channels between the authorities mentioned in paragraph 1 for transmitting requests ⇒, replies and all written correspondence ⇐ and ensuring that senders automatically receive an electronic proof of delivery shall be established in accordance with the procedure referred to in Article 40(2)~~27(2)~~.

Article ~~23~~34

⊗ 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 asylum seekers;

¹ **FR, AT:** delete this paragraph. **NL:** convert it to a recital.

2. The arrangements referred to in paragraph 1 shall be communicated to the Commission.
- ⌚ [...] ⌚ ⌚ If the Commission considers the arrangements referred to in paragraph 1(b) to be incompatible with this Regulation, it shall notify the Member States concerned. The Member States shall take all appropriate steps to amend the arrangement concerned within a reasonable period in such a way as to eliminate the incompatibilities established. ⌚¹**

↓ 1560/2003 (adapted)

⇒ new

⌘ CHAPTER VIII ⌘

Conciliation

Article ~~1435~~²

⌘ Conciliation ⌘

1. Where the Member States cannot resolve a dispute, ~~either on the need to carry out a transfer or to bring relatives together on the basis of Article 15 of Regulation (EC) No 343/2003, or on the Member State in which the person concerned should be reunited,~~ ⌚ on any matter related to the application of this Regulation, ⌚ they may have recourse to the conciliation procedure provided for in paragraph 2 ~~of this Article~~.
2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article ~~2740~~ ~~of Regulation (EC) No 343/2003~~. By agreeing to use the conciliation procedure, the Member States concerned undertake to take the utmost account of the solution proposed.

¹ **UK:** scrutiny reservation in relation with the power of the **Cion** under this provision for the arrangements established by the Member States and the lack of a remedy by the latter vis-à-vis **Cion** acts. **Cion:** will further reflect on the issue.

² **DE:** scrutiny reservation on the Article. **NL:** concerns about the efficiency of the Committee due to its rather widened scope.

The Chairman of the Committee shall appoint three members of the Committee representing three Member States not connected with the matter. They shall receive the arguments of the parties either in writing or orally and, after deliberation, shall propose a solution within one month, where necessary after a vote.

The Chairman of the Committee, or his deputy, shall chair the discussion. He may put forward his point of view but he may not vote.

Whether it is adopted or rejected by the parties, the solution proposed shall be final and irrevocable.

↓ 343/2003/EC

CHAPTER ~~VIII~~

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

↓ new

Article 36¹

Penalties

Member States shall take the necessary measures to ensure that any misuse of data processed in accordance with this Regulation is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.

¹ **HU:** scrutiny reservation on the Article.

Article ~~24~~37

⊠ Transitional measures ⊠

~~1. This Regulation shall replace the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 (Dublin Convention).~~

~~2. However, to ensure continuity of the arrangements for determining the Member State responsible for an application for asylum, wWhere an application has been lodged after the date mentioned in the second paragraph of Article ~~29~~44, 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, with the exception of the events mentioned in Article ~~14(2)~~ 10(2).~~

~~3. Where, in Regulation (EC) No 2725/2000 reference is made to the Dublin Convention, such reference shall be taken to be a reference made to this Regulation.~~

Article ~~25~~38

⊠ Calculation of time-limits ⊠

~~1.~~ 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.

~~2. Requests and replies shall be sent using any method that provides proof of receipt.~~

Article ~~26~~39

⊗ Territorial scope ⊗

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

Article ~~27~~40

⊗ Committee ⊗

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

↓ 1103/2008/EC, pt. 3(4) of the Annex

3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

↓ 343/2003/EC (adapted)

Article ~~28~~41

⊗ Monitoring and evaluation ⊗

At the latest three years after the date mentioned in the first paragraph of Article ~~44~~ ~~29~~, the Commission shall report to the European Parliament and 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 ~~⊗~~ ~~it~~ having submitted that report, the Commission shall report to the European Parliament and 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 ~~4(5)~~ ~~28~~ of Regulation (EC) No ~~2725/2000~~ [.../...] ⊗ [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation] ⊗ .

↓ new

Article 42

Statistics

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council¹, Member States shall communicate to the Commission (Eurostat), statistics concerning the application this Regulation and of Regulation (EC) No 1560/2003.

↓

Article 43

Repeal

Regulation (EC) 343/2003 is repealed.

Articles 11(1), 13, 14 and 17 of Commission Regulation (EC) No 1560/2003 are repealed.

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

¹ OJ L 199, 31.7.2007, p.23.

Article ~~2944~~

⊗ *Entry into force and applicability* ⊗

This Regulation shall enter into force on the ~~20th~~ twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply to ~~asylum~~ applications ⇒ for international protection ⇐ lodged as from the first day of the sixth month following its entry into force and, from that date, it will apply to any request to take charge of or take back asylum seekers, irrespective of the date on which the application was made. The Member State responsible for the examination of an ~~asylum~~ application ⇒ for international protection ⇐ submitted before that date shall be determined in accordance with the criteria set out in ~~the~~ ⊗ Regulation (EC) No 343/2003 ⊗ ~~Dublin Convention~~.

This Regulation shall be binding in its entirety and directly applicable in the Member States in conformity with the Treaty establishing the European Community.

Done at [...]

For the European Parliament

The President

[...]

For the Council

The President

[...]



ANNEX I

REPEALED REGULATION (REFERRED TO IN ARTICLE 43)

Council Regulation (EC) No 343/2003

(OJ L 50, 25.2.2003)

Commission Regulation (EC) No 1560/2003 only Articles 11(1), 13, 14 and 17

(OJ L 222, 5.9.2003)

ANNEX II

CORRELATION TABLE

Regulation (EC) 343/2003	This Regulation
Article 1	Article 1
Article 2(a)	Article 2(a)
Article 2(b)	deleted
Article 2(c)	Article 2(b)
Article 2(d)	Article 2(c)
Article 2(e)	Article 2(d)
Article 2(f)	Article 2(e)
Article 2(g)	Article 2(f)
-	Article 2(g)
Article 2(h) to (k)	Article 2(h) to (k)
-	Article 2(l)
Article 3(1)	Article 3(1)
Article 3(2)	Article 17(1)
Article 3(3)	Article 3(3)
Article 3(4)	Article 4(1), introductory wording
-	Article 4(1)(a) to (g)
-	Article 4(2) and (3)
Article 4 (1) to (5)	Article 20 (1) to (5)
-	Article 20 (5), third sub-paragraph
-	Article 5
-	Article 6
Article 5(1)	Article 7(1)
Article 5(2)	Article 7(2)

-	Article 7(3)
Article 6, first paragraph	Article 8(1)
-	Article 8(3)
Article 6, second paragraph	Article 8(4)
Article 7	Article 9
Article 8	Article 10
Article 9	Article 13
Article 10	Article 14
Article 11	Article 15
Article 12	Article 16
Article 13	Article 3(2)
Article 14	Article 12
Article 15(1)	Article 17(2), first sub-paragraph
Article 15(2)	Article 11(1)
Article 15(3)	Article 8(2)
Article 15(4)	Article 17(2), fourth sub-paragraph
Article 15(5)	Articles 8(5) and Article 11(2);
Article 16(1)(a)	Article 18(1)(a)
Article 16(1)(b)	Article 18(2)
Article 16(1)(c)	Article 18(1)(b)
Article 16(1)(d)	Article 18(1)(c)
Article 16(1)(e)	Article 18(1)(d)
Article 16(2)	Article 19(1)
Article 16(3)	Article 19(2), first sub-paragraph
-	Article 19(2), second sub-paragraph
Article 16(4)	Article 19(3)
	Article 19(3), second sub-paragraph

Article 17	Article 21
Article 18	Article 22
Article 19(1)	Article 25(1)
Article 19(2)	Article 25(2) and Article 26(1)
-	Article 26(2) to (6)
Article 19(3)	Article 28(1)
Article 19(4)	Article 28(2)
-	Article 28(3)
Article 19(5)	Article 28(4)
Article 20(1), introductory wording	Article 23(1)
-	Article 23(2)
-	Article 23(3)
-	Article 23(4)
Article 20(1)(a)	Article 23(5), first sub-paragraph
Article 20(1)(b)	Article 24(1)
Article 20(1)(c)	Article 24(2)
Article 20(1)(d)	Article 28(1), first sub-paragraph
Article 20(1)(e)	Article 25(1), (2), Article 26(1), Article 28(1), second and third sub-paragraphs;
Article 20(2)	Article 28(2)
Article 20(3)	Article 23(5), second sub-paragraph
Article 20(4)	Article 28(4)
-	Article 27
-	Article 29
-	Article 30
-	Article 31
Article 21(1) to (9)	Article 32(1) to (9) first to third sub-paragraph

Article 21(10) to (12)	Article 32(9) fourth sub-paragraph
Article 22(1)	Article 32(10) to (12)
-	Article 33(1)
-	Article 33(2)
Article 22(2)	Article 33(3)
Article 23	Article 33(4)
Article 24(1)	Article 34
Article 24(2)	deleted
Article 24(3)	Article 37
Article 25(1)	deleted
Article 25(2)	Article 38
Article 26	deleted
Article 27(1), (2)	Article 39
Article 27(3)	Article 40 (1), (2)
Article 28	deleted
Article 29	Article 41
-	Article 44
-	Article 35
-	Article 36
-	Article 42
-	Article 43

Regulation (EC) 1560/2003	This Regulation
Article 11(1)	Article 11(1)
Article 13(1)	Article 17(2), first sub-paragraph
Article 13(2)	Article 17(2), second sub-paragraph
Article 13(3)	Article 17(2), third sub-paragraph
Article 13(4)	Article 17(2), first sub-paragraph
Article 14	Article 35
Article 17(1)	Articles 9, 10, 17(2), first sub-paragraph
Article 17(2)	Article 32(3)