



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 27 July 2009**

---

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

---

**12364/09**

**LIMITE**

**ASILE 56  
CODEC 1000**

**NOTE**

---

from : General Secretariat of the Council  
to delegations

---

Subject : Proposal for a Regulation of the European Parliament and of the Council  
establishing the criteria and mechanisms for determining the Member State  
responsible for examining an application for international protection lodged in one  
of the Member States by a third-country national or a stateless person

---

Delegations will find attached two documents from the Czech Republic and the Commission respectively (Annex I and II) which were discussed during the Asylum Working Group meeting of 22-23 July 2009.

**Study on application of the article 7(3) and articles 8 – 12 of the proposal for  
Dublin Regulation**

**Introduction**

Following the promise given at the Asylum Working Party which took place on 16.6.2009 Presidency is hereby submitting case study on effects of the rule contained in article 7(3) of the Proposal for Dublin regulation.

Case study contains survey of situations which might occur in practice and their solution under the Proposal and under current Dublin Regulation and European Parliament's "version" of the Proposal. This study does not aspire to cover all possible situations and cases. Presidency hopes that this study will help Member States to assess the effects of the rule in article 7(3) introduced by the Proposal. Part of the case study relating to Article 11 of the Proposal concerns the version proposed by Presidency in the compromise proposal which was discussed at the meeting of Asylum Working Party on 16.6.2009. This part contains also more detailed explanation of the content of article 11 as proposed by Presidency.

Please be aware that document was originally created just for purposes of the work on compromise proposal. Presidency partly reworked the original document and added the drawings. As far as the Member States featuring in the examples and drawings are concerned, Presidency chose present and upcoming Presidency. For better understanding you will find the key to the drawings below:



- minor



- first decision in substance



- legally present family member or relative



– applicants for international protection



- dependent applicant



- dependent relative



- Sweden



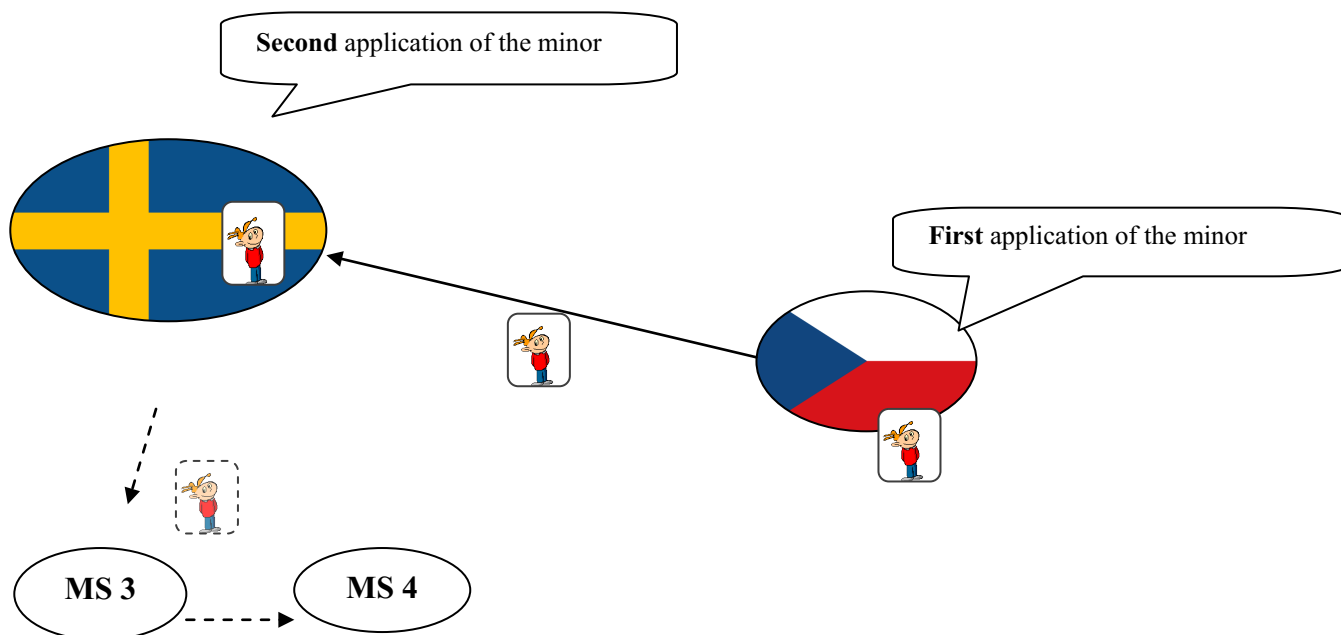
- Czech Republic

**UNACCOMPANIED MINORS  
(ARTICLE 8)**

*1) Unaccompanied minor applies for international protection in CZ for the first time in EU.*

*There are no indications that family member or another relative is staying legally in another MS  
= CZ is responsible.*

*The unaccompanied minor absconds to Sweden before the first decision in substance is taken in CZ and there (in Sweden) he/she applies for international protection again. There is still no indication that any relative or family member is legally present in another MS.*



**Solution under the Proposal:**

**Sweden is responsible** (article 8(4) of the Proposal).

**The rule in 7(3) has no influence in this case.**

**CZ PRES comments:**

There is a danger that minor moves further from Sweden to MS 3 and then to MS 4 and the responsibility for the examination of the application for international protection will move from one MS to another. This could happen in very short time. It is doubtful whether this situation is in best interests of the minor.

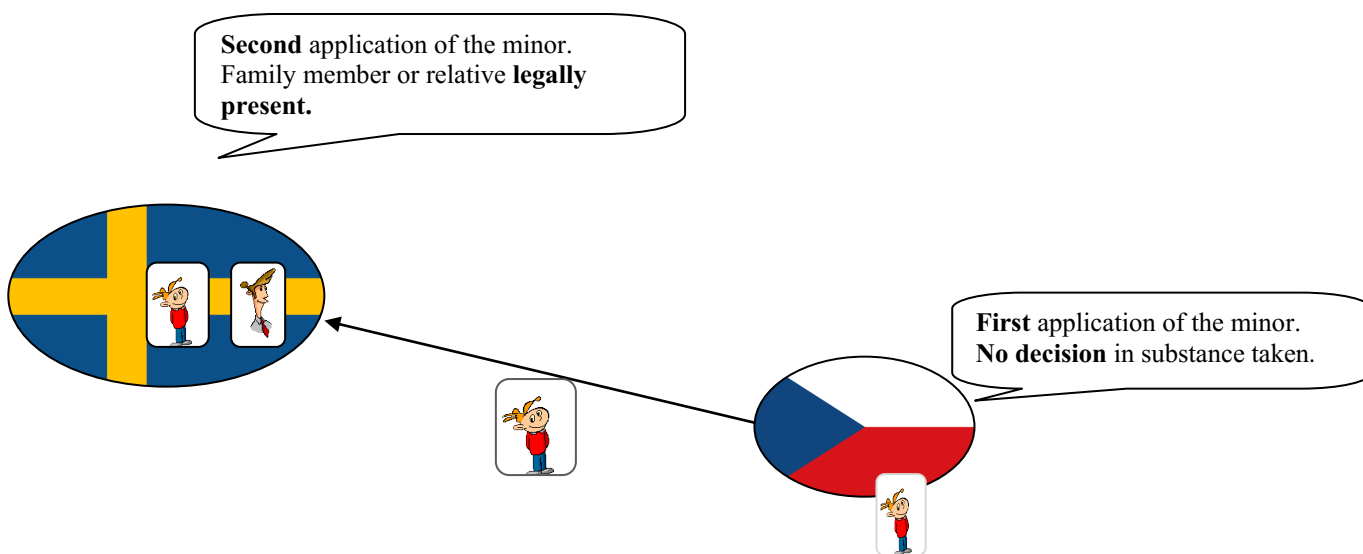
Problem might also arise when unaccompanied minor turns over 18 and lodges the application for international protection in MS 5 or once again in MS 4 or MS 3. It is obvious that one of the MS here he/she lodged the application should be responsible but which one? Presidency tends to answer that it should be the last Member state responsible for him as a minor.

**Solution under current Dublin regulation and EP version of the Proposal:**

**CZ is responsible** and obliged to take the minor back on its territory. Under the article 8 (EP version) in absence of family members it is the MS where minor lodged the application for international protection which is responsible for the examination of his application. But minor has lodged the application in both **CZ** and **Sweden**. This provision is in majority interpreted that first MS where the application was lodged is responsible (**CZ in this case**).

*2) Unaccompanied minor applies for international protection in CZ, there are no indications that family member or relative is legally present in another MS = CZ is responsible.*

*The unaccompanied minor absconds from CZ to Sweden before the first decision in substance is taken by CZ. In Sweden minor applies for international protection again. There is a new indication that minor's family member or another relative is legally present in Sweden. (For instance minor's parents or one of them arrived in the territory of the Member States later and applied for international protection in Sweden and Sweden is responsible for examination their applications for international protection).*



**Solution under the Proposal:**

**Sweden is responsible** for examination of the application for international protection lodged by minor in **Sweden under article 8(1) of the Proposal. Rule in article 7(3) is applicable in this case however in relation to article 8(4) of the Proposal it has no real influence.**

**Solution under current Dublin regulation and EP version of the Proposal:**

**CZ is responsible. Sweden would be responsible** only in the case family member or relative was already legally present in Sweden at the time the application for international protection was lodged by minor in **CZ** and 3 months had not passed yet from the moment minor lodged his/her application in CZ (time limit for submission of the take charge request).

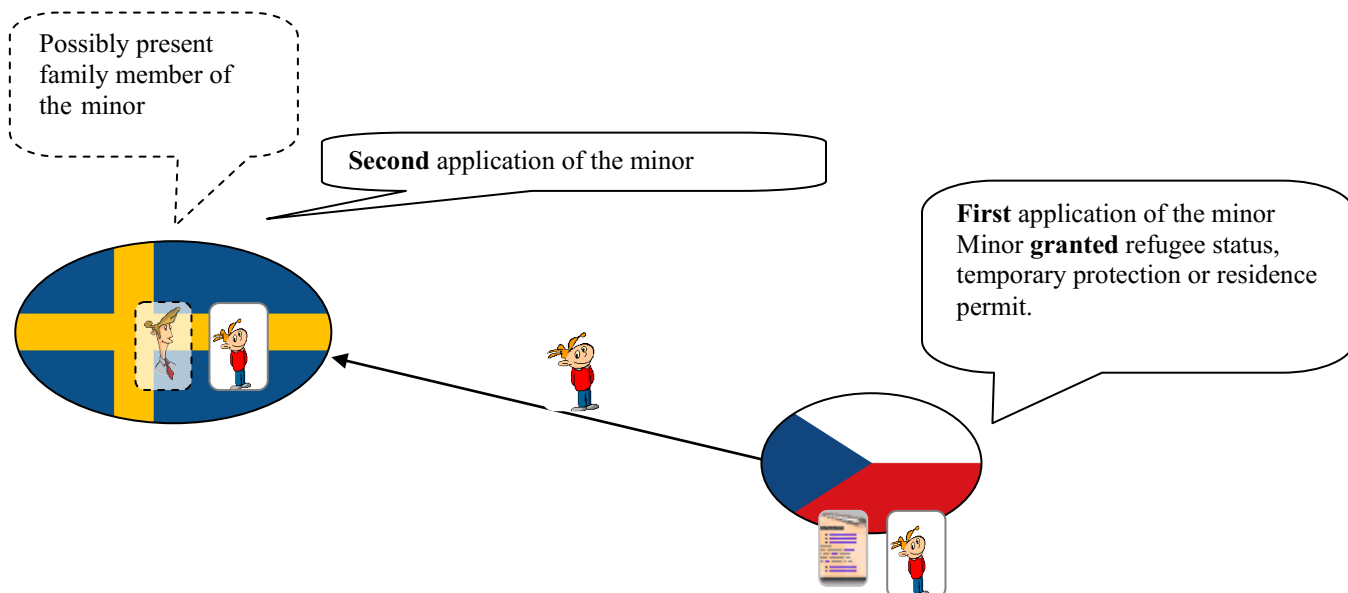
**However** if the minor concerned applied for international protection before his/her **family member** in Sweden, it would be possible – at least in theory - to reunite family member concerned with minor who **is present CZ. CZ would be responsible** for the application lodged by family member in Sweden under art. 8 of current Dublin regulation and under art. 10 of the Proposal provided that the first decision in substance has not been issued in CZ.

***3) Unaccompanied minor applies for international protection in CZ there are no indications that family member or relative is legally present in another MS = CZ is responsible.***

**CZ takes first decision in substance with one of the possible outcomes:**

- 1. Asylum or refugee status is granted to the minor.***
- 2. Subsidiary protection is granted to the minor.***
- 3. Application is rejected but minor is granted some kind of residence permit.***

***The unaccompanied minor anyway absconds to Sweden where he/she applies for international protection again.***



**Rule in article 7(3) does not apply in these cases** since CZ has already issued first decision in substance.

**In the case referred to under the point 1: Refugee status is granted to a minor**

**Both current Dublin regulation and the Proposal shall not be applied.**

**However** if a **family member** of the minor concerned lodged application for international protection in **Sweden** at the time when minor concerned has already been granted refugee status in CZ, it is at least theoretically possible to reunite family member with minor in CZ provided that **Sweden** has the time (3 months) to send the take charge request to **CZ**. This is the same for both current Dublin regulation (article 7) and Proposal (article 9).

**Under the Proposal** it is possible that even after the 3 months time limit for submission of the take charge request to reunite family member with the minor in CZ provided that family member withdraws his/her application in Sweden and applies for international protection a new in **Sweden** or **CZ (rule in article 7(3) applies)**.

**Case referred to under the point 2: Subsidiary protection is granted to the minor**

Under the **current Dublin regulation** Sweden can return the minor to CZ.

Under the **Proposal** it will not be possible to use the Dublin regulation as such.

**However** if a **family member** of the minor concerned lodged application for international protection in **Sweden** at the time when minor concerned has already been granted subsidiary protection in CZ, it would be **under the Proposal** at least theoretically possible to reunite family member with minor in CZ provided that there is still the time for Sweden to send the take charge request concerning the family member of the minor to CZ.

Under the Proposal it seems to be also possible to reunite family member concerned with the minor in CZ even after the 3 months time limit for sending the take charge request: Family member concerned withdraws his/her application in Sweden and applies for international protection a new in **Sweden** or in CZ (rule in article 7(3) applies).

**Case referred to under the point 3: Application is rejected but minor is granted some kind of residence permit**

Both current Dublin regulation and the Proposal are applicable.

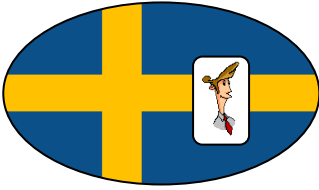
Under the Proposal **Sweden is responsible** for examination of the application for international protection of a minor (Article 8(4) of the Proposal). CZ has already issued first decision in substance therefore **rule in art. 7(3) does not apply**.

Under current Dublin regulation **CZ is still responsible** and minor should be returned from **Sweden** to CZ.

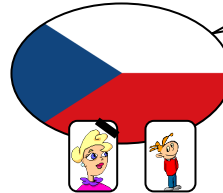
***4) Family member accompanying minor in the course of asylum procedure in responsible MS (CZ) dies or disappears without any trace so that minor becomes unaccompanied. Minor is still present in CZ and another family member or relative who is willing to take care of the minor is legally present in Sweden.***



Legally present family member or relative



First application lodged by family member of the minor  
Minor becomes **unaccompanied**.



### **Solution under the proposal:**

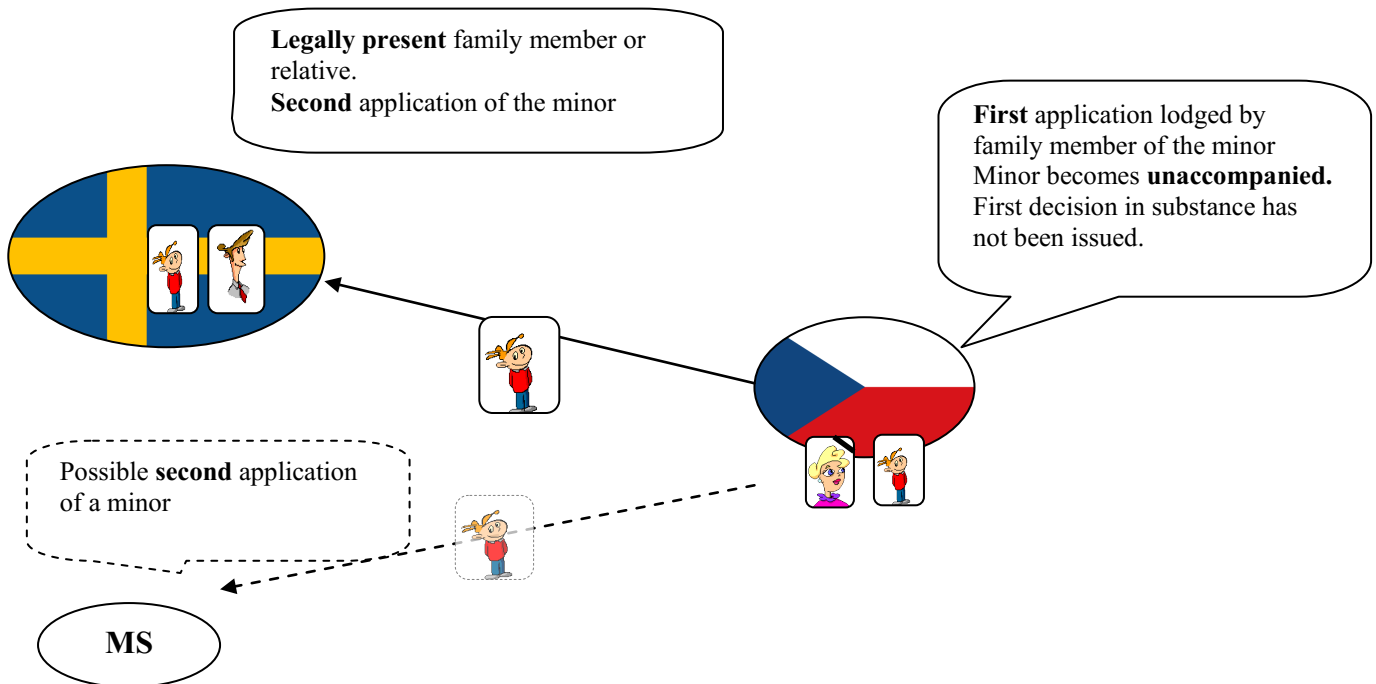
**CZ is responsible.** No subsequent application for international protection was lodged in another MS or in CZ by minor concerned. The responsibility shall be determined on the basis of the situation existing when the minor lodged his/her application for the first time (art. 7 par. 1) = when he/she arrived to CZ with his/her parent.

**However** it seems to be possible to reunite minor with his/her relative in Sweden on the condition that the representative of the minor withdraws on behalf of the minor the application for international protection in CZ and applies on his/her behalf for international protection in CZ again. **Then rule in art. 7(3) will apply.**

### **Solution under current Dublin regulation and EP version of the Proposal:**

**CZ is responsible.** It would be possible to unite minor concerned with his/her family member or relative in **Sweden** only by virtue of the discretionary clause (art. 17 of the Proposal, art. 15(3) of current Dublin regulation). Art. 15(3) of current Dublin regulation uses the semi - obligatory wording: „Member States shall if possible....“.

***5) The family member accompanying minor in the course of procedure for international protection in the responsible MS (CZ) dies or disappears without any trace so that minor becomes unaccompanied. Minor then moves to Sweden where he/she applies for international protection again. There are indications that another family member or relative is legally present in Sweden.***



**Solution under the Proposal:**

**Sweden is responsible. Rule in art. 7(3) applies** since the first decision in substance has not been issued in CZ.

**Sweden will be responsible even when the minor lodges his/her subsequent application in another MS while his/her family member is legally present in Sweden.**

**Solution under current Dublin regulation and EP version of the Proposal:**

**CZ is still responsible** for examination of the application lodged by minor in **Sweden**. The situation at the time when the first application for international protection is lodged is important for the determination of the responsibility.

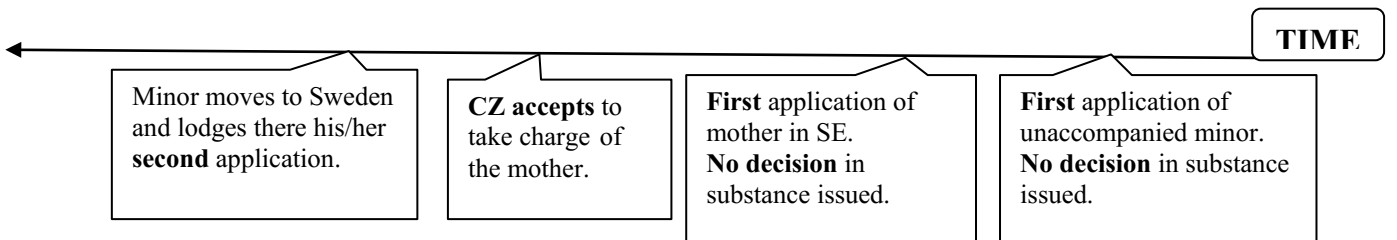
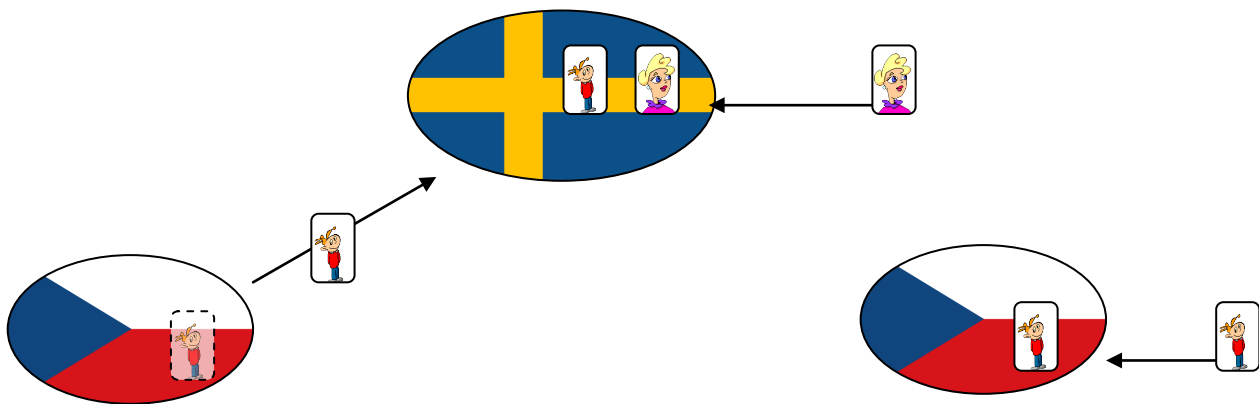
**CZ will be responsible even when minor lodges his/her subsequent application in another MS while his/her family member is legally present in Sweden.**

Under current Dublin regulation humanitarian clause can be used (art. 15 (3)) in order to reunite the minor with his/her family member or relative in Sweden. Art. 15 (3) uses the semi-obligatory wording „Member State shall if possible ...“.

**MISCELLANEOUS CASES:**

Presidency would like to present few more other cases which even more underline the difficulties with the current and proposed rules concerning unaccompanied minors. It might seem that beneath mentioned examples are too elaborated but the practice itself might be in some cases even more “colorful”.

*1) Minor arrives to the territory of Member States, applies for international protection in CZ. Minor is not accompanied by an adult responsible for him/her and there is not an indication that any family member or relative is legally present on the territory of Member States = CZ is responsible. Two weeks later mother of minor applies for international protection in Sweden declaring that her son is probably on the territory of CZ as applicant for international protection. Sweden sends the take charge request under the article 10 of the Proposal in order to reunite mother with her son in the territory of the CZ. Consent of the mother is attached to the request. CZ accepts the request. However before the transfer of mother of the minor is effected, minor absconds from the CZ to Sweden and applies for international protection there.*



**Solution under the Proposal:**

**Sweden is responsible** for a minor under article 8(1) of the Proposal because on the territory of Sweden his mother is legally present (transfer has not been executed yet). Under article 7(3) of the Proposal important for determination of responsibility is the situation at the time of lodging the most recent application for international protection. CZ is no more responsible for the minor. Due to the fact that responsibility for minor changed there is logically no more reason why should be CZ responsible for examination of the application of his mother.

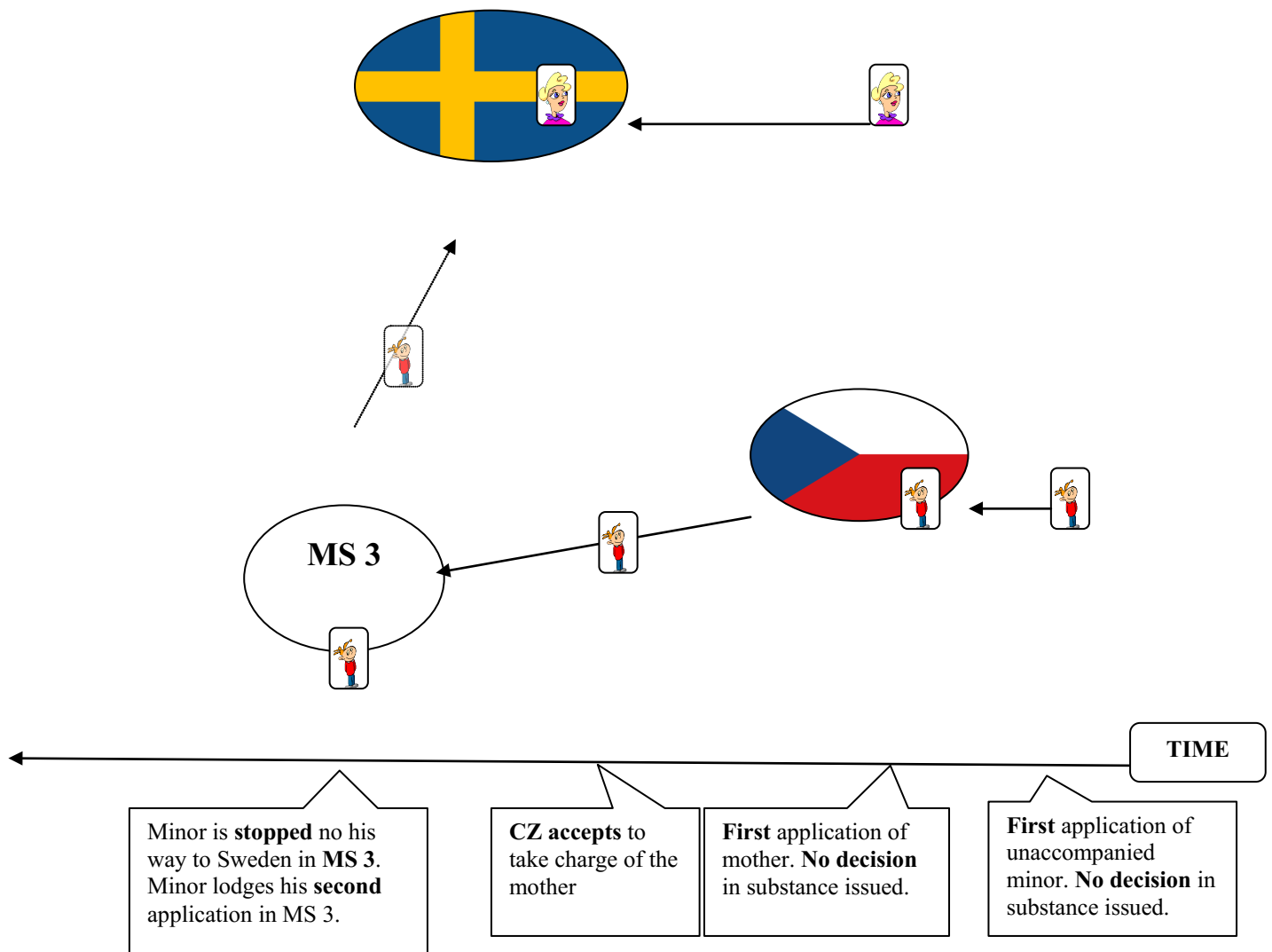
**Solution under current Dublin Regulation and EP version of the Proposal:**

**CZ is responsible** for the minor. Important for determination of the responsibility is the situation at the moment when the first application of the minor was lodged (art. 5(2) of current Dublin regulation, art. 7(1) of EP version of the Proposal). Sweden can, provided that mother agrees with it, sent to CZ take charge request based on art. 8 of current Dublin regulation (art. 10 of the EP version of the Proposal). CZ will be then responsible for the examination of the application of mother and unaccompanied minor.

**Reality:**

**However in reality** it is more likely that family member of a minor or relative is the one who picks up minor in CZ and drives him/her to Sweden. In order to lodge the application for international protection minor then comes to Swedish migration board accompanied by his/her mother. He cannot be therefore considered as unaccompanied minor. Solution in such case is questionable but Presidency is of the opinion that CZ should be responsible for both mother and minor.

*2) Minor arrives to the territory of Member States, applies for international protection in CZ. Minor is not accompanied by an adult responsible for him/her and there is not an indication that any family member or relative is legally present on the territory of Member States = CZ is responsible. Two weeks later mother of minor applies for international protection in Sweden declaring that her son is probably on the territory of CZ as applicant for international protection. Sweden sends the take charge request under the article 10 of the Proposal in order to reunite mother with her son in the territory of the CZ. Consent of the mother is attached to the request. CZ accepts the request. However before the transfer of mother of the minor is effected, minor absconds from the CZ. Minor is heading to reach Sweden however he is “stopped” in MS 3 where he applies for international protection for second time.*



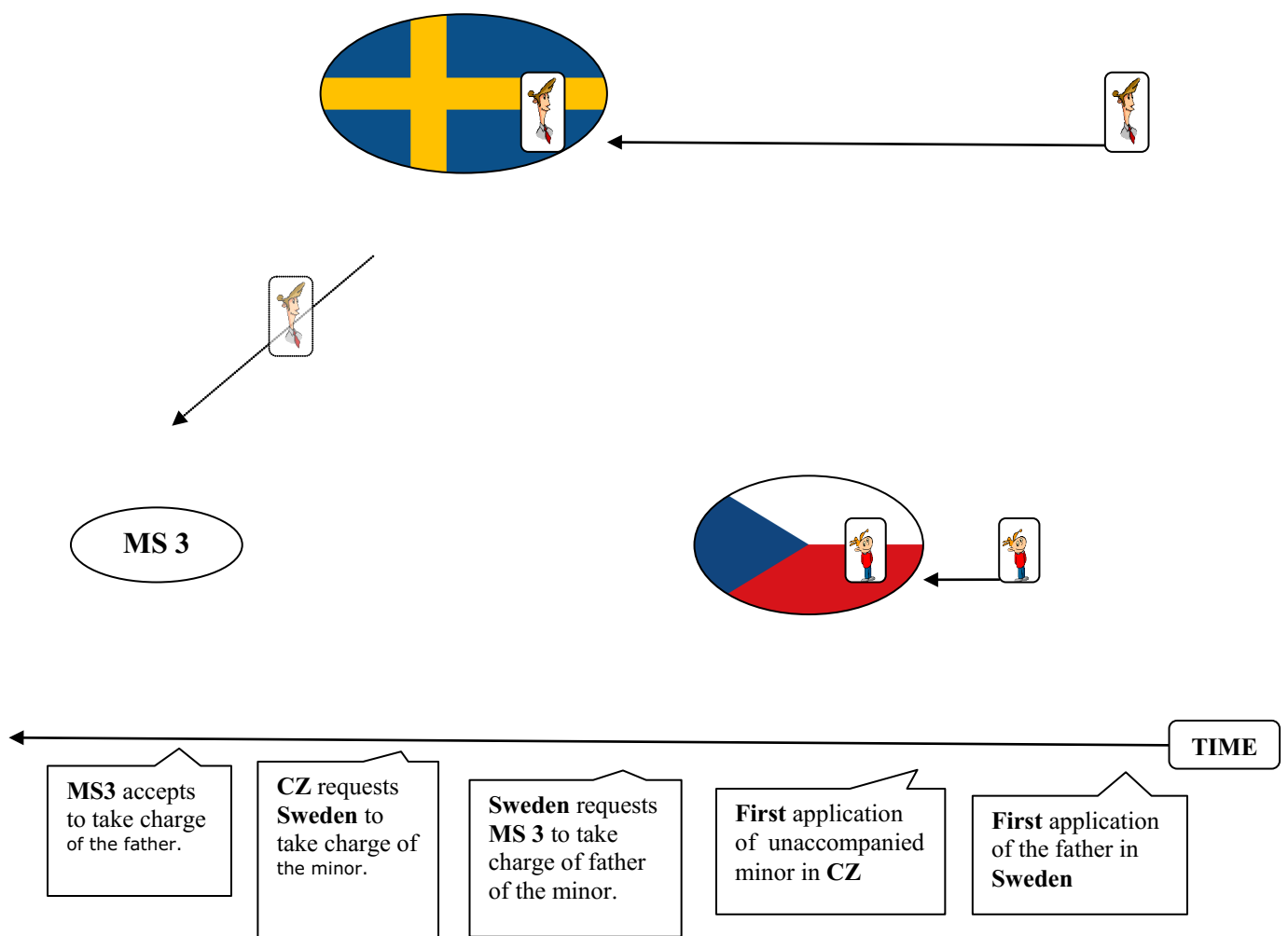
**Solution under the Proposal:**

**Sweden is responsible** for a minor under article 8(1) of the Proposal because on the territory of Sweden his mother is legally present (transfer has not been executed yet). Under article 7(3) of the Proposal important for determination of responsibility is the situation at the time of lodging the most recent application for international protection. CZ is no more responsible for the minor. Due to the fact that responsibility for minor changed there is logically no more reason why should be CZ responsible for examination of the application of his mother.

**Solution under current Dublin Regulation and EP version of the Proposal:**

**CZ is responsible** for examination of the application lodged by minor. Important for determination of the responsibility is the situation at the moment when the first application of the minor was lodged (art. 5(2) of current Dublin regulation, art. 7(1) of EP version of the Proposal). **MS 3** shall request CZ to take minor back and after acceptance is delivered, **MS 3** shall transfer him/her back to CZ. **Sweden** can provided that mother agrees with it sent to CZ take charge request based on art. 8 of current Dublin regulation (art.10 of the EP version of the Proposal). CZ will be then responsible for the examination of the application of mother and unaccompanied minor.

*3) Minor arrives on the territory of Member States unaccompanied. Minor lodges the application for international protection in CZ. During the interview minor stated that his father has already lodged application for international protection in Sweden one month before. CZ sends the take charge request to Sweden. However problem is that in fact for the examination of the application of the father is another MS responsible. (He travelled to Sweden on visa issued by another MS).*



**Possible solution:**

Solution of this particular case under the Proposal and current Dublin regulation as well as EP version of the proposal is the same. **Rule in art. 7(3) of the proposal does not apply** since minor has not lodged any subsequent application for international protection.

Responsible for examination of the application of a minor should be the state where the father of minor is legally staying (Art. 6 of current Dublin regulation, Art. 8(1) of the Proposal). Since for determination of the responsibility for the application of the minor is important the situation at the moment when he/she lodged his/her application in CZ **Sweden should be responsible for examination of the minor's application**. On the other hand **Sweden is not responsible for examination of the application** lodged by the father of the minor in Sweden.

Presidency tends to say that logically MS 3 should be responsible for both father who lodged the application in Sweden and minor who lodged the application in CZ. However it is doubtful whether this solution has sufficient backing in the legal text of current Dublin regulation or in the text of the Proposal.

**Solution under the Proposal:**

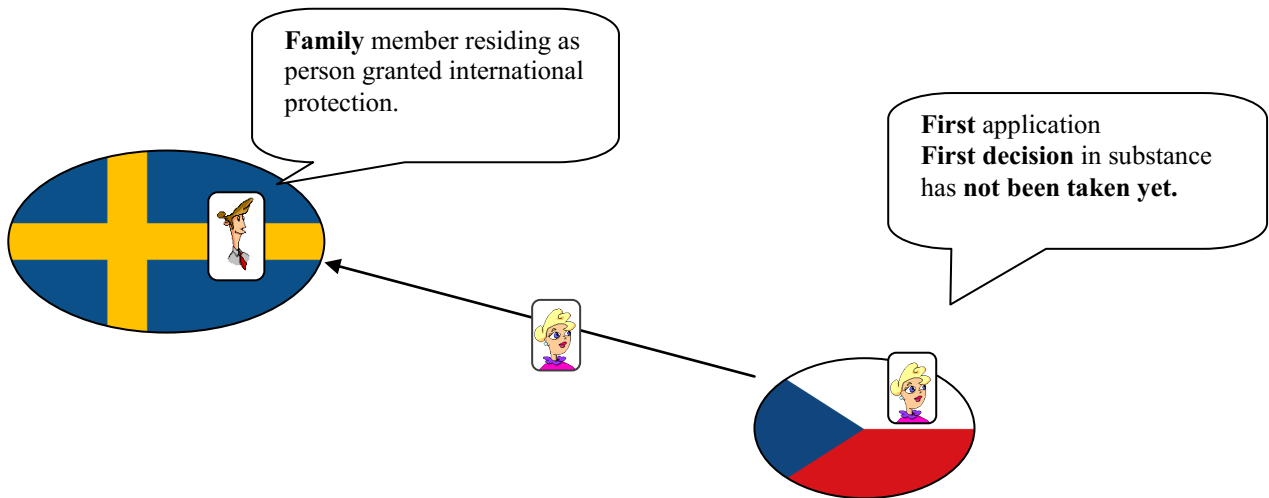
**Sweden is responsible** for a minor under article 8(1) of the Proposal because on the territory of Sweden his mother is legally present (transfer has not been executed yet). Under article 7(3) of the Proposal important for determination of responsibility is the situation at the time of lodging the most recent application for international protection. CZ is no more responsible for the minor. Due to the fact that responsibility for minor changed there is logically no more reason why should be CZ responsible for examination of the application of his/her mother.

**Solution under current Dublin Regulation and EP version of the Proposal:**

**CZ is responsible** for the minor. Important for determination of the responsibility is the situation at the moment when the first application of the minor was lodged (art. 5(2) of current Dublin regulation, art. 7(1) of EP version of the Proposal). **MS 3** shall request CZ to take minor back and after acceptance is delivered, **MS 3** shall transfer him/her back to CZ. **Sweden** can provided that mother agrees with it sent to CZ take charge request based on art. 8 of current Dublin regulation (art.10 of the EP version of the Proposal). CZ will be then responsible for the examination of the application of mother and unaccompanied minor.

**PERSONS GRANTED INTERNATIONAL PROTECTION**  
**(ARTICLE 9)**

*1) Applicant arrives to CZ where he/she applies for international protection. CZ has no indication that his/her family member resides in another MS as person who is granted international protection = CZ is responsible. Before the first decision in substance is taken in CZ applicant absconds to Sweden where he/she lodges the application for international protection again. Applicant's family member resides as person granted international protection in Sweden.*



**Solution under the Proposal**

**Sweden is responsible** for the examination of the application for international protection lodged by applicant in Sweden.

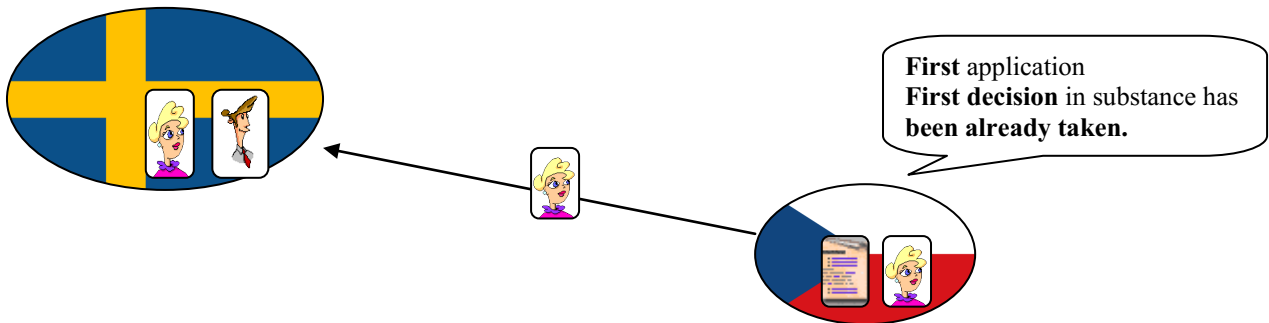
**Rule in Article 7(3) applies.**

**Under current Dublin regulation and the EP version of the Proposal**

**CZ is responsible. Sweden would be responsible** for application for international protection **only** in the case when the family member of applicant has been allowed to reside in **Sweden** as a person granted international protection already at the time when the application in CZ was lodged (provided also that 3 months time limit for sending take charge request had not passed yet).



2) Applicant arrives to CZ where he/she applies for international protection. CZ has no indication that his/her family member is residing in Sweden as person who was granted international protection. After his/her application for international protection was rejected (first decision in substance) in CZ, applicant absconds to Sweden and applies for international protection there.



**Under the proposal:**

CZ is responsible. Rule in art. 7(3) does not apply since the first decision in substance has been already issued by CZ.

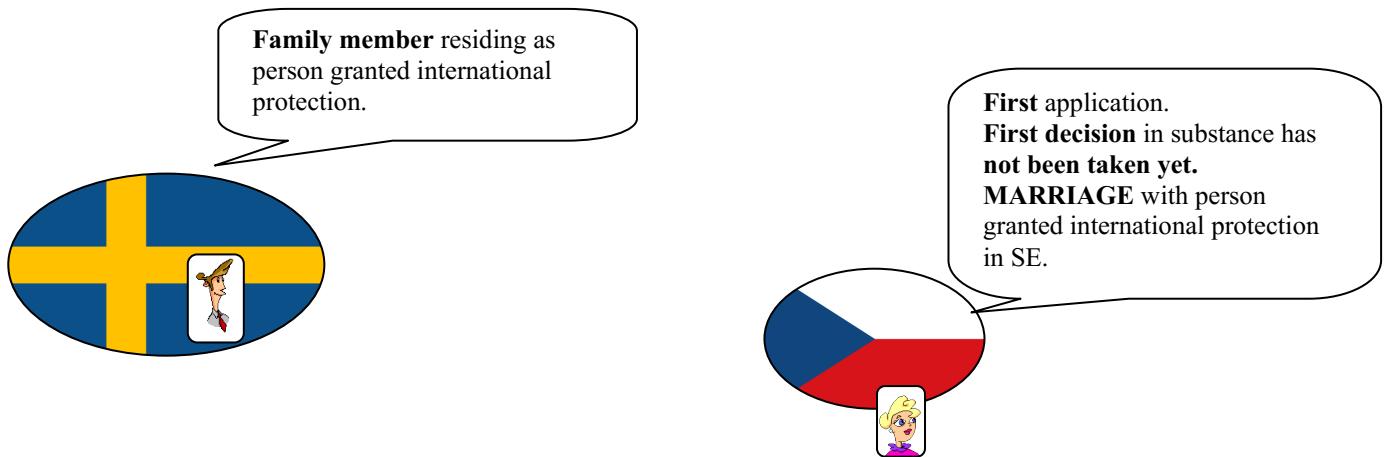
**Under current Dublin regulation and the EP version of the Proposal:**

CZ is responsible.

3) *Third country national is granted international protection in Sweden. He/she got married applicant for international protection in CZ. Application in CZ was lodged before the marriage took place.*

- a) *Applicant stays in CZ.*
- b) *Applicant moves to Sweden where he/she applies for IP before the first decision in substance is taken in CZ.*
- c) *Applicant moves to Sweden where he/she applies for IP after his application is rejected in CZ (first decision in substance is taken).*

*Ad a) Applicant stays in CZ*



**Under the Proposal**

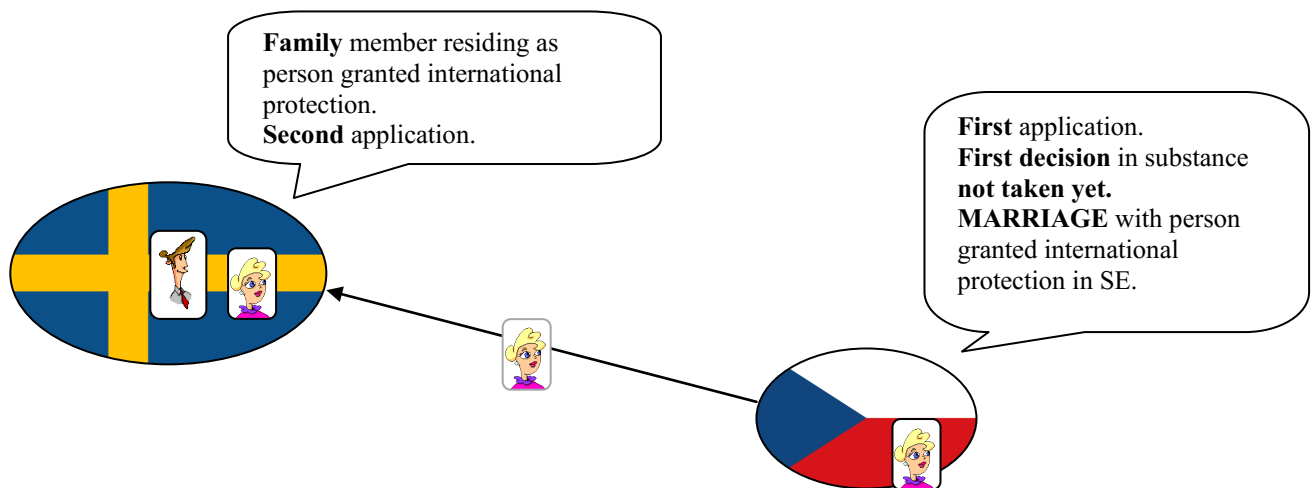
**CZ is responsible. Rule in Article 7(3) does not apply.**

Since no subsequent application has been lodged in CZ, SE or another MS. The situation at the time when the application was lodged in CZ is relevant for determination of the responsibility.

**Under current Dublin regulation and EP version of the Proposal**

**CZ is responsible.**

*Ad b) Applicant moves to Sweden where he/she applies for international protection before the first decision in substance is taken in CZ.*



**Under the Proposal:**

**Sweden is responsible** for the examination of the application for international protection provided that marriage took place before applicant lodged his/her application in Sweden.

**Rule in Article 7(3) applies.**

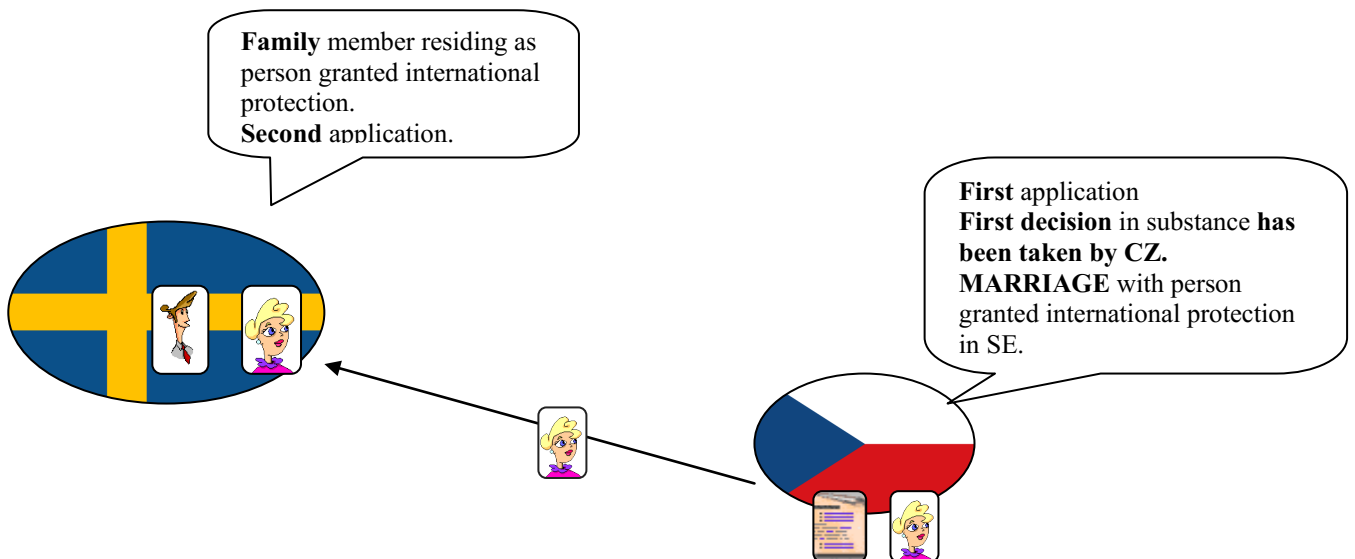
**There is danger of abuse of this rule.** Instead of the applying for residence permit applicant will apply for international protection because it is easier.

**Under current Dublin regulation and EP version of the Proposal:**

**CZ is responsible.**

**Sweden** would be responsible for the examination of the application for IP only in the case when the marriage took place before the applicant applied in CZ and the time limit of 3 months for submission of the take charge request has not passed yet.

*Ad c) Applicant moves to Sweden where he/she applies for international protection after his application is rejected in CZ (e.g. first decision in substance is taken)*



**Under the proposal:**

**CZ is responsible. Rule in article 7(3) does not apply** since the first decision in substance has already been taken.

**Under the current Dublin regulation and EP version of the Proposal:**

**CZ is responsible.**

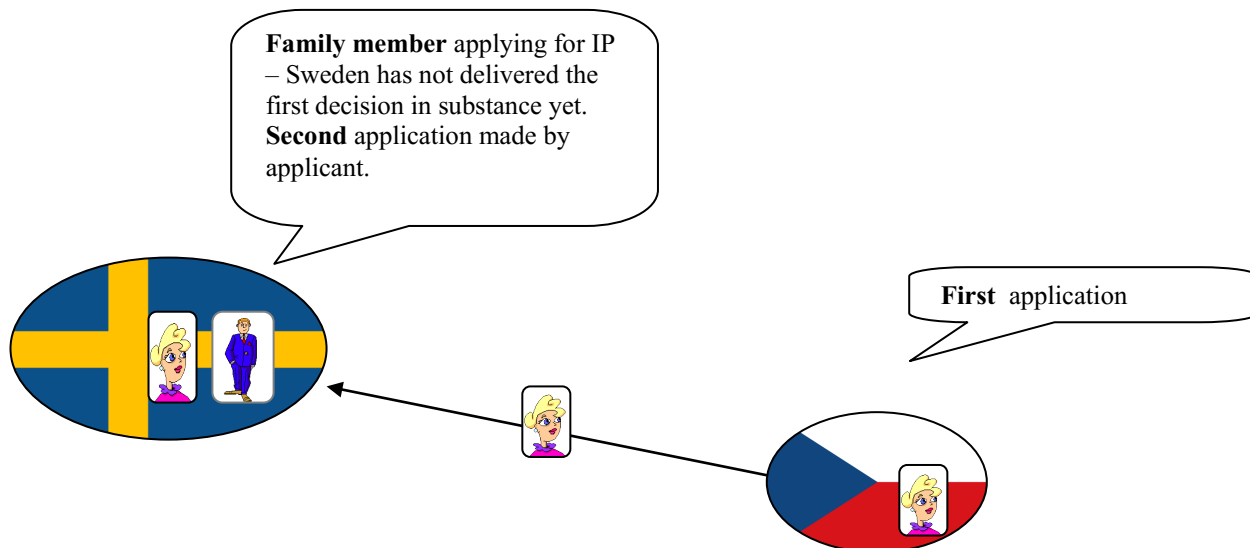
**FAMILY MEMBERS WHO ARE APPLICANTS FOR INTERNATIONAL PROTECTION  
(ARTICLE 10)**

*1) Third country national applies for international protection in CZ. CZ has no indication that applicant's family member previously applied for international protection in Sweden = CZ is responsible.*

*a) Before the first decision in substance is taken by CZ applicant moves to Sweden and applies for international protection there. Sweden finds out that applicant's family member has been already applying for international protection in Sweden for some time.*

*b) After the first decision in substance is issued by CZ applicant applies for international protection in Sweden. Sweden finds out that applicant's family member has been already applying for international protection in Sweden for some time.*

*Ad A) Before the first decision in substance is taken by CZ applicant applies for international protection in Sweden.*



**Solution under the Proposal:**

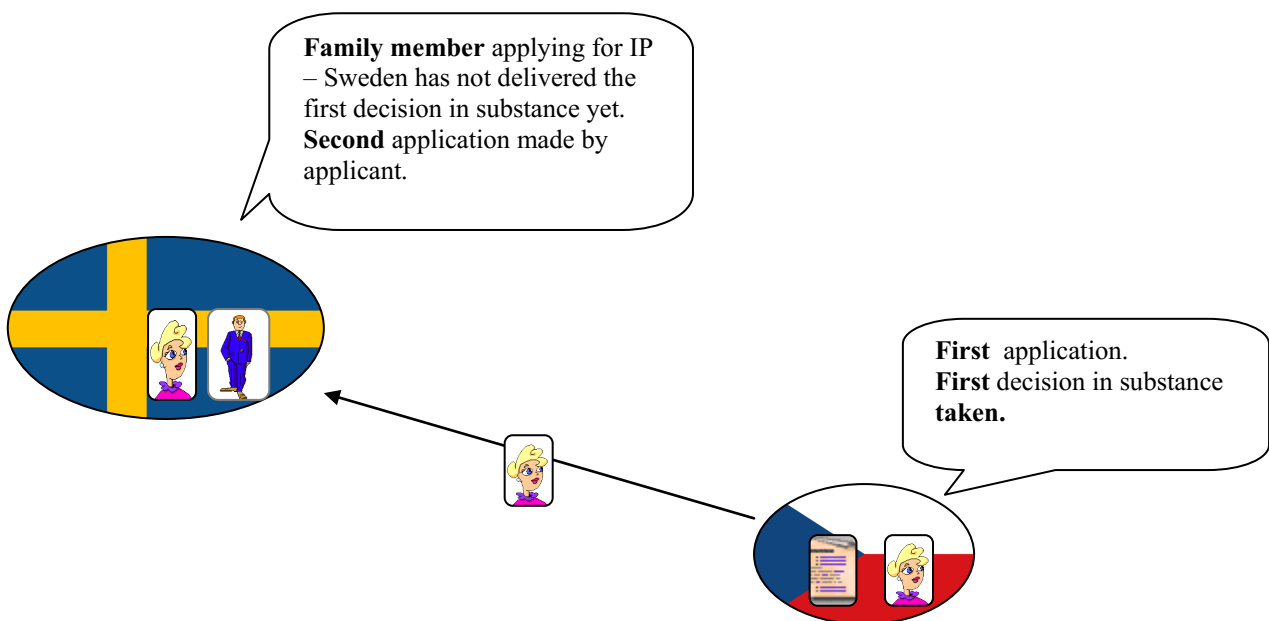
**Rule in art. 7(3) applies. Sweden is responsible** for examination of the application for international protection lodged by applicant in Sweden provided that the first decision in substance was not taken by Sweden in case of applicant's family member. Sweden is then responsible for examination of applications of both family members.

If the first decision in substance **has been already taken** by Sweden in case of applicant's family member, **CZ is responsible**.

**Solution under current Dublin regulation and EP version of the Proposal:**

**CZ is responsible. Sweden would be responsible** for the examination of the application for international protection **only in the case** when the 3 months time limit for the CZ to send the take charge request had not passed yet and family member of the applicant lodged his/her application in Sweden before the applicant lodged first application in CZ.

*Ad b) After the first decision in substance is issued by CZ applicant applies for international protection in Sweden.*



**Under the proposal**

**CZ is responsible. Rule in art. 7(3) does not apply** since there has already been issued first decision in substance in CZ.

**Under the current Dublin regulation and EP version of the proposal**

**CZ is responsible.**

## **DEPENDENT RELATIVES (ARTICLE 11)**

During the first reading of the Proposal many delegations expressed their discontent with the wording of article 11 because it does not contain precise rule which Member State is responsible for the examination of the application for international protection lodged by dependent applicant. Presidency tried to come with new wording of article 11 which sets precise rule for determination of the responsibility. As promised during the meeting on 16.6.2009 Presidency would like to use this opportunity and explain proposed text of art. 11 on individual cases.

### **Situation of dependency:**

Situation of dependency on assistance of another person may exist already before applicant applies for international protection on the territory of Member States for the first time or it may occur later during his or her stay on the territory of MS.

### **Here are some examples of dependency situations:**

1. Person and his mentally sick adult brother traveled from Pakistan together. By the fault of human traffickers they were separated and mentally sick person was left alone on the territory of CZ while his/her brother managed to reach Sweden and applied for international protection there. A representative of mentally sick brother was assigned by the Czech court in order to represent the interests of the mentally sick brother. Representative applied on behalf of the mentally sick person for international protection in CZ. Brother of the mentally sick applicant applying for international protection in Sweden is willing to take care of him.
  
2. Third country national applies for international protection in CZ however soon after the application is lodged he/she has a car accident. Because of the brain injury he/she lost short time memory. Applicant can move without any problems but needs full time assistance of third person because he/she is not able to remember what he/she was doing 5 minutes ago. His/her uncle who is legally staying in Sweden would like to take care of the applicant.

3. Shortly after adult applicant and his seriously ill father applied for international protection in CZ the applicant disappears without any trace leaving his ill father in CZ alone. Daughter of seriously ill applicant is legally present in Sweden and is willing to take care of her father.
4. The uncle of the applicant in CZ has been granted refugee status in Sweden, he is seriously ill and his wife is taking care of him. Unfortunately his wife became victim of the traffic accident. Uncle of the applicant has no other relative in Sweden who could take care of him. In such situation applicant applies for international protection in CZ claiming that his uncle in Sweden is seriously ill and that he wants to take care of him.
5. The parents applied for international protection in CZ together with their pregnant 19 years old daughter. EURODAC search reveals that pregnant daughter had applied for international protection in Poland before. She stated that she applied in Poland together with father of the child she is expecting. However he left her and absconded from Poland. She is psychologically fixed on her parents and the separation would cause her harm especially in relation to upcoming birth of her baby. Rest of the family traveled to the CZ legally with Czech visa.

**Rules:**

Basic rule is set out: Responsible is the Member State where the relative of the applicant is legally present no matter whether the relative or applicant is dependent.

Only in exceptional cases where it is physically impossible for dependent applicant to travel to the Member State where his/her relative is legally present, Member State where the dependent applicant is present will be responsible for examination of the application of the dependent applicant. This Member State will also be responsible for the application of the relative in case he/she lodged it in the state where he/she is legally present.



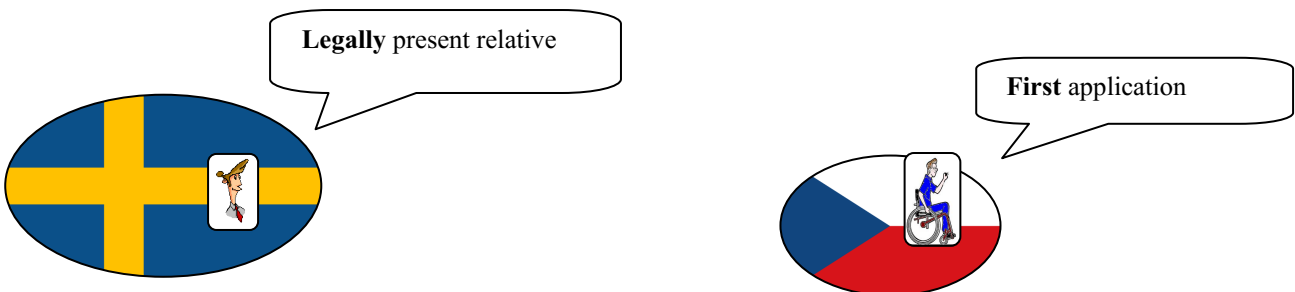
## Case studies:

**Initial commentary:** In many of beneath mentioned cases the dependent applicant travels to another Member State. In reality dependent applicant is not travelling to another MS alone because it would be in majority cases very difficult or even impossible. It is usually his/her relative or another person who picks up dependent applicant in one Member State and drives him/her to another Member State where his relative is legally present.

- 1) *Dependent third country national applies for international protection in CZ, CZ has no indication that there is a relative of the applicant legally present in territory of MS = CZ is responsible. (For instance relative and dependent applicant were separated during the journey and dependent relative does not know where his/her relative is present).*

  - a) *Dependent applicant is still in CZ when it is revealed that his relative is legally present in Sweden.*
  - b) *Before the first decision in substance is taken by CZ dependent applicant moves to Sweden where he/she applies for international protection.*
  - c) *After the application for international protection of the dependent applicant is rejected by CZ he/she moves to Sweden where he/she applies for international protection.*

*Ad a) Dependent applicant is still present in CZ when it is revealed that his relative is legally present in Sweden.*

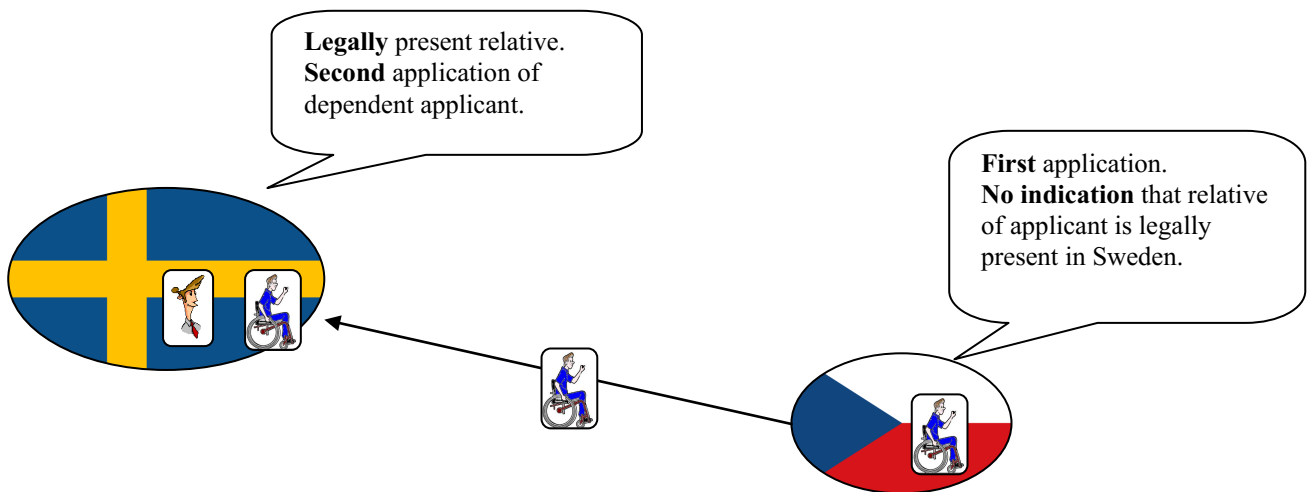


**Under the proposal:**

**Sweden shall be responsible** for the examination of the application lodged in **CZ** provided that **CZ** requests **Sweden** to take charge of the applicant within the period of three months from the moment when the application was lodged. No request sent within 3 months = **CZ is responsible**.

**Rule in art. 7(3) does not apply** since the applicant has not lodged new application for international protection in Sweden, CZ or another MS.

*Ad b) Before the first decision in substance is taken by CZ dependent applicant moves to Sweden where he/she applies for international protection.*

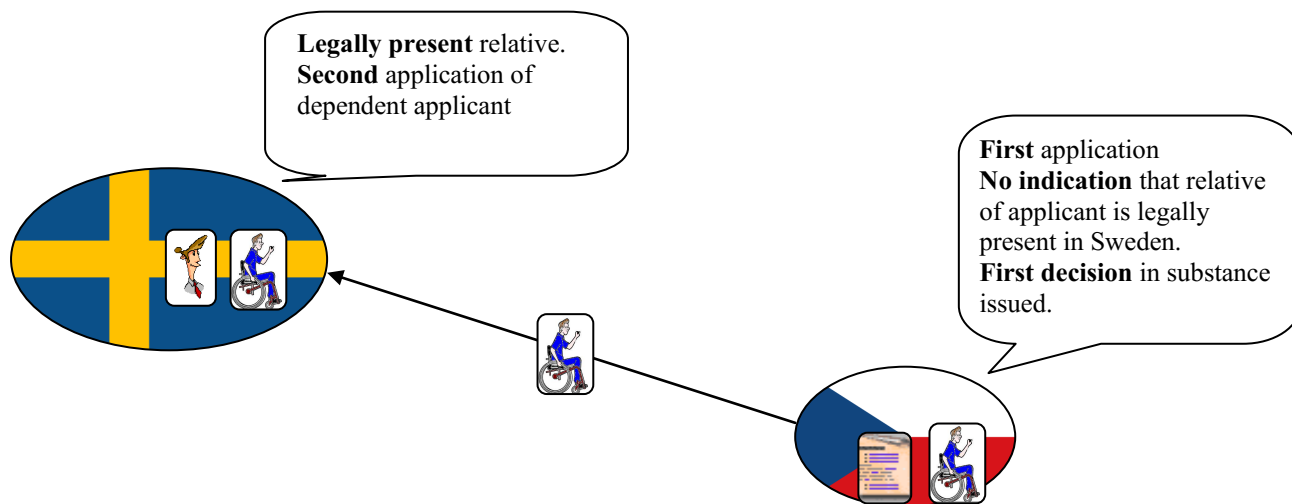


**Under the proposal:**

**Sweden** shall be responsible for the examination of the second application of the dependent person lodged in Sweden.

**The rule in Art. 7(3) applies here.** If there was no rule in article 7(3) CZ would be still responsible and obliged to take the applicant back.

**Ad c) After the application for international protection of the dependent applicant is rejected by CZ he/she moves to Sweden where he/she applies for international protection.**



**Under the proposal :**

**CZ shall be responsible** for the examination of the application lodged in Sweden.

**The rule in art. 7(3) has no effect in this case** since the first decision in substance was issued.

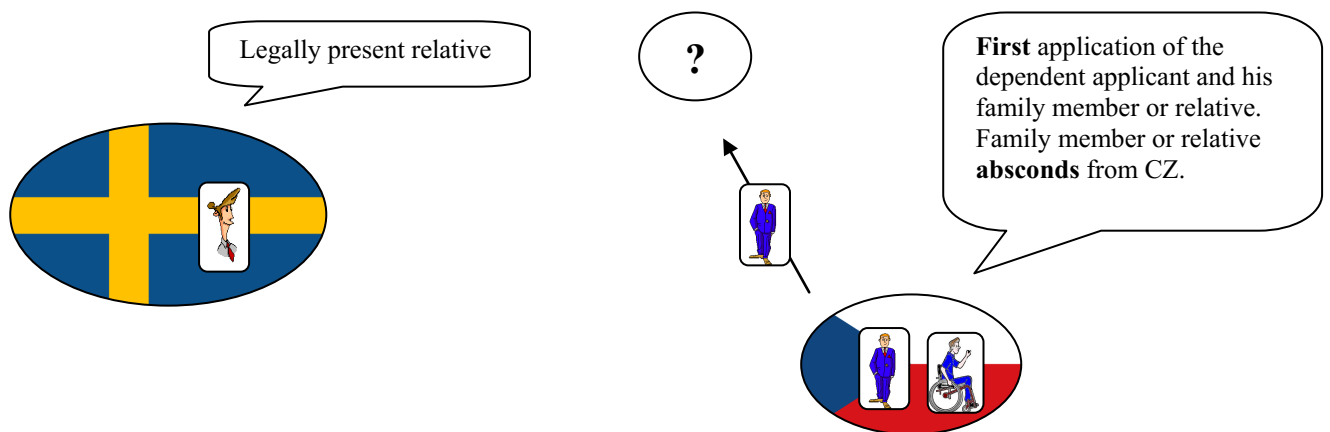
**2) Dependent third country national applies for international protection in CZ together with his family member or another relative = CZ is responsible. Family member or another relative dies or disappears without any trace. There is however another relative present legally in Sweden.**

**a) Dependent applicant stays in CZ.**

**b) Dependent applicant moves to Sweden before first decision in substance is issued in CZ.**

**c) Dependent applicant moves to Sweden after his/her application for international protection was rejected in CZ.**

*Ad a) Dependent applicant stays in CZ.*

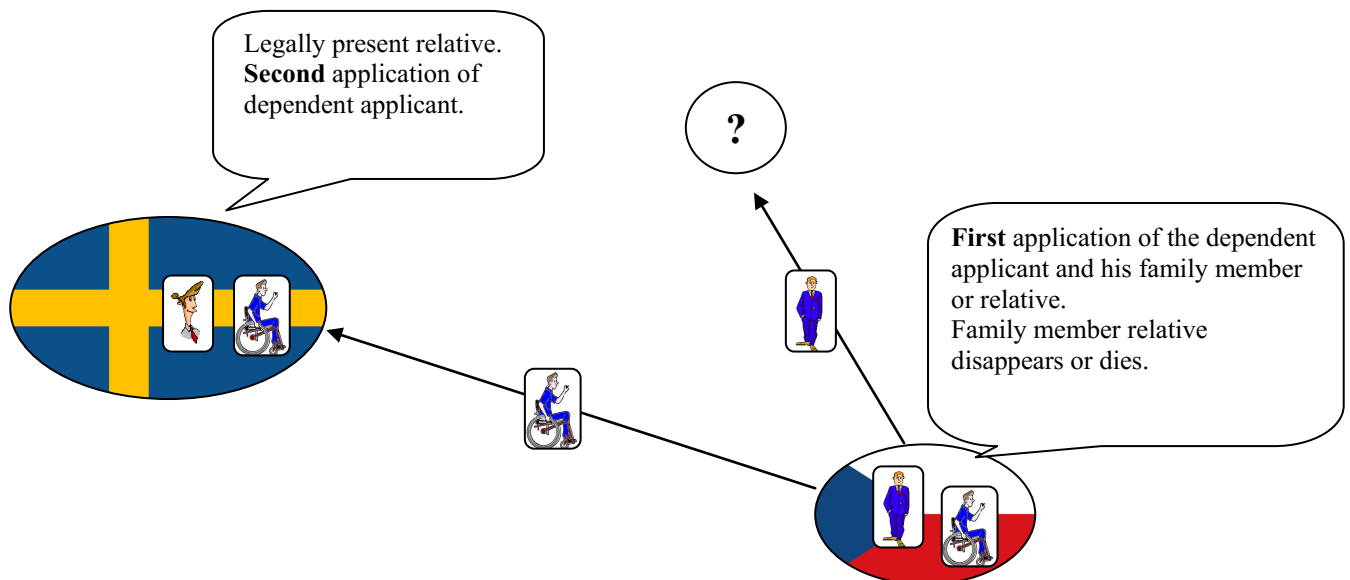


**Solution under the Proposal:**

**CZ is responsible. Sweden would be responsible** for the examination of the application lodged in CZ provided that CZ requests Sweden to take charge of the applicant within the period of 3 months from the date when the application for international protection was lodged in CZ.

**Rule in art. 7(3) does not apply in this case.**

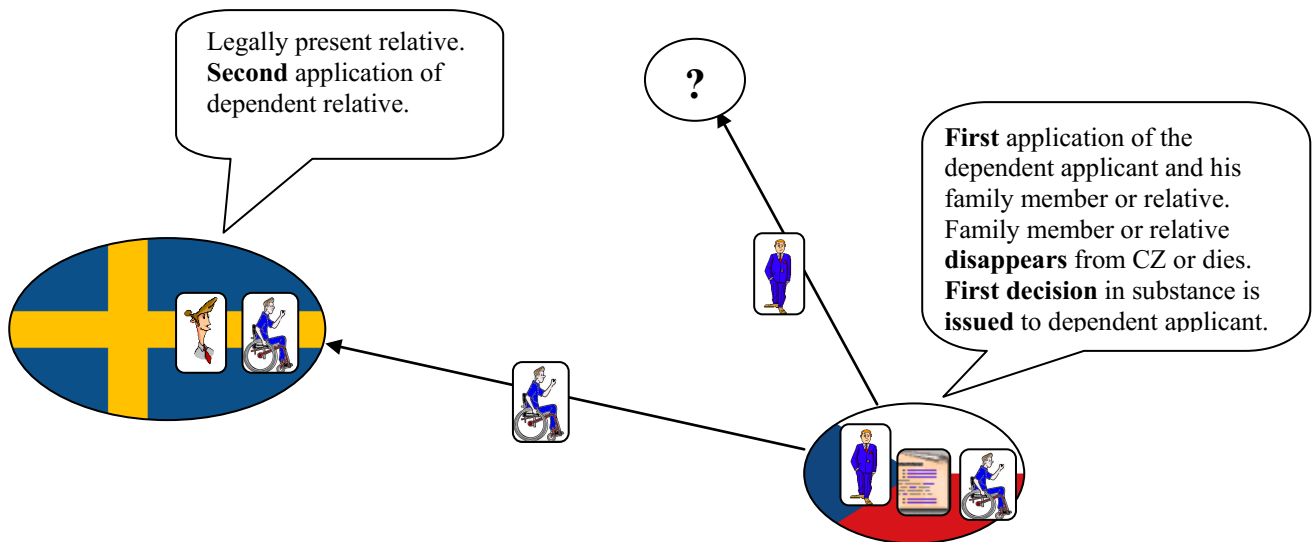
*Ad b) Dependent applicant moves to Sweden before first decision in substance is issued in CZ.*



**Under the Proposal :**

Sweden shall be responsible for the examination of the second application of the dependent lodged in Sweden thanks to rule in article 7(3) of the Proposal. If there was not rule in art. 7(3) CZ would be responsible for examination of the application and would be obliged to take dependent applicant back.

*Ad c) Dependent applicant moves to Sweden after his/her application for international protection was rejected in CZ.*



**Under the proposal :**

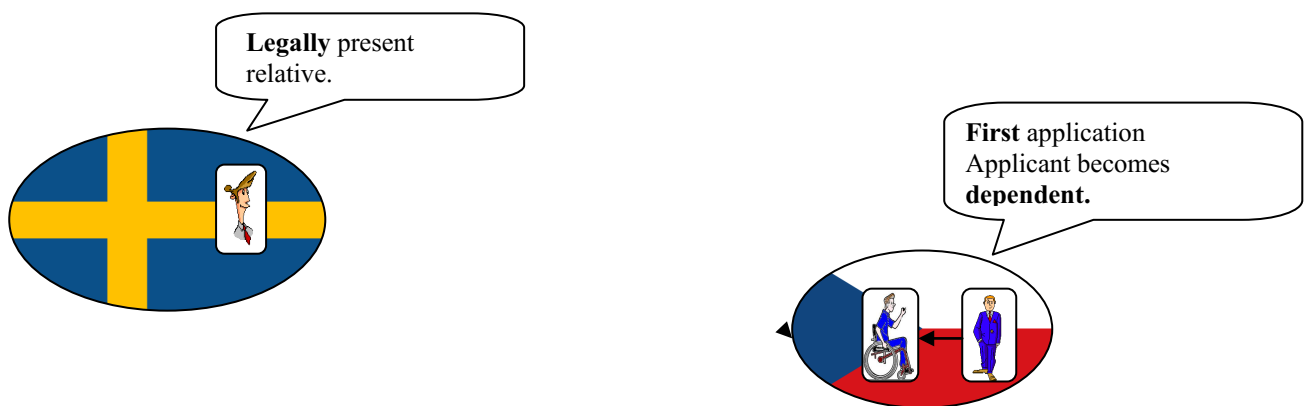
CZ is responsible. The rule in article 7(3) of the Proposal does not apply in this case since the first decision in substance has been already taken.

*3) Third country national applies for international protection in CZ = CZ is responsible. At the time of lodging the application for international protection he/she is not dependent on the assistance of the third person.*

*a) During the procedure applicant becomes dependent (illness, accident ...) on the assistance of the third person. It is then found out that his/her relative is legally present in Sweden and is willing to take care of the applicant.*

b) *Applicant moves to another Sweden before first decision in substance is taken in CZ. After the arrival to Sweden he/she applies for international protection and becomes dependent on the assistance of the third person a due to the accident or illness etc. It is found that relative of the applicant who is willing to take care of the dependent applicant is legally present in Sweden.*

*Ad a) In the course of the procedure applicant becomes dependent (illness, accident ...) on assistance of the third person. It is then found out that applicant's relative is legally present in Sweden and is willing to take care of the applicant.*

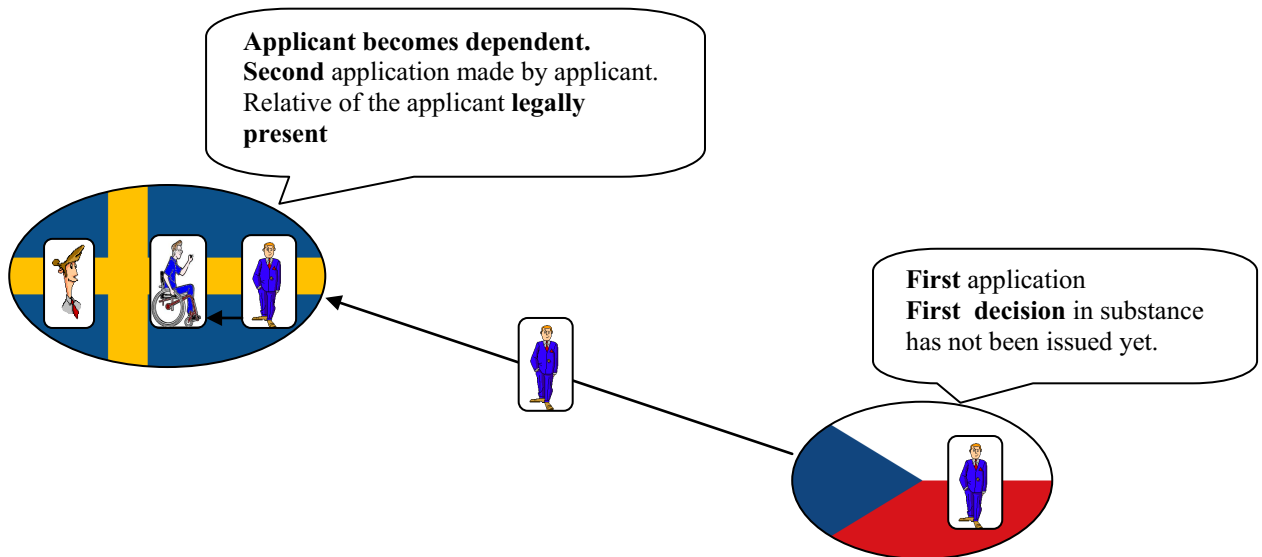


### **Under the proposal**

**CZ is responsible.** The situation when the application was lodged is important for the determination of the responsibility (art. 7(2) of the Proposal). At the time of lodging the application for international protection in CZ applicant was not dependent.

**Rule in Art. 7(3) does not apply in this case** since the second application was not made by the applicant. **However rule in art. 7(3) would apply in the case dependent applicant withdraws his/her application in CZ and lodges new application in CZ again! Sweden then would be responsible** for examination of the second application made by dependent applicant.

*Ad b) Applicant moves to Sweden before first decision in substance is taken in CZ. After the arrival to Sweden applicant becomes dependent on the assistance of the third person a due to the accident or illness and applies for international protection in Sweden. Relative of the applicant who is willing to take care of the dependent applicant is legally present in Sweden.*



**Solution under the Proposal:**

**Sweden is responsible** for the examination of the application lodged in Sweden provided that CZ had not issued first decision in substance. **Rule in article 7(3) applies. If there was not rule in art. 7(3), CZ would be responsible and obliged to take the applicant back from Sweden.**

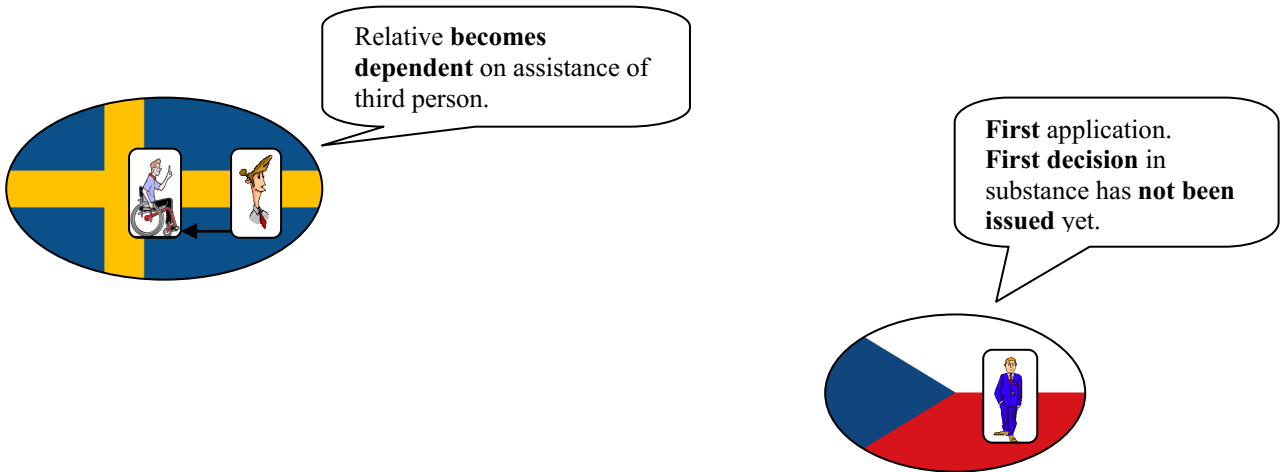
*4) Third country national applies for international protection in CZ = CZ is responsible. Before the first decision in substance is taken in CZ applicant's relative legally present in Sweden becomes dependent on assistance of third person. Dependent relative of the applicant has no one from the family who could take care of him/her in Sweden.*

*c) Applicant stays in CZ.*

*d) Applicant moves to Sweden and applies for international protection before the decision in substance is taken in CZ.*

*e) Applicant moves to Sweden and applies for international protection but after the decision in substance taken in CZ.*

*Ad a) Applicant stays in CZ*



**Solution under the Proposal:**

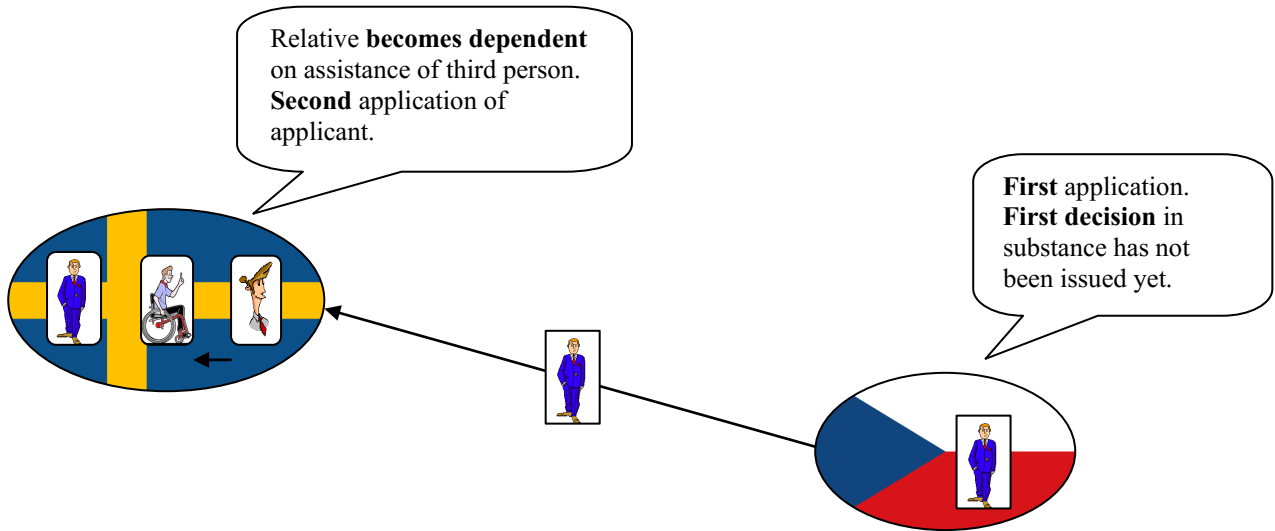
**Sweden is responsible** for the examination of the application lodged in CZ provided CZ requests **Sweden** to take charge of the applicant within the 3 months from the moment he/she applied for IP in CZ for the first time.

**Rule in art. 7(3) does not apply in this case** since subsequent application was not lodged in SE, CZ or another MS.

In the situation where the relative of the applicant becomes dependent after the date when applicant lodged his/her application in CZ but before the first decision in substance is issued by CZ **rule in art. 7(3) can be applied:** Applicant withdraws his first application in CZ and lodges new one in CZ indicating that his/her relative in Sweden is dependent. In accordance with the rule in article 7(3) Sweden should be responsible for examining the second application of the applicant.



*Ad b) Applicant moves to Sweden and applies for international protection before the decision in substance is taken in CZ.*

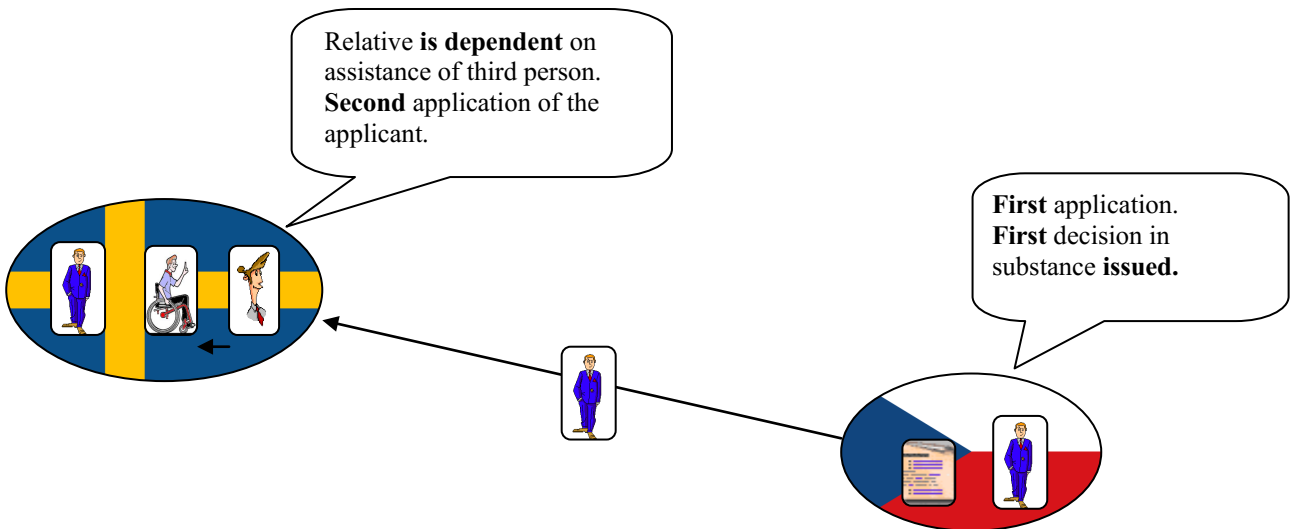


**Under the proposal**

**Sweden is responsible** for the examination of the second application lodged by applicant in Sweden provided that relative became dependent before the second application was lodged in Sweden

**Rule in article 7(3) is applicable in this case. If there was not rule in par. 7 (3) CZ would be still responsible and obliged to take the applicant back to the CZ.**

*Ad c) Applicant moves to Sweden and applies for international protection but after the decision in substance taken in CZ.*



### **Under the Proposal**

**CZ is responsible. Rule in art. 7(3) is not applicable** since the first decision in substance has already been issued by CZ.

### **FAMILY PROCEDURE (ART. 12)**

Presidency deems that the rule in article 7(3) of the Proposal cannot be applied at all because Article 12 does not contain any real criteria.

This article is to solve the situations where under the criteria set out in previous articles family would be divided because different Member States are responsible for examination of the applications for international protection of the family members.

**Family unity and the situation of unaccompanied minors  
in the context of the Dublin Regulation**

**Background**

Family links play an important role in determining the Member State responsible for examining an asylum application. The Dublin Regulation contains several binding criteria meant to protect the unity of a family, namely Articles 6, 7, 8 and 14. Moreover, the discretionary clauses in Articles 3(2) and 15 aim at avoiding situations where family members would be separated due to the strict application of the Dublin criteria.

However, despite these provisions, practice demonstrated that in some cases asylum seekers are prevented to reunite/stay with members of their family. Not only this creates hardship for the families concerned, but it could also increase the level of secondary movements since asylum seekers could be pushed to illegality, in order to join/stay with their family members. Such practices may equally entail violations of the right to family unity as enshrined *inter alia* in Article 8 of the European Convention on Human Rights (ECHR). In addition, processing the asylum applications of the various members of a family by different Member States would make it more difficult to examine the applications thoroughly and take consistent decisions.

Several causes could be identified in this respect, such as difficulties in proving family links, complicated routes taken by family members and the existence of legal limitations and gaps in the current system.

In terms of legal limitations, the current system applies a restrictive definition of family members, covering only the core family to the extent that it was already formed in the country of origin (with one exception in Article 7: family member who is a refugee). In addition, the Dublin Regulation contains certain procedural/status limitations, such as the fact that the family member must be an asylum seeker awaiting a first decision regarding the substance.

Regarding the legal gaps, the strict application of the take charge and take back rules,<sup>1</sup> leads to situations where in practice members of the same family could be separated. *The study on the application of Article 7(3) and Articles 8-12 of the proposal for Dublin Regulation*, presented by the Czech Presidency, included several such examples.<sup>2</sup> In some cases, Member States overcome these legal shortcomings by applying the discretionary clauses of the Regulation. Family matters appear to be also frequently brought before the appeal courts in Member States, which examine the appeals in the light of Article 8 of the ECHR.

Regarding the particular situation of unaccompanied minors, the current rule in Article 6(2) suggests that in case of absence of family members, the Member State responsible should be the one where the minor lodged his first application. In addition, contrary to other provisions related to minors, no reference is made in this paragraph to the best interests of the child. In practice, this means that unaccompanied minors could be automatically sent back to those Member States where they first made an application, with no consideration for their best interests. Despite these legal requirements, some Member States appear to refrain in certain circumstances to send back unaccompanied minors.

---

<sup>1</sup> "**Take charge**" implies that a **first application** for asylum has been lodged and that, thus, as Article 5(2) requires, the responsible Member State is to be determined in accordance with the criteria laid down in Chapter III of the Regulation. This is to be contrasted with "**take back**", which implies that a **previous application** has been made and that either there is a Member State who has already taken responsibility (Articles 16(1)) or that during the process of determining responsibility the application for asylum was withdrawn (Article 4(5)). Under the current Regulation, "take back" overrules the "take charge" rules in all circumstances.

<sup>2</sup> See for instance case 5) on page 8 regarding Article 8 of the proposal; case 1) on page 13 regarding Article 9 of the proposal; case 1a) on page 17 regarding Article 10 of the proposal; case 1b) on page 21 regarding Article 11 of the proposal etc.

## **Commission's proposal**

### **A: Article 7(3)**

In its proposal amending the Dublin Regulation, the Commission proposed to insert a new rule (Article 7(3)), whereby in case of two or more applications for asylum, the Member State where the latest application was made shall not automatically send back the applicant to the Member State of the first application but check whether one of the family unity criteria could not be applied meanwhile (e.g. due to possibly new elements regarding the family situation of an applicant or family elements unknown by Member States at the moment of the first application for asylum).

The Commission services believe in general that this new rule does contain guarantees in order to avoid abuse, prevent asylum shopping and ensure that an application for asylum is not examined by more than one Member State.

First, it is proposed to apply this principle only when a Member State has not yet taken a first decision regarding the substance of the claim. In case of a first such decision being already taken, the normal take back rules would apply and the applicant would be sent to the Member State which took that decision.

Second, given the existing condition that family should already be formed in the country of origin, it would not be possible for an asylum seeker to get married with another asylum seeker present in another Member State just in view of avoiding the application of Dublin rules.

There is however a risk of potential abuse when it comes to Article 9 of the proposal (Article 7 of the Regulation), concerning the reunification with a family member who is a refugee, regardless of whether the family was formed in the country of origin or not. In this case, it can be argued that an asylum seeker could get married with a refugee in another Member State just in order to avoid the application of the Dublin rules and to choose the Member State of residence. The CZ Presidency proposed therefore as compromise to exclude Article 9 from the scope of application of Article 7(3). The Commission services appreciate this as a step in the right direction.

However, it is considered that there is one case where Article 7(3) could be applied – without risk of abuse – also to situations covered under Article 9, namely when the family (asylum seeker + refugee) was formed already in the country of origin.<sup>1</sup> Therefore, instead of deleting the reference to Article 9 from Article 7(3), it is suggested to specify that Article 7(3) is applicable in the case of Article 9 only when the family was formed in the country of origin (as for all the other family provisions).

Finally, the Commission services also believe that by better taking into account the family situation of each asylum seeker in determining the Member State responsible while limiting the possibilities of abuse, the risk of asylum shopping could actually decrease, since asylum seekers would have in principle less incentive to move.

#### **B: Article 8(4)**

The Commission proposed to clarify in Article 8(4) that when the applicant is an unaccompanied minor and in the absence of family members or other relatives in Member States, the Member State responsible for examining his application shall be that where the minor has lodged his most recent application, provided that this is in his best interests. This does not mean that an unaccompanied minor could never be sent back to the Member State where he first applied for asylum. Member States could indeed do so, but only when that is in the best interests of the minor.

---

<sup>1</sup> For instance: X arrives in MS A and is recognised refugee; Y (X's spouse) arrives in MS B one year later and asks for asylum. At that time, Y/MS B do not know that X is in MS A who recognised him as refugee. When Y finds this out, he moves to MS A and there applies again for asylum. Since in this case Y already applied for asylum in MS B, based on the current Dublin rules, MS B would have to send a take back request to MS A, meaning that family members could be separated. The application of the new rule in Article 7(3) would allow MS B to keep Y on its territory and examine its application, meaning family members are kept together.

The Commission services believe that the principle of the best interests of the child shall always prevail over other considerations, regardless the stage of the asylum procedure (e.g. first or second application). Due to their vulnerable position, any transfer of an unaccompanied minor should be undertaken only after a careful consideration of their individual circumstances, given the impact any transfer could have on a minor and the risks to which a minor may be confronted in the receiving Member State.

During the negotiations in the Asylum Working Party, the Commission representative suggested to specify that the rule in Article 8(4) should only be applied if the previous application has not yet been subject of a first decision regarding the substance. As in the case of Article 7(3), such an addition to the rule contained in Article 8(4) would ensure that the principle according to which an application for international protection should be examined by one Member State only is applied also when it comes to unaccompanied minors.

### **Questions:**

Delegations are invited to reply to the following questions:

#### *Regarding family unity in general:*

1) Can delegations agree that when there is evidence that an asylum seeker has a member of his family (either an asylum seeker or a recognised refugee) on the territory of a Member State, that element should always be taken into account in the process of identifying the Member State responsible, regardless of when such evidence is produced, i.e. including after the lodging of a second application for asylum by the same person in a different Member State, subject to the condition that the previous Member State has not already taken a first decision on the substance of the asylum claim?

2) Can delegations agree that the same principle as outlined in question 1) should apply also to the cases concerning dependent relatives, for instance when an applicant becomes dependent on the assistance of a relative after a second application is made in a different Member State or when it is established that the dependent applicant has a relative legally residing in another Member State after he makes a new application in a different Member State?

Regarding unaccompanied minors:

1) Do delegations agree that child protection issues should prevail over other considerations and that therefore in case an unaccompanied minor applies for asylum in more than one Member State, he should not be sent back automatically to the Member State of the first application and that a careful assessment of his best interests has to be undertaken?

---