



**COUNCIL OF
THE EUROPEAN UNION**

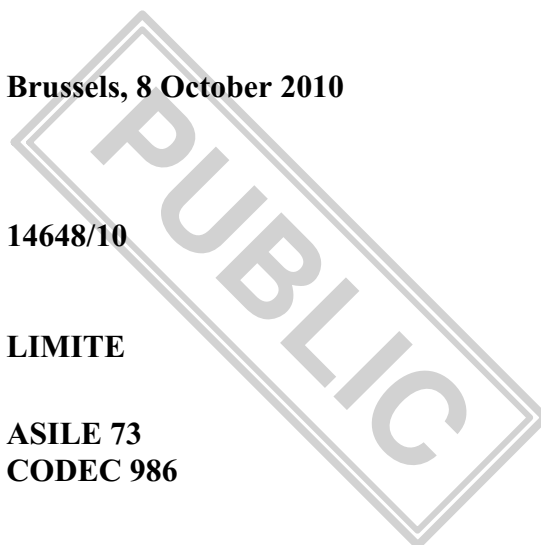
Brussels, 8 October 2010

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2008/0243 (COD)**

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LIMITE





**ASILE 73
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OUTCOME OF PROCEEDINGS

of:	Asylum Working Party
on:	3 September 2010
No Cion proposal:	16929/08 ASILE 26 CODEC 1758
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

1. At its meeting of 3 September 2010 the Asylum Working Party examined certain Presidency compromise proposals with regard to Articles 2(g), 4, 5, 6, 7(3), 8, 11, 17, 18, 19, 20, 21, 23, 25, 26, 27, 30, 30A, 32, 34, 35, 35A, 35B and 36 of the draft Regulation.
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:
 [...] .

ANNEX

↓ 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 ⇐¹

↓ 343/2003/EC (adapted)

⇒ new

☉ Council

HAVE ADOPTED THIS REGULATION:

¹ **SE:** general scrutiny reservation and linguistic reservation on the entire proposal.

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 protection ⇐ 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:

(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;

¹ OJ L 326, 13.12.2005, p.13.

~~(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

⊕ Council

⊕ [...] ⊖ ⊕ (g) "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 ⊕ [...] ⊖ third country nationals; ⊖

⊕ (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) when the applicant is a minor and unmarried the father, mother or another adult → [...] ← responsible for the → [...] ← him/her whether by → [...] ← law or → [...] ← by the national practice of the Member State where the adult is present, → [...] ← ←

→ (iv) when the person granted international protection is a minor and unmarried the father, mother or another adult responsible for → [...] ← him/her by law or by the national practice¹ of the Member State where the person granted international protection is present → [...] ← ←

¹ **IT, RO:** concerns about the inclusion of "national practice", because the relevant situation may vary from one MS to another.

↓ 343/2003/EC

↻ Council

↻ [...] ↻

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↻ [...] ↻ ↻ (v) the minor unmarried siblings ↻ [...] ↻ when the applicant
↻ [...] ↻ or the person granted international protection is a minor and
unmarried. ↻²

¹ **IE, HU** [which will consider whether the current compromise wording of Article 8(2) could replace the definition], **PT, PL, RO, SK, UK:** a definition of “relatives”, which has been deleted in the current compromise, would have added value for the purposes of this Regulation. **IE, AT, SE:** support the deletion of the definition. **AT:** this matter should be regulated under the Asylum Procedures Directive (APD). **DE, AT:** the concept of “relatives” should be defined as narrowly as possible.

NL: the concerns of the delegations could be accommodated with an amendment of Article 8(2) of the draft Regulation (see the relevant footnote on that Article) instead of a definition on “relatives”.

² **DE, EE, FI, IE, LV, AT, SI, UK:** reservations, **BG, LT:** scrutiny reservations, on the expansion of the family members’ definition, in particular with point (v) and the consequent broadening of the scope of the Regulation. **Cion:** cannot accept the current draft wording of the family members' definition; it emphasized that the scope of this point has already been diminished vis-à-vis its original recast proposal.

NL: the extension of the scope of the definition with the inclusion of minor unmarried siblings when the applicant is a minor and unmarried [point (v)] could be deleted and Article 8(1) could be amended accordingly [see Article 8(1) and the **NL** proposals and background in detail in doc.12728/10]. **DE, MT, FI, LT, UK:** considered the **NL** compromise as a possible way forward. **Cion:** do not agree with this suggestion because it will impede the coherence among the relevant different definitions of the asylum instruments, it will entail legal uncertainty (many Articles are affected by this definition) and it will be too restrictive in respect of siblings.

⇒ [...] ⇄

⇒ [...] ⇄ ⇒ (h) ⇄ “minor” means a third-country national or a stateless person below the age of 18 years;¹

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

⇒ [...] ⇄ ⇒ (i) ⇄ "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;²

⇒ [...] ⇄

¹ **DE:** prefers an age threshold of 16 years - the reservation is in connection with Article 6(2).

² **SE:** this definition should be the same throughout the asylum law instruments. The wording in this draft Regulation could be used as well for the other proposals.

↓ new

↻ Council

↻ [...] ↻

↻ ↻ [...] ↻ ↻ (j) "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

↻ Council

↻ [...] ↻ ↻ (k) ↻ "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;²

¹ **SE:** this definition should be the same throughout the asylum law instruments. The wording in this draft Regulation could be used as well for the other proposals.

² **SE:** this definition might draw for improvement on the definition of "residence permit" in the Reception Conditions Directive, if the two definitions have the same scope.

➤ [...] Ⓞ ➤ (1) Ⓞ "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:¹

- (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;
- (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 ➤ [...] Ⓞ ➤ . Ⓞ

¹ **SE:** this definition should correspond to the relevant provisions of Regulation 810/2009/EC establishing a Community Code on visas ("Visa Code"). **Pres:** this issue will be dealt with in the upcoming meeting of the Working Party.

↓ new

↻ Council

↻ [...] ↻

↓ 343/2003/EC (adapted)

↻ new

CHAPTER II

GENERAL PRINCIPLES ☒ *AND SAFEGUARDS* ☒

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 ⊗¹

41. ⇒ 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: ⇐

↓ 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 different steps of the procedure, including the possibility to request a personal interview pursuant to Article 5² as well as ⇒ [...] ● the time limits to be followed by the Member States; ●³

¹ **SI:** maintain reservation on the Article.

² **FR, IT, RO:** reservations on the reference to the personal interview, as long as it constitutes an obligation for the Member State, following a request by the the applicant.

³ **AT:** reservation in relation to the time framework comprised in point 1(b).

☞ [...] ☞

☞ [...] ☞ ☞ (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. 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.

☞ [...] ☞

3. A common leaflet ³, as well as a specific leaflet for unaccompanied minors, ⁴ 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). ⁵ This common leaflet shall also include information regarding the application of the Regulation ⁶ [concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Regulation] (EC) No [...] and in particular the purpose for which the data of the asylum seeker concerned will be processed within EURODAC. ¹

² [...]

Article 5

Personal interview²

1. The Member State carrying out the process of determining the Member State responsible under this Regulation, shall³ ⁴, at the request of the applicant or ⁵ [...], may⁴, where it is deemed necessary, ⁶ [...] conduct a personal interview with the applicant. The interview shall be conducted by ⁷ a qualified person under national law ⁸ [...]

⁹ 2. 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

¹ **AT:** scrutiny reservation on the point.

² **IE, IT, FR, PT SI:** reservations on the Article; in particular on the obligation for the Member States (MS) to grant an interview at the request of the applicant.

³ **MT, SI:** want to convert the obligation for the MS to grant an interview into a discretion (replace "shall " with "may").

⁴ **SE:** scrutiny reservation, considers that if a MS deems it necessary to conduct a personal interview, then it should become obligatory for this MS, therefore the word "may" ought to be deleted.

(c) a personal interview according to this Article has already been conducted,¹ unless the applicant can submit [...] credible information regarding the presence of family members or other relatives in the Member States.

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).²

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.

¹ **AT:** delete the rest of the phrase after the word “unless”.

² **AT:** reservation against the possibility of the applicant to force an interview.

➤ [...] ◂ ➤ 7. ◂ The Member State conducting the personal interview shall make a ➤ [...] ◂ written report¹ containing ➤ at least ◂ 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 access to the report. ◂ ➤ [...] ◂

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 ➤ [...] ◂ have the necessary expertise in view of ensuring that the best interests of the minor are taken into consideration. ◂
- 3.² 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 **FR, IT:** reservation on the obligation to draw up a written report on the basis of the personal interview (**IT:** because it could entail overburdening national administrations with duplication of reports.) Instead, **IT** suggested including the relevant information in the Dublin standard form.

² **AT:** reservation against the non-defined wording "best interests" and against the obligation for the MS (which may not be finally responsible for the examination on the merits of the asylum application) to provide extended information on the minor's well-being and social development.

☞ [...] ☞

☞ 4. ☞ [...] ☞ For the purpose of applying Article 8 of this Regulation, where there ☞ [...] ☞ is credible information¹ that ☞ members of the unaccompanied minor's family or other relatives², ☞ who ☞ [...] ☞ could³ take care of him/her may legally be ☞ present on the territory of Member States ☞ [...] ☞ ☞, the Member State where the application for international protection was lodged shall, as soon as possible after its lodging, start to trace them, where necessary with the assistance of international or other relevant organisations, whilst protecting ☞ [...] ☞ the minor's best interests. ☞⁴

☞ [...] ☞

-
- ¹ **Cion:** cannot agree with the Presidency compromise (MS to start the tracing procedure only when there is “credible information”) because it would go below the current *acquis* in the Reception Conditions Directive. **Cion** believes that MS should be more proactive in the search for the relatives; only at the end of the procedure a piece of information could be evaluated as credible or not. **PT:** doubts the added value of the Presidency compromise (the provision should be in line with the relevant one in the Reception Conditions Directive), especially because there are no definitions of “unaccompanied minors” and “other relatives”
HU, MT, SI, SK, UK: support the **Pres** compromise.
- ² **FI, FR, IE, NL, UK:** reservations on the term “other relatives”, which they consider as too broad.
- ³ **IT, AT, RO:** reservations on the point, the latter two querying whether the change from “can” to “could” entailed an extension of the provision’s scope;
RO: reservation also on the relation between this provision and Article 8(2). **SI:** scrutiny reservation on the point. **SI:** the compromise submitted by **NL** on Article 8(2) could be used in this provision as well.
- ⁴ **SE:** doubts about the added value of the provision and suggests deleting it (given that there is a general provision on tracing in the Reception Conditions Directive). Alternatively, **SE** suggested reconstructing Article 6, putting paragraphs 2 and 4 about unaccompanied minors at the end of it. **Cion:** the tracing obligation in the RCD is of different nature, in the Dublin system all parties involved are in the territory of the MS. Article 8(4) could also apply for better implementing the tracing obligations.

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. In view of the application of the criteria referred to in Article 8, 10 and 11, Member States shall take into consideration any available evidence regarding the presence ↻ [...] ↻ on the territory of a Member State of family members or of other relatives of the applicant for international protection, ↻ [...] ↻ on condition that such evidence is produced ↻ [...] ↻ before the acceptance of the request by another Member State to take charge or take back the person concerned, pursuant to Articles 22 and 24 respectively. ↻¹

¹ In order to complement the **Pres** compromise, the following suggestion at the end of the provision was put forward by **Cion**: "... and that the previous applications for international protection of the asylum seeker have not yet been subject of a first decision regarding the substance." in order to avoid having the merits of an application for international protection being examined more than once.

CZ, DE (thought that deleting the provision if accompanied with other modifications could be an option), **EL, FI, IE, IT, LV, MT, AT, PL, PT, SI, SE** (the latter prefer not inserting new deviations from the current implementing rules): scrutiny reservations on the **Pres/Cion** compromise text, due to the interaction with other provisions or because they consider that it might make the Dublin mechanism less efficient.

IE, besides the timing of the production of the evidence, it has concerns about who will decide whether the evidence is trustworthy. **IE** suggested adding "any available **critical** evidence".

↓ 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
-

↓ 343/2003/EC Article 15(3) (adapted)

⇒ new

☉ Council

23. ~~If~~ ☒ Where ☒ ⇒ the applicant ⇐ ~~asylum seeker~~ is an unaccompanied minor who has a relative ~~or relatives~~ ⇒ legally present² ⇐ in another Member State ☉ [...] ☉ ☉ and where it is established, based on an individual examination, that the relative ☉ can take care of him or her, ☒ that ☒ Member States shall ☉ unite the minor with his/her relative and ☉ ~~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.³
-

¹ **NL**, along with its proposal to delete point (g)(v) of Article 2 (see footnote ...) suggested the following amendment to this provision: *Where the applicant 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 or a minor unmarried sibling is legally present, provided that this is in the best interests of the unaccompanied minor.*

² **SI, UK**: replace “legally present” with the term “regally resident” (found in Article 11 of the proposal and which has narrower scope, e.g. does not include the asylum seekers). **Pres**: the two provisions regulate different situations. **Cion**: the two cases should not be confused.

³ **CY, DE, FI, AT, PL, RO**: reservations on the provision; **RO** due to the deletion of the definition on relatives; also suggests including explicit reference to the agreement of both parties for the application of this provision, **DE** asks the deletion of the paragraph preferring

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.¹

the current Article 15(3) wording, **AT** concerns about whether it is feasible to determine at a different MS that the relative is capable of taking care of the minor.

FR, IE, MT: scrutiny reservations on the paragraph (in relation to Article 6 para 4 for which they also maintained scrutiny reservations). **CZ** suggested introducing an implementing rule on how the assessment of the relative's ability to take up the minor can be made. **SE:** scrutiny reservation on the Presidency compromise (prefers the wording of the original **Cion** proposal), pointing out that the procedure for determining whether the relative can take care of the minor would be unduly prolonged and thus the relevant deadlines for MS actions would not be possible to be observed. **Cion** recalled that the tracing obligation exists in the current Dublin Regulation and that, pursuant to Article 12(2) of the Implementing Regulation, MS are entitled to extend the deadline for a take charge request where more time is needed.

NL: suggested the following wording in order to make the provision easier to implement, with regard to the responsibility criterion, to avoid possible disputes which might be caused by cases under Articles 6(4) and 8(2) which would run counter to the best interest of the minor, as well as to tackle the problem of definition of "relatives" [see relevant footnote in Article 2]: *Where the applicant is an unaccompanied minor who has a **second-degree relative (grandparent, brother, sister) or a relative who was previously responsible for his/her care, legally present in another MS, that MS be responsible...*** **Cion:** considers this wording too restrictive and below the current acquis (e.g; an uncle of the applicant would be excluded), taking into account that the important element for Article 8 is the ability of a relative to take care of the applicant and this evaluation on each case lies with MS competence. **Cion** pointed out that more detailed rule could be decided upon under the comitology / delegated acts regime. **PL:** reservation (considers it too restrictive) **CY, DE, EL** (considers it too restrictive), **FI, FR, MT, PT, SK, UK:** scrutiny reservations on the **NL** compromise. **HU, RO:** support the **NL** wording, **AT:** might be acceptable as a compromise but the scope of the "relative" should not be extended any further. **SI:** might be acceptable if a definition on "relatives" is adopted.

¹ **DE:** reservation on the provision.

↓ 343/2003/EC
⇒ new
⇒ Council

4. In the absence of a family member ⇒ or of another relative¹ ⇐ , the Member State responsible for examining the application shall be that where the minor has lodged his or her ⇒ ⇐ [...] ⇐ ⇐ first ⇐ ⇐ application for asylum ⇒ international protection, provided that this is in the best interests of the minor.² ⇐

⇒ [...] ⇐

↓ 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).

¹ **AT:** reservation on the wording “or of another relative”.

² **IT:** reservation on the deletion of the principle of the most recent application, serving as a basis for the examination of the minor’s application. **Cion:** in agreement with **IT** prefers reference to the most recent application. **CY:** scrutiny reservation on the provision.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

Article ~~7~~9

⊗ *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 ~~8~~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~~11

~~15~~ Dependent relatives ~~15~~¹

1. ~~15~~ Where ~~15~~ In cases in which ~~15~~ person concerned ~~15~~ an ~~15~~ asylum seeker ~~15~~ is dependent on the assistance of ~~15~~ the other ~~15~~ ~~15~~ a ~~15~~ relative ~~15~~ legally resident in one of the Member States, ~~15~~ ~~15~~ present in another Member State on account of pregnancy or a new-born child, serious illness, severe handicap or old age, ~~15~~ ~~15~~ Member States shall keep or bring together the asylum seeker with that relative, ~~15~~ provided that family ties existed in the country of origin ~~15~~ and that the persons concerned expressed their desire in writing. ~~15~~ ~~15~~

~~15~~ 2. Where the relative is legally ~~15~~ resident² 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 ~~15~~ resident ~~15~~ ~~15~~ unless the concerned asylum ~~15~~ seeker's health condition ~~15~~ prevents him/her ~~15~~ during a significant period of time from travelling to that Member State. ~~15~~

~~15~~ Where the concerned asylum ~~15~~ seeker's health condition prevents him/her during a significant period of time from travelling to another Member State, the Member State responsible for examining his/her application shall be the one where he/she is present. ~~15~~ ~~15~~³

¹ **DE, AT, UK, FI, SI** (the last two related to the definition of relatives): reservations on the Article.

² **Cion**, in reply to **SI**, clarified that as a compromise the scope of the term “legally resident” excludes relatives who are asylum seekers.

³ **DE, AT**: want deletion of paragraph 2 (especially its second part), considering that it encourages abuse. **AT** in particular pointed out that there are no extended time limits for sending requests or for transferring a person in case that he/she has in bad health. Furthermore this provision could be interpreted as putting relatives in a better situation than the core family. **Cion**: abuse is unlikely because dependence and family links have to be proven. More detailed rules could be decided in the comitology / delegated acts framework. **SI**: has a concern about the practical implementation of the second subparagraph.

↓ 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~~
⇒ [...] this Article 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

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 ⇒ for international protection ⇐ 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 ~~1014~~

~~Entry and/or stay~~

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 ~~2725/2000~~ [concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Regulation]~~(EC) No [.../...]~~ (EC) No [.../...], 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~~ ⇒ international protection ⇐ . 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 ~~before lodging the application for international protection~~, that Member State shall be responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐ .

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 ⇒ for international protection ⇐ .

Article ~~11~~15

⊗ Visa waived entry ⊗

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

Article ~~12~~16

⊗ Application in an international transit area of an airport ⊗

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

CHAPTER IV

~~HUMANITARIAN CLAUSE~~

⊠ DISCRETIONARY CLAUSES ⊠

Article ~~15~~17

⊠ Discretionary clauses ⊠

↓ 343/2003/EC Article 3(2) (adapted)

⇒ new

⦿ Council

1. ~~2.~~ By way of derogation from ~~Article 3, paragraph (1),~~ each Member State may ⊠ [...] ⊠
⊠ 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, ⊠ [...] ⊠¹

⊠ [...] ⊠ ⊠ The ⊠ Member State ⊠ which decided to examine an application for
international protection pursuant to this paragraph ⊠ [...] ⊠ ⊠ 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 ⇐.

¹ **Cion:** regrets the deletion of the reference to the consent of the asylum seeker, which it considers that it was meant to ensure a proper application of family unity criterion.

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

2. ~~± 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 ☒.

↓ 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

⇒ Council

⊗ 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 ~~[...]~~ examine ~~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~~ ⇐¹

↓ 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.

¹ **SI:** reservation on the paragraph, because it may entail additional administrative burden for MS; query whether taking a decision on the humanitarian reasons is upon MS discretion or a decision shall be issued within two months. **Pres / Cion:** confirmed that the Article maintains its discretionary nature and the deadline is stipulated to ensure legal certainty for the applicant as well as for the requesting MS that it will receive an answer timely.

↓ 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 to 19~~, 22 and 28, of an asylum seeker who has lodged an application in a different Member State;
 - ~~(b)~~(c) 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. ⇐;¹

¹ **SI:** scrutiny reservation on the Article, suggesting replacing at para.1 (b), (c) and (d) the term “residence document” with “residence permit”.

~~(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 ~~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 ~~is~~

⊗ 2. The Member State responsible shall ~~in~~ in all circumstances referred to in paragraph 1 (a) ~~[...]~~ and (b) examine or ~~complete~~ complete the examination of the application for ~~asylum~~; international protection made by the applicant, within the meaning of Article 2(d).

~~[...]~~ For the cases referred in paragraph 1 (c), 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 the examination of his/her ~~[...]~~ application is completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as defined in Directive [2005/85/EC] [Procedures Directive]. In such cases, Member States shall ensure that the examination of the application ~~is completed~~, within the meaning of Article 2(d).

¹ **FR:** scrutiny reservation on the link with the Asylum Procedures Directive (APD) proposal. **AT:** reservation linked to a similar concern on Article 24(2) APD in order to provide for a time limit putting an end to the procedure, after which the case could not be reopened. **DE:** suggests deleting the second and the third sentence of paragraph 2. **HU:** scrutiny reservation on point 2(b), asking for clarifying that once the legal remedy deadline has expired the case should not be reopened, or deleting the provision and apply the relevant clause from the APD. **CZ, UK:** scrutiny reservations on the Article. **NL** seeking to clarify that this subparagraph does not refer to cases where the applicant has left the MS during the appeal procedure (and which are to be regarded as a tacit withdrawal) suggested the following amendment:
For the cases referred to in paragraph 1 (c), when the Member State responsible has discontinued the examination of an application following its withdrawal by the applicant and no decision in first instance has been taken, the Member State shall ensure that the applicant is entitled to request that the examination of his/her application is completed or to lodge a new application for international protection, which shall not be treated as a

⇒ 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 or has had, the opportunity to access an effective remedy, pursuant to Article 39 of Directive 2005/85/EC. ⇒ [...] ⇐ ⇐¹

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.

↓ 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.

subsequent application... .Cion: could support the NL compromise in substance with some clarifications (reference to the APD in order to stress that this provision applies only to cases where an applicant explicitly or implicitly withdraws an application during the first-instance procedure) as follows: *For the cases referred to in paragraph 1 (c), when the Member State responsible has discontinued the examination of an application following its withdrawal by the applicant pursuant to Articles 19 and 20 of Directive 2005/85/EC, it shall ensure that the applicant is entitled...*

¹ CZ: scrutiny reservation on this subparagraph.

↓ 343/2003/EC (adapted)

⇒ new

3.¹ ~~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 ⇨

↓ 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 **AT:** query regarding this provision, as well as in respect of Article 20(5); concerns how it would be possible for a MS where the applicant is currently not present, to establish that the latter has left the territories of the MS for the three-month period. To remedy that **AT** suggested providing for an obligation of the requesting MS to support the MS which would be responsible to complete the examination e.g. by holding an obligatory interview on the applicant's whereabouts.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

CHAPTER VI

⊗ PROCEDURES FOR TAKING CHARGE AND TAKING BACK ⊗

⊗ SECTION I: START OF THE PROCEDURE ⊗

Article ~~420~~

⊗ *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 [...], g shall be indissociable from that of his /her family member [...], and shall be a matter for the Member State responsible for examining the application for asylum ⇒ international protection ⇐ of that [...], family member, , 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 where the Member State requested to complete the process of determining the responsible Member State can establish that if 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 another Member State.

↓ 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.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

⊗ SECTION II: PROCEDURES FOR TAKE CHARGE REQUESTS ⊗

Article ~~17~~21

⊗ *Submitting a take charge request* ⊗

1. Where a Member State with which an application for ~~asylum~~ ⇒ international protection ⇐ 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 ~~42~~20(2), ~~call upon~~ ⊗ request ⊗ the other Member State to take charge of the applicant.

¹ ⇒ In case of a EURODAC hit with data recorded pursuant to Article 10 of Regulation (EC) No [.../...] concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation, the request shall be sent within two months of receiving that hit pursuant to Article 11(2).² ☹

Where the request to take charge of an applicant is not made within the period of three months ⇒ or two months respectively ☹, responsibility for examining the application for ~~asylum~~ ⇒ international protection ⇐ shall lie with the Member State in which the application was lodged.

¹ **FR, FI, MT, AT, PT, RO, SE, UK:** support the **Pres** compromise text. **DE:** can support the **Pres**, but would want a longer deadline in case where it is temporary impossible for the MS to collect the fingerprints of the asylum seekers.

² **RO:** to clarify that this provision is of the draft EURODAC Regulation.

2. The requesting Member State may ask for an urgent reply in cases where the application for ~~asylum~~ ⇨ international protection ⇐ was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order 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 ~~1822~~(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 ~~1822~~

⊗ 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~~ 23¹

☒ Submitting a take back request ☒

¹ **CZ, FI, SE:** scrutiny reservations on the Article, (**CZ** because of its interaction with the Return Directive). **DE, EE, PT, MT, UK:** could agree with the **Pres** compromise. **NL,** in order to make the Article clearer and easier to implement suggested to amend it in order to narrow its scope to MS (the requesting MS) in which a further application for international protection has been lodged and to add a new Article 23A, (*see 14648/10 ADD I*) which will be dealing with the situation in which no subsequent application has been lodged and the third-country national is staying without a residence document in the requesting MS. **Cion:** could support splitting the Article for the sake of clarity, it could not agree however, with the **NL** text providing that a MS shall not assume responsibility for a third-country national illegally staying in that MS who is an applicant for international protection in another MS. **Cion** stressed that that one of the primary principles of the Dublin system is that an application for international protection should be fully assessed by one MS; therefore the MS where the person is staying illegally should send him/her back to the MS where the application for asylum was lodged or otherwise it will become responsible for examining the application. **CY, DE, EL, SE, EE, ES, FI, MT, PT, UK:** (the first four could accept splitting the Article) scrutiny reservations on the **NL** compromise. **CZ:** tend to prefer the **NL** proposal. However, In Article 23A **CZ** would be unwilling to exclude the application of the Return Directive as from the submission of the take back request, because it is not confirmed that this request will be accepted by the requested MS. Besides thatm the Dublin Regulation may be applied even after a return decision under the Return Directive is issued.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

1. ~~An asylum seeker shall be taken back~~ ⇒ Where a Member State with which a subsequent application¹ for international protection has been lodged or on whose territory an applicant or another person as referred to in Article 18(1)(d) ⇒ whose application for international protection has not been rejected ⇒ [...] ⇒ by a final decision² ⇒ 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), (d)(c) and (e)(d), as follows:~~ ⇒ it may request that other Member State to take back that person. ⇐
-

↓ new

⇒ Council

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 In reply to a request from **DE** and **SE**, **Cion** clarified that this concept is different from the “subsequent application” in the APD (which provides for a new application in the same MS), therefore, the term in the Dublin Regulation should be modified (possibly as “further application”).

² In reply to **LT**, **RO**, **Pres** clarified that the term “final decision” refers to a decision taken by the first MS.

3 ☞ [...] ☞ ☞ By derogation from Article 6(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals¹, 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) ☞, whose application for international protection has not been rejected ☞ [...] ☞ by a final decision ☞ 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.²

¹ **CZ:** considered that the reference to Article 6 (2) of the Return Directive entails accepting that application for international protection is to be interpreted as “other authorisation offering the right to stay issued by another MS” according to that Directive.

² **CZ:** reservation on this paragraph, suggesting deletion of the wording “... or on whose territory the person is staying without residence document; **CZ** does not agree with the fact that the responsibility for examination of the application for international protection may be transferred to the MS where the third-country national was apprehended for illegal stay and had not applied for international protection (i.e. the examination takes place in a MS without the will or consent of the applicant).

In relation to paragraphs 4 and 5, **CZ, RO** pointed out that the MS which has apprehended the illegally staying third-country national will not be able to find out at what stage his/her asylum procedure in the potentially responsible MS is without using the Dublin mechanism. Therefore, the option to choose between Dublin and the Return Directive (paragraph 5) is not real.

5. Where a person as referred to in Article 18(1)(d) whose application for international protection has been rejected [...] by a final decision in one Member State is in the territory of another Member State without a residence document, the second Member State may either request the first Member State to take back the person concerned or carry out a return procedure in accordance with Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

When the second Member State decided to request the first Member State to take back the person concerned according to this Regulation, the rules laid down in Directive 2008/115/EC shall not apply.¹

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

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

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).

¹ **RO:** the MS which carries out the Return Directive procedure should notify it to the MS responsible under the Dublin system.

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 subparagraph (b) (1), ⊗ shall be tantamount to accepting the request ⊗ , ⊗ and entail the obligation ⊗ # shall be considered to have agreed to take back the asylum seeker ⊗ person concerned ⊗ ⊗ , including the obligation to provide for proper arrangements for arrival ⊗ .~~

~~(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;~~

~~(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 19~~25~~¹

Notification of a transfer decision

1. Where the requested Member State ~~accepts~~ agrees 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~~ 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. 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.
2. 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 [...]

¹ **NL:** suggested excluding from the scope of this Article those third-country nationals to whom a return decision has already been issued, but have not been removed; in particular, it objects issuing a transfer decision to a third-country national residing illegally in a MS and who has not lodged an application for international protection in this MS. This person has already received a written, motivated return decision open to appeal, pursuant to the Return Directive. Therefore, a written notification that this person will be transferred to a MS in the Dublin system (which will be susceptible to appeal although no application for international protection has been submitted) has no added value to justify the extra administrative burden. **CZ:** scrutiny reservation on the Article (with regard to the link between the Dublin and the Return Directive systems); it shares the NL concerns. **Cion:** against this proposal because the Dublin Regulation and the Return Directive constitute two different legal systems with different consequences and rights attached to them. The notification of a decision affecting a person is crucial in order to allow him/her be informed about this situation and exercise any effective remedies applicable.

➤ 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 responsible by his/her own means. ➤ Member States shall also ensure that information on persons or entities that may provide ➤ [...] legal assistance to the person concerned is ➤ [...] communicated to the person concerned together with the decision referred to in paragraph 1, when the information has not been already communicated. ➤ [...]

~~➤ [...] 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. When the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall ➤ [...] inform him/her ➤ [...] 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.

↓ new

☞ Council

Article 26¹

Remedies

1. The applicant or another person as referred to in Article 18(1)(d) shall have the right to an effective ☞ [...] ☞ remedy, in the form of an appeal or a review, in fact and in law,² ☞ [...] ☞ ☞ against ☞ the transfer decision referred to in Article 25, before a court or tribunal.³
2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his/her right to an effective ☞ [...] ☞ remedy pursuant to paragraph 1.⁴

¹ **CZ** (in relation to the Return Directive), **IE, IT, NL** (linked to the concerns it has on Article 25), **UK** (linked to Recital 17 of the draft Regulation - these concerns are also shared by **IE**): reservations on the Article.

² **PL**: scrutiny reservation on the wording "in fact and in law" which might affect its judicial system.

³ **CY**: wanted to make clear that independent administrative bodies are entitled to examine appeals are included, or alternatively, to refer to national law in this matter.

⁴ **DE**: scrutiny reservation related to the deletion of the word "judicial" before "remedy".

3.¹ In the event of an appeal or review concerning the transfer decision referred to in Article 25, and where the right to remain in the Member State concerned pending the outcome of his/her appeal or review is not foreseen under national legislation [...], that Member State shall give the person concerned the opportunity to request the [...] court or tribunal [...] to suspend the implementation of the transfer decision pending the outcome of his/her appeal or review.

The decision on whether to suspend the implementation of the transfer, shall be taken within a reasonable period of time.

The introduction of such a request shall not suspend the implementation of the transfer unless national legislation allows for this.² Member States' competent authorities may also decide to suspend the implementation of the transfer decision pending the outcome of the appeal or review, whether or not a request has been made.

[...] 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

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

¹ **DE** (which prefers maintaining the current wording of Article 19 of the Regulation) reservation, **EL**: scrutiny reservation on the paragraph. **FI, FR, LT, MT, AT, PL, RO, SE, SI**: support the **Pres** compromise. **Cion**: reiterated its position, i.e. the right to ask for a suspensive effect (which already exists in many MS) in order to be effective has to be accompanied by the right to stay on the territory of the MS concerned until a decision on the suspensive effect is taken. **Cion** considered that this wording may lead to legal uncertainty and generate situations of “chain transfers”. **Cion** also recalled that suspension of administrative decisions which could lead to violation of Article 3 ECHR is considered a guarantee by the ECHR. **LU**: supported **Cion** points and stressed that in its system this procedure for an interim measure regarding the suspension effect can be concluded very swiftly.

² **CLS**: a better drafting could be *"The introduction of such a request ... shall be regulated by national legislation"*.

³ **AT**: reservation on this subparagraph.

➔ [...] ➔ ¹5. ➔ Member States shall ensure that legal assistance ➔ [...] ➔ be granted ➔ on request ➔ [...] ➔ free of charge where the person concerned cannot afford the costs involved ➔ , and insofar as it is necessary to ensure his/her effective access to justice ➔ [...] ➔ . Member States may provide that, as regards fees and other costs² the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance. ➔

➔ [...] ➔

➔ ➔ [...] ➔ ³Legal assistance shall include at least the preparation of the required procedural documents and representation before the judicial authorities ➔ [...] ➔ and ➔ [...] ➔ may be restricted to legal advisors or counsellors specifically designated by national law to assist and represent asylum seekers. ➔

➔ Procedures for access to legal assistance shall be laid down in national law. ➔

¹ **EL, FI, MT:** reservations on the free legal assistance, as principle, in the context of this provision, due to the administrative burden and the costs it will entail. **DE:** reservation on the paragraph, preferring the current wording and suggesting dealing with the issue of free legal assistance on a horizontal basis; **CZ:** wording of this point shall be aligned with the RCD Directive. **SE:** the granting of free legal assistance should be based on the need for such assistance. **LT:** reservation on the paragraph.

² **SE:** reservation on this clause, due to its difficult implementation.

³ **SE:** suggested amending the first sentence of the subparagraph as follows: "*When legal assistance has been granted it shall include...*"

SECTION V. DETENTION FOR THE PURPOSE OF TRANSFER

Article 27¹

Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for international protection ➡ [...] ◀.

¹ **DE:** in the light of its commentary on Article 27 laid out in doc 13733/10, entered a reservation on the Article, expressing concerns about the reference in this Article to the RCD proposal (where according to the Presidency compromise conditions of detention and procedural guarantees should be regulated horizontally) which is still largely unsettled. In the same vein, **CZ** (which entered a reservation on the Article), **ES, IE** (entered a reservation and wondered about the feasibility of merging Article 27 certain specific provisions on grounds and conditions of detention with its corresponding provisions of RCD), **SI, UK** objected the reference in Article 27 to the RCD. **SE, SK** entered scrutiny reservations on the Article in relation to the reference to the future RCD. **MT, PT:** scrutiny reservations on the Article. Moreover, **DE, LT** (which entered a scrutiny reservation on the Article) questioned the fact that a Regulation would refer to a Directive (which offers a wider discretion for its implementation). **CLS** pointed out that it is not a problem referring to a different type of legislative instrument in this draft Regulation, including the future RCD. **DE**, also stressed that it could not accept limiting the grounds for detention only to the risk of absconding; it should include the case where a person falling under the Dublin system (where there is evidence that another MS ought to be responsible) has been arrested for illegal entry and will be subject to return by force. **Cion:** if the asylum seeker is in detention on other grounds than the risk of absconding, detention shall not be interrupted if he/she has to be kept in detention for risk of absconding, but a new decision for this purpose would be required.

CY, EE, FI, IT, NL (all five entered reservations on the Article), **DE, AT, SE, SI:** suggested including in a single instrument all the provisions related to detention in the asylum context, (**SE** certain provisions of Article 27 at least), preferably, in RCD. **FR, NL:** a reference to the guarantees provided for in the Return Directive could be helpful.

- ¹2. ➡ [...] Ⓞ ➡ Without prejudice to other grounds of detention defined in 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 effectively², Member States may, in order to ensure the transfer to the Member State responsible, detain an asylum-seeker or another person as referred to in Article 18(1)(d) to a particular place if there is a risk of him/her absconding. Ⓞ
3. ➡ [...] Ⓞ ➡ Detention shall be ordered for the shortest period possible³, no longer than the time reasonably necessary to fulfil the required administrative procedures for carrying out a transfer. Ⓞ
4. ➡ [...] Ⓞ ➡ In case an asylum seeker is subject to a take charge procedure in accordance with Articles 21 and 22, 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. Ⓞ

¹ **UK:** reservation for paragraphs 2-6.

² **AT:** shall specify which these less coercive measures are.

³ **UK** expressed concerns for abuse if the order shall have to specify the exact period of detention. **Cion** only the principle of keeping the detention as short as possible is provided in this paragraph.

5. ➔ [...] ➔ In case an asylum seeker or another person as referred to in Article 18(1)(d) is subject to a take back procedure in accordance with Articles 23 and 24, detention pursuant to paragraph 2 may only be applied from the moment a Member State submits a take back request to another Member State in accordance with Article 23, until that person is transferred to the responsible Member State. ➔¹

¹ **DE, EE** stressed that a detainee should not have to be released after lodging an application for international application e.g. because the conditions of paragraphs 4 and 5 have not (yet) been fulfilled.

Regarding the distinction presented by the **Pres** between take charge cases (detention only possible from the moment of notification of a transfer decision) and take back (detention possible before acceptance of responsibility and notification, from the moment where a request to take back is sent to the requested MS), **DE** considered paragraph 5 too wide given that detention for asylum seekers should remain an exception, whereas **LU** thought the distinction justified by the fact that the risk of absconding in a take back case is much higher than in a take charge one. **RO** (reservation on Article 27 and in particular on the added value of the differentiation in paras 4 and 5), **FI, PL**: reservations on paragraphs 4 and 5. **NL**, preferring to apply detention where the application for international protection was made, opposed the distinction made in paragraphs 4 and 5; **AT, SI, SE, UK** did not agree with the later point in time for detention for take charge cases, because the person concerned may abscond in the meantime. **Cion** supported the **Pres** compromise.

AT considered that paragraph 5 (the time limit for take back cases) is contradictory to paragraph 3 (detention should not be longer than the time necessary to carry out a transfer). **Cion** recalled that the principle in paragraph 3 derives from the case law and that the interaction between the two provisions merits further consideration.

6. ☞ [...] ☞ ☞ Conditions of detention as well as guarantees available to detained applicants for international protection shall be the same as those specified in Directive [...]/.../EC [The reception conditions Directive].¹ Member States shall ensure that applicants for international protection detained in accordance with this Article enjoy the same level of reception conditions for detained applicants² as those laid down in particular in that Directive ☞ .

☞ [...] ☞

¹ **CLS** pointed out that this reference to the RCD might not be problematic for **UK** and **IE** (which have not opted in in that Directive) because paragraph 6 does not provide that RCD shall apply here, but simply that the conditions of detention “*shall be the same as those specified in RCD*”. **UK** questioned that the **Pres** text took for granted that the standards for detention for RCD will be suitable for Dublin cases and suggested stating that Dublin detainees should be treated in a similar way as other asylum seekers detainees, in order to avoid any discrimination between these two categories of detainees.

² In reply to **SE**, **Pres** clarified that “the same level of reception conditions” are general rules whereas “conditions of detention” are specific ones pertaining to the legal context of detention. **Cion** pointed out that the last sentence of paragraph 6 could be deleted.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

⊠ 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~~ ⇒ there is ⇐ a suspensive effect ⇒ [...] ⇐ ⇒ 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.

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).

↓ 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.
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 30¹

Exchange of relevant information before transfers being carried out

↻ [...] ↻

¹ **DE, IT, SE:** scrutiny reservations on the Article in relation; **DE** with the reference to data protection, **IT** in relation to the scope of the term "competent authorities" and **SE** with its nationals rules on confidentiality.

➔ [...] 1. The Member State carrying out the transfer shall ➔ [...] 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. ➔ [...] This information shall be communicated to the responsible Member State within a reasonable period of time before a transfer is carried out, in order to ensure that the competent authorities in the responsible Member State have sufficient time to take the measures required. ➔

➔ [...] 2. ➔ The transferring Member ➔ [...] State shall ➔, insofar as such information is available to the competent authority, transmit to the responsible Member State any information that it deems essential in order to safeguard the rights and immediate special needs of the person concerned, and ➔ in particular ➔ [...] :

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

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

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

➔ [...] (d) information about the ➔ assessment of the ➔ age of an applicant;¹

¹ **NL:** add at the end of the phrase: “and the method used to this effect”. **Cion:** could agree with this suggestion. **HU:** shall confirm that the assessment of the age shall be done once the other means have already been used.

☞ [...] ☞

☞ [...] ☞ ☞ 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 information exchanged shall only be used for the purposes set out in paragraph ☞ [...] ☞ ☞ 1 ☞ of this Article ☞ and shall not be further processed.

☞ [...] ☞ ☞

☞ [...] ☞

☞ 4. With a view to facilitating the exchange of information between Member States, 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). ☞

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

Exchange of health data before transfer is being carried out¹

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, insofar as available to the competent authority, transmit to the responsible Member State 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.

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 interests² of the individual or of another person where he/she is physically or legally incapable of giving his/her consent. The lack of consent, including a refusal of consent, 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

¹ **CY, IT:** scrutiny reservations on the Article; **IT** in relation with the possibility to issue a health certificate, which could incorporate the data provided for under this Article as well as in relation (along with **EL**) of the way the health data should be exchanged. **Cion:** practical aspects linked with the exchange of information should be decided under comitology / delegated acts procedure. **Cion** also recalled that under para. 3 of this Article the processing of health data could be carried out "by another person subject to an equivalent obligation of secrecy" and this term could cover specific persons within the Dublin authorities, under very strict data protection rules.

² **UK:** reservation on the reference of "vital interests", which may permit the passing of very sensitive health data without the conditions set out in its national legislation. **NL:** need an indication of which these "vital interests" could be; perhaps in a recital with a non-exhaustive list thereof. **Cion** clarified that the reference to "vital interests" should be interpreted strictly on the basis of the relevant EU acquis.

☞ [...] ☞

☞ [...] ☞ ☞ 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. ☞ [...] ☞

☞ [...] ☞ ☞ 4. ☞ The exchange of information under this Article shall only take place between the ☞ [...] ☞ ☞ health professionals or other persons referred to in paragraph 3 ☞ [...] ☞. ☞ The information exchanged shall only be used for the purposes set out in paragraph ☞ [...] ☞ ☞ 1 ☞ of this Article ☞ and shall not be further processed ☞.¹

☞ [...] ☞

☞ [...] ☞ ☞ 5. ☞ 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).

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

¹ In reply to **SE**, **Pres** pointed out that the information collected under this Article should be used solely for the purpose intended.

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:

- (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;

¹ **CLS, Cion** elaborated about the reasons behind opting for the current draft of the Article (including its legal basis) and the reference to delegated acts procedure in Articles 40 and 40a. They stressed that first it should be clarified whether MS wish to have the mechanism described in the Article or not. **Cion** furthermore, could support the text, but regretted the fact that the second scenario in its original recast proposal (possibility to suspend the transfers where a MS does not fulfil its obligations under Community Law) has not survived in the current compromise.

CZ (maintained a reservation on the provision, suggesting providing for such a mechanism outside the Dublin system), **DE** (maintained a reservation on the provision) **FR, NL, AT, SE** (maintained a reservation on the provision because it considers that a suspension mechanism, could act as a pull factor of that MS and it thinks that it may undermine the whole common EAS, while it is not clear that it will solve problems that MS under a heavy asylum pressure are confronted with), **UK** (maintained a reservation on the provision): due to the complexity of the issue further work is needed on the wording - as long as delegations confirm their will to establish the mechanism in principle. **DE, UK**: if the mechanism is to be established it should provide for as many rights as possible for the Council.

MT: given the current situation and the migration pressures on certain MS, there is a need to discuss further the mechanism. **Cion**, agreeing with **MT**: in delegated acts procedure MS retain their decision making; Parliament was in favour of the mechanism, let alone that it considered it not sufficient.

EL: the original **Cion** proposal was based on solidarity and was the first step towards burden sharing. Unless a new instrument dealing with the issue is to be submitted, this is a good opportunity to make provision for the problem.

(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.

2. 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. 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.

4. 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. 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. 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.

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~~VII

ADMINISTRATIVE COOPERATION

Article ~~21~~32

Information sharing

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.);

- (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~~ ~~⇐~~ [...] ~~⇐~~ ~~⇐~~ five ~~⇐~~ weeks. ~~⇒~~ Any delays in the reply shall be duly justified. ~~⇐~~ Non-compliance with the ~~⇐~~ [...] ~~⇐~~ five week time limit¹ does not relieve the requested Member State of the obligation to reply. ~~⇐~~ If the research carried out by the requested Member State which did not respect the maximum time-limit, 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. ~~⇐~~ ~~⇐~~ In that case, the time-limits provided for in Articles 21 and 23 for submitting a request to take charge or take back shall be extended with a period of time which shall be equivalent to the delay in the reply by the requested Member State. ~~⇐~~
6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission ~~⇒~~ in accordance with Article 33(1) ~~⇐~~ ~~which shall inform the other Member States thereof.~~

¹ **AT, SE, UK:** preferred four weeks (although **AT** and **UK** could live with five). **DE:** suggested to provide for four weeks and exceptionally for five. **Cion:** there is already provision made in the text where the five weeks cannot be complied with.

7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:

(a) 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. 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 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

⇒ Council

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 [...] ~~erasure~~ of data relating to him/her.

↓ 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.
-

↓ 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;

⇒ 2. Member States may also maintain the administrative arrangements concluded under Regulation (EC) No 343/2003. To the extent that such arrangements are not compatible with this Regulation, the Member States concerned shall amend the arrangements in such a way as to eliminate ⇒ [...] ☹ any incompatibilities ⇒ [...] ☹ observed ☹ .

3. Before concluding or amending any arrangement referred to in paragraph 1(b), the Member States concerned shall consult the Commission as to the compatibility of the arrangement with this Regulation.

4. If the Commission considers the arrangements referred to in paragraph 1(b) to be incompatible with this Regulation, it shall, within a reasonable period, 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 any incompatibilities observed.

5. Member States shall notify the Commission of all arrangements referred to in paragraph 1, and of any denunciation thereof, or amendment thereto.

↓ 1560/2003 (adapted)

⇒ new

CHAPTER VIII

Conciliation

Article 1435

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.

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

↻ Council

CHAPTER ~~VIII~~

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

↻ *Article 35* ↻ [...] ↻ A ↻

Data security and data protection

Member States shall take all appropriate measures to ensure the security of transmitted personal data ↻ [...] ↻ and in particular to avoid unlawful or unauthorized access or disclosure, alteration or loss of personal data processed.

Each Member State shall provide that the national supervisory authority or authorities designated pursuant to Article 28(1) of Directive 95/46/EC shall monitor independently, in accordance with its respective national law, the lawfulness of the processing, in accordance with this Regulation, of personal data by the Member State in question.

Article 35 ↻ [...] ⌂ ↻ B ⌂

Confidentiality

Member States shall ensure that the authorities referred to in Article 33 are bound by the confidentiality principle as defined in national law, in relation to any information they obtain in the course of their work. ⌂

↓ new

Article 36

Penalties¹

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 **DE** suggested the following wording for Article 36 *"The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive"*.

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 ~~⊗~~ 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.

↓ 343/2003/EC(adapted) (adapted)

⇒ new

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)