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from: Presidency  
to: JHA Counsellors  
on: 23 February 2012

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

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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

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Delegations will find in the annex to this note certain compromise suggestions made by the Presidency concerning the above draft Regulation, with a view to the discussion at the JHA Counsellors meeting on 23 February 2012. The Presidency suggests changes to Recital 8, new 18A (former recital X), new 18B (former recital X+1), Article 2, 4, 5, 6, 8, 11, 17, 26, 27 and 31. The suggested changes reflect the discussions on the meetings of 23 January and 3 February 2012.

The previous definition in Article 2 (gb) of a “person in relation to the applicant” has been altered to “relation”. The definitions of relatives and relation have been taken into account throughout this document, in accordance with Article 2 (ga) and 2 (gb), which resulted in changes in Article 2, 4, 6, 8, 11 and 17. At a later stage, the Presidency will, in accordance with the above amendments, make the necessary changes in Articles 7, 30 and 32 and Recitals 13, 14, 15 and 31.

Draft Article 26.3A is deleted. The proposed changes in Article 27 intend to include basic safeguards.

**Presidency Compromise text proposals**  
**Dublin-Regulation**

Recital 8

- (8) In view of ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with current EU asylum *acquis*, in particular with ~~Council Directive 2004/11/95/xx/EU of 13 December 2011~~ ~~29 April 2004~~ on ~~minimum~~ standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection, ~~for a uniform status for refugees or~~ for as persons eligible for subsidiary who otherwise need international protection and ~~for the content of the protection granted~~ <sup>1</sup>, ~~it is appropriate to extend the scope of this Regulation in order to include~~ encompasses **persons whose applications for subsidiary protection has been admitted in accordance with national law applicants for subsidiary protection and persons enjoying subsidiary protection.**

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<sup>1</sup> OJ L 337, 20.12.2011, p. 9

**Additional Recital (X)**

**(18A~~x~~)** ~~Deteriorations-Deficiencies~~ or collapses of asylum systems, **often** aggregated or contributed to by particular pressures on them, can destabilise the proper functioning of the system put in place by the present Regulation. A process for early warning, preparedness and management of asylum crises serving to prevent such deteriorations or collapses with EASO playing a key role using its powers under Regulation (EU) 439/2010 should be established both in order to ensure that cooperation within the framework of this Regulation is robust as well as to develop mutual trust among the Member States with respect to asylum policy. The process should ensure that the Union is alerted as soon as possible of situations in which a concern exists that the smooth functioning of the system set up by this Regulation is jeopardized ~~either~~ because the asylum systems of one or more Member States are subject to particular pressure **and/or** due to deficiencies in the asylum systems of one or more Member States. Such a process would allow the Union to promote preventive measures at an early stage and afford such situations the appropriate political attention. Solidarity is a pivotal element in the CEAS and solidarity and mutual trust go hand in hand. By enhancing such trust, this process could improve the steering of concrete measures of genuine and practical solidarity towards the Member State or Member States concerned **in order as a means** to assist the affected Member States in general and the asylum seekers in particular.

**(18B~~X+1~~)** Member States should collaborate with the European Asylum Support Office in the gathering of information concerning their ability to manage particular pressure on their asylum and reception systems, in particular in the framework of the application of this Regulation. The European Asylum Support Office should regularly report on the information gathered in accordance with Regulation (EU) No 439/2010.

Art. 2  
Definitions

(...)

(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; ☞

☞ [...] ☞

- (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 practice of the Member State where the person granted international protection is present; ☞ ☞ [...] ☞

~~v) siblings of the applicant, when the latter is a minor and unmarried~~

~~ga) "relative" means a person in a kinship with the applicant who can take care of him/her or who has previously been responsible for the applicant's care. Kinship between the applicant and his/her relative is established for aunts/uncles, nephews/nieces, grandparents and grandchildren regardless of whether they were born in or out of wedlock or adopted as defined under national law. After individual consideration kinship may be established in other relationships as well.~~

**ga) "relative" within the meaning of Article 8 means:**

- the sibling or grandparent of the applicant;
- the aunt/uncle or great-grandparent who has previously been responsible for the applicants care;

regardless of whether they were born in or out of wedlock or adopted as defined under national law.

**gb) "a relation" ~~person in relation with the applicant~~ "relative" within the meaning of Article 11 means:**

- the **child**, sibling, **parent**, grandparent or grandchild of the applicant;
- the aunt/uncle, nephew/niece who has previously been responsible for the applicant's care;

regardless of whether they were born in or out of wedlock or adopted as defined under national law.

Article 4  
Right to information

1. 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 of the application of this Regulation, and in particular of:
- (a) The objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of moving from a Member State to another one during the determination of the Member State responsible under this Regulation and during the examination of the application for international protection;
  - (b) the criteria for allocating responsibility, the different steps of the procedure, and their duration;
  - (bc) the ~~possibility to request a~~ personal interview pursuant to Article 5 and ~~to the~~ **possibility to** submit information regarding the presence of family members within the meaning of Article 2 (g), ~~or other~~ relatives ~~including minor unmarried siblings~~ **or relations** in the Member States, including the means by which the applicant can submit such information;
  - (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 **for example inter alia in connection with the personal interview as stipulated in Article 5.**
3. A common leaflet, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1 shall be drawn up in accordance with the procedure referred to in Article 40(2). This common leaflet shall also include information regarding the application of the Regulation [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.

## Article 5

### Personal interview

1. The Member State carrying out the process of determining the Member State responsible under this Regulation **and before a decision is made in this respect,** ~~shall~~ ~~may~~ conduct a personal interview in order to facilitate the process of determining the Member State responsible and/or in order to ensure the proper understanding of the information supplied to by the applicant in accordance with Article 4.

~~1.A. The Member State carrying out the process of determining the Member State responsible under this Regulation shall conduct an interview at the request of the applicant if he/she wishes to provide information regarding the presence of family members within the meaning of Article 2 (g) or other relatives including minor unmarried siblings in the Member States in order to facilitate the process of determining the Member State responsible.~~

2. ~~In cases where an applicant has requested an interview pursuant to Paragraph 1 A, this An~~ interview may be omitted only if:

(a) the applicant has absconded; or

~~(b) the applicant wishes to provide new information after the decision to transfer him/her to the responsible Member State~~

~~(be) after having received the information referred to in Article 4 the applicant was already given the opportunity to provide information regarding the presence of family members within the meaning of Article 2 (g) or other relatives including minor unmarried siblings in the Member States at a personal interview held in accordance with the guarantees set out in this Article or has already provided his/her information by any other means.~~

~~3. Where a Member State omits the interview pursuant to paragraph 2 (c) it shall provide the applicant with the opportunity to submit information regarding the presence of family members within the meaning of Article 2 (g) or other relatives including minor unmarried siblings in the Member States by any other means.~~



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).
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. It shall be conducted by a qualified person under national law.
7. The Member State conducting the personal interview shall make a written summary containing at least the main information supplied by the applicant at the interview. This summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant and/or a legal advisor or other counsellor who is representing him/her have timely access to the summary.

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, **therefore he/she shall have access to the content of the relevant documents in the applicant's file, and shall be provided with the relevant documents in the applicant's file,** including the specific leaflet for unaccompanied minors.
3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:
- (a) family reunification possibilities;
  - (b) the minor's well-being and social development;
  - (c) safety and security considerations, in particular where there is a risk of the child being a victim of trafficking;
  - (d) the views of the minor, in accordance with his/her age and maturity.
4. For the purpose of applying Article 8 of this Regulation, the Member State where the application for international protection was lodged by the unaccompanied minor shall, where there is credible **on account if the minor is in possession** of information that members of the unaccompanied minor's making it possible to identify the family member within the meaning of Article 2(g) or minor unmarried siblings, or other relatives as referred to in Article 2 (ga) article 8.2, who can 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 collect such information, for example, by sharing information with other Member States,** as outlined in Article 32, whilst protecting the minor's best interests.

5. Procedures for implementing paragraph 4 shall be adopted in accordance with the procedure referred to in Article 40(2).

## Article 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 within the meaning of Article 2(g), ~~or his/her minor unmarried sibling~~ is legally present, provided that this is in the best interests of the minor.
2. Where the applicant is an unaccompanied minor who has a ~~second-degree~~ relative ~~or a third-degree relative who was previously responsible for his/her care~~, **within the meaning of Article 2 (ga) or a person who has previously been responsible for the applicant's care who is** legally resident or ~~an~~ asylum seeker 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 State shall unite the minor with his/her relative and be responsible for examining the application, provided that this is in the best interests of the minor.
3. Where family members or relatives as mentioned in paragraphs 1 and 2 are staying 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 unaccompanied minor.
4. In the absence of a family member or a relative as mentioned in paragraphs 1 and 2 the Member State responsible for examining the application shall be that where the unaccompanied minor has lodged his or her first application for international protection, provided that this is in the best interests of the unaccompanied minor.

5. The procedures for implementing paragraphs 2 ð and 3, shall be adopted in accordance with the procedure referred to in Article 40 (2).

## Article 11

### Dependents relatives

1. Where an asylum seeker is dependent on the assistance of a **relation** ~~first or second-degree~~ **person in relation to the applicant** relative or a ~~third degree~~ **within the meaning of Article 2 (g)** or a ~~person relative who was previously responsible for his/her care~~ legally resident in one of the Member States, on account of pregnancy or a new-born child, serious illness, severe handicap or old age, or where a relative is dependent on the assistance of the asylum seeker, Member States shall keep or bring together the asylum seeker with that relative, provided that family ties existed in the country of origin and that the persons concerned expressed their desire in writing.
2. Where the ~~relative~~ **relation** is legally resident in another Member State than the one where the asylum seeker is present, the Member State responsible for examining the application shall be the one where the **relative** ~~relation~~ is legally resident unless the concerned asylum seeker's health condition prevents him/her during a significant period of time from travelling to that Member State.

Where the concerned asylum 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. Becoming the Member State responsible due to the applicant's inability to travel does not entail the obligation of bringing the **relative** ~~relation~~ to that Member State.

3. The procedures for implementing this Article shall be adopted in accordance with the procedure referred to in Article 40 (2).

Article 17  
Discretionary clause

1. By way of derogation from Article 3 (1), each Member State may decide to examine an application for 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.

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 applicable, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of or take back the applicant by using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

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

2. 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 within the meaning of Article 2(g), as well as other relatives **or relations** including minor unmarried siblings, 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. The persons concerned must express their consent in writing.

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.

The requested Member State shall carry out any necessary checks to examine the humanitarian reasons cited, and shall ~~decide on the request by replying~~ ~~give a reply~~ **reply** to the requesting Member State within two months of the date on which the request was received by using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. ~~A reply~~ **If a Member state refuses the request, it shall state the reasons on which it is based for the refusal. A reply refusing the request shall state the reasons on which it is based.**

Where the requested Member State accepts the request, responsibility for examining the application shall be transferred to it.

#### Article 26

#### Remedies

1. The applicant or another person as referred to in Article 18(1) (c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against the transfer decision referred to in Article 25, before a court or tribunal.
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.
3. 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 the appeal or review is not foreseen under national legislation, that Member State shall give the person concerned the opportunity to request a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his/her appeal or review. The introduction of such a request may have a suspensive effect on the implementation of the transfer decision.

Member States' competent authorities may decide acting ex officio to suspend the implementation of the transfer decision pending the outcome of the appeal or review. The decision on whether to suspend the implementation of the transfer decision, shall be taken within a reasonable period of time.

A decision rejecting the request for the suspension of the implementation of the transfer decision pending the outcome of the appeal or review shall state the reasons on which it is based.

~~**3A. Where in the request for appeal or review the applicant claims that as a result of the transfer he/she will be exposed to treatment prohibited by Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 4 of the Charter of Fundamental Rights of the European Union the transfer of the applicant shall not take place before the court or tribunal delivers a decision on the claim. This decision shall be taken within a reasonable period of time.**~~

4. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.
5. 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 costs the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance. Without arbitrarily restricting access to legal assistance, Member States may limit free legal assistance to cases where the appeal or review is likely to succeed.

Legal 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.

## Article 27

### Detention

1. ~~**Without prejudice to other grounds for detention determined in national legislation,**~~  
Member States may detain persons in order to secure a transfer to the responsible Member State in accordance with this Regulation when there is a **serious** risk of absconding, **on the basis of an individual assessment, if other less coercive alternative measures cannot be applied effectively. Detention shall be no longer than the time reasonably necessary to fulfill the required administrative procedures for carrying out the responsibility determination under this Regulation.**

Member States shall lay down provisions on conditions for detention of and on guarantees applicable to persons detained in order to secure a transfer to the responsible Member State in their national legislation, **in accordance with relevant EU and international instruments, as applicable.**

## Article 31

### Early warning and preparedness

1. Where, based in particular on the information gathered by EASO pursuant to Articles 9 and 11 of Regulation (EU) 439/2010 or the assessment of the needs of a Member State pursuant to Article 9(1) of Regulation (EU) 439/2010, the Commission identifies problems in the functioning of the asylum system of a Member State which may jeopardise the **future** application of this Regulation, the Commission, in cooperation with EASO, ~~**may shall**~~ address recommendations to that Member State inviting it to draw up a preventive action plan designed to counter the problems identified. The Member State concerned shall inform the Council and the Commission whether it intends to present a preventive action plan following the Commission's recommendations.



A Member State may draw up a preventive action plan of its own initiative. In this regard, it may call for the assistance of the Commission and EASO.

2.
  - a) Where a preventive action plan is drawn up, the Member State concerned shall submit it as well as regular reports on its implementation to the Council and the Commission. Where necessary, the Commission shall submit reports on its implementation to the Council.
  - b) The Council may request further information on this subject and provide ~~such~~ political guidance, including on the necessity to adopt a crisis management action plan, ~~as it deems appropriate and any other measures of solidarity as it deems appropriate.~~
3.
  - a) The Commission, in cooperation with the Member State concerned shall, in cooperation with the Commission and EASO, elaborate a crisis management action plan if the preventive action plan does not lead to an improvement of the situation. ~~It shall convey the plan to the Council for political endorsement. Before the plan becomes operational, the Council shall have a political discussion on the crisis management action plan.~~
  - b) The Member State concerned shall submit reports at least every three months on the implementation of the crisis management action plan to the Commission ~~and EASO, which shall inform the European Parliament and the Council on progress. Based on a discussion~~ ~~Subject to political endorsement by~~ in the Council, the Commission may, in cooperation with the Member State concerned and after informing EASO, amend the crisis management action plan to take into account any developments revealed by the regular reports.
4. This Article is without prejudice to Articles 258, 259 and 260 of the Treaty on the Functioning of the European Union

Joint statement of the Council and the European Parliament

The European Parliament and the Council invite the Commission to adopt practical guidelines to assist Member States in implementing this Regulation in light of the relevant case law by the European Court of Justice and the European Court of Human Rights.