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WORKING PAPER

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From:	General Secretariat of the Council
To:	Asylum Working Party
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund], Articles 1-2, Articles 28-44 and Articles 61-75 - Comments from the delegations

Following the Informal meetings of the Asylum Working Party on 24 March, 7 April and 15 April 2021, delegations will find attached a third revised compilation of replies received from Member States on the abovementioned subject. This revised version includes comments received from Germany.

ANNEX

Written comments submitted by the Member States

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]

and following informal videoconferences of the members of Asylum Working Party on 24 March, 7 and 15 April 21

Articles 1-2, Articles 28-44 and Articles 61-75

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AUSTRIA

AT maintains a **scrutiny reservation on Chapter V AMR**, notably due to the importance for the functioning of the future CEAS and its interlinkages with other parts of the Regulation.

Article 28 - start of the procedure

Austria would like to highlight that the determination of the responsible Member state should be conducted before the Relocation takes place.

Therefore, in Par 2 the reference to the Member State of Relocation should be deleted when it comes to the process of determining the Member State responsible

Article 29 - submitting a take-charge request

We welcome the shortening of deadlines for the submission of take-charge requests, which might contribute to the efficiency of the new system

However, regarding the special rules on unaccompanied minors in Par 1, 4th subparagraph we request to add a clear deadline for the process to determine the Member state responsible in these cases. Otherwise, a change of responsibilities may take place anytime during the asylum procedure.

Article 33 - Remedies

We strongly support the limited scope of the remedies as proposed in Par 1. Furthermore, we also explicitly support the deadlines to submit a remedy in Par. 2.

In Par. 3 there is a discrepancy to Art. 54 of the Procedures Regulation. In Art. 54 APR, as a general rule, persons who were subject to an accelerated procedure have no right to remain on the territory unless a court decides otherwise. In the proposal of Art. 33 Par. 3 the opposite is the case. As a general rule, there is a right to remain unless a court decides otherwise.

Therefore, it is important to send a clear signal that remedies concerning transfers from one Member State to another do not lead to an automatic suspension of transfers.

Furthermore, the deadline of one month for courts to decide is too long and should be shortened to 2 weeks.

Article 34 - detention

Due to the importance of detention in the process, we support the new wording of Par 2 regarding the "risk of absconding".

However, it should be considered to introduce a "shall" provision requiring Member States at least to assess the possibility to apply detention in individual cases.

We uphold a scrutiny reservation on Par 3.

We have a strong reservation on Par. 4. **Administrative authorities must be included in the text** as an authority that may issue detention orders.

Article 35 - detailed rules and time limits

For Austria, Art. 35 is one of the key provisions of the whole AMR. In the past, most transfers could not be enforced due to the absconding of applicants and the 6 months deadline which leads to a shift of responsibility.

Therefore, we are quite disappointed that the principle of the 6 months transfer deadline was uphold. We see an improvement of the text by introducing a freezing of the deadline in case of absconding. However, this is not sufficient to tackle secondary movements.

Therefore, **we request a deletion of the 6-months deadline** or at least a significant expansion. In case of a significant expansion of the deadline a new start of the deadline each time an applicant absconds would be necessary.

Article 61 and Article 72 – Financial Support and Amendments to the AMIF-Regulation

In general, Austria would like to reiterate its position brought forward in the negotiations on the AMIF-Regulation. Coherence between the AMIF Regulation and AMR should be ensured. We deem it not appropriate to conclude on a fund establishing a tailor-made instrument to implement the Pact on Migration and Asylum, while negotiations on the Pact itself, including the key legislative files, are still ongoing. This notably applies with regard to the pertinent provisions on solidarity measures, where positions of Member States are particularly divergent.

The provision set out in Art. 72 AMR and references to the AMIF-Regulation should be aligned with the current text of the AMIF-Regulation.

Regarding the amounts foreseen in Art. 72 AMR and the possibility enshrined in Art. 17 para. 7 AMIF-Regulation [Art. 20 in the current version] to adjust the amounts "*to take into account the current rates of inflation, relevant developments in the field of transfer of applicants for international protection and of beneficiaries of international protection from one Member State to another, as well as factors which can optimise the use of the financial incentive brought by those amounts*" through delegated acts adopted by the Commission, AT raises concerns about the balance between solidarity measures set out in Art. 45 AMR. The explanation given by the Commission during the AWP meeting on 15 April, stating that "*EU budget will provide support to Member States only relating to relocation and return sponsorship and not to capacity building because Member States have to make these contributions in case they want to opt out from relocation and return sponsorship"* is not convincing. According to Art. 45 paragraph 1 in conjunction with Art. 52 paragraph 2 and Art. 51 paragraph 3 point (b)(iii) AMR, capacity-building measures are a "regular" type of solidarity contributions. Capacity-building measures have the potential to create additional high added value to the benefit of a Member State under migratory pressure and to the proper and sustainable functioning of an European asylum and migration system.

Article 67 and Article 68 – Committee and Exercise of the delegation

Austria maintains its scrutiny reservation on Articles 67 and 68 in particular with regard to the points raised by the Council Legal Service during the AWP meeting on 15 April.

Article 70 - Statistics

Austria would like to emphasise that Article 70 should not lead to any obligations exceeding those set out in Regulation (EU) 2020/851 of the European Parliament and of the Council of 18 June 2020 amending Regulation (EC) No 862/2007 on Community statistics on migration and international protection.

Article 71 – Amendment to the Long Term Residence Directive

As also brought forward by other Member States, Austria does not consider the AMR to be the adequate legal act to change the Long Term Residence Directive. A possible future amendment of this Directive should not be prejudged.

Austria strongly opposes the shortening of the required period of legal and continuous residence for beneficiaries of international protection to be entitled to a long-term resident status. Like other Member States, we see the risk of creating further incentives for secondary migration and the risk of sending wrong signals to potential (irregular) migrants. We took note of the explanations given by the Commission during the AWP meeting on 15 April that this is part of the overall balance and could lead to a reduction of secondary movements since beneficiaries of international protection would be incentivized to stay in a Member States for 3 years in order to be granted a long term residence permit. However, we cannot share this interpretation. As pointed out by NL, we are currently experiencing challenges concerning increasing numbers of onward movements from beneficiaries of other Member States to Austria. We are concerned that the proposed shortening of deadlines would lead to a further increase of irregular movements and to a further blurring of the distinction between residence due to protection needs and other forms of residence grounds.

Article 75 – Entry into force and applicability

As also requested by other Member States, in the meeting of the AWP on 15 April, Austria calls for a 2-year transition period for the applicability to applications for international protection in the second subparagraph.

Article 2

(g) - family definition

Austria has a **strong reservation against the extension of the definition of family members** as proposed in Art. 2 (g) (v). Siblings should not be included in this definition in particular considering the explanation given by the Commission that also half brothers and sisters would be covered.

Furthermore, this definition contradicts the current state of negotiations of family definitions in other legal files of the CEAS.

(p) and (q) – definition of absconding and risk of absconding

Austria, as brought forward also by several other Member States, calls for a broad definition of absconding and risk of absconding.

In the definition of risk of absconding, the term "*specific*" should be deleted. During the meeting of the AWP on 15 April, the Commission explained that this addition should not lead to a significant change in practice. However, the addition would constrain the establishment of a risk of absconding in some way. Otherwise the amendment would serve no purpose.

BELGIUM

BE has a general scrutiny reservation on the whole AMMR proposal.

AWP 24/03

Article 29: BE supports the new time limit of §1, subparagraph 1, as well as the new subparagraph 4 of §1.

Article 31: BE welcomes the take back notification mechanism. However, the times limits are extremely short. We would also like to raise the fact that MS will be very much dependent on a fast registration of the data in Eurodac, which, in case of high influx, may not be the case.

Article 32:

- §1: A week to make a transfer decision is far too short, given that we have to continue to motivate substantively.
- §1: As the Commission confirmed during the meeting, the one week time limit should start from the receipt of the confirmation of the notification for making a transfer decision. Therefore we suggest the following wording: "at the latest within one week of the acceptance or confirmation of the notification".

Article 33: BE has a scrutiny reservation on the time limits of §3.

Article 34: BE is favor of article 34 in general with the exception of §4. This requirement to have the detention decisions ordered by judicial authorities is not acceptable to BE as our practice is to have those decisions taken by the immigration office, the administration. Judicial authorities have no role at his stage. Following the proposal would imply a radical and far reaching change in our national practice. Moreover, adapting our practice for the detention of Dublin cases would create a distinction with the other detention orders taken by the immigration office, which could probably not be justified. This § should simply be deleted.

AWP 07/04

Article 35:

- §2, subparagraph 2, last part of the last sentence : '… unless another Member State has carried out the procedures in accordance with this Regulation and transferred the person to the responsible Member State after the person absconded.' We would like to make it clear that in that case a new notification for TB can be done. We think that those words should be added.

- BE is very skeptical about the implementation of this mechanism. In practice this would require a very close scrutiny by the MS in order to know if people cease to be available to the authorities. This would require more staff but even with more staff it would not quite be

easy to determine. This has everything to do with the definition given to the concept of 'absconding'. As already mentioned in previous meetings, the definition in article 2, p, is not suitable.
The definition of 'absconding' should be broader, with the emphasis on "avoiding a transfer": this is a deliberate action by the person concerned to avoid a transfer by making it practically impossible for the authorities to organize a transfer (for example: failure to comply with agreements in the context of a departure, failure to show up for the planned departure, leaving the reception center without permission, ...). If somebody gives a private address and otherwise absolutely does not cooperate with a transfer decision (multiple address checks are necessary, impossibility for the authorities to enter a private home unless ordered by a judge, ...), this makes it practically impossible for the authorities to organize a transfer although this person cannot be considered as "absconded". The definition of "not remain available" does not solve this problem.
As we see, in this discussion, the notion of non-cooperation is central. This concept is present throughout many asylum legislation but not in Dublin. This is why we make the following proposal: the Commission confirmed that there is no sanction in case of non-respect of the obligation of article 9, §5 (that is to comply with the transfer decision), which, in our view is not acceptable. So, we suggest to add in article 10 on the sanctions, a new § saying that in case of non-compliance with the transfer decision, the person is supposed to have absconded. The definition of article 2 would have to be modified consequently. This way, it would be easier to determine the moment where the person absconds for the purpose of article 35.

Article 36: BE suggests to refer to §3-6 of article 17 AMF, not to the whole article.

Article 38:

- BE has a scrutiny reservation on this provision.

- BE is in favor of the fact that there is an exchange of information on this matter but the question is how this is done. The rule in the field of exchange of security information is that intelligence services of the MS communicate among them. Depending on national legislation, the intelligence service of a certain MS can give the information to the immigration of their MS. However, the immigration services are, in no case, allowed to transfer that intelligence to the immigration services of another MS. So we think that this article should rule in more detail who is authorized and how to communicate the information. Moreover this a more general matter that concerns every mention of an exchange of security information in AMMR between immigration authorities.

- How does this article comply with GDPR?

- From what we understood from the explanations given by the Commission during the AWP meeting on the link between article 8, §4 and article 38, article 38 only applies in case of a take back procedure. We would like to have the confirmation whether this is correct. As we also understood from previous explanations from the Commission, the following wording "the applicant or another person as referred to in Article 26(1), point (b), (c) or (d)" covers both take back and take charge procedures. So if article 38 only applies to take back procedures, why is the mentioned wording used?

Article 2, c): BE would like to make sure that all proposals (AMMR, Screening, APR, RCD) are coherent with regards to their scope (start at the making or the registration). So is the choice of the 'making' the right one for the definition of 'applicant'?

Article 2, g):

- BE has a scrutiny reservation on this provision.
- Rules should be clarified in order to avoid family reunifications in cascade.
- Rules should also clarify which Member State is responsible in cases where several siblings are in different Member States.

Article 2, n):

- BE considers that the period of study of 3 months is to short and that there should be a maximum time limit set to the diploma (so that someone who got their diploma 20 years ago cannot use the criteria of article 20) – we suggest 3 years. BE is not in favor of the inclusion of qualification as those are studies which do not offer the same guarantees as a diploma and are often shorter.

AWP 15/04

Article 2, p):

- See comments and the proposal made in relation to article 35.

- The definition should be broadened and be based on the notion of non-cooperation from the applicant. §70 of the Jawo arrest states that "an applicant 'absconds', within the meaning of article 29, where he *deliberately evades the reach of the national authorities* responsible for carrying out his transfer, in order to prevent the transfer". The definition of 'abconding' should be in line with it.

- Second part of the definition ("such as by leaving…") : Does this imply that in order to be able to consider that the applicant has absconded, the Member State concerned must demonstrate that the person has in fact left its territory? Such an evidence would be quite difficult to get in practice. A contrario, can the person be considered to have absconded if the person has not left the territory? We think that there should not be examples in definitions as they should be as precise as possible.

Article 2, z): In English, points z) and aa) mention 'illegal stay'. However, in the French version, points z) and aa) use different words: point z) mentions "déclarant illégal le séjour" whereas point aa) mentions "ressortissant de pays tiers en séjour irrégulier ». The wording should be aligned.

Article 69: The provision writes "…set out in Chapters I-III of Part IV of this Regulation". As there are only three chapters in Part IV, the reference should simply be to "Part IV of this Regulation".

Article 71: BE supports the proposal. However, we would like to stress the importance of maintaining a simple and transparent long term resident status, without too many exceptions. This will benefit the effective application of the legislation.

Article 72 on article 17 AMF:

- §1, c) : 'And article 56 of AMMR' : there is something missing in front of those words : 'and per person relocated in accordance with'.
- §2. Should third country nationals also be included?

Article 74: The English version mentions "events that are likely" whereas in the French version, the word "faits" (facts) is used. The wording should be aligned.

Article 75: The provision mentions "application for international protection submitted…". However, the word "submitted" should be replaced either by one of the words : made/registered/lodged. The word "submitted" is also used in article 18 so the comment is also valid for that provision.

BULGARIA

Chapter V Procedures

Art. 28 Start of the Procedure

Paragraph 1 - we cannot support the proposal, because of the Member State of the first registration and the reservation, which we expressed on this issue in connection with Art. 9 (1).

Paragraph 3, letter (b) - we cannot support due to the connection with art. 8 (4), which refers to the draft proposal for a Regulation on screening and creates an obligation for the first country in which the application for international protection is registered to be the responsible Member State for third-country nationals who are a threat to national security. This in no way contributes to the overall balance of MS responsibilities.

Paragraph 5 – we raise a substantive reservation and we do not agree with the deletion of the second and third subparagraphs of paragraph 5, Art. 20 of the current regulation, which terminates the responsibility of the Member State carrying out the procedure if the person has left the territory of the Member States for at least three months. This violates equality, and we have already expressed our position on the need for balance for countries of first entry, through possibilities for termination of responsibility, which, however, have been deleted in this proposal.

Art. 29 Submitting a take charge request

We are not in favour with the establishment of shorter deadlines, from three to two months and one month with a positive result from Eurodac and VIS. This could have a positive effect in speeding up the procedure, but for the front line Member States these deadlines may be too short in the context of all other obligations they have to fulfil, especially in the case of increased migration flows. Last but not least, short deadlines make it impossible to determine the Member State responsible, especially when this has to be established on the basis of circumstantial evidence.

Art. 30 Replying to a take charge request

Regarding the established shorter deadlines, we have the same comment as in Art. 29. We support the current deadlines, which have proven their practical applicability. Moreover, as regards the period of two weeks under paragraph 2, with a positive result from Eurodac and VIS.

On paragraph 8, we do not support the addition of 'full and detailed reasons' in the reply to a take charge request. We propose to be deleted, as it introduces subjectivism and can lead to tensions between Member States.

Art. 31 Submitting a take back notification

We do not support take back notification instead of a take back request. We believe that this would violate basic principles such as proportionality, fairness, fair cooperation and in no way achieve the desired balance. We cannot accept the concept of sending notifications without the possibility for the requested Member State to verify that is competent according to the criteria in the Regulation. We do not agree with the deletion of Art. 25 of the current regulation. How could the requested Member State respond in the event that its responsibility is terminated in accordance with Art. 27.

We also raise a reservation on the deletion of this Article 23 (3). We consider it fair and insist that if the request is not sent within deadlines, the responsibility should be transferred to the Member State where the person is located, as in the case where the notified Member State does not reply in time, the responsibility shall be transferred to it. Otherwise, setting deadlines for submission would make no sense.

Art. 33 Remedies

The scope of the appeal is limited. What is the reason for this? (For example, if there are procedural violations, is this not a subject of an appeal?)

With regard to paragraph 3, we consider that the possibility for the Court or the judiciary to rule ex officio on the suspensive effect of the transfer decision in the event of an appeal under this Article should be maintained (27 (4)). This is part of the procedural guarantees of the applicant and the deletion of the possibility for the Court to rule ex officio is not in the right direction.

Art.34 Detention

We raise a reservation on the second subparagraph of paragraph 3, due to a reference to Art. 26 Obligations of the responsible member state, point (c) and (d) governing the readmission of beneficiaries and resettled third-country nationals.

The set deadlines are short, especially for the transfer within 4 weeks. In connection with the transfer of a detained person, it is necessary to prepare documents, including a laissez-passer, as well as to notify other competent national authorities. This could be impossible in practice within 4 weeks.

On paragraph 4 providing that the detention shall be ordered in writing by judicial authorities., we raise a scrutiny reservation as we do not yet have an opinion from the Court.

Art. 35 Detailed rules and time limits

We raise a reservation on the text, in particular on the exception in para 2. Such a clause in practice means that there is no time limit for the transfer.

We insist on regulating a reasonable and mandatory time limit with consequences for non-compliance. According to the proposed exception, non-compliance with the deadlines has no real consequences for the Member States. This in fact makes the idea of optimizing the procedures meaningless. The concept of transfer without time limits will also lead to serious administrative and practical difficulties for the relevant national authorities.

Art. 37 Exchange of relevant information before a transfer is carried out

We raise a reservation on para 2 (d) due to the inclusion of an age assessment of the applicant. If there were any doubts about the applicant's age, they should have been clarified in the procedure and the MS have agreed. This is not the systematic place of the age assessment procedure.

We have a reservation on para 2, letter (e) due to the reference to the draft screening regulation and the information collected within the screening procedure.

Art. 38 Exchange of security-relevant information before a transfer is carried out

We strongly object and raise a reservation on the provision. Together with Art. 8 (4), it means that the Member States at the first registration of the application are responsible for persons who are a threat to national security. The text provides that Member States should be notified of a transfer if information is available that the person may be a threat to national security. The rules must be the same for everyone. Our proposal is that any Member State that finds that a person is a threat to the national security of the Member States should be the responsible state. In this way, the principles of fairness and sincere cooperation will be respected.

Chapter VI Administrative Cooperation

Art. 40 Information sharing

Concerning para 5 and the obligation for requested MS to reply within three weeks, we insist on current deadlines of 5 weeks.

Regarding the deletion of para 9 of Art. 34 of current Regulation, which regulates the right of the person to information about the data contained in his file, as well as his right to appeal, this is in contradiction with the rights of the person to receive information about everything related to the procedure.

Part I Scope and Definitions

Art. 2 Definitions

We raise a reservation on the extended provision for family members. It is not clear whether it covers siblings of all ages and marital status, as well as members of their families.

Part V General provisions, VI Amendments to other union acts and VII Transitional provisions and final provisions

Art. 71 (Amendments to the Long Term Residence Directive)

We raise a reservation due to the reduction of the required period of legal and continuous residence of beneficiaries of international protection from 5 to 3 years.

CROATIA

Article 2 Definitions

Point c) the definition of an "international protection applicant" - we would like to make a reservation on the term of "immediate protection", given that it is prescribed in the Proposal for a Regulation addressing situations of crisis and force majeure in the field of migration and asylum, which has not yet been discussed.

Point g) definition of "family members" and point h) definition of a "relative" with regard to the application of Article 13 (Guarantees for minors) - we would like to express concern about the mechanism for establishing family and relative links. Given the fact that international protection applicants do not hold documents which would prove family and relative links, MS have developed varied practices. The problem arises when one MS recognises a statement as relevant proof and another MS does not. We would therefore like to point to the importance of regulating this issue through prescribing clear criteria or a list of proof used for establishing family and relative links. It is also important to regulate this area so as not to call into question Article 13, paragraph 4c) of this Proposal for a Regulation, according to which the child's safety and security are taken into consideration when assessing the best interest of the child, particularly with regard to protecting them from trafficking in human beings.

Point l) the definition of a "residence document" - the words "under temporary protection arrangements or" need to be erased.

We would also like a clarification as to whether a visa that was issued before the Dublin procedure or asylum procedure and which can be used for temporary stay, can also be considered a certain type of a residence document in this regard.

Point n) "diploma or qualification" - we do not support the short 3-month time limit for obtaining diplomas or qualifications since such a time limit could be a pull factor for international protection applicants. We therefore propose a time limit of at least one year. Likewise, we propose that a time limit be set for a shorter period for issuing diplomas since such a definition covers an indefinite period which we do not find acceptable.

We would also like to propose that the definition be adequately supplemented so as to make it perfectly clear that online university studies or courses are not covered by this definition.

Point o) definition of an "education establishment" - the Republic of Croatia would like to make a scrutiny reservation on this definition with regard to the part on "any type of public or private education or vocational training establishment established in a Member State and recognised by that Member State". We believe that this opens up a significant potential for misuse.

Point q) definition of "risk of absconding" - we believe that the risk of absconding should be a single definition in all legislative proposals. We therefore also propose that the sentence stating "who is subject to a transfer procedure" and referring exclusively to the procedures in this Regulation, be deleted.

Point s) the definition of a "contributing MS" - HR advocates for flexible solidarity measures and the introduction of the 4th pillar of measures.

Article 29 Submitting a take charge request

Even though we understand the background for the new time limits, we believe that they are too short and that it will be difficult to meet them in practice which will create additional administrative burden on MS, particularly those MS on the external border which will determine responsibility as part of the mandatory border procedure.

Article 30 Replying to a take charge request

See comment on Article 29.

Article 31 Submitting a take back notification

Paragraph 1: we would like to make a scrutiny reservation due to the references made to Article 26, point c) - beneficiaries of international protection and d) - resettled persons, since we believe that including these categories would create additional administrative burden on the MS, in addition to the already too short time limits.

Likewise, given that the *take back notification* is based exclusively on the result of a HIT in Eurodac, it should be kept in mind that Eurodac will not always be updated on time, given the large amount of data that are foreseen by the new Proposal for a Regulation on Eurodac.

Considering that paragraph 1 prescribed that the *take back notification is made without delay and in any event within two weeks after receiving the Eurodac hit,* we believe that the consequences for missing that deadline should also be prescribed. Otherwise we see no added value in the time limit in this Article.

Paragraph 3: we believe that the one-week time limit to confirm the receipt of the take back notification is too short, particularly since missing this time limit creates legal consequences for MS. We therefore propose that the time limit last at least 2 weeks, which would be applicable in practice.

Article 32 Notification of a transfer decision

Paragraph 1 - we would like to make a scrutiny reservation due to the references to Article 26, point (c) beneficiaries of international protection and point (d) resettled persons. We also find it important to set up realistic time limits which will be achievable in practice. We believe that the time limit referred to in paragraph 1 of this Article is too short since the organisational aspect also needs to be taken into consideration, e.g. engaging the available interpreter in a short period of time.

Article 33 Remedies

Paragraph 1 - we would like to make a substantive reservation due to the references to Article 26, point (c) beneficiaries of international protection and point (d) resettled persons, and a scrutiny reservation given the fact that this Article and its implications are still being considered by the Ministry of Justice.

Article 34 Detention

Paragraph 3 - we would like to make a substantive reservation due to the references to Article 26, point (c) beneficiaries of international protection and point (d) resettled persons with regard to the inclusion of this category of persons in this Regulation. Likewise, we believe that the time limits are too short and they will create further administrative burden for MS in practice.

Paragraph 4 - considering our national legislation, we propose that this paragraph be extended so that a decision on detention can be made not only by judicial authorities but by administrative authorities as well.

Article 35 Detailed rules and time limits

Paragraph 1 - we would like to make a substantive reservation due to the references to Article 26, point (c) beneficiaries of international protection and point (d) resettled persons.

Paragraph 2, subparagraph 2 - we think that the practice so far has shown that the time limit of 6 months for carrying out transfer is not realistic, particularly since it is difficult to determine when a person absconded if the person is staying at a private address. Likewise, as regards the time limit, there is also a practical question in a situation where a person absconds 5 months before carrying out transfer and then becomes available a few days before the scheduled transfer. In that case, after "freezing the deadline", MS has less than a month to reorganise the transfer. Please note that this also includes repeated communication with the responsible MS, booking a plane ticket, issuing a *laissez-passer*.

Article 36 Costs of transfer

Paragraph 1 - we would like to make a scrutiny reservation due to the references to Article 26, point (c) beneficiaries of international protection and point (d) resettled persons.

Article 37 Exchange of relevant information before a transfer is carried out

Paragraph 1 - we would like to make a scrutiny reservation due to the references to Article 26, point (c) beneficiaries of international protection and point (d) resettled persons.

Paragraph 2 - we would like to make a reservation concerning the provision of information with regard to point (d) *an assessment of the age of an applicant.* More specifically, this provision does not indicate that there is an obligation to provide information only in case of suspicion as to the age of a minor person. Rather, it implies that the age assessment refers to all applicants for international protection which further prolongs the procedure and has a significant impact on the costs. We therefore propose that this provision be rephrased in accordance with this.

We also believe that the application of point (e) needs to be further considered with regard to the exchange of information collected in accordance with Article 13 of the Screening Regulation. There is a question of what language will be used for the provision of such information, which in any case incurs additional costs for translation, availability of translators, and similar.

Article 40 Information sharing

Paragraph 5 - considering that, in accordance with the existing Regulation, the time limit for replying is 5 weeks, and that it is difficult for some MS to comply with this time limit in practice, we believe that the time limit of three weeks is too ambitious. We therefore propose this time limit to be longer, namely to retain the time limit of 5 weeks.

THE CZECH REPUBLIC

Article 2 – definitions

letter a) third-country national

CZ would prefer the definition currently applicable according Regulation 604/2013, where persons – family members of Union citizens are not excluded from the scope of the Regulation.

letter c) applicant

We raise specific reservation regarding the immediate protection holders who are included in the definition of "applicant".

letter l) residence document

"temporary protection arrangements" included in the definition should be changed in some way. We refer to the proposal on Regulation addressing situations of crisis and force majeure in the field of asylum and migration, where the repealing of temporary protection directive is proposed.

letter n) diploma or qualification

CZ agrees with other delegations with the opinion that the proposed time limit of three months is not appropriate and should be extended. Moreover, the definition should be transformed to avoid the inclusion of online courses.

letter p) absconding

We agree that the definition of absconding should be extended and we are open to further discuss all possible modalities.

letter q) risk of absconding

We should consider the possibility to define directly to the text of Regulation the concrete objective criteria for assessment the risk of absconding. Proposal of recast return directive also defines the concrete objective criteria. Moreover, we would appreciate if the word "specific" used in the definition should be deleted. We are of the opinion that the simplest definition is the best option for the practical applicability the whole system.

Article 28

It is necessary to clearly decide if the first step will be the determination of the Member State responsible and then the application of solidarity part of the future Regulation if necessary.
In our opinion, it is necessary to determine the Member State responsible first.

Article 32

We have concerns regarding new time limit proposed – 1 week for taking the transfer decision. We prefer the current text without the time limit. We think that the time limit is not necessary.

Article 33

CZ generally welcomes the first paragraph of this Article. In our opinion, we should consider reducing the time limit for lodging an appeal. In particular, because of the strict limitation of reasons which should be re-examined by the court. CZ has a scrutiny reservation regarding time limits proposed in paragraph 3.

Article 34

Paragraph 3

The time limit of 4 weeks to carry out the transfer from the detention is practically impossible to fulfil. We should hold the current time limit of 6 weeks. We think that it works quite well.

Moreover, it is not clear from which point in time the time limit for sending the take back notification in the case of detainee who does not applied for international protection in the requesting Member State is counted.

Paragraph 4

We have substantive reservation regarding the obligation to order the detention by the judicial authorities. The similar provisions in return and reception directives are different.

CZ strongly prefers the current text in Dublin III Regulation where the detention may be order by administrative authorities.

Article 71

We raise the reservation regarding 3 years' period of residence which is proposed in terms of the possibility to request the long-term residence status according to Long-term Residence Directive.

Article 72

CZ raises scrutiny reservation.

Article 75

Scrutiny reservation. We are not sure whether it is realistic to prepare national systems within 12 months. Despite the direct applicability of the regulation we think that the slight implementation to national law will be necessary.

DENMARK

Denmark welcomes the deletion of the current rule in Dublin III Article 19 (2). We believe that this deletion is helping to minimize the number of people risking their lives at sea, by deleting the incentive to leave the territory of the Member States for three months.

Article 31 – and the relation to art. 12 and art. 27:

Art 27(2) presuppose that a voluntary return is registered in Eurodac. This will only be the case if the return is carried out or overseen by the authorities. If a person voluntarily has left the territory of the Member States on his/her own, this will first be established when the person reappears again on the territory of a new Member State. Our question is, will such a case lead to the cessation of the responsibility of the first Member State, if this Member State has not registered the (voluntary) return in Eurodac? If it does not, then the responsibility will only cease if a person is returned by the authorities or if the return is overseen by the authorities, which cannot be the intention of the rule. On the other hand, if it can, it will be hard to detect such a case by the Member State in which the applicant is later present, because this Member State will not conduct an interview because of the HIT registered in Eurodac.

Article 31:

Furthermore, we believe that the reflections on the shift of responsibility in recital 54 should be included in art. 31, so that the consequences of non-compliance are clearly stated.

Article 32:

According to Article 32 (1) the transfer decision should be taken ”at the latest within one week” of the acceptance or notification of the Member State deemed responsible. However, it is not clear what the consequence will be if the transfer decision is taken later than the set deadline.
According to Article 32 (2) the applicant is to be notified “without delay” of the transfer decision. We kindly ask for a clarification of “without delay” and the consequence of a “delayed” notification of the transfer decision.

Article 33:

From Danish side we have some concerns regarding the limited possibility to appeal set out in art. 33. We find that these limitations for appeal does not take into account the fact that the rules can be wrongly applied in the first instance, for example if there are a mix-up with similar names or id-number in the national system. These limitations might not be consistent with Danish administrative law and we therefore need to take a substantial reservation.

In regard of the time limit to appeal, we currently have a time limit of 7 days, and wish to keep this as a possibility and we therefore think that a time limit of two weeks is too long.

Article 34:

We find that the proposed time limit for detention in art. 34 is too short. This is not enough time to plan and carry out a transfer, we therefore prefer to keep the current time limit on six weeks.

Definitions in Article 2:

- Litra g (v) ' the sibling or siblings of the applicant'
  - DK does not agree with the extended definition of family members to include siblings of the applicant. What is the purpose it seeks to achieve? Is there any evidence that by introducing this criteria secondary migration will be reduced? Has any impact assessment been done to measure its effect? It could be argued that it will have the opposite effect i.e. that it creates a new incentive to make the journey to Europe as possibilities are now open to be "Dublin" transferred to the country where a sibling resides.
  - Moreover, the criteria is time consuming and resource intensive to administer in terms of handling sibling claims many of which could be fraudulent. According to Danish forensic authorities it is not possible to determine proof of sibling relationship through DNA testing. Moreover, it should be clarified whether half siblings are to be included or not.

- Litra n ' diploma or qualification'
  - DK has a scrutiny reservation as we need to consult relevant authorities to obtain an opinion of the feasibility of this provision in terms of the level of administrative burdens and risks of fraud.
  - DK is also concerned about the diploma obtained 'after at least three month' – a balance needs to be struck between the length of diploma course taken and the time limit for its application as relevant for the procedure under AMMR. We suggest, as a minimum, a diploma obtained after at least 6 month of study, which is no less than 5 years old, or a bachelor's degree obtained within the past 5-10 years.

- Litra p 'Absconding'
  - DK is concerned that the definition only includes applicants whereas the previous definition of Dublin Regulation included both applicants, third country nationals and stateless persons. This is also seen in relation to AMMR art 34 (rules regarding detention) which refers to both applicants or another person referred to in art 26 (1) , b, c or d.
    More clarity as to whether a person is considered to have absconded if person remains in the country but is not making himself available to the authorities.
    [læs igen fra US og HJST]

- Litra q 'Risk of absconding'
  - Same concern as above in relation to the scope of the provisions in terms of who is included.

Article 35 (2):

- This relates to the lack of clarity in terms of defining absconding. More clarity is needed when the person is not making himself available for interviews and meetings although the person may still be on the territory ,
- More clarity is needed in relation to when the time limit begins to count i.e. is the transfer frozen from the time the authorities determines the person has absconded or is it the time when the authorities informs the responsible MS about this fact.
- Moreover, more clarity is needed in relation to how to establish whether the person "becomes available to the authorities again" otherwise, it will be difficult to know when the time starts to count again.
- Lastly, it may be difficult to restart the procedure if the person absconds before the expiration of the 6 months period for instance after 5,5 month and then reappears which means the authorities will have to resume and carry out the transfer within two weeks. Instead, we propose a time frame of minimum 2 months, which will begin from the person reappears, which will remove the incentive to disappear and obstruct the process.

Article 38:

Even though the MS may have information that a potential applicant is a danger to national security, the immigration authorities may not be in possession of this type of classified information or may not be allowed to share it with another country as per national laws. This should be further clarified.

ESTONIA

CHAPTER V

General comment

Shortening of the deadlines does not pose a problem for us. We see it as a sensible measure to support effectiveness of the Dublin procedures.

Article 33 Remedies

General comment

We support using the wording of "shall endeavour" when addressing the deadlines for court proceedings. In Estonia´s case, international protection procedures and decisions can be contested in the Administrative Court. The court proceedings are regulated with the Code of Administrative Court Procedure. Its Article 126 paragraph 3 provides for that international protection matters are considered by the court as a priority.

Article 34 Detention

Paragraph 4

Proposal to amend the wording as follows

"Where a person is detained pursuant to this Article, the detention shall be ordered in writing by **administrative or** judicial authorities. The detention order shall state the reasons in fact and in law on which it is based."

Reasoning - In order to effectively fulfil the obligations arising under this Regulation, detention by an order of the administrative authorities must be possible on the condition that it is subject to a judicial review of the lawfulness of detention.

Article 35 Detailed rules and time limits

Paragraph 2 subsection 3

General comment

We welcome the possibility to suspend the deadline upon the absconding of the person to be transferred. We would also support the proposal to prolong the deadline for 3 months when a person become available to the authorities again.

Article 38 Exchange of security-relevant information before a transfer is carried out

Proposal to amend the wording and to consider amending the respective recital in following lines:

„Where the Member State carrying out a transfer is in possession of information that indicates that there are reasonable grounds to consider the applicant or another person as referred to in Article 26(1), point (b), (c) or (d), a danger to national security or public order in a Member State, that Member State shall also communicate such information to the **competent authorities of the** Member State responsible."

The transferring authority shall indicate the presence of such relevant information whereas the competent authorities of both Member States shall use designated channels for such information exchange.

Reasoning – Wording of the Article providing for an obligation might be too general for implementation. It is not clear, what is the scope of the required information. Migration authorities are generally not in possession of the detailed information on the possible threat to the national security. Therefore, the authorities designated to perform Dublin procedures might not be able to provide detailed information needed. It would support unified implementation of information provision, if the scope of the obligation of the transferring authority, would be clarified. As we have mentioned in connection of the Article 57 paragraph 5, the DubliNet might not be a suitable channel for an information sharing on the topic of security in case it would entail more details than whether the threat is being detected or not.

Article 2 Definitions

Point (g) sub point (v)

Substantial reservation.

Proposal to delete in its entirety.

Reasoning: We cannot support widening of the scope of the family members with siblings (and subsequently to half-siblings). In our view, widening of the scope of the family members in the Dublin procedure framework enables fragmentation of the family definition in EU law regulating migration. It could also pose some problems in implementation. It would not be feasible to presume that all asylum applicants consider their siblings as close family members with whom they want to be reunited with and live with as a family. There is no legal requirement to guarantee family unity with the siblings. In addition, it might create an unfair treatment compared to the third country nationals, who come to the EU for work, study or for other purposes.

Points (n) and (o)

Substantial reservation.

Proposal to delete in their entirety.

Reasoning: we cannot support adding the new criteria of diplomas or other qualifications proposed in the Article 20. Main reason for it is limitless widening of the criteria of residence permits and visas. The scope of the educational facility is extremely wide and enables to include short-term courses and distant learning. The variety of the diplomas and qualification documents is too wide and generally, they are issued without security elements making the falsification of them widespread. We also think, that having been studying few months in the MS does not necessarily create stronger link with the country that a visa or residence permit. Considering the lack of time limits to the graduating from the school, very wide scope of broadening of the residence permit or visa criteria, low threshold of falsifications and no added value compared to the visas or residence permits, we think that a new criterion would be highly problematic to implement.

Article 71 Amendments to the Long Term Residence Directive

Substantial reservation.

Proposal to delete the amendment.

Reasoning: we do not support the amendment to shorten the 5-year period to 3 years. We find it would put other migrants in comparable situation in an unfair position. We do not see that named measure would contributing to the purpose of preventing secondary movements. In addition, shortening the required residence period might create a pull factor.

FINLAND

Kindly note that all our comments are preliminary at this stage, and we may later submit further comments and/or specification on these articles.

We would see it highly valuable if the presidency could continue its practice to share the written comments submitted by MSs.

Article 2 j)

- **We should prevent the possibility to use a child as a means to choose the MS responsible, and we hope that a solution could be found to cases where a child "is left unaccompanied" for that purpose.**

As we noted in the meeting, we have had cases where a family applies for asylum but the parents abscond during the process of determination of the Member State responsible and the minor child stays in Finland. In these situations, it is unclear whether we should consider the child as unaccompanied minor - and consequently apply article 15 in determining the MS responsible- or whether we can continue the determination process normally by applying article 28 para 2 to the parents and 26 para 2 to children and eventually unite the family in the MS responsible. The answer could be simple, if we didn't have the last sentence of letter j), according to which the definition includes a minor who is left unaccompanied after he or she has entered the territory of Member States. We understand that it is not possible to delete it, as it is important in other connection, for example it may be necessary to designate a representative for the child. Unfortunately we do not have any solution to suggest, but we want to raise this as one issue to be discussed during the drafting.

Article 2 p)

We support those MS who suggest revising the definition. It is important that absconding does not presuppose leaving the country.

Article 35

- **We suggest that in cases where the person concerned absconds, the transfer period of 6 months would either start from the beginning or be otherwise of a fixed length and long enough, for example three months.**

It is important that applicants' actions do not lead to the shift of responsibility. However, we share the same concerns than many member states who find the proposal difficult to implement in practice, as we would then need to know exactly when the person absconded and then count the remaining period in days. In some cases the remaining time could also be too short to carry out the transfer in practice.

Article 38

We will send our suggestion at a later stage, national discussion is still ongoing.

Article 71

We suggest considering possible needs to change the Long Term Residence Directive as a whole, and taking into account the upcoming COM assessment of the directive.

FRANCE

Remarques générales :

La France réitère sa réserve générale d'examen sur le volet responsabilité du règlement (Partie III « Critères et mécanismes de détermination de l'État membre responsable »), bien qu'elle soutienne l'économie générale du dispositif.

Partie I – Champ d'application et définitions

Sur l'article 1 : Objectif et objet

Afin de respecter l'ordre des parties les points b (mécanisme de solidarité) et c (critères et mécanismes de détermination de l'État membre responsable de l'examen d'une demande de protection internationale) devraient être inversés.

Le point b) devrait prévoir un pluriel pour mécanisme de solidarité en cohérence avec le titre et le contenu du chapitre I de la partie IV (Mécanismes de solidarité).

Sur l'article 2 : Définitions

g) Membres de la famille :

Le principe de l'élargissement aux familles constituées pendant le parcours d'exil, [accepté dans le cadre de la renégociation du règlement qualification] peut générer des risques de fraude sur la réalité de liens familiaux qu'il sera souvent difficile d'établir.

En outre, la proposition d'ajout des frères et sœurs mérite réflexion. Elle nécessite avant tout d'évaluer les conséquences sur les pays où des fortes communautés sont déjà établies et l'intérêt réel de regrouper des adultes (les frères et sœurs sont déjà pris en compte quand il s'agit de mineur au titre de l'intérêt supérieur de l'enfant).

Nous pouvons néanmoins soutenir ces deux propositions dans un esprit de compromis et pour obtenir des avancées sur d'autres éléments (conditions matérielles d'accueil dans le seul État membre responsable de la demande, champ d'application revisité quant à la suppression de la bascule de responsabilité pour les cas de reprise en charge, et amendement de la définition de la fuite).

n) Diplôme ou qualification :

Il est difficile à ce stade d'analyser les conséquences de cette nouvelle disposition par rapport au règlement Dublin III.

Il est nécessaire de mentionner explicitement dans le règlement que les études en cause doivent avoir été suivies sur le territoire des États membres, pour éviter les demandes d'asile liées à des diplômes obtenus par correspondance ou à distance (inclure les diplômes obtenus à distance pourrait générer de nombreux abus).

Par ailleurs, il conviendrait de prévoir que le diplôme ou la qualification devrait avoir été obtenu après une période d'une année scolaire plutôt que trois mois comme proposé par la Commission. Sur ces points, la France souhaite voir l'article 2, sous n), modifié en cohérence.

Pour ne pas créer de responsabilité perpétuelle qui serait générée par les programmes étudiants et tout en restant cohérent avec la plus- de ce nouveau critère, il pourrait être pertinent d'y ajouter une condition temporelle en value intégratrice prévoyant que le critère ne sera applicable que durant un certain nombre d'années maximum après la fin des études en cause. Une durée de cinq ans pourrait à cet égard s'avérer pertinente.

- **Enfin, ce nouveau critère, de nature à soulager les pays de première entrée, ne sera acceptable qu'avec des contreparties (CMA, délai de transfert permanent pour les reprises en charge, définition de la fuite).**

Article 2 (n) 'diploma or qualification' means a diploma or qualification which is obtained after at least a ~~three months'~~ **one year** period of study **in the territory of a Member State** in a recognised, state or regional programme of education or vocational training at least equivalent to level 2 of the International Standard Classification of Education, operated by an education establishment in accordance with national law or administrative practice of the Member States;

p) fuite :

- **Cette définition doit être modifiée. En effet, définir la fuite par le fait de ne pas rester « à la disposition des autorités administratives ou judiciaires » offre peu de souplesse aux États membres. Par conséquent, la France propose une nouvelle définition de la fuite, dans le but d'éviter des bascules rapides de responsabilité d'un État membre à un autre, alors même que l'objectif du règlement est de dissuader les mouvements secondaires.**

- **En soutien à ce qu'a indiqué la Belgique lors du groupe Asile du 15 avril 2021, une définition structurante de la fuite ne peut consister en un exemple. Cette notion doit être définie de manière générique et par des termes clairs et précis, afin d'en limiter le champ d'interprétation.**

- **De plus, il convient de mentionner dans cette définition les étrangers en situation irrégulière et des apatrides.**

- **La proposition de définition proposée par la France est donc la suivante :**

Article 2 p)

'absconding' means ~~the action by which an applicant does not remain available to the competent administrative or judicial authorities, such as by leaving the territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the applicant's control~~ **the behaviour by which an applicant, a third-country national or a stateless person, voluntarily subtracts himself/herself or attempts to substract himself/herself from the procedure for determining the Member State responsible or from the measure for transfer to the Member State responsible, in particular by failing to comply with the requirements of the authorities of the State in which he or she is present.**

q) risque de fuite :

- **Au même titre que pour la définition de la fuite, il convient également d'étendre son champ d'application aux étrangers en situation irrégulière et aux apatrides.**

Sur les définitions relevant de la solidarité (article 2, lettres r à w)

- **La France n'émet à ce stade pas d'objection à ces définitions, sous réserve d'ajustements à venir en lien avec les discussions sur les articles où les termes sont mentionnés. Par ailleurs, il doit être veillé à ce que la définition des notions communes à plusieurs instruments soit identique dans chacun de ces instruments.**

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PARTIE III – Critères et mécanismes de détermination de l'État membre responsable

Article 28 : Début de la procédure

Paragraphes 1 et 2 :

La France rappelle que l'application des critères et règles de responsabilité pour un demandeur d'asile qui fait l'objet d'une procédure de relocalisation doit impérativement avoir été réalisée avant que la relocalisation ne soit effectivement réalisée. C'est une question d'efficacité des procédures. Il s'agit d'éviter des transferts successifs, qui constituent une charge pour les États Membres et ne sont pas dans l'intérêt des demandeurs eux-mêmes.

Paragraphe 5 :

La France souscrit à cet article, mais estime que dans le cas où le demandeur d'asile s'est volontairement soustrait à une procédure de relocalisation, dont il avait été dûment informé, en se rendant de lui-même dans un autre État membre, il ne devrait pas bénéficier des conditions

matérielles d'accueil dans cet État, comme la France l'a soutenu à propos de l'article 10 du présent règlement.

Article 29 : Présentation d'une requête aux fins de prise en charge

Paragraphe 1 :

La France soutient la réduction du délai de requête de prise en charge de trois mois (règlement Dublin III), à deux mois dans le présent règlement.

Article 30 : Réponse à une requête aux fins de prise en charge

Paragraphe 1 :

La France propose de fixer à un mois le délai de réponse à une requête de prise en charge, sans considération d'un éventuel *hit* lors d'une recherche sur Eurodac. La France estime en effet qu'un délai de 2 semaines en cas de *hit* est trop court pour que l'État requis dispose du temps nécessaire pour d'opérer les vérifications nécessaires.

Paragraphe 2 :

Par conséquent, la durée de la procédure de prise en charge (saisine + réponse) passerait de 5 mois maximum (règlement Dublin III) à 3 mois maximum dans le présent règlement (deux mois pour requérir un Etat membre d'une prise en charge, et un mois pour la réponse de l'État requis). La France juge que cette réduction des délais est un bon compromis entre l'objectif de transfert rapide des demandeurs d'asile et la garantie d'une mise en œuvre effective de ces transferts par les administrations nationales, dans des délais suffisants.

Paragraphe 7 :

La France soutient la proposition de la Commission consistant à préserver la possibilité d'adresser des requêtes sollicitant une réponse urgente dans les deux semaines.

Article 31 : Présentation d'une notification aux fins de reprise en charge

La France soutient cette simplification de procédure, qui tire les conclusions des imperfections du système Dublin III, dans la mesure où actuellement, dans de nombreux États membres, le nombre des requêtes aux fins de reprise en charge est nettement supérieur à celui des requêtes de prise en charge. Par conséquent, la France soutient la proposition d'un simple système de notification en remplacement des requêtes de reprise en charge, ce qui devrait fluidifier les procédures.

Pour les requêtes de prise en charge, l'article 29, paragraphe 1, sous-paragraphe 3, prévoit que lorsqu'une requête n'est pas transmise dans le délai prescrit, la responsabilité de l'examen de la demande d'asile incombe à l'État dans lequel la demande a été enregistrée. Toutefois, l'article 31 sur les notifications de reprise en charge ne semble pas prévoir de dispositif similaire. La Commission a indiqué que, s'agissant des requêtes de reprise en charge, la responsabilité d'un État membre – telle qu'inscrite dans Eurodac – ne peut être transférée à un autre État membre du seul fait d'une notification hors délai puisque la responsabilité d'un État membre a déjà été déterminée. La France considère que cette précision devrait figurer explicitement à l'article 31, et propose l'amendement suivant au paragraphe 1 :

1. In a situation referred to in Article 26(1), point (b), (c) or (d) the Member State where the person is present shall make a take back notification without delay and in any event within two weeks after receiving the Eurodac hit**. The fact that the take back notification is not made within the time limit has no effect on the obligation of the responsible Member State to take back the applicant.**

Paragraphe 1 **:**

La France propose de fixer le délai d'envoi d'une notification de reprise en charge à 1 mois à compter du hit Eurodac, et non à 2 semaines comme proposé. Ainsi, le délai d'envoi sera réduit par rapport au délai actuel de deux mois (règlement Dublin III).

Paragraphe 3 **:**

Pour la réponse à une notification de reprise en charge, la France propose de conserver le délai de 2 semaines prévu par le règlement Dublin III, et non de le réduire à 1 semaine comme proposé. Il semble en effet difficile de respecter un délai de réponse d'une semaine compte tenu du volume représenté par les requêtes de reprise en charge.

Paragraphes 1 et 3 **:**

Ainsi, selon la proposition française – la durée totale maximum de la procédure de reprise en charge (saisine + réponse) passerait de 4 mois (règlement Dublin III) à 1 mois et demi dans le présent règlement, ce qui répond à l'objectif de célérité inscrit à l'article 5§1 c) du présent règlement et semble être un bon équilibre.

Article 32 : Notification d'une décision de transfert

Paragraphe 1 **:**

Le délai d'une semaine à compter de l'acceptation ou de la notification de la requête aux fins de reprise en charge pour prendre une décision de transfert est trop court, et risque de rendre impossible la prise d'une décision de transfert. Le nombre très conséquent de requêtes Dublin

reçues par certains États membres (en France, 18 292 accords en 2020) doit être pris en considération par le règlement.

Par ailleurs, le sous-paragraphe 5 du paragraphe 3 de l'article 34 relatif au placement en rétention, qui se réfère expressément au délai prévu au paragraphe 1 de l'article 32, prévoit que les personnes placées en rétention devront être libérées si la décision de transfert n'intervient pas dans le délai prescrit. Cette conséquence sera très pénalisante et ne peut pas être acceptée. Par conséquent, la France demande la suppression de ce nouveau délai.

Article 33 : Voies de recours

Pas d'observation.

Article 34 : Placement en rétention

Paragraphe 2 **:**

La France accueille favorablement la suppression de la mention « *non négligeable* » (« *significant risk of absconding* » en anglais) pour qualifier le risque de fuite permettant le placement en rétention].

En lien avec l'article 2 (q), il est important que le terme d'« *applicant* » figurant dans cette définition du « risque de fuite » couvre également les personnes en séjour irrégulier dans l'Etat requérant et ayant déjà enregistré une demande d'asile dans un autre Etat membre.

Paragraphe 3 **:**

Sous paragraphe 2 : pour les prises ou reprises en charge, il est prévu que l'État requis ne dispose que d'une semaine pour répondre à une requête ou adresser une notification. La France estime que ce délai est trop court et soutient l'extension de ce délai à deux semaines pour les deux cas de prises ou reprises en charge.

Sous paragraphe 4 : comme indiqué lors de la lecture de l'article 32, la proposition prévoyant que l'État requérant ne dispose que d'une semaine à compter de l'accord de prise en charge ou de l'envoi d'une notification de reprise en charge pour prendre une décision de transfert ne peut être soutenue.

Proposition d'amendement (dernier sous paragraphe) :

Where the requesting or notifying Member State fails to comply with the time limits for submitting a take charge request or take back notification ~~or to take a transfer decision within the time limit laid down in Article 32(1)~~ or where the transfer does not take place within the period of four weeks referred to in the third subparagraph of this paragraph, the person shall no longer be detained. Articles 29, 31 and 35 shall continue to apply accordingly

Paragraphe 4 **:**

Cette disposition doit être amendée afin de prévoir que le placement en rétention peut également être décidé par une autorité administrative.

Proposition d'amendement reprenant les conditions définies par l'article 9, paragraphes 2 et 3, du projet de refonte de la directive Accueil :

~~4. Where a person is detained pursuant to this Article, the detention shall be ordered in writing by judicial authorities. The detention order shall state the reasons in fact and in law on which it is based~~ **The detention of an applicant shall be ordered in writing by the competent authorities. The detention order shall state the reasons in fact and in law on which it is based as well as the reasons why other less coercive alternative measures cannot be applied effectively.** **Where the detention is ordered by an administrative authority, Member States shall provide for a speedy judicial review of the lawfulness of the order of detention to be conducted *ex officio* or at the request of the applicant, or both »).**

Article 35 : modalités et délais

Paragraphe 2 **:**

La France souligne que la facilité avec laquelle les demandeurs peuvent contourner l'application du règlement Dublin III, notamment en raison des durées trop courtes prévues par les clauses de cessation de responsabilité lorsqu'un État membre ne parvient pas à les transférer constitue un des facteurs de dysfonctionnement de ce règlement.

La suppression de la bascule de responsabilité en cas de non-exécution du transfert d'un bénéficiaire de la protection internationale est une avancée positive (articles 26, paragraphe 1, sous c), et 27, paragraphe 1). Toutefois, la France demande également la suppression de cette bascule de responsabilité pour les personnes soumises à une procédure de reprise en charge, car

ces personnes ont volontairement quitté l'État membre responsable de leur demande, en violation de leurs obligations prévues à l'article 9 du présent règlement.
Aussi, pour réduire les mouvements secondaires, il semblerait dysfonctionnel de prévoir une bascule de responsabilité, même au terme d'un délai prolongé, pour les demandeurs ayant déjà été transférés une première fois dans l'État membre responsable. La France estime que la suppression de la bascule de responsabilité est de nature à dissuader les demandes multiples présentées dans plusieurs États membres, et confirme le principe de responsabilité, en particulier dans le cas où l'État membre responsable n'a pas éloigné le débouté.

Définitions de la fuite et du risque de fuite :

La France rappelle que la définition de la fuite doit être modifiée (article 2, sous p)) : définir la fuite par le fait que le demandeur d'asile ne doit pas rester « à la disposition des autorités administratives ou judiciaires » offre en effet peu de souplesse aux États membres. Par conséquent, la France propose une nouvelle définition de la fuite (cf. commentaires sur l'article 2) dans le but d'éviter des bascules rapides de responsabilité d'un État membre à un autre, alors même que l'objectif du règlement est de dissuader les mouvements secondaires.

Au même titre que pour la fuite, il convient également de modifier la définition du risque de fuite pour étendre son champ d'application aux étrangers en situation irrégulière et aux apatrides (article 2, sous q)).

Article 36 : Coût du transfert

Pas d'observation.

Article 37 (échange d'informations pertinentes avant l'exécution d'un transfert) et article 38 (échanges d'informations utiles aux fins de la sécurité avant l'exécution d'un transfert) :

La France soutient le principe de l'échange d'information issues du filtrage avant le transfert, bien que, si le contrôle de sécurité montre que le demandeur présente un danger pour la sécurité nationale ou pour l'ordre public, l'État membre qui a effectué le contrôle de sécurité est l'Etat membre responsable (article 8, paragraphe 4, alinéa 3).

Articles 39 à 42

Pas d'observation.

Article 43 : Réseau d'unités responsables

La délégation française remerciera EASO pour le travail accompli dans ce domaine, mais demandera à la Commission de préciser pourquoi il est nécessaire d'inscrire l'existence de ce réseau dans un règlement alors que d'autres réseaux d'EASO ne sont pas mentionnés.

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PARTIE V – Dispositions générales

Article 62 : Sécurité et protection des données

La France souhaite que soit ajoutés les termes « *en toute indépendance* » mentionnés à l'article 38 du règlement Dublin III dans la réalisation des missions de l'autorité de contrôle.

2. The competent supervisory authority or authorities of each Member State shall monitor **independently, in accordance with its respective national law,** the lawfulness of the processing of personal data by the authorities referred to in Article 41 of the Member State in question.

Articles 63 à 45

Pas d'observation.

Article 66 : Champ d'application territorial

La France pose une réserve d'examen sur cet article à ce stade des négociations.

Article 67 : Comitologie

La France pose une réserve d'examen sur cet article qui nécessite de plus amples réflexions. La France souhaite notamment s'assurer que la procédure d'urgence prévue à l'article 8 du règlement (UE) n° 182/2011 (règlement « Comitologie ») présente une plus-value au regard des « *raisons d'urgence impérieuses* » mentionnées au paragraphe 5 de l'article 53 qui apparaissent imprécises à ce stade.

Il n'est en effet pas anodin d'autoriser la Commission à adopter des actes d'exécution d'application immédiate engageant les États membres dans des mesures de solidarité.

Article 68 : Exercice de la délégation

Le délai de deux mois accordé au Conseil et au Parlement pour exprimer des objections à l'encontre d'un acte délégué adopté semble court. Il est de quatre mois dans le règlement Dublin III.

Article 69 : Suivi et évaluation

La Commission pourrait apporter des précisions sur l'examen du fonctionnement des mesures de solidarité et sur leur imbrication avec le rapport de la Commission sur la mise en œuvre des actes d'exécution prévu à l'article 53, paragraphe 6, en cas de pression migratoire.

La Commission pourrait préciser ce que recouvrent exactement les « *mesures prévues dans le présent règlement* », s'agissant du rapport prévu au deuxième paragraphe de cet article.

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Partie VI – Modifications d'autres actes de l'Union

Article 71 : Modifications de la directive sur les résidents de longue durée

La France pose une réserve d'examen sur cet article à ce stade des négociations. Cette disposition nous semble relever de la directive 2003/109/ce du conseil du 25 novembre 2003 relative au statut des ressortissants de pays tiers résidents de longue durée, pour laquelle une proposition de refonte est prévue à la fin de l'année 2021 sur la refonte.

Article 72 : Modification du règlement (UE) XXX/XXX [établissant le Fonds « Asile et migration »]

Cohérence de rédaction : lors des discussions en cours sur le règlement FAMI, les articles 16 et 17 sont devenus respectivement les articles 19 et 20.

Sur la modification de l'article 16 :

- **La France soutient le nouveau montant de la dotation pour les admissions humanitaires qui est désormais de 10 000 €, mais considère qu'une dotation supplémentaire spécifique pour la réinstallation des personnes vulnérables pourrait être prévue afin de mieux prendre en compte la mobilisation des services pour ces réinstallations et les besoins spécifiques en termes d'accueil qui sont nécessaires.**

GERMANY

Germany maintains a scrutiny reservation on the entire Asylum and Migration Management Regulation (AMMR) (all articles and recitals). Germany also reserves the right to make further comments. We also reserve the right to make comments on the provisions adopted directly from the Dublin III Regulation, first because our concerns about the Dublin system remain applicable and secondly because the Dublin system must in any case be re-evaluated in light of the new proposals.

Article 2

Scrutiny reservation on all definitions:

- It is crucial for the legal definitions to be identical in all legislative acts, unless by way of exception different objectives are intended.
- Please explain whether it makes sense to include in Article 2 or in a recital a definition or description of vulnerable persons as those with special reception or procedural needs.

(c)

- Scrutiny reservation in view of the cross-references to the Asylum Procedure Regulation, the Qualification Regulation and the Crisis and Force Majeure Regulation, and in particular with regard to the inclusion of persons who have been granted "immediate protection".
- Please explain the specific effects (including on the Asylum Procedure Regulation and the Qualification Regulation) of including in the definition of applicants persons who have been granted immediate protection.

(e)

- Scrutiny reservation in view of the cross-references to the Asylum Procedure Regulation.

(g)

- **Scrutiny reservation on the broader definition of family members**.
- Responsibility criteria: We still have a scrutiny reservation concerning the definition of the term "family member". We are open open to consider the Commission's proposal to include "transit families" in this definition . Further changes to the definition of "family member" and the consideration of the new responsibility criterion "diplomas or other qualifications"" are made conditional on the adoption of effective measures to prevent irregular secondary movements. Overall, it is necessary to achieve a balance between these new criteria for responsibility and effective measures to prevent irregular secondary movements.
- In (ii), the wording should be revised to read "under applicable national law" in order to insert a reservation on grounds of private international law.
- Please explain the condition "and unmarried": if marriages of minors are in any case prohibited by national law, isn't this condition superfluous?

(k)

- Scrutiny reservation.
- Question for the Commission: please explain whether this definition agrees with the definition in the Asylum Procedure Regulation and other CEAS legislative acts.
- Please add the word "designated" to the definition of "representative".

(n), (o)

- **Scrutiny reservation**, because of our scrutiny reservation **on the new responsibility criterion.**
  Changes to the definition of "family member" and the consideration of the new responsibility criterion "diplomas or other qualifications" are made conditional on the adoption of effective measures to prevent irregular secondary movements. Overall, it is necessary to achieve a balance between the new criteria for responsibility and effective measures to prevent irregular secondary movements.

(p), (q)

- **Scrutiny reservation. We have not finished the examination of this – to us – very relevant norm, which is closely connected to Art. 35, Art. 27, as well as Art. 34.**
- **We also refer to our proposal for transfer time limits, cessation of responsibility and definition of absconding/risk of absconding, which is included in the comments on Art. 35.**

General Comments on Chapter V:
To prevent irregular secondary movements and abuse of the asylum system, the asylum procedure and reception conditions in all Member States must comply fully with the requirements of applicable Union law, which must be verifiably enforced. Which Member State is responsible for examining an application for international protection must be determined quickly and definitively.

Transfers must be unbureaucratic and subject to clear deadlines; they must comply with rule-of-law standards, maintaining legal remedies. We are pleased that the Commission has drafted a new notification procedure. Transfer deadlines must be long enough (without delaying the process). Absconding, failure to appear on the transfer date and all other obstacles to the transfer for which the applicant is responsible must have consequences for the applicant, and in principle not for the transferring Member State (e.g. by suspending the time limit for transfers or taking such behaviour into account when determining the onus of presentation). Specifically, a transfer time limit should start anew after the obstacle to transfer no longer exists. If transfers of responsibility after a time limit has expired are not abolished entirely, they should only be possible after (at most) three to five years.

We are pleased that the Commission's proposal provides, under the Asylum and Migration Management Regulation, for the transfer of persons already recognised as beneficiaries of international protection and those who were admitted in the context of resettlement or humanitarian admission if they are staying unlawfully (in particular as overstayers or to submit another application for asylum) in a Member State other than the Member State responsible.

These rules to prevent or reduce irregular secondary migration should be enforced by means of incentives and, if necessary, sanctions imposed on applicants (e.g. a special procedure for persons apprehended within the territory of another Member State, if they evaded the mandatory asylum border procedure at the external border; reduction of benefits (but only while maintaining the minimum living standards required by Union and human rights law), or, in certain precisely defined cases, detention to ensure transfer (e.g. after absconding) while at the same time requiring them to cooperate.

While their application is being examined, applicants must remain in the Member State responsible for them (codification of a residence requirement) and should receive full reception benefits in principle only in that Member State; if they are staying in a Member State other than the Member State responsible for them, however, they should receive benefits that meet at least the minimum living standards required by Union and human rights law. Procedural sanctions should also be considered if they culpably violate a residence requirement.

To ensure that Dublin transfers to Member States can be carried out within the allotted time limits, Member States need a suitable incentive, and the Dublin units must have at least the necessary minimum of personnel and organisational resources.

The EU Asylum Agency should pay special attention to the implementation of the Dublin procedures as part of its planned monitoring responsibilities.
Effective legal remedies against transfer decisions and transfers must be ensured insofar as rules to protect third parties (DE: drittschützende Normen) are violated.

Article 28

Paragraph 1

- We welcome that the procedure for determining the member state responsible for examining the application will in future be linked to registration pursuant to the APR rather than to the formal application for asylum.
- As already stated regarding Article 57, in the case of relocation we believe it is important to avoid any double transfers. For this reason, we support a change to the effect that the procedure for determining the member state responsible for examining the application is to be conducted by the benefitting member state, not by the member state of relocation.
- "The Member State where an application for international protection is first registered pursuant to Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] ~~**or, where applicable, the Member State of relocation**~~ shall start the process of determining the Member State responsible without delay."

Paragraph 3

- We strongly welcome the clear obligation for member states to indicate their own responsibility in Eurodac.

Paragraph 4

- In principle we welcome the elimination of the requirement to withdraw the asylum application and the creation of a clear provision.
- What are the conceivable future situations in which the responsibility of the member state of current residence is determined before the withdrawal? What should happen then?

Article 29

Paragraph 1

Subparagraph 1

- We welcome the use of "shall" (rather than the previous "may") in the provision.

Subparagraph 2

- We welcome the shortening of the time limit for making a take charge request when the responsibility of another member state is clearly indicated through the querying of EU databases (Article 13, Article 14a Eurodac and VIS hits).
- Please explain when the time period starts, especially in the case of VIS hits:
    - Have we understood correctly that the time period begins at the point when fingerprints are entered into Eurodac, as this registration triggers the query of both VIS and Eurodac through the Interoperability Regulation?
    - What effect does it have on the calculation of the time limit if, for example, yellow links or similar have to be clarified firsty?
    - If the member state's own VIS query is provided for: is the beginning of the time period linked to this query?
    - It should be clarified that this subparagraph only applies if the responsibility is based on this hit in Eurodac or VIS and not if it is based on a different provision for deciding responsibility.

Subparagraph 4

- We welcome the fact that, for unaccompanied minors, exceptions are provided and requests after the expiry of the time limits are possible.

Article 30

Paragraph 1

- We welcome the speeding up of procedures.

Paragraph 2

- We welcome the expediting of the procedure in cases of easily checked database hits (Eurodac and VIS).
- It should be made clear that this subparagraph only applies if the responsibility is based on this hit in Eurodac or VIS and not if it is based on a different provision for deciding responsibility.

Paragraph 8

- **We welcome the fact that the objection to a take charge request must be substantiated.**
- Are we correct in assuming that a member state must conduct the transfer to another member state if the latter has objected without providing substantiating reasons? What are the requirements for an objection and how do we ensure that all member states have a uniform understanding of the requirements for substantiating an objection? How would it be ensured that the person is taken charge of in an orderly manner in the case of a transfer after an unsubstantiated objection by another member state?

Article 31

We are pleased that the Commission drafted a new notification procedure, which replaces the current take back request, speeds up procedures, and thereby makes a fundamental contribution to preventing irregular secondary movements. Notification procedures for take back requests are reasonable, as the question of which member state is responsible has already been resolved in such cases and does not require any further extensive discussion. What is most important here is for the procedures to be efficient. Paragraph 1

- No objection regarding the proposal to start the time limit for a take back notification after "receiving a Eurodac hit". Regarding cases of Art. 26 para 1 lit. (c) and (d), the start of the deadline should be clear as well. If Eurodac might be checked during a legal use of the right to freedom of movement as well, clarification might be necessary here.

Paragraph 3

- The general evidentiary requirements should apply to a notified member state's reference to its cessation of responsibilities pursuant to Article 27. Simply claiming that responsibilities have ceased would not be sufficient.
- Please explain what procedure is provided for objecting to a take back notification. Is a disagreement between the member states possible here and, if so, how would it be resolved?
- Have we understood correctly that no confirmation of receipt is provided for, but rather that the confirmation of receipt of the notification or the substantiated objection is to take place directly within the time limit? How will it be ensured that the person is taken charge of in an orderly manner in the different cases (especially without confirmation of receipt)?

Article 32

We welcome the adoption of Article 26 of Dublin III in essentially unchanged form in Article 32.

Paragraph 1

- Have we understood correctly here that it is not the notification of the member state in which the person resides that is meant, but rather the notification within the meaning of Article 31 (3) of the AMMR? The standard here is ambiguous and somewhat unclear.

Article 33

We cannot support rigid time limits for courts in Art. 33 and propose the following changes:

Art. 33 para. 3 subpara. 1:

„Any decision on whether to suspend the implementation of the transfer decision **should regularly** be taken within one month of the date when the request reached the competent court or tribunal."

Art. 33 para 3 subpara 4:

„If suspensive effect is granted, the court or tribunal **should** decide on the substance of the appeal or review **within a reasonable time after** the decision to grant suspensive effect."

Paragraph 1

Effective legal remedies against transfer decisions and transfers must be ensured insofar as rules to protect third parties (DE: drittschützende Normen) are violated. We have taken note of the statement of the Council Legal Service in the AWP on 28 June 2021 regarding Article 47 of the EU Charter of Fundamental Rights (answering the DE "List of questions for the Council Legal Service, 31 May 2021", WK 8111/2021 INIT). We ask the Council Legal Service to provide those answers in a written statement. We maintain our scrutiny reservation.

Paragraph 2

- We ask for the member states to continue to be given the **option of setting a shorter time limit**. German national law provides for the limitation to one week of the time period for an application for temporary relief for suspensive effect.
- The member states should retain discretion within their national legal systems in the area of asylum and international protection, within a common framework.

Article 34

Paragraph 1

- Please explain whether Article 34 can in the view of the Commission be applied to the groups of people covered by Article 26 (1) (c) and (d) (including whether the reference in paragraph 5 for reception conditions according to the RCD is sufficient for those groups). Germany is still examining whether exceptions to the area of application are necessary for these groups of people.

Paragraph 2:

- Please explain the effect of deleting "significant" compared to Article 18 Dublin III regulation)

Paragraph 3

- After the confirmation or agreement of the member state or the point from which the legal remedy or the review in accordance with Article 33 (3) no longer has any suspensive effect, a transfer in cases of detention must according to this proposal take place within four weeks rather than six weeks as was the case to date. This is not feasible for us for practical reasons (organising the measure: arranging security or medical escort, member states' holidays or blocked days). **We ask for the transfer time limit of six weeks to be retained.**
- We ask the Commission to explain how cases of detention after registration of an application are to be dealt with, especially what time remains for preparing the transfer after the response to the urgent request. Scrutiny reservation regarding the time limits provided for here.

Article 35

- The fact that a disproportionately great effort goes into transfer procedures is one indication of the failure of the Dublin system. This effort is wasted through the transfer of responsibility after the transfer time limit runs out, and thus can be seen in the irregular secondary movements that have taken place. The shift of responsibility that occurs after the time limit expires can create false incentives for the applicant. Unfortunately, to date the authorities of other member states have sometimes through their behaviour contributed to making it impossible to meet time limits, such that a transfer of responsibility occurs. These problems must not be replicated in a new system. **Substantive Reservation regarding the time limit provided for here.** We are rightly discussing completely new provisions for effective reduction of the burden on overburdened member states in a spirit of solidarity, especially member states on the EU's external borders. This also requires significant improvement in the prevention of secondary movement.

Our proposal for transfer time limits, cessation of responsibility and definition of absconding/risk of absconding in the Asylum and Migration Management Regulation (AMMR):

Preliminary remarks

In its concept paper on the reorientation of the CEAS of 4 February 2020, Germany called for an in principle permanent responsibility of a Member State and a fair responsibility regime, as we consider the current Dublin III system dysfunctional. Although the COM proposals of 23 September 2020 fall short of this, Germany wants to participate constructively in the further negotiations. Therefore, the following proposals on transfer time limits, cessation of responsibility and usage of the definition of absconding/risk of absconding in the AMMR are submitted. From Germany's point of view, these proposals are central in order not to recreate the current problems in the AMMR again.

Transfer time limits (Art. 35 AMMR)

- General transfer time limit: **12 months** (Art. 35 (1) AMMR)
- Start of a new transfer time limit, as described below:

  In case of imprisonment of the applicant (Art. 35 (1) AMMR)
  - A new six months' time limit starts **only once** at the end of the imprisonment. The transfer must also be possible during imprisonment, if provided for under national law.

  In case of obstacles to the transfer (Art. 35 (2) AMMR):
  - A new six months' time limit starts **each time** after removal of the obstacle (possible several times if new obstacles are caused), provided that the applicant was responsible for the obstacle.
  - A new six month' time limit starts **only once** after removal of the obstacle, provided that the applicant was not responsible for the obstacle.

Cessation of responsibility (Art. 27 (1) AMMR)

- Shift of responsibility occurs either if a Member State does not transfer within a time limit set out in Article 35 or, additionally, if the following maximum time limits for the transfer have expired:
  - Maximum time limit of **3 years** to transfer persons referred to in Art. 26 (1) (a) AMMR (where take charge procedures apply, Art. 29)

- Maximum time limit of **5 years** to transfer persons referred to in Art. 26 (1) (b), (c), (d) AMMR (where take back procedures apply, Art. 31)

Definition of absconding (Art. 2 (p) AMMR) and risk of absconding (Art. 2 (q) AMMR)

- Clear definitions of absconding/risk of absconding are necessary, in particular because they also define the scope of Article 34 AMMR (detention).
- Article 35 shall be modified (start of new transfer time limits) covering **all other obstacles to the transfer** beyond absconding; concerns of vulnerable groups must be taken into account in an appropriate manner. Article 35 AMMR shall apply to all transfer obstacles (absconding and other transfer obstacles).

Article 37

Paragraph 2

- We ask the Commission to explain why Article 37 (2) does not refer to Article 39.
- In principle we welcome the transmission via normal communication channels of data from screening before a transfer.

Article 38

- We welcome the introduction of a provision explicitly addressing the disclosure of security-related information before transfers. Before applying this article in practice, we think it might be necessary to further clarify for all actors involved how to transfer the relevant information effectively.

Article 40

- In principle no objections, but please explain the changes in comparison to Article 34 of the Dublin III Regulation:
  - Please explain how Article 40 interacts with Article 38 and other provisions from the Regulation (Article 8 (4), Article 57 (2-7)): does Article 40 (1) (c) also include the sharing of information as provided for in Article 38? (Does Article 40 (2) contain an exhaustive list of the data to be transmitted?)
- Please also explain whether it is possible to send identity documents as part of a request for information – with or **without the affected person's consent within the meaning of Article 40 (3)**. Would a clear provision on this in the AMMR be possible? Background: There are cases in which a MS is entitled to return an applicant, but their identity documents are located in a different member state and the consent to transfer the documents will probably not be given Member states have interpreted Article 34 of the Dublin III Regulation in different ways in this regard (cf. EASO query of 26 October 2020).

Article 41

Paragraph 4

- Is the content of an implementing act here limited to transfers based on the AMMR? In the interest of clarity, after "written correspondence" the wording "**according to the present [or: this] Regulation**" could be inserted.

Article 42

- We welcome the fact that the Commission has in paragraph 2 provided for the continuation of existing administrative agreements under Dublin.

Article 43

- We welcome the newly provided inclusion of the EUAA in the network of responsible units.

Article 44

- We welcome the changes in comparison to Article 37 of the Dublin III Regulation.

Article 62

- We prefer the new wording "processed" rather than "transmitted".

Article 64

- Scrutiny reservation:
- Could the Commission please explain whether the change in comparison to Article 40 of the Dublin III Regulation means that Member States will be obliged to adopt national rules specifically for the penalties envisaged in that Article? Or would it be sufficient that existing national laws of specific Member States already envisage penalties for "infringements of this Regulation"?
- Could the Commission explain why it has specifically envisaged "including administrative or criminal penalties", given that (according to Germany's observations) there is no requirement regarding penalties, and the decision about which measures to take is left to the discretion of the Member States? Member State discretion in deciding which measures to adopt should therefore remain in place. This is already suggested by the requirement that the Member States should impose penalties that are "effective, proportionate and dissuasive".

Article 70

- Question to the Commission: Does this Article have any regulatory content beyond a reference to Article 4(4) of Regulation (EC) No 862/2007?

Article 71

- **Scrutiny reservation.**
- How does this change relate to the announced revision of the long-term resident directive? Could the Commission please explain why changes should be made within the AMMR? Germany feels generally that it is preferable to jointly discuss revisions to legislation and not to preempt this option with regard to certain aspects.

Article 72

- We maintain our scrutiny reservation. The proposal has to be updated with regard to the final version of the AMF.
- Revisions as compared to Article 16 of the AMF Regulation:
    - No. 1: Lump sums also to be paid for humanitarian admissions. We welcome this revision.
    - Nr. 2: Please explain what is meant by the addition "if the persons are admitted to ensure family unity". In our view, ensuring family unity is always a reason to admit (other) family members under RST/HAP.
    - Nr. 5: Could the Commission please explain which data retention provisions are meant to apply in this context. Please explain which part of the text clarifies (definitively) who is allowed to use this data.

Article 73

- Would current tertiary legislation (implementing acts) adopted on the basis of the Dublin III Regulation initially remain valid, provided the implementing authorisations were incorporated into the AMMR?

Article 74

- Please explain how current implementing acts could be retained (e.g. through reexamination procedure).

- Article 74 envisages that the AMMR should in some cases also be applicable to applications made after the first day of its entering into force. By contrast, Article 75, second paragraph, envisages that the AMMR should be applicable only to applications which are registered after the first day of the thirteenth month after it enters into force.

Article 75

- Please explain the transitional provision. Is it to be understood that sentence 1 generally envisages that all provisions enter into force 20 days after they are announced and in paragraph 2 sentence 2 a *lex specialis* is envisaged for the application of the rules on responsibility?
- Are we correct in assuming that it is absolutely necessary that Eurodac enters into force before the AMMR does because Eurodac already requires new functions to enable the applicability of the AMMR, and a longer implementation period is required and envisaged for Eurodac than for the AMMR, for technical reasons alone?

GREECE

As a general remark, EL has a substantial scrutiny reservation on the whole text of the proposal, including Part III, criteria and mechanisms for determining the Member State responsible.

On the other hand, the Greek delegation reiterates its points of views and comments expressed in the Asylum WP meetings on the 24/3 and 7/4.

Without prejudice to the above, the Greek delegation submits the following preliminary proposals:

Article 28 : Start of the procedure

We welcome the provision that the determination of the M-S responsible in case of relocation will be conducted by the M-S of relocation and not the M-S of first entry.

It is our position that the determination phase, especially in the case of the family reunification criteria may encounter delays. In case of migratory pressure it is of outmost importance that solidarity measures will take effect the soonest possible.

Article 29

General remark

The new time-limits for submitting and answering TCRs are extremely tight and will not be sufficient for achieving the proper implementation of Art.15, 16, 17, 18, 24 of this Regulation. It has been proven in practice that the requesting Member States is often under extreme pressure to complete the necessary actions and gather the necessary evidence. Conversely the requested Member State cannot complete the necessary inquiries and reach a fully reasoned decision despite the considerably longer time-limits provided for in the existing Dublin Regulation

Take charge requests based on family unity provisions require more documentation and preparation compared to take charge requests based on other responsibility criteria. Shorter deadlines in cases of family reunification potentially undercuts the effectiveness of relevant provisions, thus hampering the right to family unity.

Having in mind that a take-back procedure based on a Eurodac hit (Art. 31 AMMR) has far less requirements – the Eurodac hit being in principle the only proof needed – there is a risk that that the current AMMR draft will primarily help to enforce the criteria of first entry and first asylum application, but not the family criteria, to the detriment of Member States of first entry.

EL proposes the following drafting and amendments :

Article 29

Submitting a take charge request

1. If a Member State where an application for international protection has been registered considers that another Member State is responsible for examining the application, it shall, without delay and in any event within ~~two~~ **three** months of the date on which the application was registered, request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Articles 13 and 14a of Regulation (EU) XXX/XXX [*Eurodac Regulation*] or of a VIS hit with data recorded pursuant to Article 21 of Regulation (EC) No 767/2008, the request to take charge shall be sent within ~~one month~~ **two months** of receiving that hit.

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State where the application was registered.

Where the **request to take charge is based on articles 15 to 18 and art 24** ~~applicant is an unaccompanied minor,~~ the determining Member State may, ~~where it considers that it is in the best interest of the minor~~, continue the procedure for determining the Member State responsible and request another Member State to take charge of the applicant despite the expiry of the time limits laid down in the first and second subparagraphs.

Article 31

General remarks

As expressed in the WG of 24/3 EL retains substantial reservation in respect to the proposed quasi-automatic system of take back notifications and the proposed inclusion of beneficiaries and resettled persons in the scope of Part III, Criteria and Mechanisms for determining the Member State responsible.
In respect to the time limits proposed we deem that, they are extremely tight and will lead to severe implementation challenges. We therefore, propose to maintain the current system for the Take back requests.

EL proposes the following drafting and amendments :

SECTION III

PROCEDURES FOR TAKE BACK ~~NOTIFICATIONS~~ REQUESTS

Article 31

*Submitting a take back ~~notification~~ **request***

1. In a situation referred to in Article 26(1), point (b), ~~(c) or (d)~~ the Member State where the person is present shall make a take back ~~notification~~ **request** without delay and in any event within ~~two weeks~~ **one month** after receiving the Eurodac hit.
2. A take back ~~notification~~ **request** shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the statements of the person concerned.
3. The ~~notified~~ **requested** Member State shall give a decision on the request to take back the person concerned ~~confirm receipt of the notification~~ to the Member State which made the request ~~notification~~ within ~~one~~ **two** ~~weeks~~, unless the ~~notified~~ **requested** Member State can demonstrate within that time limit that its responsibility has ceased pursuant to Article 27.
4. Failure to act within the ~~one~~ **two** week**s** period set out in paragraph 3 shall be tantamount to ~~confirming the receipt of the notification~~ **accepting the request**~~.~~.

5. The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back ~~notifications~~ **requests .** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Article 32

Notification of a transfer decision

~~1.~~ The determining Member State whose take charge request as regards the applicant referred to in Article 26(1), point (a) ~~was accepted~~ or whose take back request as regards a person referred to in Article 26(1), point (b) was accepted, shall take a transfer decision at the latest within **one month** of the acceptance. ~~or who made a take back notification as regards persons referred to in Article 26(1), point (b), (c) and (d) shall take a transfer decision at the latest within one week of the acceptance or notification.~~

Justification : The foreseen time limit of one week is extremely tight and will generate several operational challenges. We therefore propose to set the time limit to one month, that provides for flexibility of the national authorities to organise the notification procedure and to set timely the transfer modalities.

Article 33

General remarks

AMMR entails important progress as compared to the Dublin III Regulation in relation to the family unity:

– It extends the definition of family member (Art. 2 lit. g AMMR) to now include all family links created in transit countries as well as siblings;

– With regards to family reunification for unaccompanied minors (Art. 8 para 1 and 2 AMMR), the wording of the article ("unless it is demonstrated that it is not in the best interest of the minor") presumes that family reunification serves the best interest of the minor, unless an factual indicators implies otherwise. This rule-exception-principle will decrease the administrative effort for requesting Member States when trying to reunify unaccompanied minors.

– With regards to reunification for unaccompanied minors, the family reunification procedure is not anymore bound to the strict deadline regime with regards to the submission of a take charge request. Therefore, the family reunification for unaccompanied minors is decoupled from time limits, on which the applicants do not have any influence (Art. 29 para 1 subpara 4 AMMR).

However, these important improvements **run the risk of becoming ineffective**, if individuals cannot appeal against unlawful application of the family unity based responsibility criteria. The problem arises due to the fact, that Art. 33 para 1 AMMR only foresees a legal remedy **"against a transfer decision"**.

If the requested Member State rejects the take charge request based on family unity provisions, **no transfer decision is issued**, as a rejection of a take charge request does not logically lead to a transfer.
This issue was already problematic under the Dublin III Regulation, and national courts dealt with the problem in vastly different ways.

i. Practical Needs

Practically, a legal remedy in the family reunion procedure is of utmost importance. The Dublin III rules on family unit play a significant role in the asylum procedure in Greece. Indeed, the overwhelming majority of

take charge requests Greece sends to other Member States are based on family unity provisions. However, since 2017, acceptance rates have continuously dropped, and requested Member States have become increasingly strict with regards to take charge requests from Greece.

ii. Legal Necessity

The proposal for the new AMMR should explicitly include a legal remedy against the unlawful rejection of family unity based take charge requests. Otherwise, requested Member States will continue to unlawfully reject take charge requests – at the cost of the Member States at the EU's external borders as well as the effected families. A remedy is legally necessary to be in line with the Charter of Fundamental Rights of the EU and to ensure the well-functioning of the European legal system.

- **Right to an effective remedy**

There can be no doubt that the purpose of the family unity clauses is to safeguards the fundamental rights of applicants. This is demonstrated specifically by Art. 33 para. 1 lit. 2 RAMM, but also by the obvious purpose of Art. 15 to 18 and 24 RAMM.

According to CJEU case law, the fact that a legal act is intended to assure other objectives, does not preclude its provisions from also protecting individuals (CJEU Decision of 08 October 1996 – C-178/94 et. al, Rec. 39). Therefore, even though the family unity clauses, and RAMM in general, are designed to facilitate fast and efficient asylum procedures, they still provide for individual rights.

Where EU law provides for individual rights, Member States are obliged to ensure judicial protection of an individual's rights (CJEU Decision of 13 March 2007 – C-432/05, Rec. 38 with further references to the case law).

This obligation is specifically laid down in Art. 47 of the Charter of the Fundamental Rights of the European Union. Even before the codification of Art. 47, CJEU frequently ruled that the right to an effective remedy is a general principle of EU law.

Therefore, individual rights should not be codified in the new AMMR, without an explicit codification of an effective legal remedy.

The limitation of the effective remedy to transfer decisions cannot be uphold in light of Art. 47 of the Charter of Fundamental Rights of the EU.

iii. The function of EU Law according to CJEU case law:

The Court of Justice of the European Union (CJEU) moreover regularly states that effective legal remedies against violations of EU law by Member States do not only serve the strengthening of individual rights, but generally the effective implementation of EU law (see e.g. Decision of 04 December 1974 – C-41/74, Rec. 12). It is the task of the judiciary to act as a check on the executive and to see that legal standards set by the EU are implemented correctly and that Member States adhere to the rule of law. If the Court is not accessible, it cannot act as that check. Such an outcome risks that EU law will not be implemented correctly and effectively, counter to the fundamental principle of EU law that developed by the court: effet utile.

iv. Risk of Divergent Case-Law in Member States and inconsistent Implementation of EU Law

The fact that the actual Dublin III Regulation is already hardly implemented in a coherent way is shown by the different case law of different Member States and by the analysis of the Commission in the AMMR (p. 14). Introducing a remedy against rejections of take charge requests would ensure both the possibility for the CJEU to check on the implementation of the law and the clear wording of the legal text that clearly allows for legal actions as also demanded by the Charter of Fundamental Rights. It would also prevent a scenario where different jurisdictions issue differing decisions on whether the regulation provides for a legal remedy against rejections of family unity-based take charge requests.

Therefore, in order to ensure the practical effectiveness of the (strengthened) family unity provisions under the AMMR, we propose the insertion of a clause providing for a remedy against the rejection of a take charge request (26(1)(a) family unity articles) by the concerned family member residing in the requested Member State. Such a remedy can be regulated in a manner similar to the remedy against the transfer decision notified to the applicant.

Article 34 : Detention

We propose the following :

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.

2. Where there is a risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively, based on an individual assessment of the person's circumstances.

3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

   Where an applicant or another person referred to in Article 26(1), point (b), ~~(c) or (d)~~ is detained pursuant to this Article, the period for submitting a take charge request or a take back ~~notification~~ **request** shall not exceed two weeks from the registration of the application. Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge request or a take back notification shall not exceed one week from the date on which the person was placed in detention. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply on a take charge request. Such reply shall be given within one week of receipt of the take charge request. Failure to reply within the one-week period shall be tantamount to accepting the take charge request and shall entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

   Where a person is detained pursuant to this Article, the transfer of that person from the requesting or notifying Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within four weeks of:

   (a) the date on which the request was accepted or the take back notification was confirmed, or

   (b) the date when the appeal or review no longer has suspensive effect in accordance with Article 33(3).

   Where the requesting or notifying Member State fails to comply with the time limits for submitting a take charge request or take back ~~notification~~ **request** or to take a transfer decision within the time limit laid down in Article 32(1) or where the transfer does not take place within the period of four weeks referred to in the third subparagraph of this paragraph, the person shall no longer be detained. Articles 29, 31 and 35 shall continue to apply accordingly.

4. Where a person is detained pursuant to this Article, the detention shall be ordered in writing by **the competent administrative or** judicial authorities. The detention order shall state the reasons in fact and in law on which it is based.

5. As regards the detention conditions and the guarantees applicable to applicants detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive XXX/XXX/EU [*Reception Conditions Directive*] shall apply.

Article 35 Detailed rules and time limits

We propose the following:

EL reiterates the scrutiny reservation on the inclusion of beneficiaries and resettled persons in the scope of the AMMR

1. The transfer of an applicant or of another person as referred to in Article 26(1), point (b), ~~(c) and (d)~~, from the requesting or notifying Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting or notifying Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of the acceptance of the take charge **or take back request** ~~or of the confirmation of the take back notification~~ by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3). That time limit may be extended up to a maximum of one year if the transfer cannot be carried out due to imprisonment of the person concerned.

[...]

2. Where the transfer does not take place within the time limits set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the requesting ~~or notifying~~ Member State.

Notwithstanding the first subparagraph, where the person concerned absconds and the requesting or notifying Member State informs the Member State responsible before the expiry of the time limits set out in paragraph 1, first subparagraph, that the person concerned has absconded, the transferring Member State shall retain the right to carry out the transfer within the remaining time at a later stage **or up to a maximum of six months** should the person become available to the authorities again, unless another Member State has carried out the procedures in accordance with this Regulation and transferred the person to the responsible Member State after the person absconded. [...]

Article 37 Exchange of relevant information before a transfer is carried out

EL reiterates its substantial scrutiny reservation in relation to the proposed Screening Regulation

[...]

(e) information collected during the screening in accordance with Article 13 of Regulation (EU) XXX/XXX [*Screening Regulation*].

[...]

Article 38 Exchange of security-relevant information before a transfer is carried out

EL reiterates the scrutiny reservation on the inclusion of beneficiaries and resettled persons in the scope of the AMMR

Where the Member State carrying out a transfer is in possession of information that indicates that there are reasonable grounds to consider the applicant or another person as referred to in Article 26(1), point (b), ~~(c) or (d),~~ a danger to national security or public order in a Member State, that Member State shall also communicate such information to the Member State responsible.

Article 40 Information sharing

We propose the following:

[....]

5. The requested Member State shall be obliged to reply within ~~three~~ **five** weeks. Any delays in the reply shall be duly justified. Non-compliance with the three week time limit shall 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 withholds information which shows that it is responsible, that Member State may not invoke the expiry of the time limits provided for in Article 29 as a reason for refusing to comply with a request to take charge. In that case, the time limits provided for in Article 29 for submitting a request to take charge shall be extended by a period of time equivalent to the delay in the reply by the requested Member State.

[...]

HUNGARY

General comments

We make a scrutiny reservation on the whole proposal and refer to our substantive reservation along the lines of our concerns indicated at ministerial and SCIFA level. We also indicate that the Hungarian Parliament, in its Decision No 40/2020 (XII. 16.) OGY, laid down that the principle of subsidiarity had been infringed in relation to the five draft regulations of the new Pact on Migration and Asylum.

Article 1

On the Hungarian side, we support the strengthening of mutual trust and the fair share of solidarity and responsibility between the Member States, but in doing so, the preferences and capabilities of the Member States must be taken into account.

During the drafting of the Pact, Hungary was firmly of the opinion that the planned reform of the EU's migration policy must be based on a balance of responsibility and solidarity. Nevertheless, the most concerning part of the Pact is the new compulsory solidarity mechanism, which is based on the compulsory distribution of asylum seekers and illegal migrants, using an allocation key and does not allow forms of solidarity to be adapted to Member States' preferences and capabilities. We are not opposed to mandatory solidarity, but we can only accept it in a much more flexible form than proposed.

Article 2

Some provisions of the article refer to draft regulations still under negotiation, but in our view there is no point in adopting one element of the reform in the absence of an agreement in the other. Hungary maintains its position on the "package approach". In addition, we emphasize the importance of the consistent use of definitions in the elements of the Pact.

We have a scrutiny reservation about the definition of point (c) with regard to the draft crisis regulation.

With regard to the definition of family member in point g), the draft regulation maintains the extended definition of family members proposed in 2016, but also includes family relationships established before entering the territory of a Member State. We have concerns about the definition of family member with regard to the extension to families established during the migratory route, as although this is based on case law, in practice it is often doubtful that this can be proved. The new definition of family member could lead to mass abuses, given that a family is treated differently from a single applicant. The use of such a broadly interpreted definition of family members leaves room for the implementation of new forms of abuse, and may lead to the proliferation of forced marriages and marriages of convenience, which are difficult to detect in practice. We also disagree with the extension of the concept of family member to siblings, as such an interpretation will lead to mass abuses.

We also have reservations about the definition of "migratory pressure", as according to the proposal the Commission should be entitled to assess the migratory situation and based on its own findings consider that a Member States may be under pressure. Furthermore, we consider it necessary to modify the definition of absconding, as the current wording raises feasibility concerns from a practical point of view (e. g. leaving the territory of a Member State). Moreover, we also consider it worth mentioning the possibility that the applicant deliberately seeks to avoid the transfer to the Member State responsible.

Article 28

The content of this article is basically acceptable to us, however, paragraphs 1, 2 and 5 are treated with reservations with regard to the reference to relocation. In our view, the procedure for determining the Member State responsible should take place before the relocation.

Article 30
The content of this article is basically acceptable to us, however, we consider it necessary to clarify the definition of detailed reasons under paragraph 8.

Article 31
We can't agree with the proposed procedure for take back notifications, as we do not see how a system that does not allows the requested Member State to reply and explain its reasons could serve the principles of the Dublin system.
Paragraph 1 refers to Article 26 (1) (c) and (d), which we do not support having regard to our position that beneficiaries of international protection should not be covered by the Regulation.

Article 32
In line with our position in the previous article, we do not support the reference to the notification procedure and Article 26 (1) (c) and (d). We are also concerned about the one-week deadline for a transfer decision, which cannot be met in the case of uncontrolled entry of third-country nationals into the territory of the Member States. We recommend extending the deadline to 10 days or keeping the current text.

Article 33
In line with our position in the previous articles, we do not support the reference to Article 26 (1) (c) and (d). In the case of paragraph 2, we consider the two-week period to be unreasonably long, so it would be worth shortening it, our proposal would be 3 days. In the case of the reasonable period referred to in paragraph 3, a time limit of 3 days would also be considered appropriate.

Article 34
We indicate that the deadlines set out in paragraph 3 can only be met in the current migration circumstances, which may change in changing circumstances. We consider it justified to maintain the deadlines currently in force. We do not support the reference to the case under Article 26 (1) (c) and (d).
The reference to the take back notification procedure in the article is concerning from the Hungarian point of view, so we should keep the wording currently in force.
Paragraph 4 provides that a written decision ordering detention must be taken by judicial authorities. According to the current Hungarian practice, detention is ordered in writing by the asylum authority or aliens policing authority, the extension of which is decided by the court. In this respect, the process of ordering detention would be smooth and fast, if this tasks were entrusted to another authority, it would slow down the process, increasing the risk of absconding, thus increasing the possibility of secondary movements. Accordingly, we suggest to use the wording from the recast Return Directive which states: "administrative and judicial authority".

Article 35
It is still not clear for us from paragraph 2 what would be the moment in time when the six months period would stop running. Would it be due to the notification of the responsible Member State, the moment when the national authorities get knowledge of the departure of the person concerned to an unknown location, or any other date. Furthermore, if the person has absconded closely to the expiry of the six-month time limit, the time still remaining to carry out the transfer may became insufficient, if the person becomes available to the authorities again.
We have a reservation with regard to the references to the notification procedure and relocation.

Articles 36-38
We have a scrutiny reservation with regard to the references to Article 26 (1) (c) and (d). Furthermore, we have a reservation in relation to Article 37 (2) (e) and (d).

Article 40
The rules on information sharing are basically acceptable to us, but we propose to extend the content of the last sentence of paragraph 5 to take back procedures.

Articles 41-42
Hungary has a scrutiny reservation with regard to the references to the solidarity mechanism in Part IV of the draft regulation and the notification procedure.
In addition, the structure of the administrative arrangements needs to be defined in a uniform way, so it is proposed that a model agreement should be issued by the Commission.

Article 43
We have a reservation about this article with regards to the reference to the EUAA.

Article 44
In order to resolve the problem of applying the provisions of the draft regulation on the procedures to determine the Member State responsible, we agree that it should be settled by the Member States in bilateral or multilateral consultations and that the Commission should be involved only in the absence of an agreement. However, given that this article also covers the proposed solidarity mechanism, we have a reservation.

Article 62
We have a scrutiny reservation with regard to paragraph 3 of this article, with reference to the draft EUAA Regulation.

Article 71
In our view, the three-year deadline proposed in Article 71 is too short, and we would support maintaining the current five-year deadline.

ITALY

PART I

SCOPE AND DEFINITIONS

Article 1

Aim and subject matter

In accordance with the principle of solidarity and fair sharing of responsibility, and with the objective of reinforcing mutual trust, this Regulation:

(a) sets out a common framework for the management of asylum and migration in the Union;

(b) establishes ~~a~~ mechanism**s** for solidarity;

(c) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.

Comment: *in point b), plural is needed to imply that solidarity mechanism is twofold.*

Article 2

Definitions

For the purposes of this Regulation:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty and who is not a person enjoying the right to free movement under Union law as defined in Article 2, point (5) of Regulation (EU) 2016/399 of the European Parliament and of the Council[1];

(b) 'application for international protection' or 'application' means a request for protection made to a Member State by a third-country national or a stateless person, who can be understood as seeking refugee status or subsidiary protection status;

(c) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a decision has not been taken, or has been taken and is either subject to or can still be subject to a remedy in the Member State concerned, irrespective of whether the applicant has a right to remain or is allowed to remain in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]~~, including a person who has been granted immediate protection pursuant to Regulation (EU) XXX/XXX [*Regulation addressing situations of crisis and force majeure in the field of asylum and migration*]~~;

(d) 'examination of an application for international protection' means examination of the admissibility or the merits of an application for international protection in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] and Regulation (EU) XXX/XXX [*Qualification Regulation*], excluding procedures for determining the Member State responsible in accordance with this Regulation;

[1] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p. 1.

(e) 'withdrawal of an application for international protection' means either explicit or implicit withdrawal of an application for international protection in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*];

(f) 'beneficiary of international protection' means a third-country national or a stateless person who has been granted international protection as defined in Article 2(2) of Regulation (EU) XXX/XXX [*Qualification Regulation*];

(g) 'family members' means, insofar as the family already existed before the applicant or the family member arrived on the territory of the Member States, the following members of the applicant's family who are present on the territory of the Member States:

(i) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law 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 the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

(iii) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,

~~(iv) where the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present,~~

(v) the sibling or siblings of the applicant;

(h) 'relative' means the applicant's adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;

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

(j) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;

(k) 'representative' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary;

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

(m) '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, including:

(i) an authorisation or decision issued in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than 90 days,

(ii) an authorisation or decision issued in accordance with its national law or Union law required for entry for a transit through or an intended stay in that Member State not exceeding 90 days in any 180-day period,

(iii) an authorisation or decision valid for transit through the international transit areas of one or more airports of the Member States;

(n) 'diploma or qualification' means a diploma or qualification which is obtained **in a Member State** after at least a three months' period of study **on the territory of that Member State** in a recognised, state or regional**,** programme of education or vocational training at least equivalent to level 2 of the International Standard Classification of Education, operated by an education establishment in accordance with national law or administrative practice of the Member States;

(o) 'education establishment' means any type of public or private education or vocational training establishment established in a Member State and recognised by that Member State or considered as such in accordance with national law or whose courses of study or training are recognised in accordance with national law or administrative practice;

(p) 'absconding' means the action by which an applicant does not remain available to the competent administrative or judicial authorities, such as by leaving **the assigned reception centre or the** territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the applicant's control;

(q) 'risk of absconding' means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria defined by national law to believe that an applicant who is subject to a transfer procedure may abscond;

(r) 'benefitting Member State' means the Member State benefitting from the solidarity measures in situations of migratory pressure or for disembarkations following search and rescue operations as set out in Chapters I-III of Part IV of this Regulation;

(s) 'contributing Member State' means a Member State that contributes or is obliged to contribute to the solidarity measures to a benefitting Member State set out in Chapters I-III of Part IV of this Regulation;

(t) 'sponsoring Member State' means a Member State that commits to return illegally staying third-country nationals to the benefit of another Member State, providing the return sponsorship referred to in Article 55 of this Regulation;

(u) 'relocation' means the transfer of a third-country national or a stateless person from the territory of a benefitting Member State to the territory of a contributing Member State;

(v) 'search and rescue operations' means operations of search and rescue as referred to in the 1979 International Convention on Maritime Search and Rescue adopted in Hamburg, Germany on 27 April 1979;

(w) 'migratory pressure' means a situation where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries which generate migratory movements that place a burden even on well-prepared asylum and reception systems and requires immediate action;

~~(x) 'resettled or admitted person' means a person who has been accepted by a Member State for admission pursuant to Regulation (EU) XXX/XXX [*Union Resettlement Framework*~~

~~*Regulation*] or under a national resettlement scheme outside the framework of that Regulation;~~

(y) 'Asylum Agency' means the European Union Agency for Asylum as established by Regulation (EU) XXX/XXX [*European Union Asylum Agency*];

(z) 'return decision' means an administrative or judicial decision or act stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return that respects Directive 2008/115/EC of the European Parliament and of the Council;

(aa) 'illegally staying third-country national' means a third-country national who does not fulfil or no longer fulfils the conditions of entry as set out in Article 6 of Regulation (EU) 2016/399 or other conditions for entry, stay or residence in a Member State.

Comment: *point **c)** is deleted as unnecessary. Where a person granted immediate protection is still an applicant, then he/she is* per se *included in the definition. In any event, art. 10 of the proposal for a regulation addressing situations of crisis and* force majeure *refers to suspension (para. 1) and resumption (para. 3) of the examination of applications. No reference is made to the determination of responsibility.*
*Point **iv** in **g)** and point **x)** are deleted consistently with the IT proposal on article 26 with reference to beneficiaries, resettled and admitted persons.*
*Point **n)** is amended in order to rule out diplomas obtained by means of on line courses.*
*Point **p)** is amended in order to include cases of individuals absconded and remained in the territory of the determining MS.*

CHAPTER V

PROCEDURES

SECTION I

START OF THE PROCEDURE

Article 28

Start of the procedure

1. The Member State where an application for international protection is first registered pursuant to Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] or, where applicable, the Member State of relocation shall start the process of determining the Member State responsible without delay.

2. **Without prejudice to article 27, para. 2,** ~~T~~the Member State where an application is first registered or, where applicable, the Member State of relocation shall continue the process of determining the Member State responsible if the applicant leaves the territory of that Member State without authorisation or is otherwise not available to the competent authorities of that Member State.

3. The Member State which has conducted the process of determining the Member State responsible or which has become responsible pursuant to Article 8(4) of this Regulation shall indicate in Eurodac without delay pursuant to Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*]:

(a) its responsibility pursuant to Article 8(2);

(b) its responsibility pursuant to Article 8(4);

(c) its responsibility due to its failure to comply with the time limits laid down in Article 29;

(d) the responsibility of the Member State which has accepted a request to take charge of the applicant pursuant to Article 30.

Until this indication has been added, the procedures in paragraph 4 shall apply.

4. An applicant who is present in another Member State without a residence document or who there makes an application for international protection during the process of determining the Member State responsible, shall be taken ~~back~~ **charge of**, under the conditions laid down in Articles ~~31~~ **30** and 35, by the Member State ~~with which that application was first registered~~ **which is determined as responsible**.

That obligation shall cease where the Member State determining the Member State responsible can establish that the applicant has obtained a residence document from another Member State.

5. An applicant who is present in a Member State without a residence document or who there makes an application for international protection after another Member State has confirmed to relocate the person concerned pursuant to Article 57(7), and before the transfer has been carried out to that Member State pursuant to Article 57(9), shall be taken back, under the conditions laid down in Articles 31 and 35, by the Member State of relocation.

Comment: *since leaving the territory of a MS may also imply leaving the EU, a reference in para. 2 to article 27 and thus to the cessation of responsibility would be necessary.*

The implementation of para. 4 would entail a double transfer and time consuming procedures. Therefore, amendment to para. 4 aims at enabling transfer to the MS responsible as soon as determination is completed.

SECTION II

PROCEDURES FOR TAKE CHARGE REQUESTS

Article 29

Submitting a take charge request

1. If a Member State where an application for international protection has been registered considers that another Member State is responsible for examining the application, it shall, without delay and in any event within ~~two~~ **three** months of the date on which the application was registered, request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Articles 13 and 14a of Regulation (EU) XXX/XXX [*Eurodac Regulation*] or of a VIS hit with data recorded pursuant to Article 21 of Regulation (EC) No 767/2008, the request to take charge shall be sent within ~~one month~~ **two months** of receiving that hit.

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State where the application was registered.

By way of derogation , ~~W~~where the applicant is an unaccompanied minor, **the time limits laid down in the first and second subparagraphs shall not apply** and the determining Member State ~~may~~ **shall**, where it considers that it is in the best interest of the minor, continue the procedure for determining the Member State responsible ~~and~~ **by** request**ing** another Member State to take charge of the applicant ~~despite the expiry of the time limits laid down in the first and second subparagraphs~~.

2. The requesting Member State may request an urgent reply in cases where the application for international protection was registered after a decision to refuse entry or a return decision was issued.

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

3. In the cases referred to in paragraphs 1 and 2, the take charge request by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the applicant'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 Commission shall, by means of implementing acts, adopt uniform conditions on the preparation and submission of take charge requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Comment: *Italy is in favour of keeping the current timeframe in para. 1, subpara. 1 and 2.*

A derogation should be more clearly foreseen for UAMs, in view of implementing their prevailing BIC.

Article 30

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 ~~one~~ **two** month**s** of receipt of the request.

2. Notwithstanding the first paragraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 and 14a of Regulation (EU) XXX/XXX [*Eurodac Regulation*] or of a VIS hit with data recorded pursuant to Article 21(2) of Regulation (EC) No 767/2008, the requested Member State shall give a decision on the request within ~~two weeks~~ **one month** of receipt of the request.

3. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.

4. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

   (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 67 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 according to the evidentiary value attributed to them;

(ii) their evidentiary value, in relation to the responsibility for examining the application for international protection shall be assessed on a case-by-case basis.

5. The requirement of proof shall not exceed what is necessary for the proper application of this Regulation.

6. The requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

7. Where the requesting Member State has asked for an urgent reply pursuant to Article 29(2), the requested Member State shall reply within the period requested or, failing that, within two weeks of receipt of the request.

8. Where the requested Member State does not object to the request within the ~~one~~**two**-month period set out in paragraph 1 by a reply which gives full and detailed reasons, or where applicable within the **one-month or** two-week period set out **respectively** in paragraphs 2 and 7, this shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

Comment: *Italy is in favour of keeping the current timeframe.*

SECTION III

PROCEDURES FOR TAKE BACK ~~NOTIFICATIONS~~ REQUESTS

Article 31

*Submitting a take back ~~notification~~ **request***

1. In a situation referred to in Article 26(1), point (b), (c) or (d) the Member State where the person is present shall make a take back ~~notification~~ **request** without delay and in any event within two ~~weeks~~ **months** after receiving the Eurodac hit.

2. A take back ~~notification~~ **request** shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the statements of the person concerned**, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in Chapter II of this Regulation.**

3. The ~~notified~~ **requested** Member State shall **make the necessary checks and shall give a decision on the request to take back the person concerned as quickly as possible and in any event no later than one month from the date on which the request was received.**

When the request is based on data obtained from the Eurodac system, that time limit shall be reduced to two weeks. ~~confirm receipt of the notification to the Member State which made the notification within one week, unless the notified Member State can demonstrate within that time limit that its responsibility has ceased pursuant to Article 27~~.

4. Failure to act within the **one-month or** ~~one~~**two**-week period set out in paragraph 3 shall be tantamount to ~~confirming the receipt of the notification~~ **accepting the request**.

5. The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back ~~notifications~~ **requests**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Comment: *Italy is in favour of keeping the current take back request system and related timeframe. The notification system cannot be supported.*

The simplified treatment proposed in AMMR is allegedly based on the fact that the applicant has already applied in the requested (notified) Member State. By contrast, precisely the take back procedure entails the greatest complexity for Dublin units. Actually, each case always requires a careful analysis of its tracks in Eurodac, since the responsibility might have shifted to another Member State. Besides, take back requests are very often accompanied by multiple Eurodac codes from different Member States, confirming that internal movements have continued over the years.

In our view secondary movements are not going to be discouraged by the notification system, owing to the reduced possibility of cooperation between notifying and notified MS and the presumption-related automaticity. Reduced cooperation may actually lead to difficult preparation by the national authorities in terms of practical take charge of the transferred applicant and his/her reception, and this in turn may induce further movements.

SECTION IV

PROCEDURAL SAFEGUARDS

Article 32

Notification of a transfer decision

1. The determining Member State whose take charge request as regards the applicant referred to in Article 26(1), point (a) was accepted or who made a take back ~~notification~~ **request** as regards persons referred to in Article 26(1), point (b), ~~(c) and (d)~~ shall take a transfer decision at the latest within ~~one~~ **two** week**s** of the acceptance ~~or notification~~.

2. Where the requested Member State accepts to take charge of an applicant or to take back a person referred to in Article 26(1), point (b), ~~(c) or (d)~~, the requesting ~~or the notifying~~ Member State shall notify the person concerned in writing without delay of the decision to transfer him or her to the Member State responsible and, where applicable, of the fact that it will not examine his or her application for international protection.

3. If a legal advisor or other counsellor is representing the person concerned, Member States may choose to notify the decision to such legal advisor or counsellor instead of to the person concerned and, where applicable, communicate the decision to the person concerned.

4. The decision referred to in paragraph 1 shall contain information on the legal remedies available, including on the right to apply for suspensive effect, and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned is required to appear, if that person is travelling to the Member State responsible by his or her own means.

   Member States shall 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 that information has not been already communicated.

5. Where the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall inform him or her of the main elements of the decision, which shall always include information on the legal remedies available and the time limits applicable for seeking such remedies, in a language that the person concerned understands or is reasonably supposed to understand.

Comment: *deletion in para. 1 is consistent with IT amendments to article 26.*

Article 33

Remedies

1. The applicant or another person as referred to in Article 26(1), point (b), ~~(c) and (d)~~ shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

   The scope of the remedy shall be limited to an assessment of:

   (a) whether the transfer would result**, in the Member State responsible,** in a real risk of inhuman or degrading treatment for the person concerned within the meaning of Article 4 of the Charter of Fundamental Rights;

   (b) whether Articles 15 to 18 and Article 24 have been infringed, in the case of the persons taken charge of pursuant to Article 26(1), point (a).

2. Member States shall provide for a period of two weeks after the notification of a transfer decision within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

3. The person concerned shall have the right to request**, together with the main appeal,** ~~within a reasonable period of time from the notification of the transfer decision~~, a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within ~~one month~~ **two weeks** of the date **of lodging the appeal with** ~~when that request reached~~ the competent court or tribunal.

   Where the person concerned has not exercised his or her right to request suspensive effect, the appeal against, or review of, the transfer decision shall not suspend the implementation of a transfer decision.

   A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.

   If suspensive effect is granted, the court or tribunal shall endeavour to decide on the substance of the appeal or review within ~~one month~~ **six weeks** of the decision to grant suspensive effect.

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 is granted on request free of charge where the person concerned cannot afford the costs involved. Member States may provide that, as regards fees and other costs, the treatment of persons subject to this Regulation 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 provide that free legal assistance and representation is not to be granted where the appeal or review is considered by the competent authority or a court or tribunal to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to the second subparagraph is taken by an authority other than a court or tribunal, Member States shall provide the right to an effective remedy before a court or tribunal to challenge that decision. Where the decision is challenged, that remedy shall be an integral part of the remedy referred to in paragraph 1.

In complying with the requirements set out in this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that effective access to justice for the person concerned is not hindered.

Legal assistance shall include at least the preparation of the required procedural documents and representation before a court or tribunal and may be restricted to legal advisors or counsellors specifically designated by national law to provide assistance and representation.

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

Comment: *the wording in para. 1(a) is deemed necessary in order to ease the interpretation and exclude that the assessment be extended to Third Countries where a transfer is followed by a subsequent return (so called indirect* refoulement*).*

The amendments in para. 3 are meant to simplify the appeal procedure. The amendments proposed with regard to suspensive decision and decision on the substance don't change the whole timeframe, only has the internal distribution of time limits been modified in order to provide with more time for the decision on the substance.

SECTION V

DETENTION FOR THE PURPOSES OF TRANSFER

Article 34

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.

2. Where there is a risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively, based on an individual assessment of the person's circumstances.

Member States may also detain an applicant who represents a danger to national security and public order.

3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where an applicant or another person referred to in Article 26(1), point (b), ~~(c) or (d)~~ is detained pursuant to this Article, the period for submitting a take charge **or take back** request ~~or a take back notification~~ shall not exceed ~~two weeks~~ **one month** from the

registration of the application. Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge **or a take back** request ~~or a take back notification~~ shall not exceed ~~one~~ **two** week**s** from the date on which the person was placed in detention. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply on a take charge request. Such reply shall be given within ~~one~~ **two** weeks of receipt of the take charge request. Failure to reply within the ~~one~~ **two**-week period shall be tantamount to accepting the take charge request and shall entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting or ~~notifying~~ **requested** Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within ~~four~~ **eight** weeks of:

(a) the date on which the request was accepted ~~or the take back notification was confirmed~~, or

(b) the date when the appeal or review no longer has suspensive effect in accordance with Article 33(3).

Where the requesting or ~~notifying~~ **requested** Member State fails to comply with the time limits for submitting a take charge or **take back** request ~~or take back notification~~ or to take a transfer decision within the time limit laid down in Article 32(1) or where the transfer does not take place within the period of ~~four~~ **eight** weeks referred to in the third subparagraph of this paragraph, the person shall no longer be detained. Articles 29, 31 and 35 shall continue to apply accordingly.

4. Where a person is detained pursuant to this Article, the detention shall be ordered in writing **by the competent authority and validated** by the judicial authority~~ies~~. The detention order shall state the reasons in fact and in law on which it is based.

5. As regards the detention conditions and the guarantees applicable to applicants detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive XXX/XXX/EU [*Reception Conditions Directive*] shall apply.

Comment: *albeit detention should be the shortest possible, the time limits foreseen appear too brief to enable the implementation of relevant procedures.*

SECTION VI

TRANSFERS

Article 35

Detailed rules and time limits

1. The transfer of an applicant or of another person as referred to in Article 26(1), point (b), ~~(c) and (d)~~, from the requesting ~~or notifying~~ Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting ~~or notifying~~ Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of the acceptance of the take charge **or take back** request ~~or of the confirmation of the take back notification~~ by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3). That time limit may be

extended up to a maximum of one year **as from the last day of imprisonment,** if the transfer cannot be carried out due to imprisonment of the person concerned.

Where the transfer is carried out for the purpose of relocation, the transfer shall take place within the time limit set out in Article 57(9).

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

If necessary, the applicant shall be supplied by the requesting ~~or notifying~~ Member State with a *laissez passer*. The Commission shall, by means of implementing acts, establish the design of the *laissez passer*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

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

2. Where the transfer does not take place within the time limits set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the requesting ~~or notifying~~ Member State.

~~Notwithstanding the first subparagraph, where the person concerned absconds and the requesting or notifying Member State informs the Member State responsible before the expiry of the time limits set out in paragraph 1, first subparagraph, that the person concerned has absconded, the transferring Member State shall retain the right to carry out the transfer within the remaining time at a later stage, should the person become available to the authorities again, unless another Member State has carried out the procedures in accordance with this Regulation and transferred the person to the responsible Member State after the person absconded.~~

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

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Comment: *amendments concerning scope and notification system are consistent with the amendments to articles 26 and 31.*

Deletion of subpara. 2 in para. 2 is justified by the difficult (if not impossible) concrete implementation of the provision therein with reference to the time calculation. This is especially the case for resurfacing: establishing the moment the applicant is again available would entail a steady and burdensome research by the authorities. Furthermore, time might remain indefinitely suspended as against the need for legal certainty.

Article 36

Costs of transfer

1. In accordance with Article 17 of Regulation (EU) XXX/XXX [*Asylum and Migration Fund*], a contribution shall be paid to the Member State carrying out the transfer for the transfer of an applicant or another person as referred to in Article 26(1), point (b), ~~(c) or (d)~~, pursuant to Article 35.

2. Where the person concerned has to be transferred back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal or review 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.

Comment: *deletion in para. 1 is consistent with IT amendments to article 26.*

Article 37

Exchange of relevant information before a transfer is carried out

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 26(1), point (b), ~~(c) or (d)~~, shall communicate to the Member State responsible such personal data concerning the person to be transferred as is adequate, relevant and limited to what is necessary for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, to ensure continuity in the protection and rights afforded by this Regulation and by other applicable asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in under national law have sufficient time to take the necessary measures.

2. The transferring Member State shall transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:

   (a) any immediate measures which the Member State responsible 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, relatives or any other family relations in the receiving Member State, where applicable;

   (c) in the case of minors, information on their education;

   (d) an assessment of the age of an applicant;

   ~~(e) information collected during the screening in accordance with Article 13 of Regulation (EU) XXX/XXX [*Screening Regulation*].~~

3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 41 of this Regulation using the 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, the Commission shall, by means of implementing acts, draw up a standard form for the transfer of the data required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

5. The rules laid down in Article 40(8) and (9) shall apply to the exchange of information pursuant to this Article.

Comment: *deletion in para. 1 is consistent with IT amendments to article 26.*

Point (e) in para. 2 (e) is vague in its content. Furthermore, some of the information mentioned in article 13.2 of screening regulation proposal are duplicated in this provision.

Article 38

Exchange of security-relevant information before a transfer is carried out

Where the Member State carrying out a transfer is in possession of information that indicates that there are reasonable grounds to consider the applicant or another person as referred to in Article 26(1), point (b), ~~(c) or (d)~~, a danger to national security or public order in a Member State, that Member State shall **become** ~~also communicate such information to~~ the Member State responsible.

Comment: *deletion of point c) and d) is consistent with IT amendments to article 26.*

The principle underlying the provision in article 8.4 - applicants who are a danger to national security or public order should not be moved across the Union - should be consistently applied in this article 38 as well.

Article 39

Exchange of health data before a transfer is carried out

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 who have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, in so far as it is available to the competent authority in accordance with national law, transmit to the Member State responsible information on any special needs of the person to be transferred, which in specific cases may include information on that person's physical or mental health. That information shall be transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

   The Commission shall, by means of implementing acts, draw up the common health certificate. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

2. The transferring Member State shall ~~only~~ transmit the information referred to in paragraph 1 to the Member State responsible **pursuant to article 9.2(i) of the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data** ~~after having obtained the explicit consent of the applicant and/or of his or her representative or when such transmission is necessary to protect public health and public security, or, where the person concerned is physically or legally incapable of giving his or her consent, to protect the vital interests of the person concerned or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.~~

3. The processing of personal health data referred to in paragraph 1 shall only be carried out by a health professional who is 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 professional 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 and shall not be further processed.

5. The Commission shall, by means of implementing acts, adopt uniform conditions and practical arrangements for exchanging the information referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

6. The rules laid down in Article 40(8) and (9) shall apply to the exchange of information pursuant to this Article.

Comment: *The reference to "public security" in para. 2 seems not pertinent in the context of article 39. Moreover, the role of consent is unclear: it is requested in order to transmit information but the lack of it is no obstacle to the transfer. A reference to GDPR may provide a solution.*

CHAPTER VI

ADMINISTRATIVE COOPERATION

Article 40

Information sharing

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the person covered by the scope of this Regulation as is adequate, relevant and limited to what is necessary for:

   (a) determining the Member State responsible;

   (b) examining the application for international protection;

   (c) implementing any obligation arising under this Regulation.

2. The information referred to in paragraph 1 shall only cover:

   (a) personal details of the person concerned, and, where appropriate, his or her family members, relatives or any other family relations (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 person concerned, including biometric data taken of the applicant by the Member State, in particular for the purposes of Article 57(6) of this Regulation, in accordance with Regulation (EU) XXX/XXX [*Eurodac 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 on which any previous application for international protection was lodged, the date on which the current application was registered, the stage reached in the proceedings and the decision taken, if any.

3. Provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. ~~The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests 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 international protection, obtained by the requesting Member State. In that case, the applicant must know for what specific information he or she is giving his or her approval.~~

4. Any request for information shall only be sent in the context of an individual application for international protection or transfer for the purpose of relocation. 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 by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. 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 an individual applicant.

5. The requested Member State shall be obliged to reply within ~~three~~ **five** weeks. Any delays in the reply shall be duly justified. Non-compliance with the ~~three~~ **five** week time limit shall 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 withholds information which shows that it is responsible, that Member State may not invoke the expiry of the time limits provided for in Article 29 as a reason for refusing to comply with a request to take charge. In that case, the time limits provided for in Article 29 for submitting a request to take charge shall be extended by a period of time 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 41(1).

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) determining the Member State responsible;

(b) examining the application for 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 it 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. In each Member State concerned, a record shall be kept, in the individual file for the person concerned or in a register, of the transmission and receipt of information exchanged.

Comment: *deletion in para. 3 is based on the consideration that the exchange of information happens between the MS competent authorities and that the MS requesting information is called upon to examine and decide on the asylum application of the person concerned. The legal basis should be found in the GDPR, article 2 (Material scope), para. 2 (b) ("This Regulation does not apply to the processing of personal data: (...) b) by the Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the TEU").*

The time limit in para. 5 could be insufficient if account is taken of the wide array of information covered by para. 2. Five weeks, like the current timeframe, is a reasonable time.

No comments on articles 41-42-43-44

PART V

GENERAL PROVISIONS

No comments on Articles 62-70.

PART VI

AMENDMENTS TO OTHER UNION ACTS

Article 71

Amendments to the Long Term Residence Directive

1. Directive 2003/109/EC is amended as follows:

Article 4 is amended as follows:

(a) in paragraph 1, the following sub-paragraph is added:

"With regard to beneficiaries of international protection, the required period of legal and continuous residence shall be three years".

Comment: *Without prejudice to the IT position on the AMMR scope (excluding beneficiaries, resettled and admitted persons), this amendment to Directive 2003/109 is supported.*

Article 72

Amendments to Regulation (EU) XXX/XXX [Asylum and Migration Fund]

Regulation (EU) XXX/XXX [*Asylum and Migration Fund*] is amended as follows:

1. Article 16 is replaced by the following:

" 1. Member States shall receive, in addition to their allocation calculated in accordance with point (a) of Article 11(1), an amount of EUR 10 000 for each person admitted through resettlement or humanitarian admission.

2. Where appropriate, Member States may also be eligible for an additional amount of EUR 10 000 for family members of persons referred to in paragraph 1, if the persons are admitted to ensure family unity.

3. The amount referred to in paragraph 1 shall take the form of financing not linked to costs in accordance with Article [125] of the Financial Regulation.

4. The additional amount referred to in paragraph 1 shall be allocated to the Member State programme. The funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme. The amount referred to in paragraph 1 may be included in the payment applications to the Commission, provided that the person in respect of whom the amount is allocated was resettled or admitted.

5. Member States shall keep the information necessary to allow the proper identification of the persons resettled or admitted and of the date of their resettlement or admission, while applicable provisions concerning data retention periods shall prevail.

6. To take account of current inflation rates and relevant developments in the field of resettlement, and within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 of this Regulation to adjust, if deemed appropriate, the amount referred to in paragraph 1 of this Article, to take into account the current rates of inflation, relevant developments in the field of resettlement, as well as factors which can optimise the use of the financial incentive brought by those amounts."

2. Article 17 is replaced by the following:

"1. A Member State shall receive a contribution of:

(a) EUR [10 000] per applicant for whom that Member State becomes responsible as a result of relocation in accordance with Articles 48, 53 and Article 56 Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*];

(b) EUR [10 000] per beneficiary of international protection relocated in accordance with Articles 53 and 56 of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*];

(c) EUR [10 000] per illegally staying third-country national relocated in accordance with Article 53, when the period referred to in Article 55(2) has expired, and Article 56 of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*].

(d) The contribution in points (a), (b) and (c) is increased to EUR [12 000] for each unaccompanied minor relocated in accordance with Article 48, Article 53 and Article 56 of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*].

2. A Member State carrying out the transfer shall receive a contribution of EUR 500 to cover the transfer of persons pursuant to paragraph 1 for each person, applicant or beneficiary subject to relocation.

3. A Member State shall receive a contribution of EUR 500 to cover the transfer of a person referred to in Article 26(1)(a), (b), (c) or (d) pursuant to Article 35 of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*].

4. A Member State will receive amounts referred to in paragraphs 1 to 3 for each person provided that the person in respect of whom the contribution is allocated was relocated.

5. The amounts referred to in this Article shall take the form of financing not linked to costs in accordance with Article [125] of the Financial Regulation.

6. Member States shall keep the information necessary to allow the proper identification of the persons transferred and of the date of their transfer, while applicable provisions concerning data retention periods shall prevail.

7. Within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to adjust, if deemed appropriate, the amounts referred to in paragraphs 1, 2 and 3 of this Article to take into account the current rates of inflation, relevant developments in the field of transfer of applicants for international protection and of beneficiaries of international protection from one Member State to another, as well as factors which can optimise the use of the financial incentive brought by those amounts."

Comment: *taking stock that, as explained by the Commission, para. 1 is superseded, para. 2 (replacing art. 17 of AMF regulation) is supported.*

PART VII

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

No comments on articles 73, 74

Article 75

Entry into force and applicability

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

It shall apply to applications for international protection registered as from [the first day of the thirteenth month following its entry into force]. The Member State responsible for the examination of an application for international protection submitted before that date shall be determined in accordance with the criteria set out in Regulation 604/2013.

Comment: *the date of entry into force doesn't take into due account that national legal systems shall be adapted in order to apply this Regulation.*

LATVIA

Article 2

(g) Latvia **does not support** the inclusion of siblings in the definition of family members, as these family ties are much more difficult to prove and referring to these ties is already being abused in practice. As the terminology and concepts used in the various legal instruments of the Common European Asylum System need to be harmonized, the extension of this definition may lead to changes in other legal instruments that may adversely affect the efficiency of procedures and abuse throughout the system.

Latvia **would support** the approach taken during the discussions on the 2016 Commission proposal for Dublin Regulation, excluding brothers and sisters from the definition of family members, but adding references to minor brothers and sisters to the relevant operational articles in the text of the Regulation.

(n) and (o) Latvia **is sceptical** about the definitions regarding diplomas or qualification and educational establishment, which are linked to Article 20, because **in our view** the inclusion of these criteria for determination of the responsible Member State for examination of the application could promote additional risks of abuse of the system.

Article 12

Latvia **is reserved** about the provision for Member States to have recourse where appropriate to cultural mediator, who is able to ensure appropriate communication between the applicant and the person conducting the personal interview. **In Latvia's opinion** this provision puts a disproportionate burden on the competent authorities, in particular because this is an interview in the context of the Dublin procedure. Additionally, it is not clear what are the determining factors whether the presence of such person in necessary in a particular case and what professional qualifications will indicate that the person is appropriate for this role.

With regards to provision that the applicant may request to be interviewed and assisted by staff of the same sex, Latvia **would like to clarify** this provision by adding that this provision can only be enforced, if it is not expressed with the intention to abuse the procedure and to further delay the interview.

Article 13

Latvia **would like to note** that the provision that stipulates that the representative of an unaccompanied minor shall be involved in the process of establishing the Member State responsible

under this Regulation is very broad and it has no practical added value, therefore Latvia **would like to propose** to delete this provision.

Additionally, Latvia **is sceptical** about the responsibility described in Paragraph 5 where before transferring and unaccompanied minor to the Member State responsible, or where applicable, to the Member State of relocation, the transferring Member State shall make sure that the Member State responsible or the Member State of relocation takes the measures referred to in Reception Conditions Directive and Asylum Procedure Regulation without delay. **In Latvia's view** such obligation is disproportionate and would create additional administrative burden. All Member States must responsibly implement asylum *acquis* and be able to trust each other that certain standards are guaranteed.

Article 20

Latvia **is reserved** about this article, because **in our view** it could promote additional risks of abuse regarding criteria of diplomas or other qualifications for determining the responsible Member State for examining the application of international protection.

Article 28

Latvia **objects** the established link in this article between relocation activities and the process of determining the responsible Member State for examining the application of international protection**. In Latvia's opinion**, the Member State responsible should be determined in the first country where the asylum seeker is registered before any relocation activities are carried out. **In our view** determination of the Member State responsible following the relocation activities prolongs the overall procedure, and it creates additional risks of abuse when a person is transferred to different Member States.

Additionally, Latvia **would like to note** that the obligation in Paragraph 2 to continue the process of determining the Member State responsible if the applicant leaves the territory of that Member State without authorisation or is otherwise not available to the competent authorities of that Member State could be problematic for competent authorities with regards to practical implementation, because it would not be possible to obtain additional information from the person, as well as obtain person's consent on certain aspects of the procedure.

Article 34

In Latvia's view regarding Paragraph 4 it should be possible for not only judicial authorities, but also administrative authorities to order the detention of a person in writing.

LITHUANIA

LT had a scrutiny reservation on Part III of the AMMR proposal.

Please find below LT proposed amendments to the provisions of Article 38 and 40 accompanied by explanatory comments.

Article 38 Exchange of security-relevant information before a transfer is carried out

Explanatory comments: Due to the fact that the Lithuanian State Security Department, as well as some other Member States' security services (as we heard during the AWP meetings), refrain from revealing their intelligence sources and tend not to share with the determining authority specific security information on cases where third country nationals are considered a danger to national security, Lithuania proposes to add the following phrase in the article: „in so far as it is available to the competent authority in accordance with national law".

Text proposal: Art. 38

Article 38

Exchange of security-relevant information before a transfer is carried out

Where the Member State carrying out a transfer is in possession of information that indicates that there are reasonable grounds to consider the applicant or another person as referred to in Article 26(1), point (b), (c) or (d), a danger to national security or public order in a Member State, that Member State shall**, <u>in so far as it is available to the competent authority in accordance with national law</u>**, also communicate such information to the Member State responsible.

Article 40 Information sharing

Explanatory comments: We propose an amendment to para 3 of this article allowing for sharing information on asylum grounds submitted by the applicant with the Member State responsible without his or her consent. Lithuania believes that sharing such information with the Member State that is responsible for examination of the application cannot harm the protection of the liberties and fundamental rights of the person concerned.

Text proposal: Art. 40

Article 40

Information sharing

1. <…>
2. <…>
3. Provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for

any decisions taken concerning the applicant. The other Member State may refuse to **submit the grounds for the decisions taken concerning the applicant** ~~respond to the request submitted to it,~~ if the communication of such information is likely to harm its essential interests. ~~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 international protection, obtained by the requesting Member State. In that case, the applicant must know for what specific information he or she is giving his or her approval.~~

4. <…>

LUXEMBOURG

- **Article 2:**
  - (g)(v): We believe that the extension of family members to the siblings is an important element in the general balance between responsibility and solidarity. We can accept it, depending on the overall balance that will finally be achieved.
  - (n): We remain sceptical as regards the practical feasability of this new responsibility criterion.
- **Article 31:** We welcome the new notification procedure for take back cases.
- **Article 32(1):** The one-week deadline to take a transfer decision after acceptance of the notification is too short.
- **Article 33(3):** Article 27(4) of the current Dublin regulation should be reintroduced. *Member States may provide that the competent authorities may decide, acting ex officio, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.* If a Member state can
- **Article 34(4):** We strongly oppose that detention shall be ordered only by the judicial authorities. The administrative authorities need to be added to this paragraph.
- **Article 35(2):** We welcome the procedure of transfer in case an applicant absconds and reappears. We highly welcome the deletion of the 18-month period and the shift of responsibility, as it has led to many abuses.

MALTA

Article 8

- Paragraph 3

MT is of the opinion that it is not the responsibility of Member States to systematically assess whether there are substantial grounds for believing that there are systematic flaws in the asylum procedure and in the reception conditions of applicants in another Member State that would result in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the EU.

All Member States are bound by the relevant EU legal instruments, thus unless there is an official communication at EU level to the contrary, there is an assumption that transfer to any Member State would not lead to a risk of inhuman or degrading treatment.

- Paragraph 4

MT has a reservation on this paragraph due to our substantive concerns pertaining to the Screening Regulation and its added value as a whole.

Article 9

Malta proposes the following new paragraph -4:

> ***When the applicant makes an application for international protection in another Member State other than the one referred to in paragraphs 1 and 2, he or she shall remain available to the competent authorities of that Member State until the Member State responsible has been determined.***

Justification: The current wording does not cater for the scenario where the applicant is neither in the Member State responsible, nor in the Member State referred to in paras 1 and 2. In such cases it should be clearly stated that the applicant has an obligation to remain present in that Member State till the Member State responsible has been determined.

Article 10(1)

MT has a reservation on this paragraph due to our substantive concerns pertaining to the Screening Regulation and its added value as a whole.

Article 11

- Paragraph 1(e)

This point should be reworded as follows:

> *of the obligation for the applicant to disclose, as soon as possible in the procedure any relevant information that could help to establish any prior residence permits**, or** visas ~~or educational diplomas~~;*

Justification: MT is opposed to the addition of the new criterion pertaining to educational diplomas.

- Paragraph 1(g)

This point should be reworded as follows:

> ***In case of appeal,** of the right to be granted, on request, legal assistance free of charge where the person concerned cannot afford the costs involved;*

Justification: The current wording seems to imply that free legal assistance is to be provided free of charge for the duration of the whole procedure for determining the Member State responsible and not limited to the appeal proceedings.

- Paragraph 2

This paragraph should be re-worded as follows:

> *The information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common information material drawn up in clear and plain language pursuant to paragraph 3 for that purpose.*
>
> *Where necessary for the applicant's proper understanding, the information shall also be supplied orally, where appropriate in connection with the personal interview as referred to in Article 12.*
>
> ***Where Member States are not able to provide in writing the information referred to in paragraph 1 in view of the particular language that the applicant understands or is reasonably supposed to understand, the information may be provided only through oral translation subject to the applicant's confirmation that this information has been understood. If the information subsequently becomes available in writing, it shall be provided to the applicant, where still needed.***

Justification: This paragraph should also cater for a scenario where due to the particular language that the applicant speaks, this information cannot be provided in writing. In such cases it should be possible to provide such information only orally.

Article 12

- Paragraph 1

The text should be amended in order to clearly indicate that the obligation to carry out a personal interview applies only in case of a take charge request.

- Paragraph 4

This paragraph should be amended as follows:

> *The personal interview shall be conducted in a language that the applicant understands or is reasonably supposed to understand and in which he or she is able to communicate. Interviews of unaccompanied minors shall be conducted in a child-friendly manner, by staff who are appropriately trained and qualified under national law, in the presence of the representative and, where applicable, the minor's legal advisor. Where necessary, Member States shall have recourse to an interpreter* ~~***and where appropriate a cultural mediator,***~~ *who is able to ensure appropriate communication between the applicant and the person conducting the personal interview.* ~~***The applicant may request to be interviewed and assisted by staff of the same sex.***~~

Justification: A cultural mediator is not necessary to ensure proper communication between the interviewer and the applicant. Furthermore, it should also be noted that other legal instruments only refer to an interpreter in order to ensure proper communication. Regarding the last sentence, MT calls for this provision to be reworded and placed in a new paragraph -4, which would read as follows:

Where requested by the applicant and where possible, Member States shall ensure that the interviewers and interpreters are of the ~~sex~~ gender that the applicant prefers, unless it has reasons to consider that such a request does not relate to difficulties on the part of the applicant to submit the required information for determining the Member State responsible.

Article 13(5)

MT has a scrutiny reservation on this paragraph since we are unsure about the need of the conclusions of the assessment to be clearly listed in the transfer decision.

The assessment and conclusions are generally done on a document separate to the transfer decision, which is a standard document.

Article 16

MT has a reservation on this paragraph due to the addition of 'siblings' to the definition of family members.

MT has a substantive reservation on the addition of 'siblings' as this would create practical problems (i.e. what happens if an applicant has 3 siblings in 3 different Member States? Which Member State would be considered as the one responsible?), as well as a multiplier effect (i.e. applicant to be joined by his siblings, who could be accompanied by their spouses, who will have their own siblings etc.). Moreover, proving family links in the case of siblings is generally more difficult when compared to spouses and children, especially due to the lack of, or difficulty in, providing documentation confirming this.

Article 17

MT has a reservation on this paragraph due to the addition of 'siblings' to the definition of family members.

MT has a substantive reservation on the addition of 'siblings' as this would create practical problems (i.e. what happens if an applicant has 3 siblings in 3 different Member States? Which Member State would be considered as the one responsible?), as well as a multiplier effect (i.e. applicant to be joined by his siblings, who could be accompanied by their spouses, who will have their own siblings etc.). Moreover, proving family links in the case of siblings is generally more difficult when compared to spouses and children, especially due to the lack of, or difficulty in, providing documentation confirming this.

Article 19(4)

MT does not support the extension of responsibility in cases of expired residence documents/visas, which according to the new Proposal is extended to 3 years from the date of expiry. This should be maintained as in the current acquis (i.e. 2 years for an expired residence permit and 6 months for an expired visa).

Article 20

- General comment: MT has a reservation on the whole Article since we do not support the inclusion of diplomas/qualifications as a mandatory criterion to establish responsibility.

- Paragraph 1

What happens in case an applicant was previously issued with a diploma or qualification from an education establishment which at the time was located in Member State X, but at the time of application is no longer located in that Member State, but has either closed completely or is now located in another Member State?

MT is also concerned by the fact that this Article does not contain a timeframe within when this criterion would apply, thus effectively meaning that if a TCN obtains a diploma or qualification in a Member State, leaves the Union and subsequently applies for protection after a number of years (e.g. 7 or 8 years later), the Member State from which the TCN obtained the diploma or qualification would still be considered as the one responsible.

Article 21(1)

MT has a substantive reservation on this paragraph in view of the extension of the timeframe for responsibility from the current 1 year to 3 years.

Article 22

The timeframe for cessation of responsibility is too long and should be shortened to 1 year.

Article 26

- Paragraph 1

MT has a reservation on this paragraph due to our concerns on the new time limits that are being proposed in case of a take charge request and take back notification.

MT also has a scrutiny reservation on point (c) due to the addition of beneficiaries of international protection within the scope of the Dublin Regulation.

Article 27

- Paragraph 2

This paragraph should be amended as follows:

> *The obligation laid down in Article 26(1), point (b), of this Regulation to take back a third-country national or a stateless person shall cease where it can be established, on the basis of the update of the data set referred to in Article 11(2)(c) of Regulation (EU) XXX/XXX [Eurodac Regulation], that the person concerned has left the territory of the Member States, on either a compulsory or a voluntary basis, in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.*
>
> ***The obligation laid down in Article 26(1), point (b), of this Regulation to take back a third-country national or a stateless person shall also cease where it can be established that the applicant has left the territory of the Member States for at least three months through other means other than the ones listed in the first sub-paragraph.***
>
> *An application registered after an effective removal has taken place**, or after the applicant has left the territory of the Member States,** through other means shall be regarded as a new application for the purpose of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.*

Justification: The current wording does not cover a scenario where the applicant left the territory of the Member States by other means other than the ones indicated in the first sub-paragraph (e.g. the

applicant explicitly withdrew the application and left the territory of the Member States out of his own will and not within the context of a return decision or removal order).

Article 28

- General comment

MT would like a clarification pertaining to what happens in case the applicant withdraws his application before the Member State responsible has been determined. Are we right to assume that in case of an explicit withdrawal the process of determining the Member State responsible should stop and any new application lodged by the same applicant will lead to a new process for determining the Member State responsible?

- Paragraph 2

MT has a scrutiny reservation on this paragraph as we are still analysing the practical consequences of this provision. From our point of view, it is questionable why we should continue the process of determining the Member State responsible when the applicant has effectively absconded.

Furthermore, it should be noted that with this new proviso, there might be cases where the Member State carrying out the determination of the Member State responsible is not able to send a take charge request within the stipulated time limit in view of the fact that further information/documentation from the applicant's side is required in order to substantiate said request, thus effectively becoming the Member State responsible. Therefore, in case the determination of the Member State responsible has not yet been concluded and the applicant absconds, the determination of the Member State responsible shall be carried out by the Member State where the applicant is present.

- Paragraph 4

Akin to the current acquis, responsibility should also cease if the Member State carrying out the process for determining the Member State responsible can establish that the applicant has in the meantime left the territory of the Member States for a period of 3 months. Furthermore, an application lodged after this period of absence shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

Article 29

- Paragraph 1

MT has a substantive reservation on the new time limits that are being proposed for sending a take charge request, and is of the opinion that the current time limits of 3 months in the situation referred to in the first sub-paragraph, and two months in case of a Eurodac or VIS hit should be retained.

Article 30

- Paragraph 1

MT has a reservation on the new time limit that is being proposed for replying to a take charge request and is of the opinion that the current time limit of 2 months should be retained.

- Paragraph 2

MT has a reservation on the new time limit that is being proposed for replying to a take charge request in case of a Eurodac or VIS hit and is of the opinion that this time limit should be increased to 1 month.

- Paragraph 7

MT has a reservation on the new time limit that is being proposed to reply to an urgent request, which we deem as being too short. If the urgent request is based on Article 29(1) sub-para 1, the time limit to reply should not exceed 1 month, while if it is based on the second sub-para of Article 29(1), the time limit to reply should not exceed 2 weeks.

Article 31

- General comment

MT has a reservation on the whole Article in view of our concerns pertaining to the proposed change from a take back request to a take back notification. In this regard, MT recalls the need to maintain the current system of a take back request.

Furthermore, in case a take back request is not sent within the stipulated time limit, or the Member State concerned does not reply within the stipulated deadline, there should be a shift of responsibility akin to the current acquis.

- Paragraph 1

Without prejudice to our general comment, MT has a reservation on the time limit that is being proposed to send a take back notification, which we deem as being too short, and should be extended to two months.

MT also has a reservation on this paragraph due to our reservation on the inclusion of beneficiaries of international protection in the scope of the AMMR.

- Paragraph 3

Without prejudice to our general comment, MT has a reservation on the time limit that is being proposed to reply to a take back notification, which we deem as being too short, and should be extended to two weeks.

Article 32

- Paragraph 1

Paragraph 1 should be amended as follows:

> *The determining Member State whose take charge request as regards the applicant referred to in Article 26(1), point (a) was accepted or who made a take back* ***request*** ~~***notification***~~ *as regards persons referred to in Article 26(1), point (b), (c) and (d) shall take a transfer decision at the latest within* ~~***one week***~~ ***two weeks*** *of the acceptance* ~~***or notification***~~*.*

Justification: Proposed amendments in view of our concerns with the new system pertaining to take back notifications. We are also concerned by the short time limit to take a transfer decision, which we deem as being too short.

MT also has a reservation on this paragraph due to our reservation on the inclusion of beneficiaries of international protection in the scope of the AMMR.

- Paragraph 2

MT has a reservation on this paragraph due to our reservation on the inclusion of beneficiaries of international protection in the scope of the AMMR.

Article 33

- Paragraph 3

MT has a scrutiny reservation on this paragraph due to the time limits that are being imposed on the judicial bodies.

Article 34

- Paragraph 3

Paragraph 3 should be amended as follows:

> *Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.*
>
> *Where an applicant or another person referred to in Article 26(1), point (b), (c) or (d) is detained pursuant to this Article, the period for submitting a take charge* ~~***request***~~ *or a take back* ~~***notification***~~ ***request*** *shall not exceed* ~~***two weeks***~~ ***one month*** *from the registration of the application. Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge* ~~***request***~~ *or a take back* ~~***notification***~~ ***request*** *shall not exceed* ~~***one week***~~ ***two weeks*** *from the date on which the person was placed in detention. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply* ~~***on a take charge request***~~ ***in such cases****. Such reply shall be given within* ~~***one week***~~ ***two weeks*** *of receipt of the* ~~***take charge***~~ *request. Failure to reply within the* ~~***one week***~~ ***two weeks*** *period shall be tantamount to accepting the take* ~~***charge***~~ *request and shall entail the obligation to take charge* ***or take back*** *of the person, including the obligation to provide for proper arrangements for arrival.*
>
> *Where a person is detained pursuant to this Article, the transfer of that person from the requesting or notifying Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within* ~~***four***~~ ***six*** *weeks of:*
>
> *(a) the date on which the request was accepted* ~~***or the take back notification was confirmed***~~*, or*
>
> *(b) the date when the appeal or review no longer has suspensive effect in accordance with Article 33(3).*
>
> *Where the requesting* ~~***or notifying***~~ *Member State fails to comply with the time limits for submitting a take charge* ~~***request***~~ *or take back* ~~***request notification***~~ *or to take a transfer decision within the time limit laid down in Article 32(1) or where the transfer does not take place within the period of* ~~***four***~~ ***six*** *weeks referred to in the third subparagraph of this paragraph, the person shall no longer be detained. Articles 29, 31 and 35 shall continue to apply accordingly.*

Justification: MT has a substantive reservation on this paragraph due to our concerns on the shorter time limits, which we deem as not feasible, and the proposed change from a take back request to a take back notification. In this regard, we should maintain the current system of a take back request.

MT also has a reservation on this paragraph due to our reservation on the inclusion of beneficiaries of international protection in the scope of the AMMR.

- Paragraph 4

Paragraph 4 should be amended as follows:

> *Where a person is detained pursuant to this Article, the detention shall be ordered in writing by judicial authorities* ***or administrative authorities****. The detention order shall state the reasons in fact and in law on which it is based.*

Justification: MT has a substantive reservation on this paragraph due to the omission of administrative authorities. MT cannot support a proposal that envisages the issuance of a detention order exclusively by judicial authorities.

Article 35

- Paragraph 1

Paragraph 1 should be amended as follows:

> *The transfer of an applicant or of another person as referred to in Article 26(1), point (b), (c) and (d), from the requesting* ~~***or notifying***~~ *Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting* ~~***or notifying***~~ *Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of the acceptance of the take charge* ***or take back*** *request* ~~***or of the confirmation of the take back notification***~~ *by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3). That time limit may be extended up to a maximum of one year if the transfer cannot be carried out due to imprisonment of the person concerned.*
>
> *Where the transfer is carried out for the purpose of relocation, the transfer shall take place within the time limit set out in Article 57(9).*
>
> *If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.*
>
> *If necessary, the applicant shall be supplied by the requesting* ~~***or notifying***~~ *Member State with a laissez passer. The Commission shall, by means of implementing acts, establish the design of the laissez passer. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).*
>
> *The Member State responsible shall inform the requesting* ~~***or notifying***~~ *Member State, as appropriate, of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.*

Justification: MT has a reservation on this paragraph due to the proposed change from a take back request to a take back notification. In this regard, we should maintain the current system of a take back request.

MT also has a reservation on this paragraph due to our reservation on the inclusion of beneficiaries of international protection in the scope of the AMMR.

- Paragraph 2

The first subparagraph of paragraph 2 should be amended as follows:

> *Notwithstanding the first subparagraph, where the person concerned absconds and the requesting* ~~***or notifying***~~ *Member State informs the Member State responsible before the expiry of the time limits set out in paragraph 1, first subparagraph, that the person concerned has absconded, the transferring Member State shall retain the right to carry out the transfer within the remaining time at a later stage, should the person become available to the authorities again, unless another Member State has carried out the procedures in accordance with this Regulation and transferred the person to the responsible Member State after the person absconded.*

Justification: MT has a reservation on this paragraph due to the proposed change from a take back request to a take back notification. In this regard, we should maintain the current system of a take back request.

We are still examining the implications of the proposed changes in the case of abscondment. MT is concerned that the current proposal could create problems in case an applicant absconds close to the expiry of the six months' time limit and subsequently becomes available to the authorities since this

would entail that a transfer will effectively have to be carried out within a relatively short period of time.

Article 36

- Paragraph 1

MT has a reservation on this paragraph due to our reservation on the inclusion of beneficiaries of international protection in the scope of the AMMR.

Article 37

- Paragraph 1

MT has a reservation on this paragraph due to our reservation on the inclusion of beneficiaries of international protection in the scope of the AMMR.

- Paragraph 2

MT has a reservation on point (e) due to our significant concerns with the Screening Regulation which in our view has no added value and will only lead to increased burden on front line Member States.

Article 38

MT has a reservation on this Article due to our reservation on the inclusion of beneficiaries of international protection in the scope of the AMMR.

Article 40

- Paragraph 3

Provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests 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 international protection, obtained by the requesting Member State. In that case, the applicant must know for what specific information he or she is giving his or her approval.***~~

Justification: The applicant's consent for communication of information should not be necessary in order to communicate information between Member States. Therefore, the relevant part in the text should be deleted.

- Paragraph 5

Paragraph 5 should be amended as follows:

The requested Member State shall be obliged to reply within ~~***three***~~ ***five*** *weeks. Any delays in the reply shall be duly justified. Non-compliance with the* ~~***three***~~ ***five*** *week time limit shall 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 withholds information which shows that it is responsible, that Member State may not invoke the expiry*

*of the time limits provided for in Article**s** 29 **and 31** 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 Article**s** 29 **and 31** for submitting a request to take charge **or take back** shall be extended by a period of time equivalent to the delay in the reply by the requested Member State.*

Justification: MT has a reservation on this paragraph. We are of the opinion that the time limit to reply to requests for information is too short and should be extended to five weeks as per current acquis. Furthermore, we would like the reintroduction of take back requests in this paragraph since we are opposed to the change from take back requests to take back notifications.

Article 41

- Paragraphs 1 and 4

Paragraph 1 should be amended as follows:

*Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. The Member States 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, **requests to** take back ~~**notifications**~~ and, if applicable, complying with their obligations under Chapters I-III of Part IV.*

Paragraph 4 should be amended as follows:

*The Commission shall, by means of implementing acts, establish secure electronic transmission channels between the authorities referred to in paragraph 1 and between those authorities and the Asylum Agency for transmitting information, biometric data taken in accordance with Regulation (EU) XXX/XXX [Eurodac Regulation], requests, ~~**notifications,**~~ replies and all written correspondence and for ensuring that senders automatically receive an electronic proof of delivery. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).*

Justification: MT has a reservation on both paragraphs due to the proposed change from take back requests to take back notifications.

Article 2

- Point (b)

This point should be replaced with the latest definition in the APR (Council text), which reads as follows:

*'application for international protection' or 'application' means a request made by a third-country national or a stateless person **for protection from a Member State**, who can be understood **to** seek refugee status or subsidiary protection status*

- Point (g), letter (v):

MT has a substantive reservation on the addition of 'siblings' as this would create practical problems (i.e. what happens if an applicant has 3 siblings in 3 different Member States? Which Member State would be considered as the one responsible?). MT is also concerned by the fact that the extension of the definition of family members could lead to a multiplier effect (i.e. applicant to be joined by his siblings, who could be accompanied by their spouses, who will have their own siblings etc.). Moreover, proving family links in the case of siblings is generally more difficult when compared to spouses and children, especially due to the lack of, or difficulty in, providing documentation confirming this.

- Points (n) and (o):

MT has a substantive reservation on these two points due to the serious concerns we have vis-à-vis the new criterion for establishing the Member State responsible based on the holding of diplomas or other qualifications.

- Point (t):

MT has a reservation on this definition due to our concerns pertaining to the scope and nature of the return sponsorship, including the wide spectrum of profiles to whom this could apply and the time limits involved.

Article 71

MT has a substantive reservation on this Article. MT is opposed to the reduction of the time limit for eligibility for a long term residence permit from five years to three years, and the time limit should be kept to the current time frame of five years.

Article 72

- Paragraph 2, sub-paragraph 3:

MT also has a scrutiny reservation on this sub-paragraph due to the addition of beneficiaries of international protection within the scope of the AMMR.

Article 75

Scrutiny reservation on this Article.

THE NETHERLANDS

Kindly note that our comments are preliminary at this stage and we may later submit further comments and/or specification on these articles.

General comments:

- We found a translation mistake in the Dutch version, that also exists in the text of the current Dublin regulation article 13(1). The Dutch version states "of komende vanuit een derde land", while it should say (as stated in other language versions either "EN komende vanuit een derde land" or "komende vanuit een derde land". This mistake is continued in the proposed Dutch text of the AMMR, see for instance article 21.

- In article 2 we are missing a definition of public order, this is also relevant for article 38.

HAVE ADOPTED THIS REGULATION:

PART I

SCOPE AND DEFINITIONS

Textual amendment to article 1.

Article 1

Aim and subject matter

In accordance with the principle of solidarity and fair sharing of responsibility, and with the objective of **further** reinforcing mutual trust, this Regulation:

(a) **lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection;**

~~(a)~~**(b)** sets out a common framework for the management of asylum and migration in the Union; **and**

~~(b)~~**(c)** establishes a mechanism for solidarity.

~~(c) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection~~.

Substantive amendments to article 2

- The Netherlands wishes to be able to not recognize the marriage with an adult and, if possible, to reunite a minor with his of her father, mother or other adult responsible for the minor or sibling even if the adult spouse is legally present on the territory and to deny

reunification with the adult spouse.

- The Netherlands opposes a widening of the definition to brothers and sisters.

- Netherlands supports a definition which implies an obligation on the third country national to adhere to the obligations imposed on him, but is in favor of a broader definition of absconding, in order to discourage secondary movements.

Article 2

Definitions

For the purposes of this Regulation:

(…)

(g) 'family members' means, insofar as the family already existed before the applicant or the family member arrived on the territory of the Member States, the following members of the applicant's family who are present on the territory of the Member States:

(i) the spouse of the applicant, **provided that the marriage is recognised by the law of that Member State,** or his or her unmarried partner in a stable relationship, where the law 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 the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

(iii) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State **which is responsible for the application of the adult concerned or** where the adult **concerned** is present,

(iv) where the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State **which granted international protection**~~**where the beneficiary is present**~~,

~~**(v) the sibling or siblings of the applicant;**~~

(…)

(j) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;

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

(…)

(p) 'absconding' means the action by which an applicant, **third country national or stateless person** does not **comply with the transfer decision or does not** remain available to the competent administrative or judicial authorities **for reasons which are not beyond the applicant's control**, such as by leaving the territory of the Member State **or by leaving allocated accomodation** without authorisation from the competent authorities.

(q) 'risk of absconding' means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria defined by national law to believe that an applicant who is subject to **the procedure established by this Regulation**~~a transfer procedure~~ may abscond;

(…)

(t) 'sponsoring Member State' means a Member State that commits to return illegally staying third-country nationals to the benefit of another Member State **to the country of origin, a safe third country or a country of transit in accordance with Community or bilateral readmission agreements or other arrangements**, providing the return sponsorship referred to in Article 55 of this Regulation;

(…)

(w) 'migratory pressure' means a situation where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations~~, as a result of the geographical location of a Member State and the specific developments in third countries which generate migratory movements~~ that place a burden even on well-prepared asylum and reception systems and requires immediate action;

(…)

(z) 'return decision' means an administrative or judicial decision or act stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return **as defined in Article 3(4)** of ~~that respects~~ Directive 2008/115/EC of the European Parliament and of the Council[2];

(aa) 'illegally staying third-country national' means a third-country national who does not fulfil or no longer fulfils the conditions of entry as set out in Article 6 of Regulation (EU) 2016/399 or other conditions for entry, stay or residence in a Member State **as defined in Article 3(2) of Directive 2008/115/EC of the European Parliament and of the Council**.

(…)

[2] 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, OJ L 348, 24.12.2008, p. 98.

CHAPTER IV

OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

Amendment to article 27 in order to clarify in which situations responsibility of a Member State ceases and switches to another Member State. In addition we wonder whether the paragraph should also include a reference to the articles about relocation.

Article 27

Cessation of responsibilities

1. Where a Member State issues a residence document to the applicant, **does not transfer the person concerned pursuant to Article 8(3), must apply article 24**, decides to apply Article 25, or does not transfer the person concerned to the Member State responsible within the time limits set out in Article 35, that Member State shall become the Member State responsible and the obligations laid down in Article 26 **and 28(4)** shall be transferred to that Member State. 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 the applicant or has received a take back notification, using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

The first subparagraph shall not apply if the person has already been granted international protection by the responsible Member State.

The Member State which becomes responsible pursuant to the first subparagraph of this Article shall indicate that it has become the Member State responsible pursuant to Article 11(3) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].

2. The obligation laid down in Article 26(1), point (b), of this Regulation to take back a third-country national ~~or a stateless person~~ shall cease where it can be established, on the basis of the update of the data set referred to in Article 11(2)(c) of Regulation (EU) XXX/XXX [*Eurodac Regulation*], that the person concerned has left the territory of the Member States, on either a compulsory or a voluntary basis, in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.

An application registered after an effective removal has taken place shall be regarded as a new application for the purpose of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.

CHAPTER V

PROCEDURES

SECTION I

START OF THE PROCEDURE

Amendment to article 28: The Netherlands is in favor of determining the responsible Member State before relocation, to avoid double transfers of the same persons. Also we have made amendments for clarification purposes in relation to our amendments to article 27.

Article 28

Start of the procedure

1. The Member State where an application for international protection is first registered pursuant to Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] or, where applicable, the **benefitting** Member State ~~of relocation~~ shall start the process of determining the Member State responsible without delay.

2. The Member State where an application is first registered or, where applicable, the Member State of relocation shall continue the process of determining the Member State responsible if the applicant leaves the territory of that Member State without authorisation or is otherwise not available to the competent authorities of that Member State.

3. The Member State which has conducted the process of determining the Member State responsible or which has become responsible pursuant to Article 8(4) of this Regulation shall indicate in Eurodac without delay pursuant to Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*]:

   (a) its responsibility pursuant to Article 8(2);

   (*) its responsibility pursuant to Article 8(3);

   (b) its responsibility pursuant to Article 8(4);

   (*) its responsibility pursuant to Article 24;

   (*) its responsibility due to its decision to issue a residence document to the applicant or to apply Article 25;

   (c) its responsibility due to its failure to comply with the time limits laid down in Article 29;

   (d) the responsibility of the Member State which has accepted a request to take charge of the applicant pursuant to Article 30.

   Until this indication has been added, the procedures in paragraph 4 shall apply.

4. An applicant who is present in another Member State without a residence document or who there makes an application for international protection during the process of determining the Member State responsible, shall be taken back, under the conditions laid down in Articles 31 and 35, by the Member State **mentioned in paragraph 1.** ~~with which that application was first registered.~~

   That obligation shall cease where the Member State determining the Member State responsible can establish that the applicant has obtained a residence document from another Member State.

5. An applicant who is present in a Member State without a residence document or who there makes an application for international protection after another Member State has confirmed to relocate the person concerned pursuant to Article 57(7), and before the transfer has been carried out to that Member State pursuant to Article 57(9), shall be taken back, under the conditions laid down in Articles 31 and 35, by the Member State of relocation.

That obligation shall cease where it can be established that the applicant has obtained a residence document from another Member State.

SECTION II

PROCEDURES FOR TAKE CHARGE REQUESTS

Substantial comment: we can agree with the substance of this article, but to make the time limit feasible we suggest to make an amendment to article 12 (3) in the sense that the personal interview shall take place in a timely manner, and in any event, before a transfer decision on a take charge request is taken.

Article 29

Submitting a take charge request

1. If a Member State where an application for international protection has been registered considers that another Member State is responsible for examining the application, it shall, without delay and **at the latest** within two months of the date on which the application was registered, request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Articles 13 and 14a of Regulation (EU) XXX/XXX [*Eurodac Regulation*] or of a VIS hit with data recorded pursuant to Article 21 of Regulation (EC) No 767/2008, the request to take charge shall be sent within one month of receiving that hit.

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State where the application was registered.

Where the applicant is an unaccompanied minor, the determining Member State may, where it considers that it is in the best interest of the minor, continue the procedure for determining the Member State responsible and request another Member State to take charge of the applicant despite the expiry of the time limits laid down in the first and second subparagraphs.

2. The requesting Member State may request an urgent reply in cases where the application for international protection was registered after a decision to refuse entry or a return decision was issued.

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

3. In the cases referred to in paragraphs 1 and 2, the take charge request by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the applicant'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 Commission shall, by means of implementing acts, adopt uniform conditions on the preparation and submission of take charge requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Amendment to article 30 (8) to avoid situations where Member States have a difference of opinion on whether the refusal is full and detailed enough.

Article 30

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 one month of receipt of the request.

2. Notwithstanding the first paragraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 and 14a of Regulation (EU) XXX/XXX [*Eurodac Regulation*] or of a VIS hit with data recorded pursuant to Article 21(2) of Regulation (EC) No 767/2008, the requested Member State shall give a decision on the request within two weeks of receipt of the request.

3. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.

4. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

   (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 67 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 according to the evidentiary value attributed to them;

      (ii) their evidentiary value, in relation to the responsibility for examining the application for international protection shall be assessed on a case-by-case basis.

5. The requirement of proof shall not exceed what is necessary for the proper application of this Regulation.

6. The requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

7. Where the requesting Member State has asked for an urgent reply pursuant to Article 29(2), the requested Member State shall reply within the period requested or, failing that, within two weeks of receipt of the request.

8. Where the requested Member State does not **reply**~~object to the request~~ within the one-month period **mentioned**~~set out~~ in paragraph 1 **or the two weeks period mentioned in**

paragraphs 2 and 7~~, by a reply which gives full and detailed reasons, or where applicable within the two-week period set out in paragraphs 2 and 7~~, this shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival. **A reply refusing the request shall state the substantiated reasons on which the refusal is based**.

SECTION III

PROCEDURES FOR TAKE BACK NOTIFICATIONS

Amendment to article 31 to clarify the procedure, including the situation where a take back notification has obviously been sent to the wrong Member State.

Article 31

Submitting a take back notification

1. In a situation referred to in Article 26(1), point (b), (c)**,**~~or~~ (d)**, Article 28(4) or (5)** the Member State where the person is present shall **endeavour to** make a take back notification without delay and in any event within two weeks after receiving the Eurodac hit.

2. A take back notification shall be made using a standard form and shall include the **information in Regulation (EU) XXX/XXX [*Eurodac Regulation*] about the responsible Member State or** proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the statements of the person concerned.

3. The notified Member State shall confirm receipt of the notification to the Member State which made the notification within one week, unless the notified Member State can demonstrate within that time limit that its responsibility has ceased **or transferred to another Member State** pursuant to Article 27 **or can demonstrate that the take back notification is based on an obvious error or an incorrect registration** *(evt of the Member State responsible)* **in Regulation (EU) XXX/XXX [*Eurodac Regulation]***

4. Failure to act within the one-week period set out in paragraph 3 shall be tantamount to confirming the receipt of the notification.

5. The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back notifications. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

SECTION IV

PROCEDURAL SAFEGUARDS

Article 32

Notification of a transfer decision

1. The determining Member State whose take charge request as regards the applicant referred to in Article 26(1), point (a) was accepted or who made a take back notification as regards persons referred to in Article 26(1), point (b), (c)**,** ~~and~~ (d)**, Article 28(4) or (5),** shall **endeavour to** take a transfer decision ~~at the latest~~ within one week of the acceptance or notification.

2. Where the requested Member State accepts to take charge of an applicant or to take back a person referred to in Article 26(1), point (b), (c)**,** ~~or~~ (d)**, Article 28(4) or (5)**, the requesting or the notifying Member State shall notify the person concerned in writing without delay of the

decision to transfer him or her to the Member State responsible and, where applicable, of the fact that it will not examine his or her application for international protection.

(…)

Article 33

Remedies

1. The applicant or another person as referred to in Article 26(1), point (b), (c)**,** ~~and~~ (d)**, Article 28(4) and (5)** shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

The scope of the remedy shall be limited to an assessment of:

(a) whether the transfer would result in a real risk of inhuman or degrading treatment for the person concerned within the meaning of Article 4 of the Charter of Fundamental Rights;

(b) whether Articles 15 to 18 and Article 24 have been infringed, in the case of the persons taken charge of pursuant to Article 26(1), point (a).

2. Member States shall provide for a period of **one week** after the notification of a transfer decision within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

(…)

SECTION V

DETENTION FOR THE PURPOSES OF TRANSFER

Amendment to article 34 to delete paragraph 1: the reasoning behind this provision is that a person must not be detained solely because he or she has made a request for protection. At the core a person falls under this Regulation precisely because (s)he has moved from one Member State to another, and given the definition of absconding in this proposal, the fact that this person falls under the scope of this Regulation would in fact often be a strong reason to detain under this provision.

Amendment to paragraph 2 to bring the wording in line with article 8 of the Receptions directive and article 18 of the recast of the Return directive.

Amendment to paragraph 3, 2nd subparagraph: the current text does not contain a starting point for the time limit for submitting a take back notification when a person does not apply for international protection in the Member State where he or she is present. Since these persons are detained, it is important to have clear and unambiguous time limits. Therefore, the Netherlands suggests to add a time limit of two weeks after the receipt of the Eurodac hit when no new application was lodged in the requesting Member State.

Amendment to paragraph 3, 3rd subparagraph: It should be made clear that this article also applies to transfers in a situation of return sponsorship. Also we suggest to clarify in the text that transfers need to be carried out within four weeks of the date when the appeal or review no longer has suspensive effect, including subsequent applications. Because subsequent applications are made and in practice we see that some are made with no other purpose than to delay the transfer.

Article 34

Detention

1. ~~Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.~~

2. Where there is a risk of absconding **or when protection of national security or public order so requires**, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively, based on an individual assessment of the person's circumstances.

3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where an applicant or another person referred to in Article 26(1), point (b), (c)**,** ~~or~~ (d)**, Article 28(4) or (5)** is detained pursuant to this Article, the period for submitting a take charge request or a take back notification shall not exceed two weeks from the registration of the application **or two weeks from the receipt of the Eurodac hit when no new application has been registered in the requesting Member State**. Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge request or a take back notification shall not exceed ~~one week~~**two weeks** from the date on which the person was placed in detention. The **determining** Member State ~~carrying out the procedure in accordance with this Regulation~~ shall ask for an urgent reply on a take charge request. Such reply shall be given within one week of receipt of the take charge request. Failure to reply within the one-week period shall be tantamount to accepting the take charge request and shall entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting or notifying Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within ~~four~~**six** weeks of:

(a) the date on which the request was accepted or the take back notification was confirmed, ~~or~~

(b) the date on which the responsibility to take charge of the return procedure takes effect in accordance with Article 55(2),

(~~b~~**c**) the date when the appeal or review no longer has suspensive effect in accordance with Article 33(3)~~.~~**, or**

(d) in case the person concerned submits an application after a transfer decision was notified, the date when the decision on that application is taken, where no appeal or review has been lodged against such decision, or from the moment when the appeal or review no longer has a suspensive effect in accordance with Article 33(3).

Where the requesting or notifying Member State fails to comply with the time limits for submitting a take charge request or take back notification or to take a transfer decision within the time limit laid down in Article 32(1) or where the transfer does not take place within the period of four weeks referred to in the third subparagraph of this paragraph, the person shall no longer be detained. Articles 29, 31 and 35 shall continue to apply accordingly.

4. Where a person is detained pursuant to this Article, the detention shall be ordered in writing by judicial **or administrative** authorities. The detention order shall state the reasons in fact and in law on which it is based.

5. As regards the detention conditions and the guarantees applicable to applicants detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive XXX/XXX/EU [*Reception Conditions Directive*] shall apply.

SECTION VI

TRANSFERS

Substantive amendment to article 35: non-compliance with the time limits in a take back situation should not result in the responsibility shifting to the transferring Member State.

Amendment to paragraph 2: We fully support the goal of this paragraph, but the way it is drafted is practically not useful. Because in case someone absconds a few days before the expiry of the time limits, just these few days will remain available to arrange the transfer after he becomes available to the authorities again. In practice the arrangement of a transfer takes time. Therefore in our opinion the entire six month transfer period should recommence after a person has absconded and becomes available again to the authorities. We suggest to amend the text in this way.

Article 35
Detailed rules and time limits

1. The transfer of an applicant or of another person as referred to in Article 26(1), point (b), (c)**,** ~~and~~(d)**, article 28(4) or (5),** from ~~the requesting or notifying~~**transferring** Member State to the Member State responsible shall be carried out in accordance with the national law of the ~~requesting or notifying~~ **transferring** Member State, after consultation between the Member States concerned, as soon as practically possible, and**, in case of a take charge situation,** at the latest within six months of the acceptance ~~of the take charge request or of the confirmation of the take back notification~~ by **the**~~another~~ Member State **responsible,** ~~or~~ of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3)**, of the final decision on an application, appeal or review for another type of residence permit which, in accordance with national law, prevents that a transfer can be carried out, or of the decision on an application for international protection which is registered after a transfer decision has been notified**. That time limit may be extended up to a maximum of one year if the transfer cannot be carried out due to imprisonment of the person concerned.

Where the transfer is carried out for the purpose of relocation, the transfer shall take place within the time limit set out in Article 57(9).

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

If necessary, the **person concerned**~~applicant~~ shall be supplied by the ~~requesting or notifying~~**transferring** Member State with a *laissez passer*. The Commission shall, by means of implementing acts, establish the design of the *laissez passer*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

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

2. Where the transfer does not take place within the time limits set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take charge of ~~or to take back~~ the person concerned and responsibility shall be transferred to the ~~requesting or notifying~~**transferring** Member State.

Notwithstanding the first subparagraph, where the person concerned absconds and the ~~requesting or notifying~~**transferring** Member State informs the Member State responsible before the expiry of the time limits set out in paragraph 1, first subparagraph, that the person concerned has absconded, the transferring Member State shall retain the right to carry out the transfer within **six months after** ~~the remaining time at a later stage, should~~ the person becomes available to the authorities again, unless another Member State has carried out the procedures in accordance with this Regulation and transferred the person to the responsible Member State **or the responsibility has transferred to another Member State pursuant to Article 27** after the person absconded. **In that case the Member State where the person has become available shall make a new take back notification in accordance with Article 31.**

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

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Article 36
Costs of transfer

1. In accordance with Article 17 of Regulation (EU) XXX/XXX [*Asylum and Migration Fund*], a contribution shall be paid to the Member State carrying out the transfer for the transfer of an applicant or another person as referred to in Article 26(1), point (b), (c)**,** ~~or~~ (d)**, Article 28(4) or (5)**, pursuant to Article 35.

(…)

Article 37
Exchange of relevant information before a transfer is carried out

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 26(1), point (b), (c)**,** ~~or~~ (d)**, Article 28(4) or (5)**, shall communicate to the Member State responsible such personal data concerning the person to be transferred as is adequate, relevant and limited to what is necessary for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, to ensure continuity in the protection and rights afforded by this Regulation and by other applicable asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in under national law have sufficient time to take the necessary measures.

(…)

Article 38
Exchange of security-relevant information before a transfer is carried out

Where the Member State carrying out a transfer is in possession of information that indicates that there are reasonable grounds to consider the applicant or another person as referred to in Article 26(1), point (b), (c)**,** ~~or~~ (d)**, Article 28(4) or (5)**, a danger to national security or public order in a Member State, that Member State shall also communicate such information to the Member State responsible.

CHAPTER VI

ADMINISTRATIVE COOPERATION

Substantive amendment to paragraph 3 of article 40: A consequence of the return sponsorship could be that the sponsoring Member State will be responsible for the subsequent application of an applicant. In order to process that application smoothly and carefully, it is necessary for that Member State to have the asylum file of the earlier application. If the asylum seeker does not give his consent to this, the process stalls. We therefore propose to delete part of this paragraph.

Article 40
Information sharing

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the person covered by the scope of this Regulation as is adequate, relevant and limited to what is necessary for:

   (a) determining the Member State responsible;

   (b) examining the application for international protection;

   (c) implementing any obligation arising under this Regulation.

2. The information referred to in paragraph 1 shall only cover:

   (a) personal details of the person concerned, and, where appropriate, his or her family members, relatives or any other family relations (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 person concerned, including biometric data taken of the applicant by the Member State, in particular for the purposes of Article 57(6) of this Regulation, in accordance with Regulation (EU) XXX/XXX [*Eurodac 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 on which any previous application for international protection was lodged, the date on which the current application was registered, the stage reached in the proceedings and the decision taken, if any.

3. Provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests 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 international protection, obtained by the requesting Member State~~. ~~In that case, the applicant must know for what specific information he or she is giving his or her approval.~~

(…)

CHAPTER VII

CONCILIATION

Article 44

We welcome the amended procedure in article 44 and support the suggestion made during the asylum working party of April 7th to have the Commission make binding recommendations.

Conciliation

1. In order to facilitate the proper functioning of the mechanisms set up under this Regulation and resolve difficulties in the application thereof, where two or more Member States encounter difficulties in their cooperation under this Regulation or in its application between them, the Member States concerned shall, upon request by one or more of them, hold consultations without delay with a view to finding appropriate solutions within a reasonable time, in accordance with the principle of sincere cooperation.

As appropriate, information about the difficulties encountered and the solution found may be shared with the Commission and with the other Member States within the Committee referred to in Article 67.

2. Where no solution is found under paragraph 1 or the difficulties persist, one or more of the Member States concerned may request the Commission to hold consultations with the Member States concerned with a view to finding appropriate solutions. The Commission shall hold such consultations without delay. The Member States concerned shall actively participate in the consultations and, as well as the Commission, take all appropriate measures to promptly resolve the matter. The Commission may adopt recommendations addressed to the Member States concerned indicating the measures to be taken and the appropriate deadlines.

As appropriate, information about the difficulties encountered, the recommendations made and the solution found may be shared with the other Member States within the Committee referred to in Article 67.

3. This Article shall be without prejudice to the powers of the Commission to oversee the application of Union law under Articles 258 and 260 of the Treaty. It shall be without prejudice to the possibility for the Member States concerned to submit their dispute to the Court of Justice in accordance with Article 273 of the Treaty or to bring the matter to it in accordance with Article 259 of the Treaty.

CHAPTER III

FINANCIAL SUPPORT PROVIDED BY THE UNION

(...)

Scrutiny reservation on article 64 following questions raised during the Asylum Working Party of April 15th about the changes to this article in relation to the text in article 40 of the current Dublin regulation.

Article 64
Penalties

Member States shall lay down the rules on penalties, including administrative or criminal penalties in accordance with national law, applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

(…)

PART VI

AMENDMENTS TO OTHER UNION ACTS

Article 71

Substantive reservation on article 71 as motivated during the Asylum Working Party of April 15th.

Amendments to the Long Term Residence Directive

1. Directive 2003/109/EC is amended as follows:

Article 4 is amended as follows:

(a) in paragraph 1, the following sub-paragraph is added:

"With regard to beneficiaries of international protection, the required period of legal and continuous residence shall be three years".

(…)

PART VII

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

(…)

Amendment to article 74 and 75 to clarify which Regulation applies to applications submitted before the entry into force of this proposed Regulation.

Article 74
Transitional measures

1. Where an application has been registered after [*the first day following the entry into force of this Regulation*], 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.

2. The Member State responsible for the examination of an application for international protection submitted before that date shall be determined in accordance with the criteria set out in Regulation 604/2013.

3. Where an application has been registered in accordance with Regulation (EU) No 603/2013 of 26 June 2013[3] and the responsibility for that application was determined in accordance with Regulation (EU) No 604/2013[4] of 26 June 2013, the responsibility shall remain with the Member State that was deemed responsible, unless the Member State concerned can demonstrate that its responsibility has ceased pursuant to Article 27.

Article 75
Entry into force and applicability

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

It shall apply to applications for international protection registered as from [the first day of the thirteenth month following its entry into force]. ~~The Member State responsible for the examination of an application for international protection submitted before that date shall be determined in accordance with the criteria set out in Regulation 604/2013.~~

[3] Regulation (EU) No 603/2013 of 26 June 2013 on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)

[4] Regulation (EU) No 604/2013 of 26 June 2013 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)

POLAND

Article 28.1

With reference to para 1 we would like to support those MSs that are in favor of carrying out the Dublin procedure before the relocation procedure takes place (in the benefiting MS). Otherwise we will put unreasonable costs for the EU budget related to a double transfers.

Article 29. 1 and 2

Poland could accept new time limits for sending take charge request (1 or 2 months) in para 1.

In para 2**,** we are in favor of at least 2 weeks, 1 week for urgent reply is too short period of time.

Article 30.1, 2, 7

The proposed time limits in para 1 and 2 for replies to take chargé request are in our opinion too short. We would prefer to leave the 2-month time limit and we could accept 1 month in case of "hits" (EURODAC, VIS).

In para 7, in case of urgent reply, we could accept the time limit of at least 2 weeks.

Article 31

Reservation to replace the regular take back procedure (including the possibility of appeal the refusal) with the take back notification. We have serious doubts about the procedure which leaves no possibility of appeal. The 2-week time limit for sending the request/ notification is unrealistic. In our view it should be at least 1 month from receiving EURODAC hit. Moreover we are in favor of 2 week time limit for the reply instead of 1 week.

Article 32

Reservation to the deadline of 1 week for issuing a transfer decision. We could accept 2 weeks.

Article 33.3

Scrutiny reservation on the time limits proposed for the courts (the issue of their independence).

Article 34

Poland is of the opinion that proposed time limits are too short. We are in favor of keeping those actually applicable under Dublin III Regulation.

VTC AWP AMMR 07.04.2021 art. 1, 2, 35-44

Article 35

Scrutiny reservation. We find it necessary to clarify the time limit for the transfer of a foreigner in case of absconding. The current proposal does not seem to indicate any cut-off date available for both transferring and receiving MS. We need more detail on how the responsible MS will be able to assess whether the transfer takes place within the set deadline as this element may have impact on responsibility of transferring MS. We are also afraid as other MSs that proposed wording may lead to the situation that at the end there could be no enough time for implementing the transfer.

Article 42.1c

Substantial reservation on solidarity mechanism and placing of such provision related to Part IV in Part III of AMMR.

Article 43

Reservation with reference to the elements raised by FR and CLS during VTC (including powers of the EC). Moreover if the procedure as the EC explained covers solidarity mechanism we have serious doubts on placing this article in Part III of AMMR. It is not an adequate solution.

Article 2

PL sees the need to assure consistency on definitions within the whole CEAS package. We understand explanation of the EC on some specificity of each instrument and the differences that sometimes result from it but the consequences of such approach, including the issue of clarity, should be always taken into account.

c) applicant – Scrutiny reservation due to the fact that mentioned definition is different than the wording under the APR proposal.

g) family members – Scrutiny reservation, we are not opposing to extend the definition of family members and include siblings, although we should keep in mind possible difficulties in defining the kinship as well as fully explore consequences of possible multi-level/ cascading of family reunification process. The issue of the weighting of family ties remains unclear.

n) diploma or qualification – Scrutiny reservation (in conjunction with art. 20)

o) education establishment – Scrutiny reservation (in conjunction with art. 20)

VTC AWP AMMR 14-15.04.2021 art. 2, 61-75

Article 67.2-3

Substantial reservation due to the connection of this provision with the EC implementing acts proposed under solidarity mechanism in case of migratory pressure and disembarkation following SAR. We are in favor of strengthening the role of the Council within the mechanism.

Article 61 /72

Substantial reservation on proposed changes within AMF. Adjustment of the AMF (that relates to the current acquis) in the context of the AMMR requires balance approach to all solidarity measures. We cannot agree to create disproportions and finance only relocation (return sponsorship)/ resettlement what lies in contradiction to all our discussions on solidarity concept so far. Available financing is one of the key element of the whole concept and possible future agreement.

ROMANIA

Article 28

Paragraph 1 and 2 – We already point out the opinion that the Dublin procedure should be carried out by the beneficiary MS. Consequently, the mention regarding the *transferring Member State* should be removed from the provisions in question.

Paragraph 5 – As these provisions concern the procedure referred to in Part IV, we propose to delete it.

Article 29

Paragraph 1, last subparagraph – We propose that the deadline for submitting a request should be no later than the moment a decision regarding the substance of the asylum application is made in the national procedure.

Article 31

So as to have a quicker procedure, while also keeping the present take back procedure as it is at the moment (that is to say submitting and answering take back requests), we propose that the 3, respectively 2 month deadline for submitting the take back request be shortened to 2, respectively 1 month. As regards the deadline for answering a take back request, it should also be shortened accordingly to 2 weeks.

Article 32

Paragraph 1 and 2 –We suggest that the deadline for issuing a transfer decision should be extended to two weeks starting from the moment of receiving the positive answer to a take back request, keeping in mind our proposal on art. 26.

Article 33 – We propose that the cross-references to the first paragraph, letter c and d of Article 26 should be removed. An additional letter to the first paragraph should be added, so as to include a remedy in case of a transfer decision following a take back request.

Article 34

Paragraph 2 – We would like to ask the Commission for further clarifications regarding the situations in which there might be a *risk of absconding,* in order to clearly delimit the situations of use of detention.

Paragraph 3 – The provisions of this paragraph should be aligned with our previous proposal on Articles 26 and 31, including on the use of the take back procedure, concomitant with sending a

reply to the take back request within the same time limit as for the take charge request. Not answering in due time should be equivalent to an acceptance of the take back request. The transfer itself should be carried out in maximum 4 weeks since the moment of acceptance. In this respect we propose deleting the phrase "or the take back notification was confirmed". Also, we propose that the words "or take back notification" within the subparagraph 4 be replaced with the mention "or take back request".

Article 35 – As a general remark, the provisions of this article, as well as those of **Articles 37, 38 and 39** should be aligned with our proposal on Article 26.
Paragraph 1 – We believe that the reference to the solidarity mechanism should be removed.
Paragraph 2, subparagraph 1 – We believe that the transferring Member State should reserve its right to carry out the transfer in the remaining period of time, but not later than 2 years since the acceptance is received or, if the case may be, since the moment the decision of the Court is final.
We propose that a second paragraph should be added so as to regulate that if the transfer is not carried out in the two year deadline, the responsibility will shift to the requesting Member State.

Article 40 – We propose to delete the references to the provisions mentioned in Part IV of the Regulation. We also propose to align the provisions of this article with the other previous amendments.

Article 41 – We propose to delete the references to Part IV, while aligning the provisions of this Article with the others proposed amendments.

Art 42 Paragraph 1 letter c – We propose that all references to Chapter 1, 2 and 3 in Part IV of the AMMR be replaced with the phrase *voluntary solidarity-based contributions for taking charge of the applicants for international protection***.**

Article 2 letter w) – our one question to the Commission on this definition is related to the way 'a large number of arrivals of TCN/stateless persons' is to be interpreted. What criteria is used or better said - is there such criteria which would lead us to believe that we are indeed facing a large number of arrivals?

Article 61 – we have no observations.

Part V (Articles 62-70)

Article 64 – We request further clarification regarding the sanctions set out in this Article.

Part VI (Articles 71-72) – we have no observations.

Part VII (Articles 73-75) – we have no observations.

SLOVAKIA

Art. 2 – we would like to raise scrutiny reservation to the whole Article 2.

Art. 2 (g) - same substantial reservation as we have raised during the negotiations on the Qualification Regulation, where we are against the extension of the definition beyond the family that existed in the country of origin. We are concerned that extension of this notion will rise number of marriages of convenience with the aim to avoid expulsion from the EU. We have substantial reservation to the extension of the definition to siblings of the applicant as well.

Art. 2 (n) – as we have reservation to the Art. 20 and the new criterion of diplomas or other qualifications, therefore we would like to raise a reservation to the definition of this criterion as well.

Art. 2 (w) - reservation. We consider the definition of migratory pressure to be too vague. It is based solely on general notions, which might undermine objectivity of the assessment of situation in the Member State under pressure. Definition should be further specified, taking into account for example some of the objective criteria listed in Article 50.

Art. 28 – as it was mentioned by several delegations during the AWP meeting, we are also of the opinion that the determination of the responsible Member State should be done before relocation takes place.

Art. 31 - reservation. We are against the automatic process of submitting a take back notification, because it doesn't allow the notified Member State to assess in all cases whether its responsibility still lasts.

Art. 31(1) - Para 1 does not set out the consequences of failure to submit take back notification within two-weeks period. We see no added value of time limit without consequences of not meeting it, especially here, where Member States should be motivated to act swiftly.

Art. 31(3) – We consider the text to be ambiguous; it is not clear what does the term "receipt" means in practice. Moreover, the proposed time limit of one week is disproportionately short for processing the relevant notification, especially in cases of mass influx of the applicants for international protection. It is also not clear, from the formulation of this article, how to proceed in case where the notified Member State does not agree with its responsibility. In what form the notified Member State can express its dissenting opinion?

We also would like to reiterate our reservation regarding the inclusion of beneficiaries of international protection and resettled person into the scope of this Regulation.

Art. 32 - We consider one week time limit to take a transfer decision as disproportionate, due to the fact that from the proposed text it is not clear what does it mean to take such a decision in practice.
If it means to take written transfer decision, then we do not consider one week time limit to be sufficient. In practise several factors could hamper compliance with the proposed time limit e.g. – right of an applicant or his/her legal representative or guardian to become familiar with the applicant's file before the decision is taken; statement of the legal representative to applicant's file before issuing the decision; the need to obtain more detailed country of origin information, which are often requested by the appeal courts.

Art. 34 (3)– reservation. We are of the opinion that the proposed period of four weeks represents border line time limit, and therefore we do not agree with the shortening of the time limit for transfer from 6 weeks to 4 weeks. Current time limit of 6 weeks is optimal and allows to secure all formal, technical and organisational aspects of preparation of the transfer.
In practice the realisation of the Dublin transfer is in many cases lengthy and complicated, mainly in case of larger number of transferred persons. In connection with migration crisis there has been an enormous increase of Dublin cases. Moreover, recently we have observed rise of detention in relation to Dublin procedure, which also increased pressure on the preparation of transfers and on the staff.
Art. 34 (3) - We also have a comment of technical nature regarding the translation into the Slovak language. In sub-paragraph 2, the sentence "***Such reply shall be given within one week of receipt of the take charge request***", the one week time limit was translated as two week time limit into the Slovak language.
Art. 34 (4) - substantial reservation. We do not agree with the second part of the first sentence stating "***the detention shall be ordered in writing by judicial authorities***". In Slovakia, the detention is ordered by administrative authorities, not the judicial ones, which review the legality of the detention on the basis of duly applied remedies. Therefore, there is a need to include the administrative authorities into the text as well.

Art. 35 (2) – We have a reservation to the possibility to retain the right to carry out the transfer to the Member State responsible in subpara 2without the time limit and without the subsequent shift of responsibility. The wording "***carry out the transfer within the remaining time at a later stage***" is problematic in terms of its application in practice and does not establish how the remaining time will be counted. We have doubts, same as other Member States, as regards carrying out transfer after the person absconds and reappears. There may be only a few days that remain for carrying out

the transfer until the time limit expires. We understand that there is 6 months time limit for carrying out the transfer, but it does not automatically mean that the Member States haven't made all the effort to transfer the concerned person. In practice, different circumstances that makes the transfer difficult to carry out, may arise, such as decision of the court on appeal against the decision on transfer, right of an applicant or his/her legal representative to become familiar with the applicant's file before the decision is taken; statement of the legal representative to applicant's file before issuing the decision, right of an applicant to make an appeal against transfer decision, problems with the organization of the transfer (ensuring air tickets, Covid-19 etc.). Therefore we are of the opinion, that there should be additional time limit to carry out the transfer after the person reappears.

We are in favour of retaining the current 18-months period for the transfer in case of absconding.

Art. 62 (2) – we would like to add here a reference to *REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)* and also the reference to *DIRECTIVE (EU) 2016/680 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA*

Art. 71 - Substantial reservation. We do not agree with the proposal to amend the Long Term Residence Directive by adding the obligation to grant long-term resident status to beneficiaries of international protection after three years of legal and continuous residence on the territory of the Member States.

The proposal in question introduces special conditions which provide advantage to this category of third country nationals, which leads to the breach of the principle of equal treatment and to the subsequent discrimination of all other categories of third-country nationals to whom the Long Term Residence Directive applies.

We are of the opinion that beneficiaries of international protection should have the possibility to obtain the long term resident status in the Member State which granted them international protection under the same conditions as other third-country nationals.

One of the main conditions for granting long term resident status is the length of the residence in the territory of the Member State. The residence should be legal and continuous in order to prove, that the person has settled in the country.

The time limit of legal and continuous residence of 5 years, which currently applies, is more adequate and satisfactory for thorough check of these persons, also for the control of compliance with the obligations on their side, as well as the degree of their integration into society. We also have concerns that reducing the period to 3 years could be another pull-factor for people who could potentially abuse Member States' social systems.

SPAIN

As a general remark, the Spanish delegation has a scrutiny reservation on the whole text of the proposal, including on the Part III, criteria and mechanisms for determining the Member State responsible.

On the other hand, the Spanish delegation reiterates its points of views and comments expressed in the Asylum WP meetings on the 24th March, 7th and 15th April.

Without prejudice to the above, the Spanish delegation submits the following preliminary proposals:

-As a general rule, the AMMR proposal has replaced in Part III the criteria of "lodging" an application (followed by the current Regulation) by the criteria of "registering". Nevertheless, we think that the most stable and secure principle is that of the lodging, because is in that moment where the applicant really shows its will to apply for protection, and precisely by this reason was the criteria adopted from the very beginning of the "Dublin rules"; on the other hand, there is no ground for changing it. If the aim of this change is to speed up the procedure, the solution would lie in shortening deadlines, not in changing a criterion that provides legal certainty for one that will increase the administrative burden and, consequently, the inefficiency of the system.

-Article 28, Start of the procedure

…

3. The Member State which has conducted the process of determining the Member State responsible or which has become responsible pursuant to Article 8(4) of this Regulation shall indicate in Eurodac without delay pursuant to Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*]:
(a) its responsibility pursuant to Article 8(2);
(b) its responsibility pursuant to Article 8(4);
(c) its responsibility due to its failure to comply with the time limits laid down in Article 29 **or in Article 31**;
(d) the responsibility of the Member State which has accepted a request to take charge of the applicant pursuant to Article 30.
Until this indication has been added, the procedures in paragraph 4 shall apply.

4. An applicant who is present in another Member State without a residence document or who there makes an application for international protection during the process of determining the Member State responsible, shall be taken back, under the conditions laid down in Articles 31 and 35, by the Member State with which that application was first registered.

That obligation shall cease where the Member State determining the Member State responsible can establish that the applicant has obtained a residence document from another Member State **or has in the meantime left the territory of the Member States for a period of at least three months.**

An application lodged after the period of absence referred to in the second subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

5. An applicant who is present in a Member State without a residence document or who there makes an application for international protection after another Member State has confirmed to relocate **or to transfer onto its own territory** the person concerned pursuant to Article 57(7) **or to Article 55 (2)**, and before the transfer has been carried out to that Member State pursuant to Article 57(9),

shall be taken back, under the conditions laid down in Articles 31 and 35, by the Member State of relocation.

Article 29, Submitting a take charge request

1. If a Member State where an application for international protection has been registered considers that another Member State is responsible for examining the application, it shall, without delay and in any event within **three** ~~**two**~~ months of the date on which the application was registered, request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Articles 13 and 14a of Regulation (EU) XXX/XXX [*Eurodac Regulation*] or of a VIS hit with data recorded pursuant to Article 21 of Regulation (EC) No 767/2008, the request to take charge shall be sent within **two** ~~**one**~~ month**s** of receiving that hit.

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State where the application was registered.

Where the applicant is an unaccompanied minor **or in order to apply Articles 16 and 17**, the determining Member State may, where it considers that it is in the best interest of the minor **or the family unit**, continue the procedure for determining the Member State responsible and request another Member State to take charge of the applicant despite the expiry of the time limits laid down in the first and second subparagraphs.
…

Article 30, 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** ~~**one**~~ month of receipt of the request.

2. Notwithstanding the first paragraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 and 14a of Regulation (EU) XXX/XXX [*Eurodac Regulation*] or of a VIS hit with data recorded pursuant to Article 21(2) of Regulation (EC) No 767/2008, the requested Member State shall give a decision on the request within **one month** ~~**two weeks**~~ of receipt of the request.
…

7. Where the requesting Member State has asked for an urgent reply pursuant to Article 29(2), the requested Member State shall reply within the period requested or, failing that, within **one month** ~~**two weeks**~~ of receipt of the request.

8. Where the requested Member State does not object to the request within the **two-month** ~~**one-month**~~ period set out in paragraph 1 by a reply which gives full and detailed reasons, or where applicable within the **one-month** ~~**two-week**~~ period set out in paragraphs 2 and 7, this shall be tantamount to accepting the request, and entail the obligation to take charge of

Article 31, Submitting a take back request ~~***notification***~~

1. In a situation referred to in Article 26(1), point (b)~~**, (c)**~~ or (d) the Member State where the person is present **may request the Member State it considers responsible to take back that person** ~~**shall make a take back notification**~~ without delay and in any event within two **months** ~~**weeks**~~ after receiving the Eurodac hit.

If the take back request 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.

2. A take back **request** ~~**notification**~~ shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the statements of the person concerned, **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.**

3. **Where the take back request is not made within the periods laid down in paragraph 1, responsibility for examining the application for international protection shall lie with the requesting Member State.**

~~**The notified Member State shall confirm receipt of the notification to the Member State which made the notification within one week, unless the notified Member State can demonstrate within that time limit that its responsibility has ceased pursuant to Article 27.**~~

4. **The requested Member State shall make the necessary checks and shall give a decision on the request to take back the person concerned as quickly as possible and in any event no later than one month from the date on which the request was received. When the request is based on data obtained from the Eurodac system, that time limit shall be reduced to two weeks.**

Failure to act within the one month period or the two weeks period mentioned in the first subparagraph shall be tantamount to accepting the request, and shall entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for arrival.

~~**Failure to act within the one-week period set out in paragraph 3 shall be tantamount to confirming the receipt of the notification.**~~

…

Article 32, Notification of a transfer decision

1. The determining Member State whose take charge request as regards the applicant referred to in Article 26(1), point (a) was accepted or who made a take back **request** ~~**notification**~~ as regards persons referred to in Article 26(1), point (b)~~**, (c)**~~ and (d) shall take a transfer decision at the latest within one week of the acceptance ~~**or notification**~~.

2. Where the requested Member State accepts to take charge of an applicant or to take back a person referred to in Article 26(1), point (b)~~**, (c)**~~ or (d), the requesting ~~**or the notifying**~~ Member State shall notify the person concerned in writing without delay of the decision to transfer him or her to the Member State responsible and, where applicable, of the fact that it will not examine his or her application for international protection.

…

Article 33, Remedies

…

1. The applicant or another person as referred to in Article 26(1), point (b)~~, (c)~~ and (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.
The scope of the remedy shall be limited to an assessment of:
(a) whether the transfer would result in a real risk of inhuman or degrading treatment for the person concerned within the meaning of Article 4 of the Charter of Fundamental Rights;
(b) whether Articles 15 to 18 and Article 24 have been infringed, in the case of the persons taken charge of pursuant to Article 26(1), point (a).
…

3. The person concerned shall have the right to request, within a reasonable period of time from the notification of the transfer decision, a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within **a reasonable period of time** ~~**one month of the date when that request reached the competent court or tribunal**~~.

Where the person concerned has not exercised his or her right to request suspensive effect, the appeal against, or review of, the transfer decision shall not suspend the implementation of a transfer decision.

A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.

If suspensive effect is granted, the court or tribunal shall endeavour to decide on the substance of the appeal or review within **a reasonable period of time** ~~**one month of the decision to grant suspensive effect**~~.
…

Article 34, Detention
…

3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where an applicant or another person referred to in Article 26(1), point (b)~~, (c)~~ or (d) is detained pursuant to this Article, the period for submitting a take charge request or a take back **request** ~~**notification**~~ shall not exceed two weeks from the registration of the application. Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge request or a take back **request** ~~**notification**~~ shall not exceed one week from the date on which the person was placed in detention. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply on a take charge request. Such reply shall be given within one week of receipt of the take charge request. Failure to reply within the one-week period shall be tantamount to accepting the take charge request and shall entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting ~~**or notifying**~~ Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within four weeks of:

(a) the date on which the request was accepted or the take back **request** ~~**notification**~~ was confirmed, or
(b) the date when the appeal or review no longer has suspensive effect in accordance with Article 33(3).

Where the requesting ~~**or notifying**~~ Member State fails to comply with the time limits for submitting a take charge request or take back notification or to take a transfer decision within the time limit laid down in Article 32(1) or where the transfer does not take place within the period of four weeks referred to in the third subparagraph of this paragraph, the person shall no longer be detained. Articles 29, 31 and 35 shall continue to apply accordingly.
…

Article 35, Detailed rules and time limits

1. The transfer of an applicant or of another person as referred to in Article 26(1), point (b), ~~**(c)**~~ and (d), from the requesting ~~**or notifying**~~ Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting ~~**or notifying**~~ Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of the acceptance of the take charge request or of the confirmation of the take back **request** ~~**notification**~~ by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3). That time limit may be extended up to a maximum of one year if the transfer cannot be carried out due to imprisonment of the person concerned.

Where the transfer is carried out for the purpose of relocation, the transfer shall take place within the time limit set out in Article 57(9).

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

If necessary, the applicant shall be supplied by the requesting ~~**or notifying**~~ Member State with a *laissez passer*. The Commission shall, by means of implementing acts, establish the design of the *laissez passer*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

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

2. Where the transfer does not take place within the time limits set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the requesting ~~**or notifying**~~ Member State.

Notwithstanding the first subparagraph, where the person concerned absconds and the requesting ~~**or notifying**~~ Member State informs the Member State responsible before the expiry of the time limits set out in paragraph 1, first subparagraph, that the person concerned has absconded, the transferring Member State shall retain the right to carry out the transfer within the remaining time at a later stage, should the person become available to the authorities again, unless another Member State has carried out the procedures in accordance with this Regulation and transferred the person to the responsible Member State after the person absconded.

…

Article 36, Costs of transfer

1. In accordance with Article 17 of Regulation (EU) XXX/XXX [*Asylum and Migration Fund*], a contribution shall be paid to the Member State carrying out the transfer for the transfer of an applicant or another person as referred to in Article 26(1), point (b)~~, (c)~~ or (d), pursuant to Article 35.
…

Article 37, Exchange of relevant information before a transfer is carried out

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 26(1), point (b)~~, (c)~~ or (d), shall communicate to the Member State responsible such personal data concerning the person to be transferred as is adequate, relevant and limited to what is necessary for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, to ensure continuity in the protection and rights afforded by this Regulation and by other applicable asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in under national law have sufficient time to take the necessary measures.

2. The transferring Member State shall transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:

(a) any immediate measures which the Member State responsible 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, relatives or any other family relations in the receiving Member State, where applicable;
(c) in the case of minors, information on their education;
(d) an assessment of the age of an applicant;
[(e) information collected during the screening in accordance with Article 13 of Regulation (EU) XXX/XXX [*Screening Regulation*].]
…

Article 38, Exchange of security-relevant information before a transfer is carried out

Where the Member State carrying out a transfer is in possession of information that indicates that there are reasonable grounds to consider the applicant or another person as referred to in Article 26(1), point (b)~~, (c)~~ or (d), a danger to national security or public order in a Member State, that Member State shall also communicate such information to the Member State responsible.

Article 2, Definitions
…

(c) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a decision has not been taken, or has been taken and is either subject to or can still be subject to a remedy in the Member State concerned, irrespective of whether the **person** ~~**applicant**~~ has a right to remain or is allowed to remain in accordance with

Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]**, ~~including a person who has been granted immediate protection pursuant to Regulation (EU) XXX/XXX [*Regulation addressing situations of crisis and force majeure in the field of asylum and migration*]~~**;

…

(p) 'absconding' means the action by which an applicant does not remain available to the competent administrative or judicial authorities, such as by leaving **for an unknown destination or leaving** the territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the applicant's control;

…

(w) 'migratory pressure' means a situation where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries which generate migratory movements that place a burden even on well-prepared asylum and reception systems and requires immediate action; **in any case, a Member State is considered to be under migratory pressure where the number of irregular arrivals of third-country nationals or stateless persons on its territory is higher than 120% of its distribution key on the total number of such arrivals in the Union in the previous year, including arrivals following search and rescue operations.**

Article 65, Calculation of time limits

Any period of time provided for in this Regulation shall be calculated **in accordance with the Regulation No 1182/71 of the Council determining rules applicable to periods, dates and time limits.** ~~**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.**~~

Article 75, Entry into force and applicability

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

It shall apply to applications for international protection registered as from [the first day of the **twenty-fourth** ~~**thirteenth**~~ month following its entry into force]. The Member State responsible for the examination of an application for international protection submitted before that date shall be determined in accordance with the criteria set out in Regulation 604/2013.