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NOTE

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from:	Presidency
to:	Asylum Working Party
No Cion prop.:	16929/08 ASILE 26 CODEC 1758
Subject:	REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

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1. At its meeting on 3 December 2009 the Working Party examined new Presidency compromise proposals concerning Articles 2(g), 4, 5, 6, 7, 8, 17, 18, 20, 23, 25, 26, 30, 30A, 31, 34, 35A and 35B.
2. The results of the discussions are set out in the Annex I to this Note, with delegations' comments in the footnotes. Reservations on provisions that have not been discussed on the above meeting but are still relevant have also been indicated in the text.

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

**ANNEX**

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Ⓔ 343/2003/EC

new

Council

2008/0243 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing the criteria and mechanisms for determining the Member State responsible for  
examining an ~~asylum~~ application ~~for international protection~~ lodged in one of the  
Member States by a third-country national ~~or a stateless person~~**

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Ⓔ 343/2003/EC (adapted)

new

Council

HAVE ADOPTED THIS REGULATION:

# CHAPTER I

## SUBJECT-MATTER AND DEFINITIONS

### *Article 1*

#### *Subject-matter*

This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for ~~asylum~~ international protection lodged in one of the Member States by a third-country national or a stateless person .

### *Article 2*

#### *Definitions*

For the purposes of this Regulation:

- (a) "third-country national" means ~~anyone~~ any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community and who is not [...] national of a state which participates in this Regulation by virtue of an agreement with the European Community. ;
- ~~(b) "Geneva Convention" means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;~~
- ~~(c) "application for asylum" means the application made by a third-country national which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless a third-country national explicitly requests another kind of protection that can be applied for separately;~~

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new

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

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343/2003/EC (adapted)

new

Council

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

~~(d)(e)~~ "examination of an asylum application for international protection" means any examination of, or decision or ruling concerning, an application for asylum international protection by the competent authorities in accordance with national law Council Directive 2005/85/EC<sup>1</sup>, except for procedures for determining the Member State responsible in accordance with this Regulation, and Directive 2004/83/EC;

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

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<sup>1</sup> OJ L 326, 13.12.2005, p.13.

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

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new

Council

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

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

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new

Council

[...]

(iii) when the applicant is a minor and unmarried the father, mother<sup>1</sup> or another adult [...] responsible for [...] him/her whether by [...] law or [...] by the national practice<sup>2</sup> of the Member State where the adult is present, [...]

(iv) when the person granted international protection is a minor and unmarried the father, mother or another adult responsible for [...] him/her by law or by the national practice of the Member State where the person granted international protection is present [...] <sup>3</sup>

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Ⓔ 343/2003/EC

Council

[...]

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<sup>1</sup> **DELETED**: replace “the father, mother” with “parents”; the request is also applicable to point (iv).

<sup>2</sup> **DELETED**: concerns about the inclusion of "national practice", because the relevant situation may vary from one MS to another; suggests using only the practice of the MS where the adult is present. **DELETED** (which believed that national law should prevail over practice): also concerns about the term..

<sup>3</sup> **DELETED**: scrutiny reservations on the point. **DELETED**: including a person who has been granted international protection broadens exceedingly the scope of the provision. **Cion**: persons who have been granted international protection have already been in the current Dublin Regulation system.

[...] (v) the minor unmarried siblings [...] when the applicant [...] or the person granted international protection is a minor and unmarried.<sup>1</sup>

[...] (ga) [...] "relative" means a person who is the applicant's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece and nephew, first or second cousin, step-parent or step-child.<sup>2</sup>

[...] (h) "minor" means a third-country national or a stateless person below the age of 18 years;<sup>3</sup>

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<sup>1</sup> **DELETED**: reservations, **DELETED**: scrutiny reservations, **DELETED**: parliamentary scrutiny reservation, on the provision and the entailed broadening of the scope of the Regulation. **Cion**: emphasized that the scope of this point has already been diminished vis-à-vis the original **Cion** recast proposal.

<sup>2</sup> **DELETED** (which thinks that a definition of relatives is necessary): reservations; **DELETED** (questioning the definition's added value), **DELETED** (query on which MS has to establish the family link if relatives in more than one MS), **DELETED** (questioning the definition's added value): scrutiny reservations on the new definition, considering it too broad and sometimes problematic concerning evidence that a case falls within its scope. **DELETED**: scrutiny reservations on the provision. **DELETED**: concerns about its impact on Articles 7(3), 8, 11.

Most of delegations' concerns focused on the inclusion in the definition of in-laws, step-parents or step-children.

**Cion**: this definition applies essentially to Articles 8 and 11. In both provisions (especially Article 11), there are several clear-cut conditions, which demarcate the scope of the definition. **DELETED**: application of the definition to Article 11, with all the conditions attached is acceptable, but it has a problem with its application on Article 8, where less strict requirements are set. **Cion**: this is related to the special vulnerability of the unaccompanied minors who ought to be reunited with a relative.

<sup>3</sup> **DELETED**: prefers an age threshold of 16 years - the reservation is in connection with Article 6(2).

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Ⓔ 343/2003/EC (adapted)

new

Council

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

[...]

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new

Council

[...]

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

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<sup>1</sup> **DELETED**: add " ... or responsible authority..."; **DELETED**: the "or any other appropriate representation" at the end of the point covers the above concern.



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Ⓔ 343/2003/EC

new

Council

[...] (k) "residence document" means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay in its territory, including the documents substantiating the authorisation to remain in the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the responsible Member State as established in this Regulation or during examination of an application for ~~asylum~~ international protection or an application for a residence permit;

[...] (l) "visa" means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:

- (i) "long-stay visa" means the authorisation or decision of a Member State required for entry for an intended stay in that Member State of more than three months;
- (ii) "short-stay visa" means the authorisation or decision of a Member State required for entry for an intended stay in that State or in several Member States for a period whose total duration does not exceed three months;
- (iii) "transit visa" means the authorisation or decision of a Member State for entry for transit through the territory of that Member State or several Member States, except for transit at an airport;

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

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new

[...]

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Ⓔ 343/2003/EC (adapted)

new

## CHAPTER II

### ***GENERAL PRINCIPLES AND SAFEGUARDS***

#### *Article 3*

##### *Access to the procedure for examining an application for international protection*

1. Member States shall examine ~~the~~ any application for international protection ~~of any~~ by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones ~~their territory to any one of them for asylum~~. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III of this Regulation indicate is responsible.

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☒ 343/2003/EC Article 13

new

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

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☒ 343/2003/EC

new

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

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☒ 343/2003/EC Article 3(4) (adapted)

new

Council

#### Article 4

##### *Right to information* <sup>1</sup>

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

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<sup>1</sup> **DELETED**: maintain reservations on the Article; **DELETED** in relation to the time framework comprised in this Article.

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new

Council

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

(b) the criteria for allocating responsibility, [...] [...] the different steps of the procedure, including the possibility to request a personal interview pursuant to Article 5<sup>1</sup> as well as [...] the time limits to be followed by the Member States ;

[...]

[...]

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

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

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

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<sup>1</sup> **DELETED**: reservations on the reference to the personal interview, as long as it constitutes an obligation for the Member State, following a request by the the applicant.

2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or may [...] reasonably [...] be presumed to understand. Member States shall use the common leaflet drawn up pursuant to paragraph 3 for that purpose.

Where necessary for the proper understanding of the applicant, [...] the information shall also be supplied orally, at the interview organised pursuant to Article 5.

[...] [...] **2a** The information referred to in paragraph 1 shall be provided at the same time as the information referred to in Article 25(1) of Regulation (EC) No [...] [...] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation.]<sup>1</sup>

3. A common leaflet , as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1 shall be drawn up in accordance with the procedure referred to in Article 40(2). This common leaflet shall also include information regarding the purpose for which the data of the asylum seeker concerned will be processed within EURODAC.

[...]

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<sup>1</sup> **DELETED**: scrutiny reservations on the point; **DELETED** invoked possible practical problems due to the different time frameworks of Article 4 of this Regulation and Article 25 of the EURODAC Regulation. **DELETED** concerns on the possible confusion that might be created by more than one leaflets to be provided under the two Regulations.

*Article 5*  
*Personal interview*<sup>1</sup>

1. The Member State carrying out the process of determining the Member State responsible under this Regulation, shall , at the request of the applicant<sup>2</sup> or [...] , may, where it is deemed necessary, [...] conduct a personal interview with the applicant. The interview shall be conducted by a qualified person under national law [...]
2. In cases where an applicant has requested an interview, this interview may be omitted if:
- (a) the applicant has absconded; or
  - (b) the applicant makes the request after the decision to transfer him/her to the responsible Member State was taken, pursuant to Article 25; or
  - (c) a personal interview according to this Article has already been conducted,<sup>3</sup> unless the applicant can submit [...] credible information regarding the presence of family members or other relatives in the Member States.
- [...] [...] 3. The personal interview shall be for the purpose of facilitating the process of determining the Member State responsible, in particular for allowing the applicant to submit relevant information necessary for the correct identification of the responsible Member State, and , where necessary especially where the applicant is an unaccompanied minor, for the purpose of informing the applicant orally about the application of this Regulation.

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<sup>1</sup> **DELETED**: reservation on the Article. **DELETED** (which entered reservation on paragraphs 1 and 2 of this Article, also in relation to the obligation to provide for an interview at the request of the applicant) suggested making it optional for the MS to grant an interview following a request by the applicant, whereas it should be mandatory if the MS considers it necessary.

<sup>2</sup> **DELETED**: reservation on the obligation for the Member State to provide for an interview on the request of the applicant (see also the relevant request from **DELETED** in the above footnote).

<sup>3</sup> **DELETED**: delete the rest of the phrase after the word “unless”.

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

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

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

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

[...] <sup>1</sup>

#### *Article 6*

#### *Guarantees for [...] minors*

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.
2. Member States shall ensure that a representative represents and/or assists the unaccompanied minor with respect to all procedures provided for in this Regulation.  
[...] The representative shall [...] have the necessary expertise in view of ensuring that the best interests of the minor are taken into consideration.

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<sup>1</sup> **DELETED**: reservations on the obligation for the Member State to draft a written report on the basis of the interview.

3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development [...] ;

(c) safety and security considerations, in particular where there is a risk of the child being a victim of trafficking;

(d) the views of the minor, in accordance with his/her age and maturity.

[...]

4. [...] For the purpose of applying Article 8 of this Regulation, where there are indications that members of the unaccompanied minor's family or other relatives, who can take care of him/her may legally be present on the territory of Member States [...], the Member State where the application for international protection was lodged shall, as soon as possible after its lodging, start to trace them, where necessary with the assistance of international or other relevant organisations, whilst protecting [...] the minor's best interests.<sup>1</sup>

[...]

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<sup>1</sup> **DELETED**: scrutiny reservations on the point, considering it unclear (e.g. the concept of "ability to take care of", which MS should determine it). **Cion**: this concept is related to the purposes served in Article 8.

**DELETED**: reservation, **DELETED** (which thinks that the provision goes beyond the scope of the Dublin Regulation): scrutiny reservations on the point.

**DELETED**: reservations on the term "other relatives", which they consider as too broad;

**DELETED**: have also concerns about the wording "family members who can take care of the minor"; suggesting limiting the scope of the "family members" or "other relatives" to those who have been previously responsible for the unaccompanied minor; (these delegations would prefer the **DELETED** alternative wording for the point as it was set out in doc 12328/09). **DELETED**: **DELETED** wording reduces significantly the chances to apply the provision, e.g. where the third-country national who was previously taking care of the minor has since then deceased. In agreement with **DELETED**, **Cion** pointed out that the **DELETED** proposal would restrict unreasonably the scope of the provision.



[...]

[...]

Ⓔ 343/2003/EC (adapted)

new

## CHAPTER III

### ~~HIERARCHY OF CRITERIA~~

### ***CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE***

*Article ~~5~~ 7*

*Hierarchy of criteria*

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

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new

Council

[...] 3. In view of the application of the criteria referred to in Article 8, 10 and 11, Member States shall take into consideration any available evidence regarding the presence on the territory of a Member State of family members or relatives of the applicant for international protection, regardless of when such evidence is produced. <sup>1</sup>

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Ⓔ 343/2003/EC (adapted)

new

*Article ~~6~~ 8*

*Unaccompanied minors*

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

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<sup>1</sup> **DELETED**: delete paragraph 3, entails too much of administrative work. The same concern was shared by **DELETED** has concerns with the last part of the sentence "regardless of when...".

**DELETED** (which suggested adding at the beginning of the sentence "By way of derogation from paragraph 2... - suggestion endorsed by **Cion**), **DELETED**: scrutiny reservations on the provision. **DELETED** queried about the legal impact of the obligation provided for in this provision for the MS responsible. **DELETED** pointed out that if the new evidence only became available after a decision on the application is taken, it would be very difficult to take it into account.

**DELETED** thought that if the controversial last part of the provision ("regardless...") is deleted the rest could be converted to a recital. Otherwise, the provision as it stands could lead to considerable delays and a final deadline might be necessary. **DELETED**: acknowledges that with the wording "take into account" there is always a margin of appreciation;

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

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CE 343/2003/EC Article 15(3) (adapted)

new

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

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new

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

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CE 343/2003/EC

new

Council

4. In the absence of a family member or of another relative, the Member State responsible for examining the application shall be that where the minor has lodged his or her [...] first application for ~~asylum~~ international protection, provided that this is in the best interests of the minor. <sup>1</sup>

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<sup>1</sup> **DELETED**: reservation, **DELETED**: scrutiny reservation on the point. **Cion**: strong concerns vis-à-vis the current compromise.

☒ 1103/2008/EC, pt. 3(1) of the Annex

new

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

☒ 343/2003/EC (adapted)

new

Council

*Article ~~79~~*

*Family members who are persons granted international protection*

Where the asylum seeker has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a ~~refugee~~ person granted international protection in a Member State, that Member State shall be responsible for examining the application for ~~asylum~~ international protection, provided that the persons concerned ~~so~~ expressed their desire in writing .

*Article ~~9~~10*

*Family members who are applicants for international protection*

If the asylum seeker has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for asylum international protection, provided that the persons concerned ~~so~~ expressed their desire in writing.

*Article ~~15~~11*

*Dependent relatives<sup>1</sup>*

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

2. Where the relative is legally [...] resident in another Member State than the one where the asylum seeker is present, the Member State responsible for examining the application shall be the one where the relative is legally [...] resident [...] unless the concerned asylum [...] seeker's health condition [...] prevents him/her [...] during a significant period of time from travelling to that Member State.

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<sup>1</sup> **DELETED**: reservations, **DELETED**: scrutiny reservation on the Article.

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

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☒ 1560/2003 Article 11(1) (adapted)

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

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

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

*Article ~~14~~12*  
*Family procedure*

Where several members of a family submit applications for ~~asylum~~ international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to them being separated, the Member State responsible shall be determined on the basis of the following provisions:

- (a) responsibility for examining the applications for ~~asylum~~ international protection of all the members of the family shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of family members;
- (b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

*Article ~~9~~13*  
*Issuance of residence documents or visas*

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

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



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

5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the Member State issuing the residence document or visa shall not be responsible if it can establish that a fraud was committed after the document or visa had been issued.

*Article ~~10~~14*

*Entry and/or stay*

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article ~~22~~18(3), including the data referred to in Chapter III of Regulation [concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Regulation] (EC) No [.../...] ~~2725/2000~~, that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for **asylum** **international protection** . This responsibility shall cease 12 months after the date on which the irregular border crossing took place.

2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1, and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article ~~22+8~~(3), that the asylum seeker - who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established - ~~at the time of lodging the application~~ has been ~~previously~~ living for a continuous period of at least five months in a Member State before lodging the application for international protection, that Member State shall be responsible for examining the application for ~~asylum~~ international protection.

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

*Article ~~11~~15*

*Visa waived entry*

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

*Article ~~12~~16*

*Application in an international transit area of an airport*

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

## CHAPTER IV

### ~~HUMANITARIAN CLAUSE~~

## DISCRETIONARY CLAUSES

*Article ~~15~~17*

*Discretionary clauses*

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

1. ~~2.~~ By way of derogation from Article 3, paragraph (1), each Member State may [...] decide to examine an application for ~~asylum~~ international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation, [...] <sup>1</sup>

<sup>1</sup> **DELETED** **Cion:** regret the deletion of the last sentence of the paragraph, by virtue of which the applicant could object to the decision of the MS if he/she could provide credible information indicating the presence of family members or other relative in another MS.

[...] The Member State which decided to examine an application for international protection pursuant to this paragraph [...] shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where appropriate applicable, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of or take back the applicant by using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

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

Ⓒ 343/2003/EC (adapted)

new

Council

2. ~~1 Any Member State, even where it is not responsible under the criteria set out in this Regulation,~~ The Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, or the Member State responsible, may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations, even where this latter Member State is not responsible under the criteria laid down in Articles 8 to 12 of this Regulation. ~~In this case that Member State shall, at the request of another Member State, examine the application for asylum of the person concerned.~~ The persons concerned must express their consent in writing.

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☒ 1560/2003 Article 13(2)

The request to take charge shall contain all the material in the possession of the requesting Member State to allow the requested Member State to assess the situation.

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☒ 1560/2003 (adapted) Article 13(3)

new

Council

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

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☒ 343/2003/EC (adapted)

new

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

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CE 343/2003/EC (adapted)

new

Council

## CHAPTER V

### ~~TAKING CHARGE AND TAKING BACK~~

## OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

### *Article ~~16~~18*

#### *Obligations of the Member State responsible*<sup>1</sup>

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

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<sup>1</sup> **DELETED**: scrutiny reservation on the Article, stressing that the applicant should be given only one full access to the international protection regime.

~~(c)(d)~~ take back, under the conditions laid down in Articles 23, 24 and 28 ~~20~~, an applicant who has withdrawn the application under examination and made an application in another Member State ~~or who is in the territory of another Member State without a residence document~~; ~~(d)(e)~~ take back, under the conditions laid down in Articles 23, 24 and 28 ~~20~~, a third-country national ~~or a stateless person~~ whose application ~~has been~~ rejected and who ~~made an application in another Member State or who~~ is in the territory of another Member State without ~~permission~~ a residence document

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

~~[...] For the cases referred to in paragraph 1 (c), when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant, it shall [...] [...] ensure that the applicant is entitled to request that the examination of his/her [...] application is completed. In such cases, Member States shall ensure that the examination of the application is completed, within the meaning of Article 2(d).~~

~~For the cases referred to under paragraph 1 (d), where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has, or has had, the opportunity to access an effective remedy, pursuant to Article 39 of Directive 2005/85/EC. [...]~~

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<sup>1</sup> **DELETED** (points out that if the applicant leaves the MS concerned before the decision is issued it does not mean that this MS has not fulfilled its duties), **DELETED** (which thinks that the first sentence of the paragraph shall be moved to the Asylum Procedures Directive): scrutiny reservations on the point. **DELETED**: prefers the previous version of the provision as it was provided in doc 12423/09. **DELETED**: once the application is withdrawn it ceases to exist, a new application shall be submitted.

Article 19

*Cessation of responsibilities*

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

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new

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



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☒ 343/2003/EC (adapted)

new

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

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new

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

## CHAPTER VI

# PROCEDURES FOR TAKING CHARGE AND TAKING BACK

### SECTION I: START OF THE PROCEDURE

*Article ~~420~~<sup>1</sup>*

*Start of the procedure*

1. The process of determining the Member State responsible under this Regulation shall start as soon as an application for ~~asylum~~ international protection is first lodged with a Member State.
2. An application for ~~asylum~~ international protection shall be deemed to have been lodged once a form submitted by the applicant ~~for asylum~~ or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

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<sup>1</sup> **DELETED**: scrutiny reservation on the Article.

- <sup>1</sup>3. For the purposes of this Regulation, the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member set out in Article 2, point [...] g shall be indissociable from that of his /her family member [...] and shall be a matter for the Member State responsible for examining the application for ~~asylum~~ international protection of that [...] family member, , even if the minor is not individually an asylum seeker , provided that this is in his/her best interests . The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.
4. Where an application for ~~asylum~~ international protection is lodged with the competent authorities of a Member State by an applicant who is in the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for ~~asylum~~ international protection was lodged.
- The applicant shall be informed in writing of this transfer and of the date on which it took place.
5. An asylum seeker who is present in another Member State [...] without a residence document or who there lodges an application for ~~asylum~~ international protection after withdrawing his first application made in a different Member State during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles ~~2023~~, 24 and 28, by the Member State with which that application for ~~asylum~~ international protection was firstly lodged, with a view to completing the process of determining the Member State responsible for examining the application for ~~asylum~~ international protection .

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<sup>1</sup> **DELETED**: scrutiny reservation on the provision.

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

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new

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

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Ⓔ 343/2003/EC (adapted)

new

## SECTION II: PROCEDURES FOR TAKE CHARGE REQUESTS

### *Article ~~17~~21*

#### *Submitting a take charge request*

1. Where a Member State with which an application for ~~asylum~~ international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within three months of the date on which the application was lodged within the meaning of Article ~~42~~420(2), ~~call upon~~ request the other Member State to take charge of the applicant.

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

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

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

3. In both cases, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article ~~1822~~(3) and/or relevant elements from the asylum seeker's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

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

#### *Article ~~1822~~*

##### *Replying to a take charge request*

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of the date on which the request was received.
2. In the procedure for determining the Member State responsible for examining the application for ~~asylum~~ international protection established in this Regulation, elements of proof and circumstantial evidence shall be used.
3. In accordance with the procedure referred to in Article ~~27(2)~~ 40(2) two lists shall be established and periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria:

(a) Proof:

- (i) This refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary.
- (ii) The Member States shall provide the Committee provided for in Article ~~27~~ 40 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs.

(b) Circumstantial evidence:

- (i) This refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them.
- (ii) Their evidentiary value, in relation to the responsibility for examining the application for ~~asylum~~ international protection shall be assessed on a case-by-case basis.

- 4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.
- 5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.
- 6. Where the requesting Member State has pleaded urgency, in accordance with the provisions of Article ~~17(2)~~ 21(2), the requested Member State shall make every effort to conform to the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give the reply after the time limit requested, but in any case within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.

7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the ~~provisions~~ obligation to provide for proper arrangements for arrival.

### SECTION III. PROCEDURES FOR TAKE BACK REQUESTS

Article ~~20~~ 23

Submitting a take back request <sup>1</sup>

Ⓔ 343/2003/EC (adapted)

new

Council

1. ~~An asylum seeker shall be taken back~~ Where a Member State with which a subsequent application for international protection has been lodged or on whose territory an applicant or another person as referred to in Article 18(1)(d) whose application for international protection has not been rejected in final instance is staying without a residence document, considers that another Member State is responsible in accordance with Article 420(5) and Article 1618(1) ~~(e)(b), (e)(c) and (e)(d), as follows:~~ it may request that other Member State to take back that person.

<sup>1</sup> **DELETED**: scrutiny reservations on the Article.

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new

Council

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

If the request to take back the applicant who lodged a subsequent application for international protection is based on evidence other than data obtained from the EURODAC system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

3 [...] By derogation from Article 6(2) of Directive 2008/115/EC of the European Parliament and of the Council of 6 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, where there is no subsequent application for international protection, and in case the requesting Member State decides to search the EURODAC system in accordance with Article 13 of Regulation (EC) No [...] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation], the request to take back the person concerned shall be made as quickly as possible and in any case within two months of receiving the EURODAC hit, pursuant to Article 13(4) of that Regulation.

If the request to take back the person concerned is based on evidence other than data obtained from the EURODAC system, it shall be sent to the requested Member State within three months of the date on which the requesting Member State becomes aware that another Member State may be responsible for the person concerned.



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

5. Where a person as referred to in Article 18(1)(d) whose application for international protection has been rejected in final instance in one Member State is in the territory of another Member State without a residence document, the second Member State may either request the first Member State to take back the person concerned or carry out a return procedure in accordance with Directive 2008/115/EC of the European Parliament and of the Council of 6 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

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

☐ 343/2003/EC (adapted)

new

Council

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

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

#### Article 24

##### *Replying to a take back request*

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

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

~~(d) a Member State which agrees to take back an asylum seeker shall be obliged to readmit that person to its territory. The transfer shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken by another Member State or of the decision on an appeal or review where there is a suspensive effect;~~

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

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

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

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

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

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

## SECTION IV. PROCEDURAL SAFEGUARDS

### Article ~~19~~25

#### Notification of a transfer decision <sup>1</sup>

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

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<sup>1</sup> **DELETED**; scrutiny reservations on the Article.

The decision referred to in paragraph 1 shall also contain information on available legal remedies and the time-limits applicable for seeking such remedies, [...] details of the time limit for carrying out the transfer and shall, if necessary, contain information on the place where, and the date ~~at~~ on which the ~~applicant~~ person concerned should appear, if he/she is travelling to the responsible Member State ~~responsible~~ by his/her own means. Member States shall also ensure that information on persons or entities that may provide [...] legal assistance to the person concerned is [...] communicated to the person concerned together with the decision referred to in paragraph 1, when the information has not been already communicated in accordance with Directive [...]/.../EC [laying down minimum standards for the reception of asylum seekers.]<sup>1</sup>

~~[...] This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case-by-case basis if the national legislation allows for this.~~

3. When the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall [...] inform him/her [...] of the main elements of the decision, which shall always include information on available legal remedies and the time-limits applicable for seeking such remedies, in a language the person concerned understands or may be reasonably [...] presumed to understand.<sup>2</sup>

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<sup>1</sup> **DELETED**: replace the end of the sentence by "... the information has not been already previously communicated, regardless of the basis to make provision for the granting of this information". **DELETED** (should make reference to the Reception Conditions Directive), **DELETED**: scrutiny reservations on the point; **DELETED** because it refers to the Reception Conditions Directive, **DELETED** because it has concerns that unnecessary double administrative work will be needed.

<sup>2</sup> **DELETED**: reservation related to Article 26.

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new

Council

*Article 26*

*Remedies<sup>1</sup>*

1. The applicant or another person as referred to in Article 18(1)(d) shall have the right to an effective [...] remedy, in the form of an appeal or a review, in fact and in law, [...] against the transfer decision referred to in Article 25, before a court or tribunal.
2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his/her right to an effective [...] <sup>2</sup> remedy pursuant to paragraph 1.
- <sup>3</sup>3. In the event of an appeal or review concerning the transfer decision referred to in Article 25, Member States shall give the person concerned the opportunity to request the [...] court or tribunal [...] to suspend the implementation of the transfer decision pending the outcome of his/her appeal or review.<sup>4</sup>

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<sup>1</sup> **DELETED**: reservations, **DELETED**: scrutiny reservations on the Article; **DELETED** wishes to align its wording with the Asylum Procedures Directive. **DELETED**: has a problem with the principle of the Article, wants reference to national law. **DELETED** suggested in paragraph 3 of the Article a deadline of 7 days from submission of the appeal in order that a decision on the suspensive effect can be taken.

<sup>2</sup> **DELETED**: scrutiny reservation related to the deletion of the word “judicial” before “remedy”.

<sup>3</sup> **DELETED**: scrutiny reservation on the provision, **DELETED**: prefers maintaining current wording of the Regulation.

<sup>4</sup> **DELETED**: reservation on the paragraph.

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

[...] A decision not to allow the person concerned to remain on the territory of the Member State concerned pending the outcome of his/her appeal or review, shall state the reasons on which it is based.

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

[...] <sup>1</sup> 5. Member States shall ensure that legal assistance [...] be granted [...] free of charge where the person concerned cannot afford the costs involved , and insofar as it is necessary to ensure his/her effective access to justice [...]

[...]

[...] Such legal assistance shall include at least the preparation of the required procedural documents and representation before the judicial authorities [...] and [...] may be restricted to legal advisors or counsellors specifically designated by national law to assist and represent asylum seekers. <sup>2</sup>

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<sup>1</sup> **DELETED**: scrutiny reservations on the point. **DELETED**: wording of this point shall be aligned with the Reception Conditions Directive.

<sup>2</sup> **DELETED**: shall refer to principles in force for the EU citizens. **DELETED**: query whether the legal assistance will be granted by default or following a request. **DELETED**: prefer previous version of the wording where the legal assistance is granted "on request" by the applicant. **Cion**: this might be a possibility if the proper information is duly provided to the applicant. A possible compromise could clarify that the conditions for grantin legal assistance are not more favourable than those for EU citizens. **DELETED**: reference shall be made to the Return Directive (or to national law through the Return Directive).

## SECTION V. DETENTION FOR THE PURPOSE OF TRANSFER

### *Article 27*

#### *Detention*

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for international protection in accordance with Directive 2005/85/EC.
2. Without prejudice to Article 8(2) of Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers], when it proves necessary, on the basis of an individual assessment of each case, and if other less coercive measures cannot be applied effectively, Member States may detain an asylum-seeker or another person as referred to in Article 18(1)(d), who is subject of a decision of transfer to the responsible Member State, to a particular place only if there is a significant risk of him/her absconding.
3. When assessing the application of other less coercive measures for the purpose of paragraph 2, Member States shall take into consideration alternatives to detention such as regular reporting to the authorities, the deposit of a financial guarantee, an obligation to stay at a designated place or other measures to prevent the risk of absconding.
4. Detention pursuant to paragraph 2 may only be applied from the moment a decision of transfer to the responsible Member State has been notified to the person concerned in accordance with Article 25, until that person is transferred to the responsible Member State.
5. Detention pursuant to paragraph 2 shall be ordered for the shortest period possible. It shall be no longer than the time reasonably necessary to fulfil the required administrative procedures for carrying out a transfer.



6. Detention pursuant to paragraph 2 shall be ordered by judicial authorities. In urgent cases it may be ordered by administrative authorities, in which case the detention order shall be confirmed by judicial authorities within 72 hours from the beginning of the detention. Where the judicial authority finds detention to be unlawful, the person concerned shall be released immediately.

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

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

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

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

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

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

11. Unaccompanied minors shall never be detained.

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

Ⓔ 343/2003/EC (adapted)

new

Council

## SECTION VI: TRANSFERS

### *Article ~~19~~28*

#### *Modalities and time-limits*

~~13~~ The transfer of the applicant or of another person as referred to in Article 18(1)(d) from the requesting Member State ~~in which the application was lodged~~ to the responsible Member State ~~responsible~~ shall be carried out in accordance with the national law of the requesting ~~first~~ Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request ~~that charge be taken~~ by another Member State to take charge or to take back the person concerned or of the **final** decision on an appeal or review where ~~there is~~ a suspensive effect **is granted** [...].

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

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

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

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new

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

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

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

---

new

Council

*Article 29*

*Costs of transfers*

1. The costs necessary to transfer an applicant or another person as referred to in Article 18(1)(d) to the responsible Member State shall be met by the transferring Member State.
2. Where the person concerned has to be sent back to a Member State, as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.
3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.
4. Supplementary rules relating to the obligation of the sending Member State to meet the costs of transfers may be adopted in accordance with the procedure referred to in Article 40(2).

*Article 30*

*Exchange of relevant information before transfers being carried out<sup>1</sup>*

[...]

---

<sup>1</sup> **DELETED** scrutiny reservations on the Article; (**DELETED** in relation to reference to data protection).

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

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

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

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

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

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

[...] (d) information about the assessment of the age of an applicant;<sup>1</sup>

[...]

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<sup>1</sup> **DELETED**: add at the end of the phrase: “and the method used to this effect”. **DELETED**: shall confirm that the assessment of the age shall be done once the other means have already been used.

[...] 3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 33 using the 'DubliNet' electronic communication network set-up under Article 18 of Regulation EC (No) 1560/2003. [...] [...] The information exchanged shall only be used for the purposes set out in paragraph [...] 1 of this Article and shall not be further processed. [...]

[...]

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

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

*Article 30 [...] A*

*Exchange of health data before transfer is being carried out<sup>1</sup>*

[...] 1. For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors and persons that have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, insofar as available,<sup>2</sup> transmit information about any special needs of the [...] person to be transferred, which in specific cases may include information about the state of the physical and mental health of the [...] person to be transferred. The responsible Member State shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

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<sup>1</sup> **DELETED**: scrutiny reservations on the Article.

<sup>2</sup> **DELETED**: add "to the competent authority". **Cion** could accept the suggestion.

[...] 2: Any information mentioned in paragraph [...] 1 shall only be transmitted by the transferring Member State to the responsible Member State after the explicit consent of the applicant and/or of [...] the person representing him/her has been obtained or when this is necessary to protect the vital interests<sup>1</sup> of the individual or of another person where he/she is physically or legally incapable of giving his/her consent. The lack of consent , including a refusal of consent, to transmitting any information referred to in paragraph 1 shall not be an obstacle to carrying out his/her transfer or to transmitting the information referred to in paragraph 1 provided that is necessary to protect the vital interests of the individual [...]

[...]

[...] 3. The processing of personal health data referred to in paragraph 1 shall only be carried out by a health professional subject under national law or rules established by national competent bodies to the obligation of professional secrecy or by another person subject to an equivalent obligation of secrecy. [...]

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

[...]

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

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

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<sup>1</sup> **DELETED**: need an indication of which these vital interests could be; perhaps in a recital with a non-exhaustive list thereof.

## SECTION VII: TEMPORARY SUSPENSION OF TRANSFERS

### Article 31<sup>1</sup>

[...]

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

---

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

**DELETED** (maintained a reservation on the provision, suggesting providing for such a mechanism outside the Dublin system), **DELETED** (maintained a reservation on the provision) **DELETED** (maintained a reservation on the provision): due to the complexity of the issue further work is needed on the wording - as long as delegations confirm their will to establish the mechanism in principle. **DELETED**: if the mechanism is to be established it should provide for as many rights as possible for the Council.

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

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



**2. A request to the Commission shall indicate the grounds on which it is based and shall in particular include:**

**(a) a detailed description of the particularly urgent situation which places an exceptionally heavy burden on the requesting Member State's reception capacities, asylum system or infrastructure, including relevant statistics and supporting evidence;**

**(b) a substantiated forecast of the likely evolution of this situation in the short-term;**

**(c) a substantiated explanation of the further burden that the transfer of applicants for international protection in accordance with this Regulation could add to the requesting Member State's reception capacities, asylum system or infrastructure, including relevant statistics and other supporting evidence;**

**(d) a detailed description of measures that the Member State has taken or has planned to take, whether general or particular, to ensure fulfilment of its obligations arising out of the Union legislation on asylum.**

**3. The Commission shall examine the request and shall, in case it considers that a Member State is faced with such a particularly urgent situation as described in paragraph 1, as soon as possible and at the latest one month following the receipt of the request, adopt a decision in accordance with the procedure and the conditions referred to in Articles 40 and 40a to the effect that all transfers of applicants in accordance with this Regulation to the requesting Member State be suspended for a period which cannot exceed six months.**

**4. The Commission shall notify the Member States, the European Parliament and the Council of the decision to suspend all transfers of applicants in accordance with this Regulation to the requesting Member State.**

- 5. Following a decision to suspend transfers to the requesting Member State, the other Member States in which the applicants whose transfers have been suspended are present, shall, without prejudice to other responsibility criteria laid down in this Regulation, be responsible for examining the applications for international protection of those persons.**
- 6. A decision to suspend transfers to a Member State pursuant to paragraph 1 shall justify the granting of assistance for the emergency measures laid down in Article 5 of Decision No 573/2007/EC of the European Parliament and of the Council<sup>1</sup>, following a request for assistance from that Member State.**
- 7. Nothing in this Article shall be interpreted as allowing Member States to derogate from their general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations arising out of the Union legislation on asylum.**

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<sup>1</sup> OJ L 144, 6.6.2007, p.1.

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CE 343/2003/EC (adapted)

new

Council

## CHAPTER ~~VII~~

### ADMINISTRATIVE COOPERATION

*Article ~~21~~32*

*Information sharing*<sup>1</sup>

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker as is appropriate, relevant and non-excessive for:
  - (a) the determination of the Member State responsible for examining the application for ~~asylum~~ international protection;
  - (b) examining the application for international protection ~~asylum~~;
  - (c) implementing any obligation arising under this Regulation.
2. The information referred to in paragraph 1 may only cover:
  - (a) personal details of the applicant, and, where appropriate, the members of his family (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);
  - (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);

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<sup>1</sup> **DELETED**: scrutiny reservation on the Article.

- (c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EC) No ~~2725/2000~~ [.../...] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation] ;
- (d) places of residence and routes travelled;
- (e) residence documents or visas issued by a Member State;
- (f) the place where the application was lodged;
- (g) the date any previous application for ~~asylum~~ international protection was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, provided it is necessary for the examination of the application for ~~asylum~~ international protection , the Member State responsible may request another Member State to let it know on what grounds the asylum seeker bases his application and, where applicable, the grounds for any decisions taken concerning the applicant. The Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm the essential interests of the Member State or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for ~~asylum~~ international protection, obtained by the [...] requesting Member State . In this case, the applicant must know for what information he/she is giving his/her approval.

4. Any request for information shall only be sent in the context of an individual application for international protection. It shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means asylum seekers enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to the individual asylum seeker.
5. The requested Member State shall be obliged to reply within ~~six~~ four<sup>1</sup> weeks. Any delays in the reply shall be duly justified. Non-compliance with the four weeks time limit does not relieve the requested Member State of the obligation to reply. If the research carried out by the requested Member State which did not respect the maximum time-limit, yield information which shows that it is responsible, that Member State may not invoke the expiry of the time-limit provided for in Articles 21 and 23 as a reason for refusing to comply with a request to take charge or take back. In that case, the time-limits provided for in Articles 21 and 23 for submitting a request to take charge or take back shall be extended with a period of time which shall be equivalent to the delay in the reply by the requested Member State.<sup>2</sup>
6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission in accordance with Article 33(1) ~~which shall inform the other Member States thereof.~~

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<sup>1</sup> **DELETED**: prefer keeping the six-week deadline. **DELETED**: scrutiny reservations on the four-week deadline due to the possible ensuing administrative burden.

<sup>2</sup> **DELETED**: scrutiny reservation on the last sentence of paragraph 5.

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

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

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

(c) implementing any obligation arising under this Regulation.

8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that that Member State has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.

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

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

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

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new

Council

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

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Ⓔ 343/2003/EC (adapted)

new

10. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/or in a register, of the transmission and receipt of information exchanged.
11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which it is exchanged.
12. Where the data is not processed automatically or is not contained, or intended to be entered, in a file, each Member State ~~should~~ shall take appropriate measures to ensure compliance with this Article through effective checks.

*Article ~~22~~33*

*Competent authorities and resources*

1. Each Member States shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. They ~~and~~ shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back asylum seekers.

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new

2. The Commission shall publish a consolidated list of the authorities referred to in paragraph 1 in the Official Journal of the European Union. Where there are amendments thereto, the Commission shall publish once a year an updated consolidated list.
3. The authorities referred to in paragraph 1 shall receive the necessary training with respect to the application of this Regulation.

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Ⓔ 343/2003/EC (adapted)

new

Council

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



*Article ~~2334~~*

*Administrative arrangements* <sup>1</sup>

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:

(a) exchanges of liaison officers;

(b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back asylum seekers;

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

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

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

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<sup>1</sup> **DELETED**: scrutiny reservations on the Article; **DELETED**: it is related to its uncertainty to what extent it is binding for MS to pass these agreements to **Cion**.

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

Ⓔ 1560/2003 (adapted)

new

## CHAPTER VIII

### **Conciliation**

#### Article ~~14~~35

#### *Conciliation*

1. Where the Member States cannot resolve a dispute, ~~either on the need to carry out a transfer or to bring relatives together on the basis of Article 15 of Regulation (EC) No 343/2003, or on the Member State in which the person concerned should be reunited,~~ on any matter related to the application of this Regulation, they may have recourse to the conciliation procedure provided for in paragraph 2 ~~of this Article~~.
2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article ~~27~~40 of Regulation (EC) No ~~343/2003~~. By agreeing to use the conciliation procedure, the Member States concerned undertake to take the utmost account of the solution proposed.

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

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

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

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Ⓔ 343/2003/EC

Council

## CHAPTER ~~VII~~XIX

### TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

*Article 35 [...] A*

*Data security and data protection<sup>1</sup>*

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

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

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<sup>1</sup> **DELETED**: scrutiny reservation on the Article.

Article 35 [...] B

Confidentiality<sup>1</sup>

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

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new

Article 36

Penalties

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

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☒ 343/2003/EC (adapted)

Article ~~24~~37

Transitional measures

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

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<sup>1</sup> **DELETED**: scrutiny reservation on the Article.

~~2. However, to ensure continuity of the arrangements for determining the Member State responsible for an application for asylum, where an application has been lodged after the date mentioned in the second paragraph of Article ~~29-44~~, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date, with the exception of the events mentioned in Article ~~14(2)~~ ~~10(2)~~.~~

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

*Article ~~25~~38*

*Calculation of time-limits*

~~1.~~ Any period of time prescribed in this Regulation shall be calculated as follows:

- (a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;
- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
- (c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

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

*Article ~~26~~39*

*Territorial scope*

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

*Article ~~27~~40*

*Committee*

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

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

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☒ 1103/2008/EC, pt. 3(4) of the Annex

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

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☒ 343/2003/EC (adapted)

*Article ~~28~~41*

*Monitoring and evaluation*

At the latest three years after the date mentioned in the first paragraph of Article ~~44~~ ~~29~~, the Commission shall report to the European Parliament and the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

After ~~H~~having submitted that report, the Commission shall report to the European Parliament and the Council on the application of this Regulation at the same time as it submits reports on the implementation of the Eurodac system provided for by Article ~~4(5)~~ 28 of Regulation (EC) No ~~2725/2000~~ [...] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation] .

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new

*Article 42*

*Statistics*

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council<sup>1</sup>, Member States shall communicate to the Commission (Eurostat), statistics concerning the application this Regulation and of Regulation (EC) No 1560/2003.

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Ⓒ

*Article 43*

*Repeal*

Regulation (EC) 343/2003 is repealed.

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

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

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<sup>1</sup> OJ L 199, 31.7.2007, p.23.

*Article ~~29~~44*

*Entry into force and applicability*

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

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



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

Done at [...]

*For the European Parliament*

*The President*

[...]

*For the Council*

*The President*

[...]

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**ANNEX I**

**REPEALED REGULATION (REFERRED TO IN ARTICLE 43)**

Council Regulation (EC) No 343/2003

(OJ L 50, 25.2.2003)

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

(OJ L 222, 5.9.2003)

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## ANNEX II

### CORRELATION TABLE

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

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

Article 17	Article 21
Article 18	Article 22
Article 19(1)	Article 25(1)
Article 19(2)	Article 25(2) and Article 26(1)
-	Article 26(2) to (6)
Article 19(3)	Article 28(1)
Article 19(4)	Article 28(2)
-	Article 28(3)
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