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**PROPOSAL**

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	10 May 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 270 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third- country national or a stateless person (recast)

Delegations will find attached Commission document COM(2016) 270 final.

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Encl.: COM(2016) 270 final



Brussels, 4.5.2016  
COM(2016) 270 final

2016/0133 (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 application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

The EU is working towards a more sustainable approach to managing migration, both for people who need international protection and for those who move for other reasons. The approach aims to end irregular and dangerous movements and the business model of smugglers, and to replace these with safe and legal ways to the EU for those who need protection. Protection in the region and resettlement from there to the EU should become the model for the future, and best serves the interests and safety of refugees.

However it remains likely that in the short and medium term people will continue to arrive at the EU's external borders. Those who do not claim international protection should be returned. Those who do claim asylum should have their claim processed efficiently, and be assured decent reception facilities and support in the Member State responsible to deal with their applications, whilst that process is ongoing and beyond that if their claims are found to be grounded.

Recent experience has however shown that large-scale uncontrolled arrivals put an excessive strain on the Member States' asylum systems, which has led to an increasing disregard of the rules. This is now starting to be addressed with a view to regaining control of the present situation by applying the current rules on Schengen border management and on asylum, as well as through stepped up cooperation with key third countries in particular Turkey. However the situation has exposed more fundamental weaknesses in the design of our asylum rules which undermine their effectiveness and do not ensure a sustainable sharing of responsibility, which now need to be addressed.

On 6 April 2016, the Commission set out its priorities for improving the Common European Asylum System (CEAS) in its Communication "Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe".<sup>1</sup> The Commission announced that it would progressively work towards reforming the existing Union framework on asylum, to establish a sustainable and fair system for determining the Member State responsible for examining asylum applications, reinforce the Eurodac system, achieve greater convergence in the asylum system, prevent secondary movements, and establish an enhanced mandate for the European Asylum Support Office (EASO). The need for reform has been widely acknowledged, including by the European Parliament<sup>2</sup> and the European Council.<sup>3</sup>

This proposal on the reform of the Dublin III Regulation is part of the first instalment of legislative proposals which will constitute a major reform of the CEAS. This first package also includes a proposal for recast of the Eurodac Regulation and a proposal for establishing a European Union Agency for Asylum. The Eurodac proposal includes the necessary changes to adapt the system to the proposed Dublin rules, in line with its primary objective to serve the

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<sup>1</sup> COM(2016) 197 final.

<sup>2</sup> See for example European Parliament resolutions of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)); of 10 September 2015 on migration and refugees in Europe (2015/2833(RSP)).

<sup>3</sup> EUCO 19.02.2016, SN 16/16

implementation of the Dublin Regulation. Eurodac shall also become a database for wider immigration purposes, facilitating return and the fight against irregular migration.

The proposal for a European Union Agency for Asylum aims to improve the implementation and functioning of the CEAS by building on the work of the European Asylum Support Office and further develop it into an Agency which should be responsible for facilitating functioning of the CEAS, for ensuring convergence in the assessment of applications for international protection across the Union, and for monitoring the operational and technical application of Union law.

A second stage of legislative proposals reforming the Asylum Procedures and Qualification Directives, as well as the Reception Conditions Directive will follow, to ensure the full reform of all parts of the EU asylum system, including to avoid the disruption of the Dublin mechanism by abuses and asylum shopping by applicants for and beneficiaries of international protection. In particular, asylum procedures will have to speed up and become more convergent, more uniform rules are needed on the procedures and rights to be offered to beneficiaries of international protection and reception conditions will have to be adapted, to increase as much as possible harmonisation across the Member States.

As set out in its 6 April Communication, the migratory and refugee crisis exposed significant structural weaknesses and shortcomings in the design and implementation of the European asylum system, and of the Dublin rules in particular. The current Dublin system was not designed to ensure a sustainable sharing of responsibility for applicants across the Union. This has led to situations where a limited number of individual Member States had to deal with the vast majority of asylum seekers arriving in the Union, putting the capacities of their asylum systems under strain and leading to some disregard of EU rules. In addition, the effectiveness of the Dublin system is undermined by a set of complex and disputable rules on the determination of responsibility as well as lengthy procedures. In particular, this is the case for the current rules which provide for a shift of responsibility between Member States after a given time. Moreover, lacking clear provisions on applicants' obligations as well as on the consequences for not complying with them, the current system is often prone to abuse by the applicants.

The objectives of the Dublin Regulation – to ensure quick access of asylum applicants to an asylum procedure and the examination of an application in substance by a single, clearly determined, Member State – remain valid. It is clear, however, that the Dublin system must be reformed, both to simplify it and enhance its effectiveness in practice, and to be equal to the task of dealing with situations when Member States' asylum systems are faced with disproportionate pressure.

This proposal is a recast of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person ("the Dublin III Regulation").

In particular, this proposal aims to:

- enhance the system's capacity to determine efficiently and effectively a single Member State responsible for examining the application for international protection.

In particular, it would remove the cessation of responsibility clauses and significantly shorten the time limits for sending requests, receiving replies and carrying out transfers between Member States;

- ensure fair sharing of responsibilities between Member States by complementing the current system with a corrective allocation mechanism. This mechanism would be activated automatically in cases where Member States would have to deal with a disproportionate number of asylum seekers;
- discourage abuses and prevent secondary movements of the applicants within the EU, in particular by including clear obligations for applicants to apply in the Member State of first entry and remain in the Member State determined as responsible. This also requires proportionate procedural and material consequences in case of non-compliance with their obligations.

Targeted consultations with the European Parliament and the Member States, including on the basis of the 6 of April Communication, as well as the United Nations High Commissioner for Refugees (UNCHR) and civil society confirmed divergent views on the nature and extent to which the Dublin Regulation should be reformed<sup>4</sup>. Against this background, the Commission carefully assessed the arguments brought forward. The Commission came to the conclusion that the current criteria in the Dublin system should be preserved, while supplementing them with a corrective allocation mechanism to relieve Member States under disproportionate pressure. At the same time, the new Dublin scheme will be based on a European reference system from the start of its implementation with an automatically triggered corrective solidarity mechanism as soon as a Member State carries a disproportionate burden.

At the same time, other fundamental changes are introduced in order to discourage abuses and prevent secondary movements of the applicants within the EU.

- **Consistency with existing policy provisions in the policy area**

The Dublin system is the cornerstone of the Common European Asylum System and deals with the determination of which Member State is responsible for an asylum claim. It operates through the legal and policy instruments in the field of asylum, in particular asylum procedures, standards for the qualification for individuals for international protection, and reception conditions, as well as relocation and resettlement.

Progress is being stalled by the fact that the track record of implementation of EU law in the field of asylum is poor. Ensuring the full and swift implementation by Member States of EU law is a priority. In particular, the Commission has been working over the last years with the Greek authorities to prioritise a normalisation of the situation since Dublin transfers were suspended in 2010. To that end, the Commission addressed a recommendation to Greece on 10 February 2016<sup>5</sup> on the urgent measures to be taken by Greece in view of the resumption of Dublin transfers.

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<sup>4</sup> See below under 3.4 "stakeholder consultation"

<sup>5</sup> C(2016) 871 final

This proposal is part of a package including proposals reforming other elements of the Dublin system, which will ensure consistency of provisions in this policy area. The proposal for reform of the Eurodac Regulation includes the necessary changes to reflect those proposed in the Dublin Regulation and to assist in better controlling irregular migration. The Commission is also proposing to establish a European Union Agency for Asylum to support the functioning of the Common European Asylum System, including of the revised Dublin mechanism.

In response to the crisis situation in Greece and Italy, the Council adopted in September 2015 two relocation decisions<sup>6</sup>, which will be applied until September 2017. This was a temporary, ad hoc and emergency response to the situation in these two Member States which experienced unprecedented flows of migrants and which should have been relieved of some of the burden in that the responsibility for certain asylum claimants from Italy and Greece is transferred to other Member States. The Commission reported twice on the implementation of these decisions<sup>7</sup>.

With a view to designing a structural solution for dealing with such crisis situations, the Commission proposed a crisis relocation mechanism in September 2015<sup>8</sup>. Relocation was proposed to be triggered through a delegated act, which would also determine the number persons to be relocated. This proposal introduces an automatically triggered corrective allocation mechanism. It has therefore a similar objective as the proposal made by the Commission in September 2015 and, depending on the results of the discussions on this proposal, the Commission could consider withdrawing the September proposal.

The proposal also envisages new rules for determining the Member State responsible for examining an application lodged by an unaccompanied minor, namely that – in the absence of family relations – the Member State of first application shall be responsible, unless this is not in the best interests of the minor. This rule will allow a quick determination of the Member State responsible and thus allow swift access to the procedure for this vulnerable group of applicants, also in view of the shortened time limits proposed. Given that this rule differs from what the Commission proposed in June 2014<sup>9</sup>, the Commission has the intention to withdraw that proposal, on which it has so far been impossible to reach an agreement.

- **Consistency with other Union policies**

This proposal is consistent with the comprehensive long-term policy on better migration management as set out by the Commission in the European Agenda on Migration<sup>10</sup>, which developed President Juncker's Political Guidelines into a set of coherent and mutually reinforcing initiatives based on four pillars. Those pillars consist of reducing the incentive for irregular migration, securing external borders and saving lives, a strong asylum policy and a new policy on legal migration. This proposal, which further implements the European Agenda on Migration as regards the objective of strengthening the Union's asylum policy should be seen as part of the broader policy at EU level towards building a robust and effective system for sustainable migration management for the future that is fair for host societies and EU citizens as well as for the third country nationals concerned and countries of origin and transit.

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<sup>6</sup> Council Decision 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September

<sup>7</sup> COM (2016)165 and COM (2016)222

<sup>8</sup> COM (2015) 450

<sup>9</sup> Com (2014) 382

<sup>10</sup> COM(2015) 240

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

This proposal recasts Regulation (EU) No 604/2013 and should therefore be adopted on the same legal basis, namely Article 78, second paragraph, point (e) of the TFEU, in accordance with the ordinary legislative procedure.

- **Variable geometry**

The United Kingdom and Ireland are bound by Regulation 604/2013, following the notification of their wish to take part in the adoption and application of that Regulation based on the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the TEU and to the TFEU.

In accordance with the above-mentioned Protocol, the United Kingdom and Ireland may decide to take part in the adoption of this proposal. They also have this option after adoption of the proposal.

Under the Protocol on the position of Denmark, annexed to the TEU and the TFEU, Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of the TFEU (with the exception of "measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas"). However, given that Denmark applies the current Dublin Regulation, on the basis of an international agreement that it concluded with the EC in 2006<sup>11</sup>, it shall, in accordance with Article 3 of that Agreement, notify the Commission of its decision whether or not to implement the content of the amended Regulation.

The participation of the United Kingdom, Ireland and Denmark in the arrangements laid down in this proposal recasting Regulation (EU) No 604/2013 will be determined in the course of negotiations in accordance with these Protocols. These Protocols notably allow the United Kingdom and Ireland, but do not require them, to opt into initiatives in the policy area of freedom, security and justice while respecting their operability.

- **Impact of the proposal on non EU Member States associated to the Dublin system**

In parallel to the association of several non-EU Member States to the Schengen acquis, the Union has concluded several agreements associating these countries also to the Dublin/Eurodac acquis:

– the agreement associating Iceland and Norway, concluded in 2001;

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<sup>11</sup> Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L66, 8.3.2006,p.38)

- the agreement associating Switzerland, concluded on 28 February 2008;
- the protocol associating Liechtenstein, concluded on 7 March 2011.

In order to create rights and obligations between Denmark – which as explained above has been associated to the Dublin/Eurodac acquis via an international agreement – and the associated countries mentioned above, two other instruments have been concluded between the Union and the associated countries<sup>12</sup>.

In accordance with the three above-cited agreements, the associated countries shall accept the Dublin/Eurodac acquis and its development without exception. They do not take part in the adoption of any acts amending or building upon the Dublin acquis (including therefore this proposal) but have to notify to the Commission within a given time-frame of their decision whether or not to accept the content of that act, once approved by the European Parliament and the Council. In case Norway, Iceland, Switzerland or Liechtenstein do not accept an act amending or building upon the Dublin/Eurodac acquis, the respective agreements will be terminated, unless the Joint/Mixed Committee established by the agreements decides otherwise, by unanimity.

- **Subsidiarity**

Title V of the TFEU on the Area of Freedom, Security and Justice confers certain powers on these matters to the European Union. These powers must be exercised in accordance with Article 5 of the Treaty on the European Union, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the European Union.

The proposal streamlines the current Dublin rules and complements these with a new corrective allocation mechanism to put in place a system to address situations when Member States' asylum systems are faced with disproportionate pressure.

The aim is to achieve a fair sharing of responsibilities between Member States by relieving a Member State with a disproportionate burden and sharing that burden among the remaining Member States. By definition, this requires EU action. In addition, the proposal aims at ensuring the correct application of the Dublin system in times of crisis and at tackling secondary movements of third country nationals between Member States, issues which are cross-border by nature. It is clear that actions taken by individual Member States cannot satisfactorily reply to the need for a common EU approach to a common problem.

- **Proportionality**

As regards the streamlining of the Dublin rules, the changes proposed are limited to what is necessary to enable an effective operation of the system, both in relation to the swifter access of applicants to the procedure for granting international protection and to the capacity of Member States' administrations to apply the system.

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<sup>12</sup> Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (concluded on 24.10.2008, OJ L 161, 24.06.2009, p. 8) and Protocol to the Agreement between the Community, Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State, Iceland and Norway (OJ L 93, 3.4.2001).



As regards the introduction of a new corrective allocation mechanism, Regulation (EU) No 604/2013 does not provide, in its current form, for tools enabling sufficient responses to situations of disproportionate pressure on Member States' asylum systems. The provisions on the corrective allocation mechanism that the proposal introduces seek to address this gap. These provisions do not go beyond what is necessary to achieve the objective of addressing the situation effectively.

- **Choice of the instrument**

Given that the existing Dublin mechanism was established by means of a Regulation, the same legal instrument is used for streamlining it and complementing it with a corrective allocation mechanism.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

#### **Ex-post evaluations/fitness checks of existing legislation**

In the European Agenda for Migration, the Commission, while urging the Member States to fully implement the Dublin III Regulation and existing EU asylum acquis, announced the evaluation and possible revision of the Regulation in 2016. In line with this commitment the Commission commissioned external studies on the evaluation of the Dublin system.<sup>13</sup> The evaluation assessed the effectiveness, efficiency, relevance, consistency and EU added value of the Dublin III Regulation. It examined the extent to which the Regulation addressed its objectives, the wider policy needs of the EU and the needs of the target stakeholders.<sup>14</sup> The evaluation included an in-depth study on the practical implementation of the Dublin III Regulation in the Member States.<sup>15</sup> The main findings are set out below.

#### **3.1. The relevance of the Dublin III Regulation**

The Dublin system is a cornerstone of the EU asylum acquis and its objectives remain valid. An EU instrument for establishing criteria and a mechanism for determining the Member State responsible for examining an application is essential as long as separate national asylum systems exist within the Union. Without this, Member States would have to rely on *ad hoc* agreements as in pre-Dublin times, which would make the determination of responsibility between Member States extremely difficult. The evaluation concluded that no national or

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<sup>13</sup> Evaluation and implementation reports available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index_en.htm).

<sup>14</sup> The evaluation was based on desk research, quantitative analysis and consultations with legal/policy advisors in a total of 19 Member States (BE, BG, CH, CY, EL, FR, HR, HU, IT, LT, LV, MT, NL, NO, PL, RO, SE, SI, SK). Information from the other 12 Member States participating in the Dublin III Regulation was not received in time to be included in the report.

<sup>15</sup> A broad range of stakeholders were consulted, including: Dublin units in national asylum administrations, legal/policy advisors, NGOs, lawyers/legal representatives, appeal and review authorities, law enforcement authorities, detention authorities, applicants and/or beneficiaries of international protection. A total of 142 interviews were conducted. Field visits were conducted in 15 Member States (AT, BE, DE, EL, FR, HU, LU, IT, MT, NL, NO, PL, SE, UK, CH), whereas in 16 (BG, CY, CZ, DK, EE, ES, FI, HR, IE, LT, LV, PT, RO, SI, SK, LI) phone interviews were conducted.

bilateral instrument could provide the same effect overall, which could result in a failure to address applications for international protection falling between national jurisdictions. Mixed views were expressed regarding the actual impact of the Regulation, which should ensure a swift access to the asylum procedures for the applicant and lead to a long-term strategy discouraging multiple applications. This would further provide efficiency to the asylum system by preventing misuse and would reduce the overall costs.

### 3.2 Implementation of the Regulation

- **General**

The most significant problem highlighted in the evaluation was the lack of consistent and correct implementation across the Member States. It was further concluded that the design of the Dublin III Regulation had a number of shortcomings which made it more difficult to achieve its main objectives. The hierarchy of criteria as set out in the Dublin III Regulation does not take the capacity of the Member States into account, nor does it aim for a balance of efforts. The method of allocating responsibility delays access to the asylum procedure. Under the current system applicants may wait up to 10 months (in the case of "take back" requests) or 11 months (in the case of "take charge" requests), before the procedure for examining the claim for international protection starts. This undermines Dublin's aim to ensure an applicant's swift access to the asylum procedure.

It has also become clear that the Dublin III Regulation was not designed to deal with situations of disproportionate pressure. It does not aim at the objective of a fair sharing of responsibility or to address the disproportionate distribution of applicants across the Member States. These factors have become especially evident in some Member States, which have experienced difficulties in applying the Regulation in this context, with registrations of asylum seekers not always taking place, procedures being delayed and internal capacity insufficient to deal with the cases in a timely manner.

- **Procedural guarantees and safeguards**

**Information** to the applicant about the Dublin procedure significantly differs. Approximately half of the participating Member States reported that the information provided consists of "general information", which may fall short of the requirements stipulated in Article 4(1). Furthermore, the findings suggest that in a small number of Member States, information may not be provided at all, and if provided it seems to be outdated.

The **personal interview** is a standard practice when determining responsibility in nearly all Member States, but the lack of capacity in some of the overburdened countries has prevented the authorities from routinely conducting interviews. If interviews are omitted, the applicant will generally be allowed to submit information in other forms. Many Member States reported that interviews were severely delayed, as a result of the current high influx.

The interpretation of the **best interests of the child** diverges. This has on some occasions led to communication issues and mistrust between the Member States. Furthermore, practical problems have been identified in the process of appointing a representative for the minor, especially as a consequence of the current high influx. This however constitutes a wider problem for the asylum procedure.

- **Criteria for determining the responsible Member State and evidence**

The criteria most often applied as grounds for transfer were those relating to documentation and entry (Articles 12 and 13), resulting in placing a substantial share of responsibility on Member States at the external border. This has led applicants to avoid being fingerprinted, contributing to secondary movements.

Several Member States indicated that the interpretations of what is considered to be acceptable evidence by the authorities in the receiving country placed an unreasonable burden of proof on the sending country. Eurodac and Visa Information System (VIS) data are accepted as proof by nearly all Member States, and is the evidence most often relied on when determining responsibility. The data obtained through interviews were generally not considered as sufficient evidence. The discretionary provision and provisions on dependent persons (Articles 16 and 17), dealing with humanitarian cases, are infrequently used, with the exception of only a small number of Member States.

The criteria relating to family links were less frequently used, mainly due to the difficulty of tracing family or obtaining evidence of family connections. The Member States greatly differ in respect of the evidence accepted for these criteria, but a main requirement is usually documentary evidence (such as birth or marriage certificate), which is often difficult to produce for the asylum applicant. The substantial divergence on what is acceptable proof of family connections makes it difficult to determine responsibility, leading to lengthy procedures. This could be a factor in driving secondary movements, with applicants attempting to travel onwards.

- **Taking charge and taking back procedures**

The number of "take back" requests was significantly higher than the number of "take charge" requests. Between 2008 and 2014 72% of outgoing Dublin requests were take back requests, against 28% of outgoing take charge requests. Similarly, 74% of incoming Dublin requests were take back requests compared with 26% of incoming take charge requests. **The timeframes** stipulated for submitting and replying to these requests were mostly complied with by all Member States, but the high inflow of migrant put an increased pressure on the asylum agencies, prolonging the response time for some Member States. This also led to an increase in incomplete requests, which could lead to rejections and disputes. This also influenced the practice of 'acceptance by default', with some countries deliberately failing to respond to requests by the deadline as a way of handling the large amount of cases.

In 2014, the total number of take charge and take back requests was 84,586 which represents 13% of the total asylum applications made in the EU, which is a decline from previous years. Out of all requests, 33% were rejected by the receiving Member State, which could suggest that the entry into force of the Dublin III Regulation in 2014 has made it harder for the Member States to reach consensus on the responsibility. In 2014, only about a quarter of the total number of accepted take back and take charge requests actually resulted in a physical transfer. These low numbers suggest that there are problems with the practical application of the Dublin III Regulation. However, it could also be partly explained by delays in the transfers, which is not captured in the annual data used in the evaluation. Another important reason for the low rate of transfers, as confirmed by many Member States, is the **high rate of absconding during the Dublin procedures**, resulting in a shift of responsibility between Member States.

- **Implementation of transfers**

The timeframe for implementing the transfers varied significantly. The efficiency depends on the capacity and resources in the units in charge of implementing transfers, the fact that a separate authority was in charge of the arrangements, the number of cases, the degree of cooperation of the applicant and the knowledge of their whereabouts. One indicated reason for delays was the extension of the time limits as per Article 29(2). Twenty Member States stated that the absconding of the applicant, allowing for a total of 18 months for transfers, was the primary explanation for delays. The practice of detention, reported as often used by 21 of 31 countries, varies considerably in regards to the stage of the procedure: some authorities resort to detention from the start of the Dublin procedure, others only when the transfer request has been accepted by the responsible Member State. These divergent practices create legal uncertainty as well as practical problems. Furthermore, 13 Member States highlighted that transfers in general lack effectiveness, indicating that secondary movements are ‘often’ observed following a completed transfer.

- **Appeals**

Remedies are available against a transfer decision in all Member States. Member States favour judicial remedies, most frequently before the administrative courts. In the process of appeals, all Member States have introduced **time limits** for an applicant to exercise their right to an effective remedy, although the interpretation of what constitutes a ‘reasonable period of time’ greatly vary, ranging from three to 60 days. If a case is appealed, some Member States will automatically **suspend the transfer**, whilst others apply Article 27(3)(c), where this has to be requested by the applicant.

- **Administrative cooperation**

All Member States indicated the frequent use of the secured electronic DubliNet network for exchange of information and informal information channels are only applied in exceptional circumstances. To further facilitate the effective application of the Dublin III Regulation, many Member States have concluded administrative arrangements as referred to in Article 36. However, to date, no Member State has made use of the conciliation procedure as described in Article 37, any disputes being resolved informally.

- **Early Warning and Preparedness Mechanism**

The Early Warning and Preparedness Mechanism has not been implemented to date. While some Member States argued that the conditions for triggering the mechanism were never fulfilled, others argued that it is difficult to reach a political agreement on triggering the mechanism in the absence of clear criteria and indicators to measure the pressure. This procedure was also considered lengthy and complicated. Alternative support measures had also helped to relieve the pressure and may have obviated the need to trigger the mechanism. The European Asylum and Support Office was used as an example of support that made it unnecessary to activate the mechanism, helping to prevent or manage crises in the field of international protection.

### **3.3 Achieving the objectives of the Dublin III Regulation**

The main findings of the external study regarding the evaluation of the Dublin III Regulation were as set out below.

- ***To prevent applicants from pursuing multiple applications, thereby reducing secondary movements***

Notwithstanding the aim of reducing secondary movements, multiple asylum applications remain a common problem in the EU. 24% of the applicants in 2014 had already launched previous applications in other Member States, which suggests that the Regulation has had little or no effect on this objective. It was further argued that it may have served inadvertently to increase the incidence of other types of secondary movements, since the national differences in the quality of reception and asylum systems continue to exist and continue to encourage secondary movements.

- ***To ensure an equitable distribution of applicants for and beneficiaries of international protection between the Member States***

The Dublin III Regulation has limited impact on the distribution of applicants within the EU, given that net transfers in Dublin procedures are close to zero. When Member States receive and transfer similar numbers of applicants, their incoming and outgoing requests cancel each other out, indicating that there is no or very little redistributive effect from the Dublin III Regulation. This appears to be due to: the hierarchy of criteria, which does not take Member States' capacity into account; the disproportionate responsibility placed on Member States at the external border, by mostly applying the criteria of first country of entry; and the low number of actual transfers, which suggests that applicants are able to submit claims where they choose, placing a greater responsibility on more desirable destinations. This is evident from the figures from 2014, where 70% of all first-time asylum applications were submitted in only five Member States.

- ***The reasonable cost in terms of financial and human resources deployed in the implementation of the Dublin III Regulation***

The direct and indirect estimated cost of Dublin-related work in 2014 in Europe was approximately EUR 1 billion. The absence of such a mechanism would generate even higher costs for the EU and EEA States, but the evaluation found that the Dublin III Regulation in general lacked efficiency. The legally envisaged time to transfer an applicant is long and the rate of actual transfers small: both of these have a significant financial implication on the indirect costs; and the overall efficiency of the system. In an attempt to counteract absconding, the cost of detention in some Member States is very high. Absconding generates other indirect costs and reduces the efficiency of the system. Absence of transfers and returns of rejected applicants in practice generates high social costs linked to irregular migration. It is estimated that a maximum of 42% of the Dublin applicants not effectively transferred may still be staying as irregular migrants within the EU.

There is a high likelihood that the current system will remain unsustainable in the context of the continuing migratory pressure. The effective suspension of Dublin transfers to Greece from 2011 has proved a particularly critical weakness in the system in particular given the large number of migrants arriving in Greece in recent months.

### **3.4 Stakeholder consultations**

In addition to the external evaluation the Commission concluded targeted consultations with LIBE coordinators of political groups of the European Parliament's Committee on Civil Liberties, Justice and Home affairs, with Member States and other stakeholders.

The coordinators of political groups of the European Parliament's Committee on Civil Liberties, Justice and Home affairs were consulted on basis of a discussion document and preliminary results from the external evaluation of the Dublin Regulation. There was overall broad support for a fundamental reform of the Dublin system and a recognition that the status quo was not sustainable. While some supported having objective criteria to determine responsibility, including in the form of a distribution key, others noted the importance of taking an applicant's preferences/characteristics into account, despite the difficulty in doing so in an objective, fair and workable way.

The Member States were consulted on basis of the same documents. There was agreement that the current Regulation is too complex and over-regulated and thus very difficult for administrations to apply. Changes added under the 2013 Dublin III reform resulted in increased rights for applicants which could be misused to frustrate the entire system. Secondary movements were mentioned as the most pressing implementation problem. The discussion around the need or not to transform Dublin III into a responsibility-sharing instrument, changing its current purely responsibility-allocation nature, confirmed that there are two main views: some Member States called for a permanent system for burden sharing through a distribution key, while others were in favour of keeping and streamlining the current system, including the irregular entry criterion.

There were divergent views on whether the preferences of applicants should be taken into account: While some said that preferences could not be fully ignored as this would almost inevitably result in secondary movements, others strongly advised against, as clear, objective criteria were needed and adding preferences would result in complicated case-by-case assessments. Also, Member States recalled that applicants are seeking international protection/fleeing persecution and that, therefore, they should not be provided with excessive room for choosing the final country of asylum, since the rationale of Dublin is not that of an (economic) migration scheme.

Other stakeholders such as UNHCR and non-governmental organisations working in the area of asylum were also consulted. They agreed that the current Dublin III regulation has important shortcomings as regards its underlying rationale – the irregular entry criterion as default criterion in the first place – and that practice during the last months has shown that a fundamental reform is necessary. The general view was that an applicant's preferences or characteristics should be taken into account for the allocation of a Member State responsible in view of integration perspectives and to reduce secondary movements. To that same end, the family criterion should be expanded. Many underlined the need to make progress towards a level playing field in all Member States, in particular as regards reception conditions and procedures.

### **3.5 Fundamental rights**

This proposal is fully compatible with fundamental rights and general principles of Community as well as international law.

In particular, **better informing** asylum-seekers about the application of this Regulation and their rights and obligations within it will on the one hand enable them to better defend their rights and on the other hand will contribute to diminish the level of secondary movements as asylum-seekers will be better inclined to comply with the system. **The effectiveness of the right to judicial remedy** will be increased, by specifying the scope of the appeal and defined a harmonised time limit for taking decisions. The appeal will in addition have automatic suspensive effect.

**The right to liberty and freedom of movement** will be reinforced by shortening the time limits under which a person may be detained in an exceptional case prescribed under the Regulation and only if it is in line with the principles of necessity and proportionality.

**The right to family reunification** will be reinforced, in particular by enlarging the scope of the Regulation to include siblings as well as families formed in transit countries.

The **rights of unaccompanied minors have also been strengthened** through better defining the principle of the best interests of the child and by setting out a mechanism for making a best interests of the child-determination in all circumstances implying the transfer of a minor.

#### 4. BUDGETARY IMPLICATIONS

The total financial resources necessary to support the implementation of this proposal amount to EUR 1828.6 million foreseen for the period 2017-2020. This would cover the transfer costs once the corrective allocation mechanism has been triggered for the benefit of a Member State, the establishment and operation of the IT system for the registration and automatic allocation of asylum applicants, but also support for developing the necessary reception capacity, both as regards infrastructure and the running costs, in particular in those Member States which so far only had to deal with low numbers of asylum applicants.

The financial needs are compatible with the current multiannual financial framework and may entail the use of special instruments as defined in the Council Regulation (EU, Euratom) No 1311/2013.<sup>16</sup>

#### 5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

The proposal retains the link between responsibility in the field of asylum and the respect by Member States of their obligations in terms of protection of the external border, subject to exceptions designed to protect family unity and the best interests of the child. The current criteria for the allocation of responsibility are essentially preserved, but targeted changes are proposed, notably to strengthen family unity under Dublin by extending the family definition.

The main amendments made intend to on the one hand improve the efficiency of the system, notably by maintaining a stable responsibility of a given Member State for examining an application, once that responsibility has been established. On the other hand, the amendments serve to limit secondary movements, in particular by deleting the rules on shift of responsibility between Member States.

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<sup>16</sup> Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

The system is supplemented with a new corrective allocation mechanism, based on a reference key, allowing for adjustments in allocation of applicants in certain circumstances. It therefore means the system can deal with situations when Member States' asylum systems are faced with disproportionate pressure, by ensuring an appropriate system of responsibility sharing between Member States.

## **I. Streamlining the Dublin Regulation and improving its efficiency**

With the aims of ensuring that the Dublin procedure operates smoothly and in a sustainable way, that it fulfils the aim of quick access to the examination procedure and to protection for those in need of it, and that secondary movements are discouraged, various modifications are proposed, in particular:

- **A new obligation is introduced that foresees that an applicant must apply in the Member State either of first irregular entry or, in case of legal stay, in that Member State.** The aim is to ensure an orderly management of flows, to facilitate the determination of the Member State responsible, and to prevent secondary movements. With this amendment it is clarified that an applicant neither has the right to choose the Member State of application nor the Member State responsible for examining the application. In case of non-compliance with this new obligation by an applicant the Member State must examine the application in an accelerated procedure. In addition, an applicant will only be entitled to material reception rights where he or she is required to be present.
- Before the start of the process of determining the Member State responsible, the Regulation introduces an obligation for the Member State of application **to check whether the application is inadmissible**, on the grounds that the applicant comes from a first country of asylum or a safe third country. If this is the case, the applicant will be returned to that first country or safe third country, and the Member State who made the inadmissibility check will be considered responsible for that application. The Member State of application must also check whether the applicant comes from a safe country of origin or presents a security risk, in which case the Member State of application will be responsible and has to examine the application in accelerated procedure.
- The Regulation **introduces a rule that once a Member State has examined the application** as Member State responsible, it remains responsible also for examining future representations and applications of the given applicant. This strengthens the new rule that only one Member State is and shall remain responsible for examining an application and that the criteria of responsibility shall be applied only once.
- The requirement of the cooperation of applicants is enhanced with a view to assuring quick access to status determination procedures, correct functioning of the system and preventing the circumvention of the rules, notably absconding. The Regulation sets out **proportionate obligations of the applicant** concerning the timely provision of all the elements and information relevant for determining the Member State responsible and also concerning cooperation with the competent authorities of the Member States. It is also explicitly stated that applicants have an obligation to be present and available for the authorities of a relevant Member State and respect the transfer decision. **Non-**



**fulfilment of legal obligations** set out in the Regulation will have proportionate procedural consequences for the applicant, such as preclusion of accepting information that was unjustifiably submitted too late.

- The Regulation enlarges the scope of the **information** which must be provided to applicants. The **personal interview** serves to facilitate the process of determining the Member State responsible by helping in gathering all the necessary information. However, it should not result in delaying the procedure when the applicant has absconded or when sufficient information has already been provided.
- The rule on **hierarchy of criteria for determining responsibility** states explicitly that the criteria shall be applied only once. This means that, as of the second application, the readmission rules (take back) will apply without exceptions. The rule that criteria shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application with a Member State, now applies to all criteria, including those regarding family members and minors. A clear cut-off deadline for providing relevant information will enable a quick assessment and decision.
- **The definition of family members** is extended in two ways: by (1) including the sibling or siblings of an applicant and by (2) including family relations which were formed after leaving the country of origin but before arrival on the territory of the Member State. Siblings are a rather targeted but important category where the possibility to prove and check the family relation is relatively easy and thus the potential for abuse is low. The extension to cover families formed during transit reflects recent migratory phenomena such as longer stays outside the origin country before reaching the EU, such as in refugee camps. These targeted extensions of the family definition are expected to reduce the risk of irregular movements or absconding for persons covered by the extended rules.
- A number of modifications are proposed to **streamline the responsibility criteria set out in Articles 14, 15, and 16**. In Article 14 the criteria of responsibility regarding visas and residence documents have been clarified. In Article 15 on irregular entry, the clause envisaging cessation of responsibility after 12 months from irregular entry as well as the complicated and difficult to prove clause in relation to illegal stay were deleted. In relation to the criterion of visa waived entry, the exception concerning subsequent entries to a Member States for which the need for an entry visa is waived is also deleted, in line with the approach that the Member State of first entry should, as a rule, be responsible and in view of preventing unjustified secondary movements after entry. The discretionary clause is made narrower, to ensure that it is only used on humanitarian grounds in relation to wider family.
- The amended Regulation establishes **shorter time limits** for the different steps of the Dublin procedure, in order to speed up the determination procedure and to grant swifter access of an applicant to the asylum procedure. This concerns time limits for submitting and replying to a take charge request, making a take back notification, and taking a transfer decision. As a result of shortening the time limits, the urgency procedure was removed.

- **Expiry of deadlines will no longer result in a shift of responsibility between Member States** (with the exception of the deadline for replying to take charge requests). Such shifts appear to have encouraged circumventing the rules and obstructing the procedure. The new rule should instead be that once a Member State was determined responsible, that Member State shall remain responsible.
- Take back requests have been transformed into **simple take back notifications**, given that it is clear which the responsible Member State is and there will be no longer be any scope for shift of responsibility. Such notifications do not require a reply, but instead an immediate confirmation of receipt. This will be a significant tool to address secondary movements, considering the current prevalence of take back rather than take charge requests.
- Related to this are **procedural consequences** for the examination of the application after a take back transfer. The rules have been modified as concerns how the Member States responsible should examine the application after taking the person back, with a view to dissuading and sanctioning secondary movements
- An **obligation** for the Member State responsible has been added **to take back a beneficiary of international protection**, who made an application or is irregularly present in another Member State. This obligation will give Member States the necessary legal tool to enforce transfers back, which is important to limit secondary movements.
- The **rules on remedies** have been adapted in order to considerably speed up and harmonise the appeal process. In addition to establishing specific, short time limits, making use of a remedy automatically suspends the transfer. A new remedy is introduced for cases where no transfer decision is taken, and the applicant claims that a family member or, in the case of minors, also a relative, is legally present in another Member State.
- The **conciliation procedure** as a dispute resolution mechanism has not been formally used since it was foreseen in the 1990 Dublin Convention (albeit in a slightly different form), and seems therefore unnecessary and should be abolished.
- The objectives of the existing **early warning and preparedness mechanism** are proposed to be taken over by the new European Union Agency for Asylum, as set out notably in Chapter 5 on monitoring and assessment and Chapter 6 on operational and technical assistance in the proposal on a European Union Agency for Asylum. That mechanism has therefore been deleted from the Dublin Regulation.
- A **network of Dublin units** is set up and facilitated by the European Union Agency for Asylum to enhance practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance.
- In relation to **unaccompanied minors**, the proposal clarifies that the Member State where the minor first lodged his or her application for international protection will be responsible, unless it is demonstrated that this is not in the best interests of the minor. This rule will allow a quick determination of the Member State responsible and thus

allow swift access to the procedure for this vulnerable group of applicants, also in view of the shortened time limits proposed.

- The provision on **guarantees for unaccompanied minors** is adapted to make the best interests assessment more operational. Thus, before transferring an unaccompanied minor to another Member State, the transferring Member State shall make sure that that Member State will take the necessary measures under the asylum procedures and reception conditions Directives without delay. It is also stipulated that any decision to transfer an unaccompanied minor must be preceded by an assessment of his/her best interests, to be done swiftly by qualified staff.

## **II. Corrective allocation mechanism**

The recast Regulation establishes a corrective mechanism in order to ensure a fair sharing of responsibility between Member States and a swift access of applicants to procedures for granting international protection, in situations when a Member State is confronted with a disproportionate number of applications for international protection for which it is the Member State responsible under the Regulation. It should mitigate any significant disproportionality in the share of asylum applications between Member States resulting from the application of the responsibility criteria.

- **Registration and monitoring system**

An automated system is established that will allow for the registration of all applications and the monitoring of each Member States' share in all applications. The Union's Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) will be responsible for the development and technical operation of the system. As soon as an application is lodged, the Member State shall register that application in the automated system, which will record each application under a unique application number. As soon as a Member State has been determined to be the Member State responsible, this will also be included in the system. The automated system will also indicate, in real time, the total number of applications lodged in the EU and the number per Member State, as well as – after a Member State responsible has been determined – the number of applications that each Member State must examine as Member State responsible and the share which this represents, compared to other Member States. The system will also indicate the numbers of persons effectively resettled by each Member State.

- **Triggering the corrective allocation mechanism**

The number of applications for which a given Member State is responsible and the numbers of persons effectively resettled by a Member State are the basis for the calculation of the respective shares. This includes applications for which a Member State would be responsible under the inadmissibility check, safe country of origin and security grounds. Calculations take place on a rolling one year basis, i.e. at any moment, based on the number of new applications for which a Member State has been designated as responsible in the system over the past year and the number of persons effectively resettled. The system continuously calculates the percentage of applications for which each Member State has been designated as responsible and compares with the reference percentage based on a key. This reference key is based on

two criteria with equal 50% weighting, the size of the population and the total GDP of a Member State.

The application of the corrective allocation for the benefit of a Member State is triggered automatically where the number of applications for international protection for which a Member State is responsible exceeds 150% of the figure identified in the reference key.

- **Allocation of applications through a reference key and cessation**

As of the triggering of the mechanism, all new applications lodged in the Member State experiencing the disproportionate pressure, after the admissibility check but before the Dublin check, are allocated to those Member States with a number of applications for which they are the Member State responsible which is below the number identified in the reference key; the allocations are shared proportionately between those Member States, based on the reference key. No further such allocations will be made to a Member State once the number of applications for which it is responsible exceeds the number identified in the reference key.

The allocation continues as long as the Member State experiencing the disproportionate pressure continues to be above 150% of its reference number.

Family members to whom the allocation procedure applies will be allocated to the same Member State. The corrective allocation mechanism should not lead to the separation of family members.

- **Financial solidarity**

A Member State of allocation may decide to temporarily not take part in the corrective mechanism for a twelve months-period. The Member State would enter this information in the automated system and notify the other Member States, the Commission and the European Agency for Asylum. Thereafter the applicants that would have been allocated to that Member State are allocated to the other Member States instead. The Member State which temporarily does not take part in the corrective allocation must make a solidarity contribution of EUR 250,000 per applicant to the Member States that were determined as responsible for examining those applications. The Commission should adopt an implementing act, specifying the practical modalities for the implementation of the solidarity contribution mechanism. The European Union Agency for Asylum will monitor and report to the Commission on a yearly basis on the application of the financial solidarity mechanism.

- **Procedure in the transferring Member State and the Member State of allocation**

The Member State which benefits from the corrective mechanism shall transfer the applicant to the Member State of allocation and shall also transmit the applicant's fingerprints in order to allow security verification in the Member State of allocation. This aims to prevent any impediments to allocation as experienced during the implementation of the relocation decisions. Following the transfer, the Member State of allocation will do the Dublin check to verify whether there are primary criteria, such as family in another Member State, apply in the case of the applicant. Where this should be the case, the applicant will be transferred to the Member State which would consequently be responsible.

- **Review clause**

It is foreseen that the Commission will review the functioning of the corrective allocation mechanism 18 months after entry into force of this Regulation and from

then on annually, in order to assess whether the corrective allocation mechanism is meeting its objective of ensuring a fair sharing of responsibility between Member States and of relieving disproportionate pressure on certain Member States.

The Commission will in particular verify that the threshold for the triggering and cessation of the corrective allocation effectively ensure a fair sharing of responsibility between the Member States and a swift access of applicants to procedures for granting international protection in situations when a Member State is confronted with a disproportionate number of applications for international protection for which it is responsible under this Regulation.

Proposal for a

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

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(e) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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↓ 604/2013 recital 1 (adapted)

- (1) A number of substantive changes are to be made to ~~Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national~~<sup>17</sup> ☒ Regulation (EU) No 604/2013 of the European Parliament and of the Council<sup>18</sup> ☒. In the interests of clarity, that Regulation should be recast.

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<sup>17</sup> ~~OJ L 50, 25.2.2003, p. 1.~~

<sup>18</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

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↓ 604/2013 recital 2

- (2) A common policy on asylum, including a Common European Asylum System (CEAS), is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.

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↓ 604/2013 recital 3

- (3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing the CEAS, based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of *non-refoulement*. In this respect, and without the responsibility criteria laid down in this Regulation being affected, Member States, all respecting the principle of *non-refoulement*, are considered as safe countries for third-country nationals.

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↓ 604/2013 recital 4

- (4) The Tampere conclusions also stated that the CEAS should include, in the short-term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

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↓ 604/2013 recital 5

- (5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

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↓ 604/2013 recital 6

- (6) The first phase in the creation of a CEAS that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted international protection, has now been completed. The European Council of 4 November 2004 adopted The Hague Programme which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase

instruments and measures to the European Parliament and to the Council with a view to their adoption before 2010.

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↓ 604/2013 recital 7

⇒ new

- (7) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity in accordance with Article 78 of the Treaty on the Functioning of the European Union (TFEU), for those granted international protection, by 2012 at the latest. Furthermore it emphasised that the Dublin system remains a cornerstone in building the CEAS, as it clearly allocates responsibility among Member States for the examination of applications for international protection. ⇒ In May 2015 the Commission indicated in its Communication on the European Agenda on Migration that the Dublin Regulation would be evaluated and, if necessary, that a proposal for its revision would be made, in particular to achieve a fairer distribution of asylum seekers in Europe. ⇐

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↓ 604/2013 recital 8

- (8) ~~The resources of the European Asylum Support Office (EASO), established by Regulation (EU) No 439/2010 of the European Parliament and of the Council<sup>19</sup>, should be available to provide adequate support to the relevant services of the Member States responsible for implementing this Regulation. In particular, EASO should provide solidarity measures, such as the Asylum Intervention Pool with asylum support teams, to assist those Member States which are faced with particular pressure and where applicants for international protection ('applicants') cannot benefit from adequate standards, in particular as regards reception and protection.~~

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↓ new

- (9) The European Union Agency for Asylum should provide adequate support in the implementation of this Regulation, in particular by establishing the reference key for the distribution of asylum seekers under the corrective allocation mechanism, and by adapting the figures underlying the reference key annually, as well as the reference key based on Eurostat data.

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↓ 604/2013 recital 9 (adapted)

⇒ new

- (10) In the light of the results of the evaluation undertaken of the implementation of ☒ Regulation (EU) 604/2013 ☒ ~~the first phase instruments~~, it is appropriate, at this stage, to confirm the principles underlying Regulation ~~(EC) No 343/2003~~ (EU) No 604/2013, while making the necessary improvements, in the light of experience, to the

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<sup>19</sup> ~~OJ L 132, 29.5.2010, p. 11~~



effectiveness of the Dublin system and the protection granted to applicants under that system. ~~Given that a well-functioning Dublin system is essential for the CEAS, its principles and functioning should be reviewed as other components of the CEAS and Union solidarity tools are built up. A comprehensive ‘fitness check’ should be foreseen by conducting an evidence based review covering the legal, economic and social effects of the Dublin system, including its effects on fundamental rights.~~ ⇒Based on this evaluation and on consultation with Member States, the European Parliament and other stakeholders, it is also considered appropriate to establish in the Regulation measures required for a fair share of responsibility between Member States for applications for international protection, in particular to ensure that a disproportionate burden is not placed upon some Member States. ⇐

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↓ 604/2013 recital 10

- (11) In order to ensure equal treatment for all applicants and beneficiaries of international protection, and consistency with the current Union asylum *acquis*, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 ~~on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted~~<sup>20</sup>, the scope of this Regulation encompasses applicants for subsidiary protection and persons eligible for subsidiary protection.
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↓ new

- (12) In order to ensure that beneficiaries of international protection who entered the territory of another Member State than the Member State responsible without fulfilling the conditions of stay in that other Member State are taken back by the Member State responsible, it is necessary to encompass beneficiaries of international protection in the scope of this Regulation.
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↓ 604/2013 recital 11

- (13) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 ~~laying down standards for the reception of applicants for international protection~~<sup>21</sup> should apply to the procedure for the determination of the Member State responsible as regulated under this Regulation, subject to the limitations in the application of that Directive.

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<sup>20</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

<sup>21</sup> See page 96 of this Official Journal. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96).

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↓ 604/2013 recital 12

- (14) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 ~~on common procedures for granting and withdrawing international protection~~<sup>22</sup> should apply in addition and without prejudice to the provisions concerning the procedural safeguards regulated under this Regulation, subject to the limitations in the application of that Directive.
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↓ 604/2013 recital 13

- (15) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.
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↓ 604/2013 recital 14

- (16) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Charter of Fundamental Rights of the European Union, respect for family life should be a primary consideration of Member States when applying this Regulation.
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↓ new

- (17) In order to prevent that applicants with inadmissible claims or who are likely not to be in need of international protection, or who represent a security risk are transferred among the Member States, it is necessary to ensure that the Member where an application is first lodged verifies the admissibility of the claim in relation to the first country of asylum and safe third country, examines in accelerated procedures applications made by applicants coming from a safe country of origin designated on the EU list, as well as applicants presenting security concerns.

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<sup>22</sup> ~~See page 60 of this Official Journal.~~ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

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↓ 604/2013 recital 15

- (18) The processing together of the applications for international protection of the members of one family by a single Member State makes it possible to ensure that the applications are examined thoroughly, the decisions taken in respect of them are consistent and the members of one family are not separated.

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↓ new

- (19) The definition of a family member in this Regulation should include the sibling or siblings of the applicant. Reuniting siblings is of particular importance for improving the chances of integration of applicants and hence reducing secondary movements. The scope of the definition of family member should also reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The definition should therefore include families formed outside the country of origin, but before their arrival on the territory of the Member State. This limited and targeted enlargement of the scope of the definition is expected to reduce the incentive for some secondary movements of asylum seekers within the EU.

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↓ 604/2013 recital 16

⇒ new

- (20) In order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent on account of the applicant's pregnancy or maternity, state of health or old age, should become a binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a family member or relative on the territory of another Member State who can take care of him or her should also become a binding responsibility criterion. ⇒ In order to discourage secondary movements of unaccompanied minors, which are not in their best interests, in the absence of a family member or a relative, the Member State responsible should be that where the unaccompanied minor first has lodged his or her application for international protection, unless it is demonstrated that this would not be in the best interests of the child. Before transferring an unaccompanied minor to another Member State, the transferring Member State should make sure that that Member State will take all necessary and appropriate measures to ensure the adequate protection of the child, and in particular the prompt appointment of a representative or representatives tasked with safeguarding respect for all the rights to which they are entitled. Any decision to transfer an unaccompanied minor should be preceded by an assessment of his/her best interests by staff with the necessary qualifications and expertise. ⇐

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↓ 604/2013 recital 17 (adapted)  
⇒ new

- (21) ⇒ Assuming responsibility by a Member State for examining an application lodged with it in cases when such examination is not its responsibility under the criteria laid down in this Regulation may undermine the effectiveness and sustainability of the system and should be exceptional. ⇐ ~~Any~~ ☒ Therefore, a ☒ Member State should be able to derogate from the responsibility criteria, ~~in particular~~ ⇒ only ⇐ on humanitarian ~~and compassionate~~ grounds, ⇒ in particular for family reasons, before a Member State responsible has been determined ⇐ ~~in order to bring together family members, relatives or any other family relations~~ and examine an application for international protection lodged with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation.

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↓ new

- (22) In order to ensure that the aims of this Regulation are achieved and obstacles to its application are prevented, in particular in order to avoid absconding and secondary movements between Member States, it is necessary to establish clear obligations to be complied with by the applicant in the context of the procedure, of which he or she should be duly informed in a timely manner. Violation of those legal obligations should lead to appropriate and proportionate procedural consequences for the applicant and to appropriate and proportionate consequences in terms of his or her reception conditions. In line with the Charter of Fundamental Rights of the European Union, the Member State where such an applicant is present should in any case ensure that the immediate material needs of that person are covered.

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↓ 604/2013 recital 18 (adapted)  
⇒ new

- (23) A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection ⇒ unless the applicant has absconded or the information provided by the applicant is sufficient for determining the Member State responsible ⇐. As soon as the application for international protection is lodged, the applicant should be informed ☒ in particular ☒ of the application of this Regulation, ⇒ of the lack of choice as to which Member State will examine his or her asylum application; of his or her obligations under this Regulation and of the consequences of not complying with them ⇐ ~~and of the possibility, during the interview, of providing information regarding the presence of family members, relatives or any other family relations in the Member States, in order to facilitate the procedure for determining the Member State responsible.~~

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↓ 604/2013 recital 19 ⇒ new
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- (24) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. ⇒ An effective remedy should also be provided in situations when no transfer decision is taken but the applicant claims that another Member State is responsible on the basis that he has a family member or, for unaccompanied minors, a relative in another Member State. ⇐ In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred. ⇒ The scope of the effective remedy should be limited to an assessment of whether applicants' fundamental rights to respect of family life, the rights of the child, or the prohibition of inhuman and degrading treatment risk to be infringed upon. ⇐

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↓ new
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- (25) The Member State which is determined as responsible under this Regulation should remain responsible for examination of each and every application of that applicant, including any subsequent application, in accordance with Article 40, 41 and 42 of Directive 2013/32/EU, irrespective of whether the applicant has left or was removed from the territories of the Member States. Provisions in Regulation (EU) 604/2013 which had provided for the cessation of responsibility in certain circumstances, including when deadlines for the carrying out of transfers had elapsed for a certain period of time, had created an incentive for absconding, and should therefore be removed.
- (26) In order to ensure the speedy determination of responsibility and allocation of applicants for international protection between Member States, the deadlines for making and replying to requests to take charge, for making take back notifications, and for carrying out transfers, as well as for making and deciding on appeals, should be streamlined and shortened to the greatest extent possible.

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↓ 604/2013 recital 20
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- (27) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality. In particular, the detention of applicants must be in accordance with Article 31 of the Geneva Convention. The procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. As regards the general guarantees governing detention, as well as detention

conditions, where appropriate, Member States should apply the provisions of Directive 2013/33/EU also to persons detained on the basis of this Regulation.

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↓ 604/2013 recital 21

- (28) Deficiencies in, or the collapse of, asylum systems, often aggravated or contributed to by particular pressures on them, can jeopardise the smooth functioning of the system put in place under this Regulation, which could lead to a risk of a violation of the rights of applicants as set out in the Union asylum *acquis* and the Charter of Fundamental Rights of the European Union, other international human rights and refugee rights.

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↓ new

- (29) Proper registration of all asylum applications in the EU under a unique application number should help detect multiple applications and prevent irregular secondary movements and asylum shopping. An automated system should be established for the purpose of facilitating the application of this Regulation. It should enable registration of asylum applications lodged in the EU, effective monitoring of the share of applications of each Member State and a correct application of the corrective allocation mechanism.
- (30) The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice established by Regulation (EU) No 1077/2011<sup>23</sup> should be responsible for the preparation, development and the operational management of the central system and the communication infrastructure between the central system and the national infrastructures.

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↓ 604/2013 recital 22 (adapted)  
⇒ new

- ~~(31) A process for early warning, preparedness and management of asylum crises serving to prevent a deterioration in, or the collapse of, asylum systems, with EASO playing a key role using its powers under Regulation (EU) No 439/2010, should be established in order to ensure robust cooperation within the framework of this Regulation and to develop mutual trust among Member States with respect to asylum policy. Such a process should ensure that the Union is alerted as soon as possible when there is a concern that the smooth functioning of the system set up by this Regulation is being jeopardised as a result of particular pressure on, and/or deficiencies in, the asylum systems of one or more Member States. Such a process would allow the Union to promote preventive measures at an early stage and pay the appropriate political attention to such situations. Solidarity, which is a pivotal element in the CEAS, goes hand in hand with mutual trust. By enhancing such trust, the process for early warning,~~

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<sup>23</sup> Regulation (EU) No 1077/2011 of the European Parliament and of the council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p. 1).

~~preparedness and management of asylum crises could improve the steering of concrete measures of genuine and practical solidarity towards Member States, in order to assist the affected Member States in general and the applicants in particular.~~ In accordance with Article 80 ~~TFEU~~ of the Treaty, Union acts should, whenever necessary, contain appropriate measures to give effect to the principle of solidarity. ⇒ A corrective allocation mechanism should be established in order to ensure a fair sharing of responsibility between Member States and a swift access of applicants to procedures for granting international protection in situations when a Member State is confronted with a disproportionate number of applications for international protection for which it is responsible under this Regulation. ⇐ ~~and the process should be accompanied by such measures. The conclusions on a Common Framework for genuine and practical solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows, adopted by the Council on 8 March 2012, provide for a ‘tool box’ of existing and potential new measures, which should be taken into account in the context of a mechanism for early warning, preparedness and crisis management.~~

↓ new

- (32) A key based on the size of the population and of the economy of the Member States should be applied as a point of reference in the operation of the corrective allocation mechanism in conjunction with a threshold, so as to enable the mechanism to function as a means of assisting Member States under disproportionate pressure. The application of the corrective allocation for the benefit of a Member State should be triggered automatically where the number of applications for international protection for which a Member State is responsible exceeds 150% of the figure identified in the reference key. In order to comprehensively reflect the efforts of each Member State, the number of persons effectively resettled to that Member State should be added to the number of applications for international protection for the purposes of this calculation.
- (33) When the allocation mechanism applies, the applicants who lodged their applications in the benefitting Member State should be allocated to Member States which are below their share of applications on the basis of the reference key as applied to those Member States. Appropriate rules should be provided for in cases where an applicant may for serious reasons be considered a danger to national security or public order, especially rules as regards the exchange of information between competent asylum authorities of Member States. After the transfer, the Member State of allocation should determine the Member State responsible, and should become responsible for examining the application, unless the overriding responsible criteria, related in particular to the presence of family members, determine that a different Member State should be responsible.
- (34) Under the allocation mechanism, the costs of transfer of an applicant to the Member State of allocation should be reimbursed from the EU budget.
- (35) A Member State of allocation may decide not to accept the allocated applicants during a twelve months-period, in which case it should enter this information in the automated system and notify the other Member States, the Commission and the

European Union Agency for Asylum. Thereafter the applicants that would have been allocated to that Member State should be allocated to the other Member States instead. The Member State which temporarily does not take part in the corrective allocation should make a solidarity contribution of EUR 250,000 per applicant not accepted to the Member State that was determined as responsible for examining those applications. The Commission should lay down the practical modalities for the implementation of the solidarity contribution mechanism in an implementing act. The European Union Agency for Asylum will monitor and report to the Commission on a yearly basis on the application of the financial solidarity mechanism.

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↓ 604/2013 recital 23 (adapted)

~~Member States should collaborate with EASO in the gathering of information concerning their ability to manage particular pressure on their asylum and reception systems, in particular within the framework of the application of this Regulation. EASO should regularly report on the information gathered in accordance with Regulation (EU) No 439/2010.~~

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↓ 604/2013 recital 24

- (36) In accordance with Commission Regulation (EC) No 1560/2003<sup>24</sup>, transfers to the Member State responsible for examining an application for international protection may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers by providing adequate information to the applicant and should ensure that supervised or escorted transfers are undertaken in a humane manner, in full compliance with fundamental rights and respect for human dignity, as well as the best interests of the child and taking utmost account of developments in the relevant case law, in particular as regards transfers on humanitarian grounds.
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↓ 604/2013 recital 25

- (37) The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the TFEU and the establishment of Union policies regarding the conditions of entry and stay of third-country nationals, including common efforts towards the management of external borders, makes it necessary to strike a balance between responsibility criteria in a spirit of solidarity.
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↓ new

- (38) The [General Data Protection Regulation (EU) .../2016] applies to the processing of personal data by the Member States under this Regulation from the date set out in that Regulation; until this date Directive 95/46/EC applies. Member States should

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<sup>24</sup> OJ L 222, 5.9.2003, p. 3.



implement appropriate technical and organisational measures to ensure and be able to demonstrate that processing is performed in accordance with that Regulation and the provisions specifying its requirements in this Regulation. In particular those measures should ensure the security of personal data processed under this Regulation and in particular to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed. The competent supervisory authority or authorities of each Member State should monitor the lawfulness of the processing of personal data by the authorities concerned, including of the transmission to and from the automated system and to the authorities competent for carrying out security checks.

- (39) The processing of personal data by the European Union Agency for Asylum should be subject to the monitoring of the European Data Protection Supervisor in accordance with Regulation (EC) No 45/2001 and the provisions on data protection laid down in *[Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010]*.

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↓ 604/2013 recital 26 (adapted)

~~Directive 95/46/EC of the European Parliament and of 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<sup>25</sup> applies to the processing of personal data by the Member States under this Regulation.~~

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↓ 604/2013 recital 27 (adapted)

~~The exchange of an applicant's personal data, including sensitive data on his or her health, prior to a transfer, will ensure that the competent asylum authorities are in a position to provide applicants with adequate assistance and to ensure continuity in the protection and rights afforded to them. Special provisions should be made to ensure the protection of data relating to applicants involved in that situation, in accordance with Directive 95/46/EC.~~

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↓ 604/2013 recital 28

- (40) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communication between competent departments, reducing time limits for procedures or simplifying the processing of requests to take charge or take back, or establishing procedures for the performance of transfers.

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<sup>25</sup> ~~OJ L 281, 23.11.1995, p. 31.~~

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↓ 604/2013 recital 29 (adapted)

- ~~(41)~~ Continuity between the system for determining the Member State responsible established by Regulation ~~(EC) No 343/2003~~ (EU) No 604/2013 and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Regulation *[Proposal for a Regulation recasting Regulation (EU) No 603/2013 of the European Parliament and of the Council]* ~~of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparisons with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes~~<sup>26</sup>.
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↕ new

- (42) A network of competent Member State authorities should be set up and facilitated by the European Union Agency for Asylum to enhance practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance.
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↓ 604/2013 recital 30 (adapted)

- (43) The operation of the Eurodac system, as established by Regulation *[Proposal for a Regulation recasting Regulation (EU) No 603/2013 of the European Parliament and of the Council]*, should facilitate the application of this Regulation.
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↓ 604/2013 recital 31

- (44) The operation of the Visa Information System, as established by Regulation (EC) No 767/2008 of the European Parliament and of the Council ~~of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on~~

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<sup>26</sup>

~~See page 1 of this Official Journal.~~ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).

~~short-stay visas~~<sup>27</sup>, and in particular the implementation of Articles 21 and 22 thereof, should facilitate the application of this Regulation.

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↓ 604/2013 recital 32

- (45) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the European Court of Human Rights.
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↓ 604/2013 recital 33

- (46) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>28</sup>.
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↓ 604/2013 recital 34 (adapted)  
⇒ new

- (47) The examination procedure should be used for the adoption of a common leaflet on Dublin/Eurodac, as well as a specific leaflet for unaccompanied minors; of a standard form for the exchange of relevant information on unaccompanied minors; of uniform conditions for the consultation and exchange of information on minors and dependent persons; of uniform conditions on the preparation and submission of take charge ☒ requests ☒ and take back ☒ notifications ☒ ~~requests~~; of two lists of relevant elements of proof and circumstantial evidence, and the periodical revision thereof; of a *laissez passer*; of uniform conditions for the consultation and exchange of information regarding transfers; of a standard form for the exchange of data before a transfer; of a common health certificate; of uniform conditions and practical arrangements for the exchange of information on a person's health data before a transfer, and of secure electronic transmission channels for the transmission of requests.
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↓ 604/2013 recital 35 (adapted)

- (48) In order to provide for supplementary rules, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the identification of family members or

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<sup>27</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (OJ L 218, 13.8.2008, p. 60).

<sup>28</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

relatives of an unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State; the elements for assessing a dependency link; the criteria for assessing the capacity of a person to take care of a dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article ~~68(3)~~ of this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level ☒ and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016 ☒. ☒ In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. ☒ ~~The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.~~

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↓ 604/2013 recital 36

- (49) In the application of this Regulation, including the preparation of delegated acts, the Commission should consult experts from, among others, all relevant national authorities.

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↓ 604/2013 recital 37

- (50) Detailed rules for the application of Regulation ~~(EC) No 343/2003~~ (EU) No 604/2013 have been laid down by Regulation (EC) No 1560/2003. Certain provisions of Regulation (EC) No 1560/2003 as amended by Regulation 118/2014 should be incorporated into this Regulation, either for reasons of clarity or because they can serve a general objective. In particular, it is important, both for the Member States and the applicants concerned, that there should be a general mechanism for finding a solution in cases where Member States differ over the application of a provision of this Regulation. It is therefore justified to incorporate the mechanism provided for in Regulation (EC) No 1560/2003 for the settling of disputes on the humanitarian clause into this Regulation and to extend its scope to the entirety of this Regulation.

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↓ 604/2013 recital 38

- (51) The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.

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↓ new

- (52) In order to assess whether the corrective allocation mechanism in this Regulation is meeting the objective of ensuring a fair sharing of responsibility between Member States and of relieving disproportionate pressure on certain Member States, the Commission should review the functioning of the corrective allocation mechanism and in particular verify that the threshold for the triggering and cessation of the corrective allocation effectively ensures a fair sharing of responsibility between the Member States and a swift access of applicants to procedures for granting international protection in situations when a Member State is confronted with a disproportionate number of applications for international protection for which it is responsible under this Regulation.

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↓ 604/2013 recital 39

- (53) This Regulation respects the fundamental rights and observes the principles which are acknowledged, in particular, in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the Charter as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. This Regulation should therefore be applied accordingly.

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↓ 604/2013 recital 40

- (54) Since the objective of this Regulation, namely the establishment of 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, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

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↓ 604/2013 recital 41 (adapted)

~~In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Regulation.~~

(55) *[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]*

OR

(56) *[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]*

OR

(53) *[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]*

(54) *In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]*

OR

(53) *[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]*

(54) *In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]*

- (57) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,
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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 ☒ single ☒ 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 ('the Member State responsible').

#### *Article 2*

##### **Definitions**

For the purposes of this Regulation:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not national of a State which participates in this Regulation by virtue of an agreement with the ~~European~~ Union;

(b) 'application for international protection' means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU;

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

(d) 'examination of an application for international protection' means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive 2013/32/EU and Directive 2011/95/EU, except for procedures for determining the Member State responsible in accordance with this Regulation;

(e) 'withdrawal of an application for international protection' means the actions by which the applicant terminates the procedures initiated by the submission of his or her application for international protection, in accordance with Directive 2013/32/EU, either explicitly or tacitly;

(f) 'beneficiary of international protection' means a third-country national or a stateless person who has been granted international protection as defined in Article 2(a) of Directive 2011/95/EU;

(g) 'family members' means, insofar as the family already existed  $\Rightarrow$  before the applicant arrived on the territory of the Member States  $\Leftarrow$  ~~in the country of origin~~, the following members of the applicant's family who are present on the territory of the Member States:

- the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,
- the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,
- when the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,
- when the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present<sub>2</sub>.

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↓ new

- the sibling or siblings of the applicant;

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↓ 604/2013

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

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

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



(k) 'representative' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out its duties in respect of the minor, in accordance with this Regulation;

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

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

- 'long-stay visa' means an authorisation or decision issued by one of the Member States in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than three months,
- 'short-stay visa' means an authorisation or decision of a Member State with a view to transit through or an intended stay on the territory of one or more or all the Member States of a duration of no more than three months in any six-month period beginning on the date of first entry on the territory of the Member States,
- 'airport transit visa' means a visa valid for transit through the international transit areas of one or more airports of the Member States;

(n) 'risk of absconding' means the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to a transfer procedure may abscond;

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↓ new

(o) 'benefitting Member State' means the Member State benefitting from the corrective allocation mechanism set out in Chapter VII of this Regulation and carrying out the allocation of the applicant;

(p) 'Member State of allocation' means the Member States to which an applicant will be allocated under the allocation mechanism set out in Chapter VII of this Regulation;

(q) ‘resettled person’ means a person subject to the process of resettlement whereby, on a request from the United Nations High Commissioner for Refugees (‘UNHCR’) based on a person’s need for international protection, third-country nationals are transferred from a third country and established in a Member State where they are permitted to reside with one of the following statuses:

(i) ‘refugee status’ within the meaning of point (e) of Article 2 of Directive 2011/95/EU;

(ii) ‘subsidiary protection status’ within the meaning of point (g) of Article 2 of Directive 2011/95/EU; or

(iii) any other status which offers similar rights and benefits under national and Union law as those referred to in points (i) and (ii);

(r) ‘European Union Agency for Asylum’ means the Agency as established by Regulation (EU) [*Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010*].

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↓ 604/2013

## CHAPTER II

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

#### *Article 3*

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

1. Member States shall examine any application for international protection 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. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

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

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the

application was lodged, the determining Member State shall become the Member State responsible.

↓ new

~~3. Any Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Directive 2013/32/EU.~~

3. Before applying the criteria for determining a Member State responsible in accordance with Chapters III and IV, the first Member State in which the application for international protection was lodged shall:

(a) examine whether the application for international protection is inadmissible pursuant to Article 33(2) letters b) and c) of Directive 2013/32/EU when a country which is not a Member State is considered as a first country of asylum or as a safe third country for the applicant; and

(b) examine the application in accelerated procedure pursuant to Article 31(8) of Directive 2013/32/EU when the following grounds apply:

(i) the applicant has the nationality of a third country, or he or she is a stateless person and was formerly habitually resident in that country, designated as a safe country of origin in the EU common list of safe countries of origin established under Regulation *[Proposal COM (2015) 452 of 9 September 2015]*; or

(ii) the applicant may, for serious reasons, be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.

4. Where the Member State considers an application inadmissible or examines an application in accelerated procedure pursuant to paragraph 3, that Member State shall be considered the Member State responsible.

5. The Member State which has examined an application for international protection, including in the cases referred to in paragraph 3, shall be responsible for examining any further representations or a subsequent application of that applicant in accordance with Article 40, 41 and 42 of Directive 2013/32/EU, irrespective of whether the applicant has left or was removed from the territories of the Member States.

#### *Article 4*

#### **Obligations of the applicant**

1. Where a person who intends to make an application for international protection has entered irregularly into the territory of the Member States, the application shall be made in the Member State of that first entry. Where a person who intends to make an application for

international protection is legally present in a Member State, the application shall be made in that Member State.

2. The applicant shall submit as soon as possible and at the latest during the interview pursuant to Article 7, all the elements and information relevant for determining the Member State responsible and cooperate with the competent authorities of the Member States.

3. The applicant shall:

- (a) comply with a transfer decision notified to him or her in accordance with paragraphs 1 and 2 of Article 27 and point (b) of Article 38;
- (b) be present and available to the competent authorities in the Member State of application, respectively in the Member State to which he or she is transferred.

## *Article 5*

### **Consequences of non-compliance**

1. If an applicant does not comply with the obligation set out in Article 4(1), the Member State responsible in accordance with this Regulation shall examine the application in an accelerated procedure, in accordance with Article 31(8) of Directive 2013/32/EU.

2. The Member State in which the applicant is obliged to be present shall continue the procedures for determining the Member State responsible even when the applicant leaves the territory of that Member State without authorisation or is otherwise not available for the competent authorities of that Member State.

3. The applicant shall not be entitled to the reception conditions set out in Articles 14 to 19 of Directive 2013/33/EU, with the exception of emergency health care, during the procedures under this Regulation in any Member State other than the one in which he or she is required to be present.

4. The competent authorities shall take into account elements and information relevant for determining the Member State responsible only insofar as these were submitted within the deadline set out in Article 4(2).

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↓ 604/2013 (adapted) ⇒ new
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## *Article ~~4~~ 6*

### **Right to information**

1. As soon as an application for international protection is lodged within the meaning of Article ~~20~~ 21(2) in a Member State, its competent authorities shall inform the applicant of the application of this Regulation  $\Rightarrow$  and of the obligations set out in Article 4 as well as the consequences of non-compliance set out in Article 5  $\Leftarrow$  , and in particular ~~of~~:

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$\Downarrow$  new

(a) that the right to apply for international protection does not encompass any choice of the applicant which Member State shall be responsible for examining the application for international protection;

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$\Downarrow$  604/2013 (adapted)  
 $\Rightarrow$  new

(~~a~~b)  $\boxtimes$  of  $\boxtimes$  the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of ~~moving from one Member State to another~~  $\Rightarrow$  leaving the Member State where he or she is obliged to be present  $\Leftarrow$  during the phases in which the Member State responsible under this Regulation is being determined and the application for international protection is being examined  $\Rightarrow$  , in particular that the applicant shall not be entitled to the reception conditions set out in Articles 14 to 19 of Directive 2013/33/EU in any Member State other than the one where he or she is required to be present, with the exception of emergency health care  $\Leftarrow$  ;

(~~b~~c)  $\boxtimes$  of  $\boxtimes$  the criteria  $\Rightarrow$  and the procedures  $\Leftarrow$  for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration, ~~including the fact that an application for international protection lodged in one Member State can result in that Member State becoming responsible under this Regulation even if such responsibility is not based on those criteria;~~

(~~c~~d)  $\boxtimes$  of  $\boxtimes$  the personal interview pursuant to Article ~~5~~ 7 and the ~~possibility~~  $\Rightarrow$  obligation  $\Leftarrow$  of submitting  $\Rightarrow$  and substantiating  $\Leftarrow$  information regarding the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information;

(~~d~~e)  $\boxtimes$  of  $\boxtimes$  the possibility to challenge a transfer decision ~~and, where applicable, to apply for a suspension of the transfer~~  $\Rightarrow$  within 7 days after notification and of the fact that this challenge shall be limited to an assessment of whether Articles 3(2) in relation to the existence of a risk of inhuman or degrading treatment or Articles 10 to 13 and 18 are infringed upon  $\Leftarrow$  ;

(~~e~~f) ~~the fact~~ that the competent authorities of Member States  $\Rightarrow$  and the European Union Agency for Asylum process personal data of the applicant including for the  $\Leftarrow$  ~~can~~ exchange  $\boxtimes$  of  $\boxtimes$  data on him or her for the sole purpose of implementing their obligations arising under this Regulation;

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↓ new

(g) of the categories of personal data concerned;

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↓ 604/2013 (adapted)  
⇒ new

(~~h~~) ~~of~~ ~~the~~ right of access to data relating to him or her and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article ~~35~~ 47 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data ~~⇒~~ , and of the contact details of the data protection officer; ~~⇐~~ ⇐

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↓ new

(i) where applicable, of the allocation procedure set out in Chapter VII.

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↓ 604/2013 (adapted)  
⇒ new

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

Where necessary for the proper understanding of the applicant, the information shall also be supplied orally, for example in connection with the personal interview as referred to in Article ~~5~~ 7.

3. The Commission shall, by means of implementing acts, draw up a common leaflet, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1 of this Article. This common leaflet shall also include information regarding the application of Regulation (EU) [*Proposal for a Regulation recasting Regulation No 603/2013*] and, in particular, the purpose for which the data of an applicant may be processed within Eurodac. The common leaflet shall be established in such a manner as to enable Member States to complete it with additional Member State-specific information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ 56(2) of this Regulation.

#### Article ~~5~~ 7

#### Personal interview

1. In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant ~~⇒~~ , unless

the applicant has absconded or the information provided by the applicant pursuant to Article 4(2) is sufficient for determining the Member State responsible  $\Leftarrow$ . The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article ~~4~~ 6.

~~2. The personal interview may be omitted if:~~

~~(a) the applicant has absconded; or~~

~~(b) after having received the information referred to in Article 4, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).~~

~~32.~~ The personal interview shall take place in a timely manner and, in any event, before any decision is taken to transfer the applicant to the Member State responsible pursuant to Article ~~26(1)~~  $\Rightarrow$  take charge request pursuant to Article 24 is made  $\Leftarrow$ .

~~43.~~ The personal interview shall be conducted in a language that the applicant understands or is reasonably supposed to understand and in which he or she is able to communicate. Where necessary, Member States shall have recourse to an interpreter who is able to ensure appropriate communication between the applicant and the person conducting the personal interview.

~~54.~~ The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law.

~~65.~~ The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. This summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant and/or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.

## Article ~~6~~ 8

### 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.  $\boxtimes$  Each  $\boxtimes$  Member States  $\Rightarrow$  where an unaccompanied minor is obliged to be present  $\Leftarrow$  shall ensure that a representative represents and/or assists ~~an~~  $\boxtimes$  the  $\boxtimes$  unaccompanied minor with respect to ~~all~~  $\boxtimes$  the relevant  $\boxtimes$  procedures provided for in this Regulation. The representative shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such representative shall have access to the content of the relevant documents in the applicant's file including the specific leaflet for unaccompanied minors.

This paragraph shall be without prejudice to the relevant provisions in Article 25 of Directive 2013/32/EU.

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 minor being a victim of human trafficking;
- (d) the views of the minor, in accordance with his or her age and maturity.

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↓ new

4. Before transferring an unaccompanied minor to the Member State responsible or, where applicable, to the Member State of allocation, the transferring Member State shall make sure that the Member State responsible or the Member State of allocation takes the measures referred to in Articles 14 and 24 of Directive 2013/33/EU and Article 25 of Directive 2013/32/EU without delay. Any decision to transfer an unaccompanied minor shall be preceded by an assessment of his/her best interests. The assessment shall be based on the factors listed in paragraph 3. The assessment shall be done swiftly by staff with the qualifications and expertise to ensure that the best interests of the minor are taken into consideration.

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↓ 604/2013 (adapted)  
⇒ new

~~45.~~ For the purpose of applying Article ~~8~~ 10, the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, ~~siblings~~ or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

To that end, that Member State may call for the assistance of international or other relevant organisations, and may facilitate the minor's access to the tracing services of such organisations.

The staff of the competent authorities referred to in Article ~~35~~ 47 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.

~~56.~~ With a view to facilitating the appropriate action to identify the family members, ~~siblings~~ or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph ~~4~~ 5 of this Article, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ 56(2).



## CHAPTER III

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

#### *Article ~~7~~ 9*

##### **Hierarchy of criteria**

1. The criteria for determining the Member State responsible shall be applied ⇒ only once, ⇐ 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 applicant first lodged his or her application for international protection with a Member State.

~~3. In view of the application of the criteria referred to in Articles 8, 10 and 16, Member States shall take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant, on condition that such evidence is produced before another Member State accepts the request to take charge or take back the person concerned, pursuant to Articles 22 and 25 respectively, and that the previous applications for international protection of the applicant have not yet been the subject of a first decision regarding the substance.~~

#### *Article ~~8~~ 10*

##### **Minors**

⊗ 1. Where the applicant is an unaccompanied minor, only the criteria set out in this article shall apply, in the order in which they are set out in paragraphs 2 to 5. <⊗

~~12. Where the applicant is an unaccompanied minor, t~~ The Member State responsible shall be that where a family member ~~or a sibling~~ of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

~~23. Where the applicant is an unaccompanied minor who~~ has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.

~~34. Where family members, siblings~~ or relatives as referred to in paragraphs ~~1~~ 2 and ~~2~~ 3, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.

~~45.~~ In the absence of a family member, ~~a sibling~~ or a relative as referred to in paragraphs ~~1~~ 2 and ~~2~~ 3, the Member State responsible shall be that where the unaccompanied minor ~~⇒ first ⇐~~ has lodged his or her application for international protection, ~~provided that it is~~ ~~☒~~ unless it is demonstrated that this is not ~~☒~~ in the best interests of the minor.

~~56.~~ The Commission ~~shall be~~ ~~☒~~ is ~~☒~~ empowered to adopt delegated acts in accordance with Article ~~45~~ 57 concerning the identification of family members, ~~siblings~~ or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article ~~6~~ 8(3).

~~67.~~ The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ 56(2).

#### *Article ~~9~~ 11*

##### **Family members who are beneficiaries of international protection**

Where the applicant 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 beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

#### *Article ~~10~~ 12*

##### **Family members who are applicants for international protection**

If the applicant 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 international protection, provided that the persons concerned expressed their desire in writing.

#### *Article ~~11~~ 13*

##### **Family procedure**

Where several family members ~~and/or minor unmarried siblings~~ submit applications for 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 their being separated, the Member State responsible shall be determined on the basis of the following provisions:

(a) responsibility for examining the applications for international protection of all the family members and/or minor unmarried siblings shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;

(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 ~~12~~ 14

##### Issue of residence documents or visas

1. Where the applicant is in possession of a valid residence document  $\Rightarrow$  or a residence document which has expired less than two years before lodging the first application  $\Leftarrow$ , the Member State which issued the document shall be responsible for examining the application for international protection.

2. Where the applicant is in possession of a valid visa  $\Rightarrow$  or a visa expired less than six months before lodging the first application  $\Leftarrow$ , the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009 of the European Parliament and of the Council<sup>29</sup> of 13 July 2009, establishing a Community Code on Visas<sup>29</sup>. In such a case, the represented Member State shall be responsible for examining the application for international protection.

3. Where the applicant 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 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 applicant 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 or 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 applicant 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~~

<sup>29</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council, of 13 July 2009, establishing a Community Code on Visas (OJ L 243, 15.9.2009, p. 1).

~~months previously and enabled him or 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.~~

54. 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 ~~13~~ 15*

#### **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(3)~~ 25(4) of this Regulation, including the data referred to in Regulation [*Proposal for a Regulation recasting Regulation (EU) No 603/2013*], that an applicant 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 international protection. ~~That 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 of this Article and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3), that the applicant — who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established — has been 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 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 he or she has been living most recently shall be responsible for examining the application for international protection.~~

#### *Article ~~14~~ 16*

#### **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 international protection.

~~2. The principle set out in paragraph 1 shall not apply if the third-country national or the stateless person lodges his or her application for 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 that case, that other Member State shall be responsible for examining the application for international protection.~~

*Article ~~15~~ 17*

**Application in an international transit area of an airport**

Where the application for international protection is made in the 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**

***DEPENDENT PERSONS AND DISCRETIONARY CLAUSES***

*Article ~~16~~ 18*

**Dependent persons**

1. Where, on account of pregnancy, a new-born child, serious illness, severe disability or old age, an applicant is dependent on the assistance of his or her child, sibling or parent legally resident in one of the Member States, or his or her child, sibling or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, sibling or parent, provided that family ties existed in the country of origin, that the child, sibling or parent or the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing.

2. Where the child, sibling or parent referred to in paragraph 1 is legally resident in a Member State other than the one where the applicant is present, the Member State responsible shall be the one where the child, sibling or parent is legally resident unless the applicant's health prevents him or her from travelling to that Member State for a significant period of time. In such a case, the Member State responsible shall be the one where the applicant is present. Such Member State shall not be subject to the obligation to bring the child, sibling or parent of the applicant to its territory.

3. The Commission ~~shall be~~ ☒ is ☒ empowered to adopt delegated acts in accordance with Article ~~45~~ 57 concerning the elements to be taken into account in order to assess the dependency link, the criteria for establishing the existence of proven family links, the criteria for assessing the capacity of the person concerned to take care of the dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time.

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ 56(2).

*Article ~~17~~ 19*

**Discretionary clauses**

1. By way of derogation from Article 3(1) ⇒ and only as long as no Member State has been determined as responsible ⇐ , each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person ⇒ based on family grounds in relation to wider family not covered by Article 2(g) ⇐ , even if such examination is not its responsibility under the criteria laid down in this Regulation.

The Member State which decides to examine an application for international protection pursuant to this paragraph shall become the Member State responsible and shall assume the obligations associated with that responsibility. Where applicable, it shall inform, ~~using the ‘DublinNet’ electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003,~~ 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 to take back,~~ the applicant.

The Member State which becomes responsible pursuant to this paragraph shall forthwith indicate it in Eurodac in accordance with Regulation *[Proposal for a Regulation recasting Regulation (EU) No 603/2013]* by adding the date when the decision to examine the application was taken.

2. The Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, ~~or the Member State responsible,~~ may, at any time before ⇒ a Member State responsible has been determined ⇐ ~~a first decision regarding the substance is taken,~~ request another Member State to take charge of an applicant in order to bring together any family relations, ~~on humanitarian grounds based in particular on family or cultural considerations,~~ even where that other Member State is not responsible under the criteria laid down in Articles ~~8~~ 10 to ~~11~~ 13 and ~~16~~ 18. The persons concerned must express their consent in writing.

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

The requested Member State shall carry out any necessary checks to examine the humanitarian grounds cited, and shall reply to the requesting Member State within ~~two~~ ⇒ one ⇐ months of receipt of the request ~~using the ‘DublinNet’ electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.~~ A reply refusing the request shall state the reasons on which the refusal is based.

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

## CHAPTER V

### ***OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE***

#### *Article ~~18~~ 20*

#### **Obligations of the Member State responsible**

1. The Member State responsible under this Regulation shall be obliged to:

- (a) take charge, under the conditions laid down in Articles ~~24~~ 24, ~~22~~ 25 and ~~29~~ 30, of an applicant who has lodged an application in a different Member State;
- (b) take back, under the conditions laid down in Articles ~~23~~, 26 ~~24~~, ~~25 and ~~29~~ 30, an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document;~~
- (c) take back, under the conditions laid down in Articles ~~23~~, 26 ~~24~~, ~~25 and ~~29~~ 30, a third-country national or a stateless person who has withdrawn the application under examination and made an application in another Member State or who is on the territory of another Member State without a residence document;~~
- (d) take back, under the conditions laid down in Articles ~~23~~, 26 ~~24~~, ~~25 and ~~29~~ 30, 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 on the territory of another Member State without a residence document~~;~~~~

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↓ new

(e) take back, under the conditions laid down in Articles 26 and 30 a beneficiary of international protection, who made an application in another Member State than the Member State responsible which granted that protection status or who is on the territory of another Member State than the Member State responsible which granted that protection without a residence document.

2. In a situation referred to in point (a) of paragraph 1, the Member State responsible shall examine or complete the examination of the application for international protection.

3. In a situation referred to in point (b) of paragraph 1, the Member State responsible shall examine or complete the examination of the application for international protection in an accelerated procedure in accordance with Article 31 paragraph 8 of Directive 2013/32/EU.

4. In a situation referred to in point (c) of paragraph 1, the Member State responsible shall treat any further representations or a new application by the applicant as subsequent application in accordance with Directive 2013/32/EU.

5. In a situation referred to in point (d) of paragraph 1, the decision taken by the responsible authority of the Member State responsible to reject the application shall no longer be subject to a remedy within the framework of Chapter V of Directive 2013/32/EU.

6. Where a Member State issues a residence document to the applicant, the obligations referred to in paragraph 1 shall be transferred to that Member State.

7. The Member State responsible shall indicate in the electronic file referred to in Article 22(2) the fact that it is the Member State responsible.

~~2. In the cases falling within the scope of paragraph 1(a) and (b), the Member State responsible shall examine or complete the examination of the application for international protection made by the applicant.~~

~~In the cases falling within the scope of paragraph 1(c), when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in Directive 2013/32/EU. In such cases, Member States shall ensure that the examination of the application is completed.~~

~~In the cases falling within the scope of 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 seek an effective remedy pursuant to Article 46 of Directive 2013/32/EU.~~

#### ~~Article 19~~

#### **Cessation of responsibilities**

~~1. Where a Member State issues a residence document to the applicant, the obligations specified in Article 18(1) shall be transferred to that Member State.~~

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

~~An application lodged after the period of absence referred to in the first subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.~~

~~3. The obligations specified in Article 18(1)(c) and (d) shall cease where the Member State responsible can establish, when requested to take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.~~

~~An application lodged after an effective removal has taken place shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.~~



## CHAPTER VI

### ~~PROCEDURES FOR TAKING CHARGE AND TAKING BACK~~

#### SECTION I

##### START OF THE PROCEDURE

###### Article ~~20~~ 21

###### Start of the procedure

1. The process of determining the Member State responsible shall start as soon as an application for international protection is first lodged with a Member State  $\Rightarrow$  , provided that the Member State of first application is not already the Member State responsible pursuant to Article 3(4) or (5)  $\Leftarrow$  .

2. An application for international protection shall be deemed to have been lodged once a form submitted by the applicant or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

3. For the purposes of this Regulation, the situation of a minor who is accompanying the applicant and meets the definition of family member shall be indissociable from that of his or her family member and shall be a matter for the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, provided that it is in the minor's best interests. The same treatment shall be applied to children born after the applicant arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for international protection is lodged with the competent authorities of a Member State by an applicant who is on 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 international protection was lodged.

The applicant shall be informed in writing of this change in the determining Member State and of the date on which it took place.

5. An applicant who is present in another Member State without a residence document or who there lodges an application for international protection after withdrawing his or her 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 ~~23, 26 24, 25~~ and ~~29 30~~, by the Member State with which that application for international protection was

first lodged, with a view to completing the process of determining the Member State responsible.

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

~~An application lodged after the period of absence referred to in the second subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.~~

↓ new

## **SECTION II**

### ***Application registration and monitoring***

#### ***Article 22***

#### **Registration**

1. The Member State with which an application for international protection is lodged shall enter in the automated system referred to in Article 44(1) within the period referred to in Article 10 (1) of Regulation *[Proposal for a Regulation recasting Regulation (EU) 603/2013]* that:

(a) such application is lodged;

(b) where applicable, links to the applications of family members or relatives travelling together;

(c) the reference number referred to in Article 12 (i) of Regulation *[Proposal for a Regulation recasting Regulation (EU) No 603/2013]*.

2. Upon entry of the information pursuant to paragraph 1, the automated system referred to in Article 44 shall register each application under a unique application number, create an electronic file for each application and communicate the unique application number to the Member State of application.

3. Member States shall provide the European Union Agency for Asylum with information on the number of third country nationals effectively resettled on a weekly basis. The Agency shall validate this information and enter the data in the automated system.

4. Where a hit in Eurodac indicates that the applicant has previously lodged an application for international protection before having left or having been removed from the territories of the Member States, the Member State with which the new application is lodged shall also indicate

which Member State has been the Member State responsible for examining the previous application.

5. The Member State with which the application is lodged shall search the VIS pursuant to Article 21 of Regulation (EC) 767/2008. Where a hit in the VIS indicates that the applicant is in possession of a valid visa or a visa expired less than six months before lodging the first application, the Member State shall indicate the visa application number and the Member State, the authority of which issued or extended the visa and whether the visa has been issued on behalf of another Member State.

### *Article 23*

#### **Information in the automated system**

1. The automated system referred to in Article 44(1) shall indicate in real time:

- (a) the total number of applications lodged in the Union;
- (b) the actual number of applications lodged in each Member State;
- (c) the number of third country nationals resettled by each Member State;
- (d) the actual number of applications to be examined by each Member State as Member State responsible;
- (e) the share of each Member State pursuant to the reference key referred to in Article 35.

2. In the electronic file referred to in Article 22(2) only the following information shall be recorded:

- (a) the unique application number referred to in Article 22(2);
- (b) link to applications referred to in point b of Article 22 (1) and 22(4);
- (c) the reference number referred to in point d of Article 12(i) of Regulation *[Proposal for a Regulation recasting Regulation (EU) No 603/2013]*;
- (d) the existence of an alert following the security verification pursuant to Article 40;
- (e) the Member State responsible;
- (f) in case of the indication of a previous application for international protection by the same applicant pursuant to Article 22(4), the Member State who was responsible for that previous application;
- (g) in case of the indication of a visa issued to the applicant pursuant to Article 22(5), the Member State which issued or extended the visa or on behalf of which the visa has been issued and the visa application number;

(h) where the allocation mechanism under Chapter VII applies, the information referred to in Article 36(4) and point (h) of Article 39.

3. Upon communication by the Member State responsible pursuant to Article 20(7) and Article 22(3) the automated system referred to in Article 44(1) shall count that application and that third country national effectively resettled for the share of that Member State.

4. The electronic files shall be automatically erased after expiry of the period set out in Article 17(1) of Regulation *[Proposal for Regulation recasting Regulation (EU) No 603/2013]*.

↓ 604/2013 (adapted)  
⇒ new

## ***SECTION ~~H~~ III***

### ***PROCEDURES FOR TAKE CHARGE REQUESTS***

#### ***Article ~~21~~ 24***

##### **Submitting a take charge request**

1. Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it ~~may~~ ⇒ shall ⇐, as quickly as possible and in any event within ~~three~~ ⇒ one ⇐ months of the date on which the application was lodged within the meaning of Article ~~20~~ 21(2), request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 of Regulation *[Proposal for a Regulation recasting Regulation (EU) No 603/2013]* ⇒ or of a VIS hit with data recorded pursuant to Article 21(2) of Regulation (EU) 767/2008 ⇐, the request shall be sent within two ~~months~~ ⇒ weeks ⇐ of receiving that hit ~~pursuant to Article 15(2) of that Regulation.~~

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

~~2. The requesting Member State may ask for an urgent reply in cases where the application for 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.~~

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

~~32~~. In the cases referred to in paragraphs ~~1 and 2~~, 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 ~~22(3)~~ 25(4) and/or relevant elements from the applicant's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, adopt uniform conditions on the preparation and submission of take charge requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ 56(2).

#### Article ~~22~~ 25

### Replying to a take charge request

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within ~~two~~ ⇒ one ⇐ months of receipt of the request.

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⇓ new

2. Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 of Regulation [*Proposal for a Regulation recasting Regulation (EU) No 603/2013*] or of a VIS hit with data recorded pursuant to Article 21(2) of Regulation (EU) 767/2008, the requested Member State shall give a decision on the request within two weeks of receipt of the request.

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↓ 604/2013 (adapted)  
⇒ new

~~23~~. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.

~~34~~. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ 56(2).

(a) Proof:

(i) this refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary;

(ii) the Member States shall provide the Committee provided for in Article ~~44~~ 56 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 international protection shall be assessed on a case-by-case basis.

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

56. 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 21(2), the requested Member State shall make every effort to comply with 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 its reply after the time limit requested, but in any event 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~~ ⇒ Where the requested Member State does not object to the request ⇐ within the ~~two-month~~ ⇒ one-month ⇐ period mentioned in paragraph 1 ~~and the one-month period mentioned in paragraph 6~~ ⇒ by a reply which gives substantiated reasons, or where applicable within the two weeks period mentioned in paragraph 2, this ⇐ shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

## ***SECTION ~~III~~ IV***

### ***PROCEDURES FOR TAKE BACK ~~REQUESTS~~ ⊗ NOTIFICATIONS ⊗***

#### *Article ~~23~~ 26*

#### **Submitting a take back ⊗ notification ⊗ ~~request when a new application has been lodged in the requesting Member State~~**

1. ~~Where a Member State with which a person as ⊗ In a situation ⊗ referred to in Article 18 20(1)(b), (c), or (d) ⇒ or (e) ⇐ has lodged a new application for international protection considers that another ⊗ the ⊗ Member State where the person is present is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person where the person is present ⇒ shall make a take back notification at the latest within two weeks after receiving the Eurodac hit, and transfer that person to the Member State responsible ⇐ .~~

~~2. A take back request shall be made as quickly as possible and in any event within two months of receiving the Eurodac hit, pursuant to Article 9(5) of Regulation (EU) No 603/2013.~~

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

~~3. Where the take back request is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged.~~

~~42. A take back request ⇒ notification ⇐ shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) 25(4) and/or relevant elements from the statements of the person concerned, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.~~

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↓ new

3. The Member State responsible shall confirm immediately the receipt of the notification to the Member State which made the notification.

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↓ 604/2013  
⇒ new

4. The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back ⇒ notifications ⇐ requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44 56(2).

#### ~~Article 24~~

#### ~~Submitting a take back request when no new application has been lodged in the requesting Member State~~

~~1. Where a Member State on whose territory a person as referred to in Article 18(1)(b), (c) or (d) is staying without a residence document and with which no new application for international protection has been lodged considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.~~

~~2. By way of derogation from Article 6(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals<sup>20</sup>, where a Member State on whose territory a person is staying without a residence document decides to search~~

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<sup>30</sup> OJ L 348, 24.12.2008, p. 98.

~~the Eurodac system in accordance with Article 17 of Regulation (EU) No 603/2013, the request to take back a person as referred to in Article 18(1)(b) or (c) of this Regulation, or a person as referred to in its Article 18(1)(d) whose application for international protection has not been rejected by a final decision, shall be made as quickly as possible and in any event within two months of receipt of the Eurodac hit, pursuant to Article 17(5) of Regulation (EU) No 603/2013.~~

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

~~3. Where the take back request is not made within the periods laid down in paragraph 2, the Member State on whose territory the person concerned is staying without a residence document shall give that person the opportunity to lodge a new application.~~

~~4. Where a person as referred to in Article 18(1)(d) of this Regulation whose application for international protection has been rejected by a final decision in one Member State is on the territory of another Member State without a residence document, the latter Member State may either request the former Member State to take back the person concerned or carry out a return procedure in accordance with Directive 2008/115/EC.~~

~~When the latter Member State decides to request the former Member State to take back the person concerned, the rules laid down in Directive 2008/115/EC shall not apply.~~

~~5. The request for the person referred to in Article 18(1)(b), (c) or (d) to be taken back shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the person's statements, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.~~

~~The Commission shall, by means of implementing acts, establish and review periodically two lists indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in Article 22(3)(a) and (b), and shall adopt uniform conditions for the preparation and submission of take back requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).~~

## ~~Article 25~~

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

~~1. The requested Member State shall make the necessary checks and shall give a decision on the request to take back the person concerned as quickly as possible and in any event no later than one month from the date on which the request was received. When the request is based on data obtained from the Eurodac system, that time limit shall be reduced to two weeks.~~

~~2. Failure to act within the one month period or the two weeks period mentioned in paragraph 1 shall be tantamount to accepting the request, and shall entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for arrival.~~



## ***SECTION ~~IV~~ V***

### ***PROCEDURAL SAFEGUARDS***

#### *Article ~~26~~ 27*

##### **Notification of a transfer decision**

1. Where the requested Member State accepts to take charge of ~~or to take back~~ an applicant ~~or other person as referred to in Article 18(1)(e) or (d)~~, the requesting Member State shall notify the ~~person concerned~~ ⇒ applicant in writing without delay ⇐ of the decision to transfer him or her to the Member State responsible and, where applicable, of not examining his or her application for international protection.

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↓ new

2. Where the applicant or another person referred to in Article 20(1) (c), (d) or (e) is to be taken back, the Member State where the person concerned is present shall notify the person concerned in writing without undue delay the decision to transfer him or her to the Member State responsible.

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↓ 604/2013 (adapted)  
⇒ new

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

~~24.~~ The decision referred to in paragraphs 1 ⇒ and 2 ⇐ shall contain information on the legal remedies available, ~~including on the right to apply for suspensive effect, where applicable,~~ and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned should appear, if that person is travelling to the Member State responsible by his or her own means.

Member States shall ensure that information on persons or entities that may provide legal assistance to the person concerned is communicated to the person concerned together with the decision referred to in paragraphs 1 ⇒ and 2 ⇐, when that information has not been already communicated.

~~35.~~ When the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall inform him or her of the main elements of the decision, which shall always include information on the legal remedies available and the time limits applicable for seeking such remedies, in a language that the person concerned understands or is reasonably supposed to understand.

## Remedies

1. The applicant or another person as referred to in Article ~~18~~ 20(1)(c), ~~or~~ (d)  $\Rightarrow$  or (e)  $\Leftarrow$  shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

2. Member States shall provide for a ~~reasonable~~ period of ~~time~~  $\Rightarrow$  7 days after the notification of a transfer decision  $\Leftarrow$  within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

3. For ~~the purposes of~~ appeals against, or reviews of, transfer decisions, ~~Member States shall provide in their national law that:~~  $\Rightarrow$  the court or tribunal shall decide within a period of 15 days on the substance of the appeal or review. No transfer shall take place before this decision on the appeal or review is taken.  $\Leftarrow$

~~(a) the appeal or review confers upon the person concerned the right to remain in the Member State concerned pending the outcome of the appeal or review; or~~

~~(b) the transfer is automatically suspended and such suspension lapses after a certain reasonable period of time, during which a court or a tribunal, after a close and rigorous scrutiny, shall have taken a decision whether to grant suspensive effect to an appeal or review; or~~

~~(c) the person concerned has the opportunity to request within a reasonable period of time a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within a reasonable period of time, while permitting a close and rigorous scrutiny of the suspension request. A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.~~

~~4. Member States may provide that the competent authorities may decide, acting *ex officio*, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.~~

$\Downarrow$  new

4. The scope of the effective remedy laid down in paragraph 1 shall be limited to an assessment of whether Articles 3(2) in relation to the existence of a risk of inhuman or degrading treatment or Articles 10 to 13 and 18 are infringed upon.

5. Where no transfer decision referred to in paragraph 1 is taken, Member States shall provide for an effective remedy before a court or tribunal, where the applicant claims that a family member or, in the case of unaccompanied minors, a relative is legally present in a Member State other than the one which is examining his or her application for international protection,

and considers therefore that other Member State as Member State responsible for examining the application.

↓ 604/2013 (adapted)  
⇒ new

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

67. Member States shall ensure that legal assistance is granted on request free of charge where the person concerned cannot afford the costs involved. Member States may provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

Without arbitrarily restricting access to legal assistance, Member States may provide that free legal assistance and representation not be granted where the appeal or review is considered by the competent authority or a court or tribunal to have no tangible prospect of success.

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

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

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

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

## ***SECTION ~~VI~~***

### ***DETENTION FOR THE PURPOSE OF TRANSFER***

#### *Article ~~28~~ 29*

##### **Detention**

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

2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the

basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.

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

Where a person is detained pursuant to this Article, the period for submitting a take charge ~~or take back~~ request  $\Rightarrow$  or a take back notification  $\Leftarrow$  shall not exceed ~~one month~~  $\Rightarrow$  two weeks  $\Leftarrow$  from the lodging of the application. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply ~~in such cases~~  $\Rightarrow$  on a take charge request  $\Leftarrow$ . Such reply shall be given within ~~two~~  $\Rightarrow$  one  $\Leftarrow$  weeks of receipt of the  $\Rightarrow$  take charge  $\Leftarrow$  request. Failure to reply within the ~~two-week~~  $\Rightarrow$  one-week  $\Leftarrow$  period shall be tantamount to accepting the  $\Rightarrow$  take charge  $\Leftarrow$  request and shall entail the obligation to take  $\Rightarrow$  the person in  $\Leftarrow$  charge ~~or take back the person~~, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within ~~six~~  $\Rightarrow$  four  $\Leftarrow$  weeks  $\Rightarrow$  from the final transfer decision  $\Leftarrow$  ~~of the implicit or explicit acceptance of the request by another Member State to take charge or to take back the person concerned or of the moment when the appeal or review no longer has a suspensive effect in accordance with Article 27(3).~~

When the requesting Member State fails to comply with the deadlines for submitting a take charge ~~or take back~~ request  $\Rightarrow$  or take back notification  $\Leftarrow$  or where the transfer does not take place within the period of ~~six~~  $\Rightarrow$  four  $\Leftarrow$  weeks referred to in the third subparagraph, the person shall no longer be detained. Articles ~~21~~ 24, ~~23~~ 26 ~~24~~ and ~~29~~ 30 shall continue to apply accordingly.

4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply.

## **SECTION ~~IV~~ VII**

### ***TRANSFERS***

#### ***Article ~~29~~ 30***

#### **Modalities and time limits**

1.  $\Rightarrow$  The determining Member State whose take charge request referred to in Article 20(1) (a) was accepted or who made a take back notification referred to in Article 20(1) (b) to (e) shall take a transfer decision at the latest within one week of acceptance or notification and transfer the applicant or the person concerned to the Member State responsible.  $\Leftarrow$

The transfer of the applicant or of another person as referred to in Article ~~18~~ 20(1)(c), ~~or~~ (d)  $\Rightarrow$  or (e)  $\Leftarrow$  from the requesting Member State to the Member State responsible 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  $\Rightarrow$  four weeks from the final transfer decision  $\Leftarrow$  ~~six months of acceptance of the request 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 in accordance with Article 27(3).~~

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

If necessary, the applicant shall be supplied by the requesting Member State with a *laissez passer*. The Commission shall, by means of implementing acts, establish the design of the *laissez passer*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ 56(2).

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

~~2. Where the transfer does not take place within the 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. 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 person concerned or up to a maximum of eighteen months if the person concerned absconds.~~

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

43. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ 56(2).

#### Article ~~30~~ 31

#### Costs of transfer

1. The costs necessary to transfer an applicant or another person as referred to in Article ~~18~~ 20(1)(c), ~~or~~ (d)  $\Rightarrow$  or (e)  $\Leftarrow$  to the Member State responsible shall be met by the transferring Member State.

2. Where the person concerned has to be transferred back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal or review after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.

3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.

*Article ~~31~~ 32*

**Exchange of relevant information before a transfer is carried out**

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article ~~18~~ 20(1)(c) or (d) shall communicate to the Member State responsible such personal data concerning the person to be transferred as is ☒ adequate ☐ ~~appropriate~~, relevant and ~~non-excessive~~ ☒ limited to what is necessary ☐ for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, and to ensure continuity in the protection and rights afforded by this Regulation and by other relevant asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in accordance with national law have sufficient time to take the necessary measures.

2. The transferring Member State shall, in so far as such information is available to the competent authority in accordance with national law, transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:

- (a) any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care that may be required;
- (b) contact details of family members, relatives or any other family relations in the receiving Member State, where applicable;
- (c) in the case of minors, information on their education;
- (d) an assessment of the age of an applicant.

3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article ~~35~~ 47 of this Regulation 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, the Commission shall, by means of implementing acts, draw up a standard form for the transfer of the data required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article ~~44~~ 56(2).

5. The rules laid down in Article ~~34(8) to (12)~~ ☒ 46(8) ☐ shall apply to the exchange of information pursuant to this Article.

### Exchange of health data before a transfer is carried out

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

The Commission shall, by means of implementing acts, draw up the common health certificate. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article ~~44~~ 56(2).

2. The transferring Member State shall only transmit the information referred to in paragraph 1 to the Member State responsible after having obtained the explicit consent of the applicant and/or of his or her representative or, ~~if the applicant is physically or legally incapable of giving his or her consent,~~ when such transmission is necessary  $\Rightarrow$  to protect public health and public security,  $\Leftarrow$   $\boxtimes$  or, if the applicant is physically or legally incapable of giving his or her consent,  $\boxtimes$  to protect the vital interests of the applicant or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.

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

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

5. The Commission shall, by means of implementing acts, adopt uniform conditions and practical arrangements for exchanging the information referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article ~~44~~ 56(2).

6. The rules laid down in Article ~~34(8) to (12)~~  $\Rightarrow$  46(8)  $\Leftarrow$  shall apply to the exchange of information pursuant to this Article.

### ~~Article 33~~

#### ~~A mechanism for early warning, preparedness and crisis management~~

~~1. Where, on the basis of, in particular, the information gathered by EASO pursuant to Regulation (EU) No 439/2010, the Commission establishes that the application of this Regulation may be jeopardised due either to a substantiated risk of particular pressure being~~

~~placed on a Member State's asylum system and/or to problems in the functioning of the asylum system of a Member State, it shall, in cooperation with EASO, make recommendations to that Member State, inviting it to draw up a preventive action plan.~~

~~The Member State concerned shall inform the Council and the Commission whether it intends to present a preventive action plan in order to overcome the pressure and/or problems in the functioning of its asylum system whilst ensuring the protection of the fundamental rights of applicants for international protection.~~

~~A Member State may, at its own discretion and initiative, draw up a preventive action plan and subsequent revisions thereof. When drawing up a preventive action plan, the Member State may call for the assistance of the Commission, other Member States, EASO and other relevant Union agencies.~~

~~2. Where a preventive action plan is drawn up, the Member State concerned shall submit it and shall regularly report on its implementation to the Council and to the Commission. The Commission shall subsequently inform the European Parliament of the key elements of the preventive action plan. The Commission shall submit reports on its implementation to the Council and transmit reports on its implementation to the European Parliament.~~

~~The Member State concerned shall take all appropriate measures to deal with the situation of particular pressure on its asylum system or to ensure that the deficiencies identified are addressed before the situation deteriorates. Where the preventive action plan includes measures aimed at addressing particular pressure on a Member State's asylum system which may jeopardise the application of this Regulation, the Commission shall seek the advice of EASO before reporting to the European Parliament and to the Council.~~

~~3. Where the Commission establishes, on the basis of EASO's analysis, that the implementation of the preventive action plan has not remedied the deficiencies identified or where there is a serious risk that the asylum situation in the Member State concerned develops into a crisis which is unlikely to be remedied by a preventive action plan, the Commission, in cooperation with EASO as applicable, may request the Member State concerned to draw up a crisis management action plan and, where necessary, revisions thereof. The crisis management action plan shall ensure, throughout the entire process, compliance with the asylum *acquis* of the Union, in particular with the fundamental rights of applicants for international protection.~~

~~Following the request to draw up a crisis management action plan, the Member State concerned shall, in cooperation with the Commission and EASO, do so promptly, and at the latest within three months of the request.~~

~~The Member State concerned shall submit its crisis management action plan and shall report, at least every three months, on its implementation to the Commission and other relevant stakeholders, such as EASO, as appropriate.~~

~~The Commission shall inform the European Parliament and the Council of the crisis management action plan, possible revisions and the implementation thereof. In those reports, the Member State concerned shall report on data to monitor compliance with the crisis management action plan, such as the length of the procedure, the detention conditions and the reception capacity in relation to the inflow of applicants.~~



~~4. Throughout the entire process for early warning, preparedness and crisis management established in this Article, the Council shall closely monitor the situation and may request further information and provide political guidance, in particular as regards the urgency and severity of the situation and thus the need for a Member State to draw up either a preventive action plan or, if necessary, a crisis management action plan. The European Parliament and the Council may, throughout the entire process, discuss and provide guidance on any solidarity measures as they deem appropriate.~~

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↓ new

## CHAPTER VII

### Corrective allocation mechanism

#### Article 34

#### General Principle

1. The allocation mechanism referred to in this Chapter shall be applied for the benefit of a Member State, where that Member State is confronted with a disproportionate number of applications for international protection for which it is the Member State responsible under this Regulation.

2. Paragraph 1 applies where the automated system referred to in Article 44(1) indicates that the number of applications for international protection for which a Member State is responsible under the criteria in Chapter III, Articles 3(2) or (3), 18 and 19, in addition to the number of persons effectively resettled, is higher than 150% of the reference number for that Member State as determined by the key referred to in Article 35.

3. The reference number of a Member State shall be determined by applying the key referred to in Article 35 to the total number of applications as well as the total number of resettled persons that have been entered by the respective Member States responsible in the automated system during the preceding 12 months.

4. The automated system shall inform Member States, the Commission and the European Union Agency for Asylum once per week of the Member States' respective shares in applications for which they are the Member State responsible.

5. The automated system shall continuously monitor whether any of the Member States is above the threshold referred to in paragraph 2, and if so, notify the Member States and the Commission of this fact, indicating the number of applications above this threshold.

6. Upon the notification referred to in paragraph 5, the allocation mechanism shall apply.

#### Article 35

#### Reference key

1. For the purpose of the corrective mechanism, the reference number for each Member State shall be determined by a key.
2. The reference key referred to in paragraph 1 shall be based on the following criteria for each Member State, according to Eurostat figures:
  - (a) the size of the population (50 % weighting);
  - (b) the total GDP (50% weighting);
3. The criteria referred to in paragraph 2 shall be applied by the formula as set out in Annex I.
4. The European Union Agency for Asylum shall establish the reference key and adapt the figures of the criteria for the reference key as well as the reference key referred to in paragraph 2 annually, based on Eurostat figures.

### *Article 36*

#### **Application of the reference key**

1. Where the threshold referred to in Article 34(2) is reached, the automated system referred to in Article 44(1) shall apply the reference key referred to in Article 35 to those Member States with a number of applications for which they are the Member States responsible below their share pursuant to Article 35(1) and notify the Member States thereof.
2. Applicants who lodged their application in the benefitting Member State after notification of allocation referred to in Article 34(5) shall be allocated to the Member States referred to in paragraph 1, and these Member States shall determine the Member State responsible;
3. Applications declared inadmissible or examined in accelerated procedure in accordance with Article 3(3) shall not be subject to allocation.
4. On the basis of the application of the reference key pursuant to paragraph 1, the automated system referred to in Article 44(1) shall indicate the Member State of allocation and communicate this information not later than 72 hours after the registration referred to in Article 22(1) to the benefitting Member State and to the Member State of allocation, and add the Member State of allocation in the electronic file referred to in Article 23(2).

### *Article 37*

#### **Financial solidarity**

1. A Member State may, at the end of the three-month period after the entry into force of this Regulation and at the end of each twelve-month period thereafter, enter in the automated system that it will temporarily not take part in the corrective allocation mechanism set out in Chapter VII of this Regulation as a Member State of allocation and notify this to the Member States, the Commission and the European Union Agency for Asylum.
2. The automated system referred to in Article 44(1) shall in that case apply the reference key during this twelve-month period to those Member States with a number of applications for which they are the Member States responsible below their share pursuant to Article 35(1), with the exception of the Member State which entered the information, as well as the

benefitting Member State. The automated system referred to in Article 44(1) shall count each application which would have otherwise been allocated to the Member State which entered the information pursuant to Article 36(4) for the share of that Member State.

3. At the end of the twelve-month period referred to in paragraph 2, the automated system shall communicate to the Member State not taking part in the corrective allocation mechanism the number of applicants for whom it would have otherwise been the Member State of allocation. That Member State shall thereafter make a solidarity contribution of EUR 250,000 per each applicant who would have otherwise been allocated to that Member State during the respective twelve-month period. The solidarity contribution shall be paid to the Member State determined as responsible for examining the respective applications.

4. The Commission shall, by means of implementing acts, adopt a decision in accordance with the examination procedure referred to in Article 56, lay down the modalities for the implementation of paragraph 3.

5. The European Union Agency for Asylum shall monitor and report to the Commission on a yearly basis on the application of the financial solidarity mechanism.

#### *Article 38*

##### **Obligations of the benefitting Member State**

The benefitting Member State shall:

- (a) take a decision at the latest within one week from the communication referred to in Article 36(4) to transfer the applicant to the Member State of allocation, unless the benefitting Member State can accept within the same time limit responsibility for examining the application pursuant to the criteria set out in Articles 10 to 13 and Article 18;
- (b) notify without delay the applicant of the decision to transfer him or her to the Member State of allocation;
- (c) transfer the applicant to the Member State of allocation, at the latest within four weeks from the final transfer decision.

#### *Article 39*

##### **Obligations of the Member State of allocation**

The Member State of allocation shall:

- (a) confirm to the benefitting Member State the receipt of the allocation communication and indicate the competent authority to which the applicant shall report following his or her transfer;
- (b) communicate to the benefitting Member State the arrival of the applicant or the fact that he or she did not appear within the set time limit;

- (c) receive the applicant and carry out the personal interview pursuant to Article 7, where applicable;
- (d) examine his or her application for international protection as Member State responsible, unless, according to the criteria set out in Articles 10 to 13 and 16 to 18, a different Member State is responsible for examining the application;
- (e) where, according to the criteria set out in Articles 10 to 13 and 16 to 18 a different Member State is responsible for examining the application, the Member State of allocation shall request that other Member State to take charge of the applicant;
- (f) where applicable, communicate to the Member State responsible the transfer to that Member State;
- (g) where applicable, transfer the applicant to the Member State responsible;
- (h) where applicable, enter in the electronic file referred to in Article 23(2) that it will examine the application for international protection as Member State responsible.

#### Article 40

##### **Exchange of relevant information for security verification**

1. Where a transfer decision according to point (a) of Article 38 is taken, the benefitting Member State shall transmit, at the same time and for the sole purpose of verifying whether the applicant may for serious reasons be considered a danger to the national security or public order, the fingerprint data of the applicant taken pursuant to Regulation (*Proposal for a Regulation recasting Regulation 603/2013/EU*) to the Member State of allocation.

2. Where, following a security verification, information on an applicant reveals that he or she is for serious reasons considered to be a danger to the national security or public order, information on the nature of the alert shall be shared with the law enforcement authorities in the benefitting Member State and shall not be communicated via the electronic communication channels referred to in Article 47(4).

The Member State of allocation shall inform the benefitting Member State of the existence of such alert, specifying the law enforcement authorities in the Member State of application that have been fully informed, and record the existence of the alert in the automated system pursuant to point d of Article 23(2), within one week of receipt of the fingerprints.

3. Where the outcome of the security verification confirms that the applicant may for serious reasons be considered a danger to the national security or public order, the benefitting Member State of application shall be the Member State responsible and shall examine the application in accelerated procedure pursuant to Article 31(8) of Directive 2013/32/EU.

4. The information exchanged shall only be used for the purposes set out in paragraph 1 and shall not be further processed.

#### Article 41

##### **Procedure for allocation**

1. Chapter V and Sections II to VII of Chapter VI shall apply *mutatis mutandis*.

2. Family members to whom the procedure for allocation applies shall be allocated to the same Member State.

#### *Article 42*

##### **Costs of allocation transfers**

For the costs to transfer an applicant to the Member State of allocation, the benefitting Member State shall be refunded by a lump sum of EUR 500 for each person transferred pursuant to Article 38(c). This financial support shall be implemented by applying the procedures laid down in Article 18 of Regulation (EU) No 516/2014.

#### *Article 43*

##### **Cessation of corrective allocation**

The automated system shall notify the Member States and the Commission as soon as the number of applications in the benefitting Member State for which it is the Member State responsible under this Regulation is below 150 % of its share pursuant to Article 35(1).

Upon the notification referred to in paragraph 2, the application of the corrective allocation shall cease for that Member State.

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↓ 604/2013

## **CHAPTER ~~VII~~ VIII**

### ***ADMINISTRATIVE COOPERATION***

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↓ new

#### *Article 44*

##### **Automated system for registration, monitoring and the allocation mechanism**

1. For the purposes of the registration and monitoring the share of applications for international protection pursuant to Article 22 and of the application of the allocation mechanism set out in Chapter VII an automated system shall be established.

2. The automated system shall consist of the central system and the communication infrastructure between the central system and the national infrastructures.

3. The European agency for the operational management of large scale IT systems in the area of freedom, security and justice established by Regulation (EU) No 1077/2011 shall be responsible for the preparation, development and the operational management of the central system and the communication infrastructure between the central system and the national infrastructures.

4. The national infrastructures shall be developed and managed by the Member States.

#### *Article 45*

##### **Access to the automated system**

1. The competent asylum authorities of the Member States referred to in Article 47 shall have access to the automated system referred to in Article 44(1) for entering the information referred to in Article 20(7), Article 22(1), (4) and (5), Article 37(1) and point (h) of Article 39.

2. The European Union Agency for Asylum shall have access to the automated system for entering and adapting the reference key pursuant to Article 35(4) and for entering the information referred to in Article 22(3).

3. The information referred to in Article 23(2), Article 36(4) and point h of Article 39 shall be accessible for consultation only by the competent asylum authorities of the Member States referred to in Article 47 for the purposes of this Regulation and of Regulation *[Proposal for a Regulation recasting Regulation (EU) No 603/2013]*.

4. The Commission shall, by means of implementing acts, adopt uniform conditions and practical arrangements for entering and consulting the information referred to in paragraphs 1 and 3. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 56(2).

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↓ 604/2013 (adapted) ⇒ new
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#### *Article ~~34~~ 46*

##### **Information sharing**

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the applicant as is ☒ adequate ☒ ~~appropriate~~, relevant and ~~non-excessive~~  
⇒ limited to what is necessary ⇐ for:

- (a) determining the Member State responsible;
- (b) examining the application for international protection;
- (c) implementing any obligation arising under this Regulation.

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

- (a) personal details of the applicant, and, where appropriate, his or her family members, relatives or any other family relations (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);
- (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);
- (c) other information necessary for establishing the identity of the applicant, including fingerprints ~~processed~~ ⇒ taken of the applicant by the Member State, in particular for the purposes of Article 40 ⇐ in accordance with Regulation [*Proposal for a Regulation recasting Regulation (EU) No 603/2013*];
- (d) places of residence and routes travelled;
- (e) residence documents or visas issued by a Member State;
- (f) the place where the application was lodged;
- (g) the date on which any previous application for international protection was lodged, the date on which the 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 international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for international protection, obtained by the requesting Member State. In that case, the applicant must know for what specific information he or she is giving his or her approval.

4. Any request for information shall only be sent in the context of an individual application for international protection. It shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. 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 an individual applicant.

5. The requested Member State shall be obliged to reply within ~~five~~ ⇒ two ⇐ weeks. Any delays in the reply shall be duly justified. Non-compliance with the ~~five~~ ⇒ two ⇐ week time limit shall not relieve the requested Member State of the obligation to reply. If the research carried out by the requested Member State which did not respect the maximum time limit withholds information which shows that it is responsible, ~~that Member State may not invoke~~

~~the expiry of the time limits provided for in Articles 21, 23 and 24 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, 24, 23 and 24 for submitting a request to take charge or take back shall be extended by a period of time which shall be equivalent to the delay in the reply by the requested Member State.~~

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission in accordance with Article ~~35~~ 47(1).

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

- (a) determining the Member State responsible;
- (b) examining the application for international protection;
- (c) implementing any obligation arising under this Regulation.

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

~~9. The applicant shall have the right to be informed, on request, of any data that is processed concerning him or her.~~

~~If the applicant finds that the data have been processed in breach of this Regulation or of Directive 95/46/EC, in particular because they are incomplete or inaccurate, he or she shall be entitled to have them corrected or erased.~~

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

~~The applicant shall have the right to bring an action or a complaint before the competent authorities or courts or tribunals of the Member State which refused the right of access to or the right of correction or erasure of data relating to him or her.~~

~~10~~8. 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 they are exchanged.~~

~~12. Where the data are not processed automatically or are not contained, or intended to be entered, in a file, each Member State shall take appropriate measures to ensure compliance with this Article through effective checks.~~



### Competent authorities and resources

1. Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. The Member States shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge, ~~of and requests to take back~~ ⇒ notifications and, if applicable, complying with their obligations under the allocation mechanism ⇐ ~~applicants~~.

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.

4. The Commission shall, by means of implementing acts, establish secure electronic transmission channels between the authorities referred to in paragraph 1 ⇒ and between those authorities and the European Union Agency for Asylum ⇐ for transmitting ⇒ information, fingerprint data taken in accordance with Regulation [*Proposal for a Regulation recasting Regulation 603/2013/EU*], ⇐ requests, ⇒ notifications, ⇐ replies and all written correspondence and for ensuring that senders automatically receive an electronic proof of delivery. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ 56(2).

### Administrative arrangements

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

(a) exchanges of liaison officers;

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

2. Member States may also maintain the administrative arrangements concluded under Regulation (EC) No 343/2003 ⇒ and Regulation (EU) No 604/2013⇐. 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 time in such a way as to eliminate any incompatibilities observed.~~

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

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↓ new

#### *Article 49*

### **Network of Dublin units**

The European Union Agency for Asylum shall set up and facilitate the activities of a network of the competent authorities referred to in Article 47 (1), with a view to enhancing practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance.

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↓ 604/2013 (adapted)

⇒ new

## **~~CHAPTER VIII~~**

## **~~CONCILIATION~~**

#### *Article 37*

### **~~Conciliation~~**

~~1. Where the Member States cannot resolve a dispute on any matter related to the application of this Regulation, they may have recourse to the conciliation procedure provided for in paragraph 2.~~

~~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 44. 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 or her deputy, shall chair the discussion. He or she may put forward his or her point of view but may not vote.~~

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

## CHAPTER IX

### ***TRANSITIONAL PROVISIONS AND FINAL PROVISIONS***

#### *Article ~~38~~ 50*

#### **Data security and data protection**

1. Member States shall ~~take all~~ ☒ implement ☒ appropriate ☒ technical and organisational ☒ measures to ensure the security of ~~transmitted~~ personal data ☒ processed under this Regulation ☒ and in particular to ~~avoid~~ ☒ prevent ☒ unlawful or unauthorised 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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↓ new

2. The competent supervisory authority or authorities of each Member State shall monitor the lawfulness of the processing of personal data by the authorities referred to in Article 47 of the Member State in question, including of the transmission to and from the automated system referred to in Article 44(1) and to the authorities competent for carrying out checks referred to in Article 40.

3. The processing of personal data by the European Union Agency for Asylum shall be subject to the monitoring of the European Data Protection Supervisor in accordance with Regulation (EC) No 45/2001 and the provisions on data protection laid down in [*Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010*].

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↓ 604/2013 (adapted)  
☒ new

#### *Article ~~39~~ 51*

#### **Confidentiality**

Member States shall ensure that the authorities referred to in Article ~~35~~ 47 are bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

#### Article ~~40~~ 52

##### Penalties

Member States shall ☒ lay down the rules on ☒ ~~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, ☒ applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be ☒ ~~that are~~ effective, proportionate and dissuasive.

#### Article ~~41~~ 53

##### Transitional measures

Where an application has been lodged after [~~the first day following the entry into force of this Regulation]~~ ~~the date mentioned in the second paragraph of Article 49~~, 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 13(2).~~

☒ By way of derogation from Article 34(2), during the first three months after entry into force of this Regulation, the corrective allocation mechanism shall not be triggered. By way of derogation from Article 34(3), after the expiry of the three month period following the entry into force of this Regulation and until the expiry of one year following the entry into force of this Regulation, the reference period shall be the period which has elapsed since the entry into force of this Regulation. ☒

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↓ 604/2013

#### Article ~~42~~ 54

##### Calculation of time limits

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.

*Article ~~43~~ 55*

**Territorial scope**

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

*Article ~~44~~ 56*

**Committee**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

*Article ~~45~~ 57*

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles ~~8(5)~~ 10(6) and ~~16~~ 18(3) shall be conferred on the Commission for a period of 5 years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles ~~8(5)~~ 10(6) and ~~16~~ 18(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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↓ 604/2013

⇒ new

⊗ 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. ⊗

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↓ 604/2013

45. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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↓ 604/2013 (adapted)

⇒ new

56. A delegated act adopted pursuant to Articles ~~8(5)~~ 10(6) and ~~16~~ 18(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ~~four~~ ⇒ two ⇐ months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article ~~46~~ 58

#### ⊗ Review, ⊗ ~~m~~Monitoring and evaluation

By [18 months after entry into force] and from then on annually, the Commission shall review the functioning of the corrective allocation mechanism set out in Chapter VII of this Regulation and in particular the thresholds set out in Article 34(2) and Article 43 thereof.

By ⇒ [three years after entry into force] ⇐ ~~21 July 2016~~, the Commission shall report to the European Parliament and to the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

After having submitted that report, the Commission shall report to the European Parliament and to 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 ~~40-42~~ of Regulation [Proposal for a Regulation recasting Regulation (EU) No 603/2013].

Article ~~47~~ 59

#### Statistics

1. In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council ~~of 11 July 2007 on Community statistics on migration and international protection~~<sup>31</sup>, Member States shall communicate to the Commission (Eurostat), statistics concerning the application of this Regulation and of Regulation (EC) No 1560/2003.

⇒2. The European Union Agency for Asylum shall publish at quarterly intervals the information transmitted pursuant to Article 34(4) ⇐.

## *Article ~~48~~ 60*

### **Repeal**

Regulation ~~(EC) No 343/2003~~ ⇔ **(EU) No 604/2013** ⇔ is repealed ⇒ for the Member States bound by this Regulation as concerns their obligations in their relations between themselves⇐.

~~Articles 11(1), 13, 14 and 17 of 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.

## *Article ~~49~~ 61*

### **Entry into force and applicability**

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

It shall apply to applications for international protection lodged as from [⇔ the first day following its entry into force ⇔ ] ~~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 applicants, irrespective of the date on which the application was made~~. The Member State responsible for the examination of an application for international protection submitted before that date shall be determined in accordance with the criteria set out in Regulation ~~343/2003~~604/2013.

~~References in this Regulation to Regulation (EU) No 603/2013, Directive 2013/32/EU and Directive 2013/33/EU shall be construed, until the dates of their application, as references to Regulation (EC) No 2725/2000<sup>32</sup>, Directive 2003/9/EC<sup>33</sup> and Directive 2005/85/EC<sup>34</sup> respectively.~~

<sup>31</sup> Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection (OJ L 199, 31.7.2007, p. 23).

<sup>32</sup> Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15.12.2000, p. 1).

<sup>33</sup> Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31, 6.2.2003, p. 18).

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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<sup>34</sup> ~~Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).~~



**ANNEX I**

**~~REPEALED REGULATIONS (REFERRED TO IN ARTICLE 48)~~**

~~Council Regulation (EC) No 343/2003~~

~~(OJ L 50, 25.2.2003, p. 1)~~

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

~~(OJ L 222, 5.9.2003, p. 3)~~

## ANNEX II

### ***CORRELATION TABLE***

<del>Regulation (EC) No 343/2003</del>	<del>This Regulation</del>
<del>Article 1</del>	<del>Article 1</del>
<del>Article 2(a)</del>	<del>Article 2(a)</del>
<del>Article 2(b)</del>	<del>—</del>
<del>Article 2(c)</del>	<del>Article 2(b)</del>
<del>Article 2(d)</del>	<del>Article 2(c)</del>
<del>Article 2(e)</del>	<del>Article 2(d)</del>
<del>Article 2(f)</del>	<del>Article 2(e)</del>
<del>Article 2(g)</del>	<del>Article 2(f)</del>
<del>—</del>	<del>Article 2(h)</del>
<del>—</del>	<del>Article 2(i)</del>
<del>Article 2(h)</del>	<del>Article 2(j)</del>
<del>Article 2(i)</del>	<del>Article 2(g)</del>
<del>—</del>	<del>Article 2(k)</del>
<del>Article 2(j) and (k)</del>	<del>Article 2(l) and (m)</del>
<del>—</del>	<del>Article 2(n)</del>
<del>Article 3(1)</del>	<del>Article 3(1)</del>
<del>Article 3(2)</del>	<del>Article 17(1)</del>
<del>Article 3(3)</del>	<del>Article 3(3)</del>
<del>Article 3(4)</del>	<del>Article 4(1), introductory wording</del>
<del>—</del>	<del>Article 4(1)(a) to (f)</del>
<del>—</del>	<del>Article 4(2) and (3)</del>

<del>Article 4(1) to (5)</del>	<del>Article 20(1) to (5)</del>
<del>—</del>	<del>Article 20(5), third subparagraph</del>
<del>—</del>	<del>Article 5</del>
<del>—</del>	<del>Article 6</del>
<del>Article 5(1)</del>	<del>Article 7(1)</del>
<del>Article 5(2)</del>	<del>Article 7(2)</del>
<del>—</del>	<del>Article 7(3)</del>
<del>Article 6, first paragraph</del>	<del>Article 8(1)</del>
<del>—</del>	<del>Article 8(3)</del>
<del>Article 6, second paragraph</del>	<del>Article 8(4)</del>
<del>Article 7</del>	<del>Article 9</del>
<del>Article 8</del>	<del>Article 10</del>
<del>Article 9</del>	<del>Article 12</del>
<del>Article 10</del>	<del>Article 13</del>
<del>Article 11</del>	<del>Article 14</del>
<del>Article 12</del>	<del>Article 15</del>
<del>—</del>	<del>Article 16</del>
<del>Article 13</del>	<del>Article 3(2)</del>
<del>Article 14</del>	<del>Article 11</del>
<del>Article 15(1)</del>	<del>Article 17(2), first subparagraph</del>
<del>Article 15(2)</del>	<del>Article 16(1)</del>
<del>Article 15(3)</del>	<del>Article 8(2)</del>
<del>Article 15(4)</del>	<del>Article 17(2), fourth subparagraph</del>
<del>Article 15(5)</del>	<del>Articles 8(5) and (6) and Article 16(2)</del>
<del>Article 16(1)(a)</del>	<del>Article 18(1)(a)</del>
<del>Article 16(1)(b)</del>	<del>Article 18(2)</del>

<del>Article 16(1)(e)</del>	<del>Article 18(1)(b)</del>
<del>Article 16(1)(d)</del>	<del>Article 18(1)(e)</del>
<del>Article 16(1)(e)</del>	<del>Article 18(1)(d)</del>
<del>Article 16(2)</del>	<del>Article 19(1)</del>
<del>Article 16(3)</del>	<del>Article 19(2), first subparagraph</del>
<del>—</del>	<del>Article 19(2), second subparagraph</del>
<del>Article 16(4)</del>	<del>Article 19(3)</del>
<del>==</del>	<del>Article 19(3), second subparagraph</del>
<del>Article 17</del>	<del>Article 21</del>
<del>Article 18</del>	<del>Article 22</del>
<del>Article 19(1)</del>	<del>Article 26(1)</del>
<del>Article 19(2)</del>	<del>Article 26(2) and Article 27(1)</del>
<del>==</del>	<del>Article 27(2) to (6)</del>
<del>Article 19(3)</del>	<del>Article 29(1)</del>
<del>Article 19(4)</del>	<del>Article 29(2)</del>
<del>—</del>	<del>Article 29(3)</del>
<del>Article 19(5)</del>	<del>Article 29(4)</del>
<del>Article 20(1), introductory wording</del>	<del>Article 23(1)</del>
<del>—</del>	<del>Article 23(2)</del>
<del>—</del>	<del>Article 23(3)</del>
<del>—</del>	<del>Article 23(4)</del>
<del>Article 20(1)(a)</del>	<del>Article 23(5), first subparagraph</del>
<del>—</del>	<del>Article 24</del>
<del>Article 20(1)(b)</del>	<del>Article 25(1)</del>
<del>Article 20(1)(c)</del>	<del>Article 25(2)</del>

<del>Article 20(1)(d)</del>	<del>Article 29(1), first subparagraph</del>
<del>Article 20(1)(e)</del>	<del>Article 26(1), (2), Article 27(1), Article 29(1), second and third subparagraphs</del>
<del>Article 20(2)</del>	<del>Article 29(2)</del>
<del>Article 20(3)</del>	<del>Article 23(5), second subparagraph</del>
<del>Article 20(4)</del>	<del>Article 29(4)</del>
<del>—</del>	<del>Article 28</del>
<del>==</del>	<del>Article 30</del>
<del>—</del>	<del>Article 31</del>
<del>—</del>	<del>Article 32</del>
<del>—</del>	<del>Article 33</del>
<del>Article 21(1) to (9)</del>	<del>Article 34(1) to (9), first to third subparagraphs</del>
<del>==</del>	<del>Article 34(9), fourth subparagraph</del>
<del>Article 21(10) to (12)</del>	<del>Article 34(10) to (12)</del>
<del>Article 22(1)</del>	<del>Article 35(1)</del>
<del>—</del>	<del>Article 35(2)</del>
<del>==</del>	<del>Article 35(3)</del>
<del>Article 22(2)</del>	<del>Article 35(4)</del>
<del>Article 23</del>	<del>Article 36</del>
<del>—</del>	<del>Article 37</del>
<del>—</del>	<del>Article 40</del>
<del>Article 24(1)</del>	<del>—</del>
<del>Article 24(2)</del>	<del>Article 41</del>
<del>Article 24(3)</del>	<del>—</del>
<del>Article 25(1)</del>	<del>Article 42</del>

<del>Article 25(2)</del>	<del>—</del>
<del>Article 26</del>	<del>Article 43</del>
<del>Article 27(1), (2)</del>	<del>Article 44(1), (2)</del>
<del>Article 27(3)</del>	<del>—</del>
<del>—</del>	<del>Article 45</del>
<del>Article 28</del>	<del>Article 46</del>
<del>—</del>	<del>Article 47</del>
<del>—</del>	<del>Article 48</del>
<del>Article 29</del>	<del>Article 49</del>

<del>Regulation (EC) No 1560/2003</del>	<del>This Regulation</del>
<del>Article 11(1)</del>	<del>—</del>
<del>Article 13(1)</del>	<del>Article 17(2), first subparagraph</del>
<del>Article 13(2)</del>	<del>Article 17(2), second subparagraph</del>
<del>Article 13(3)</del>	<del>Article 17(2), third subparagraph</del>
<del>Article 13(4)</del>	<del>Article 17(2), first subparagraph</del>
<del>Article 14</del>	<del>Article 37</del>
<del>Article 17(1)</del>	<del>Articles 9, 10, 17(2), first subparagraph</del>
<del>Article 17(2)</del>	<del>Article 34(3)</del>



## ANNEX I

Formula for the reference key pursuant to Article 35 of the Regulation:

$$\text{Population effect}_{\text{MS}} = \frac{\text{Population}_{\text{MS}}}{\text{Population}_{\text{EU25}}}^{35}$$

$$\text{GDP effect}_{\text{MS}} = \frac{\text{GDP}_{\text{MS}}}{\text{GDP}_{\text{EU25}}}^{36}$$

$$\text{Share}_{\text{MS}} = 50\% \text{ Population effect}_{\text{MS}} + 50\% \text{ GDP effect}_{\text{MS}}$$

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<sup>35</sup> For three Member States, participation depends on the exercise of rights as set out in the relevant Protocols and other instruments.

<sup>36</sup> For three Member States, participation depends on the exercise of rights as set out in the relevant Protocols and other instruments.

## **ANNEX II**

### **CORRELATION TABLE**

<b>Regulation (EU) No 604/2013</b>	<b>This Regulation</b>
Article 1	Article 1
Article 2, introductory wording	Article 2, introductory wording
Article 2(a) to (n)	Article 2(a) to (n)
-	Article 2(o), (p), (q) and (r)
Article 3(1) and (2)	Article 3(1) and (2)
Article 3(3)	-
-	Article 3(3),(4) and (5)
-	Articles 4 and 5
Article 4(1), introductory wording	Article 6(1), introductory wording
-	Article 6(1)(a)
Article 4(1)(a)	Article 6(1)(b)
Article 4(1)(b)	Article 6(1)(c)
Article 4(1)(c)	Article 6(1)(d)
Article 4(1)(d)	Article 6(1)(e)
Article 4(1)(e)	Article 6(1)(f)
-	Article 6(1)(g)
Article 4(1)(f)	Article 6(1)(h)
-	Article 6(1)(i)
Article 4(2) and (3)	Article 6(2) and (3)
Article 5(1)	Article 7(1)
Article 5(2)	-
Article 5(3)	Article 7(2)



Article 5(4)	Article 7(3)
Article 5(5)	Article 7(4)
Article 5(6)	Article 7(5)
Article 6(1), (2) and (3)	Article 8(1), (2) and (3)
-	Article 8(4)
Article 6(4)	Article 8(5)
Article 6(5)	Article 8(6)
Article 7(1) and (2)	Article 9(1) and (2)
Article 7(3)	-
-	Article 10(1)
Article 8(1)	Article 10(2)
Article 8(2)	Article 10(3)
Article 8(3)	Article 10(4)
Article 8(4)	Article 10(5)
Article 8(5)	Article 10(6)
Article 8(6)	Article 10(7)
Article 9	Article 11
Article 10	Article 12
Article 11	Article 13
Article 12(1), (2) and (3)	Article 14(1), (2) and (3)
Article 12(4)	-
Article 12(5)	Article 14(4)
Article 13(1)	Article 15
Article 13(2)	-
Article 14(1)	Article 16
Article 14(2)	-
Article 15	Article 17

Article 16	Article 18
Article 17	Article 19
Article 18(1), introductory wording	Article 20(1), introductory wording
Article 18(1)(a) to (d)	Article 20(1)(a) to (d)
-	Article 20(e)
-	Article 20(2), (3), (4), (5), (6) and (7)
Article 18(2)	-
Article 19	-
Article 20(1), (2), (3) and (4)	Article 21(1), (2), (3) and (4)
Article 20(5), first subparagraph	Article 21(5), first subparagraph
Article 20(5), second and third subparagraphs	-
-	Article 22
-	Article 23
Article 21(1)	Article 24(1)
Article 21(2)	-
Article 21(3)	Article 24(2)
Article 22(1)	Article 25(1)
-	Article 25(2)
Article 22(2)	Article 25(3)
Article 22(3)	Article 25(4)
Article 22(4)	Article 25(5)
Article 22(5)	Article 25(6)
Article 22(6)	-
Article 22(7)	Article 25(7)
Article 23(1)	Article 26(1)
Article 23(2)	-
Article 23(3)	-

Article 23(4)

-

-

Article 24

Article 25

Article 26(1)

-

Article 26(3)

Article 27(1), (2) and (3)

Article 27(4)

-

-

Article 27(5)

Article 27(6)

Article 28

Article 29(1)

Article 29(2)

Article 29(3)

Article 29(4)

Article 30

Article 31

Article 32

Article 33

-

-

-

-

Article 26(2)

Article 26(3)

Article 26(4)

-

-

Article 27(1) and (3)

Article 27(2)

Article 27(4)

Article 28(1), (2) and (3)

-

Article 28(4)

Article 28(5)

Article 28(6)

Article 28(7)

Article 29

Article 30(1)

-

Article 30(2)

Article 30(3)

Article 31

Article 32

Article 33

-

Article 34

Article 35

Article 36

Article 37

-	Article 38
-	Article 39
-	Article 40
-	Article 41
-	Article 42
-	Article 43
-	Article 44
-	Article 45
Article 34(1), (2), (3), (4), (5), (6) and (7)	Article 46(1), (2), (3), (4), (5), (6) and (7)
Article 34(8)	-
Article 34(9)	-
Article 34(10)	Article 46(8)
Article 34(11)	-
Article 34(12)	-
Article 35	Article 47
Article 36(1) and (2)	Article 48(1) and (2)
Article 36(3)	-
Article 36(4)	-
Article 36(5)	-
-	Article 49
Article 37	-
Article 38(1) first subparagraph	Article 50(1)
Article 38(1), second subparagraph	-
-	Article 50(2)
-	Article 50(3)
Article 39	Article 51
Article 40	Article 52

Article 41	Article 53, first subparagraph
-	Article 53, second subparagraph
Article 42	Article 54
Article 43	Article 55
Article 44	Article 56
Article 45(1), (2) and (3)	Article 57(1), (2) and (3)
-	Article 57(4)
Article 45(4)	Article 57(5)
Article 45(5)	Article 57(6)
Article 46	Article 58
Article 47	Article 59
-	Article 59(2)
Article 48	Article 60
Article 49	Article 61
Annex I	-
Annex II	-
-	Annex I
-	Annex II

## **LEGISLATIVE FINANCIAL STATEMENT**

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

- **Title of the proposal/initiative**

Proposal for Regulation 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)

- **Policy area(s) concerned in the ABM/ABB structure<sup>37</sup>**

18 – Migration and Home Affairs

- **Nature of the proposal/initiative**

☐ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action<sup>38</sup>**

☒ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

- **Objective(s)**
- *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

In the European Agenda on Migration (COM(2015)240 final) the Commission announced that it will evaluate the Dublin system and determine whether a revision of the legal parameters of Dublin will be needed to achieve a fairer distribution of asylum seekers in Europe.

The crisis has exposed significant structural weaknesses and shortcomings in the design and implementation of European asylum and migration policy, including the Dublin system which was not designed to ensure a sustainable sharing of responsibility for asylum applicants across the EU. As noted in the conclusions of the European Council of 18-19 February 2016 and those of 17-18 March 2016, it is time for progress to be made in reforming the EU's existing framework so as to ensure a humane and efficient asylum policy.

On 6 April 2016 in its Communication "Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe" (COM(2016) 197 final), the Commission considered it a priority to establish a sustainable and fair system for

<sup>37</sup>

ABM: activity-based management; ABB: activity-based budgeting.

<sup>38</sup>

As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

determining the Member State responsible for asylum seekers ensuring a high degree of solidarity and a fair sharing of responsibility between Member States through a fair allocation of asylum seekers. It committed to proposing to amend the Dublin Regulation by either streamlining and supplementing it with a corrective fairness mechanism or moving to a new system based on a distribution key.

A fair allocation of asylum seekers would significantly change the current financial landscape and support should be provided for developing the reception capacity, both infrastructure and running costs, especially in those Member States which did not have to deal with a high number of asylum seekers up so far.

- *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No

1.3: Enhance protection and solidarity

ABM/ABB activity(ies) concerned

18.03 – Asylum and Migration

To enhance efficiency and effectiveness of the system for determining the Member State responsible for examining an application for international protection lodged in a Member State by a third country national .

To enhance solidarity and responsibility-sharing between the Member States.

- *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

Member States and the European Union as a whole will benefit from improving an efficiency and effectiveness of the streamlined Dublin Regulation, operational also in cases of high influx of third country nationals. Member States with a disproportionate number of applications for which they would be responsible will benefit from a corrective allocation mechanism, which will relieve the particular pressure they are subject to and enable them to deal with the backlog of applications.

Applicants for international protection will benefit from more efficient and faster system of determining a responsible Member State, which will enable quicker access to an asylum procedure and the examination of an application in substance by a single, clearly determined, Member State.

It is expected that reception capacity would be increased, in particular in those Member States which did not yet need to deal with a high number of asylum seekers. Also, Member States would be supported to provide food and basic assistance to the transferred asylum seekers.

- *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

Set up and functioning of the automated system within 6 months since entry into force of this Regulation.

Number of transfers of applicants for international protection.

Number of reception places partly supported under the additional funding to be allocated to the Asylum, Migration and Integration Fund (AMIF) for the implementation of this proposal in the period 2017-2020.

Number of transferred asylum seekers provided with assistance each year under the additional funding to be allocated to the AMIF for the implementation of this proposal.

- **Grounds for the proposal/initiative**
- *Requirement(s) to be met in the short or long term*

The proposal aims to:

- enhance the Dublin system's capacity to determine efficiently and effectively a member state responsible for examining the application for international protection by streamlining the criteria and mechanisms for determination of Member State responsible;
- contribute to preventing secondary movements within the EU, including by discouraging abuses and asylum shopping;



- ensure a high degree of solidarity and fair sharing of responsibility by providing for a corrective allocation mechanism activated in cases where any Member State receives a disproportionate number of applications for examination of which it would be responsible.

- *Added value of EU involvement*

The establishment of 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 cannot be achieved by the Member States acting on their own and can only be achieved at Union level.

The added value of this proposal is streamlining and enhancing effectiveness of the current Dublin Regulation and providing for a corrective fairness mechanism that is applied during a period of disproportionate pressure on a Member State for its benefit.

- *Lessons learned from similar experiences in the past*

The Commission evaluation has concluded that the current Dublin system is not satisfactory. This requires a number of changes aimed at streamlining it and making it more efficient.

The Dublin system was not designed as an instrument for solidarity and sharing of responsibility. The migration crisis exposed this deficiency, which calls for inclusion of a corrective allocation system in the proposal.

- *Compatibility and possible synergy with other appropriate instruments*

#### 1. Transfer costs:

Under the present proposal, the Member State carrying out the transfer to the Member State of allocation is entitled to receive a lump sum of EUR 500 for each person transferred, which should be implemented under AMIF shared management.

AMIF already foresees the possibility of transfer of applicants for international protection as part of the national programme of each Member State on a voluntary basis (Article 7 and Article 18 of Regulation (EU) No. 516/2014).

Under Council Decisions (2015/1523 and 2015/1601), establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, 160 000 third country nationals should be transferred by 26 September 2017. This proposal does not affect the implementation of those decisions.

Appropriate mechanisms will be established to enhance the synergies and avoid any overlaps between the new proposal and the already existing instruments.

2. Establishment and technical maintainance of automated IT system for allocation of asylum seekers:

The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) shall be responsible for the preparation, development and the operational management of the automated IT system for the allocation of the asylum seekers.

3. Increase in the reception capacity:

To support the implementation of this Regulation, additional reception capacity would be needed, in particular in those Member States which did not have to deal with a high number of asylum seekers up so far.

4. Provision of food and basic services to the transferred asylum seekers:

To support the implementation of this Regulation, support would be needed for the provision of food and basic services to the transferred asylum seekers.

- **Duration and financial impact**

☐ Proposal/initiative of **limited duration**

- ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- ☐ Financial impact from 2016 to 2020

✓ Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from 2017 to 2020,
- followed by full-scale operation.

- **Management mode(s) planned**

☐ **Direct management** by the Commission

- ☐ by its departments, including by its staff in the Union delegations;
- ☐ by the executive agencies

✓ **Shared management** with the Member States

✓ **Indirect management** by entrusting budget implementation tasks to:

- ☐ third countries or the bodies they have designated;
- ☐ international organisations and their agencies (to be specified);
- ☐ the EIB and the European Investment Fund;
- ✓ bodies referred to in Articles 208 and 209 of the Financial Regulation;
- ☐ public law bodies;
- ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

The transfers and support to reception capacity and running costs will be covered under AMIF shared management.

The establishment and technical maintainance of the IT system will be entrusted to eu-LISA (indirect management) and the related costs are covered under this proposal.

- **MANAGEMENT MEASURES**
- **Monitoring and reporting rules**

*Specify frequency and conditions.*

By two years after entry into force of the Regulation, the Commission should report to the European Parliament and to the Council on the application of this Regulation and, where appropriate, should propose the necessary amendments. Member States should forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

After having submitted that report, the Commission shall report to the European Parliament and to 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 40 of Regulation (EU) No 603/2013).

For shared management, a coherent and efficient reporting, monitoring and evaluation framework is in place. For each national programme, Member States are required to set up a Monitoring Committee to which the Commission may participate in advisory capacity.

On an annual basis Member States will report on the implementation of the multiannual programme. These reports are a precondition for annual payments in the framework of the clearance of accounts procedure, set out in Regulation (EU) No. 514/2014.

By 30 June 2018, in accordance with Aarticle 57(2) of Regulation (EU) No 514/2014, the Commission will present an interim evaluation report on the implementation of the AMIF, which will also include the implementation of the financial resources made available by this Regulation.

Moreover, the Commission will submit an ex-post evaluation report by 30 June 2024, covering the impact of the implementation of AMIF on the development of the area of freedom, security and justice, inlcuding on the Common European Asylum System.

For the establishemnt and technical maintainance of the IT system (indirect management), eu-LISA will report regularly on the progress made. The Agency is subject to regular monitoring and reporting requirments. The Management Board of the Agency shall before 31 March each year, adopt a consolidated annual activity of the Agency for the previous year and forward it by 15 June at the latest to the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors. This report shall be made public. Every three years, the Commission shall conduct an evaluation in accordance with the evaluation criteria of the Commission guidelines to assess particularly the impact, effectiveness and efficiency of the Agency's performance and its working practices

in relation to its objectives, mandate and tasks. The evaluation shall, in particular, address the possible need to modify the mandate of the Agency, and the financial implications of any such modification.

- **Management and control system**
- *Risk(s) identified*

DG HOME has not been facing important risks of errors in its spending programmes. This is confirmed by the recurrent absence of significant findings in the annual reports of the Court of Auditors as well as by the absence of residual error rate above 2% in the past years in DG HOME annual activity reports.

The management and control system follows the general requirements set in the Common Strategic Framework Funds and fully complies with the requirements of the Financial Regulation.

Multi-annual programming coupled with annual clearance based on the payments made by the Responsible Authority aligns the eligibility periods with the annual accounts of the Commission.

On the spot checks will be carried out as part of the 1st level controls, i.e. by the Responsible Authority and will support its annual management declaration of assurance.

The use of lump sums (simplified cost option) for the transfers shall further reduce mistakes made by the responsible authorities when implementing this proposal.

- *Information concerning the internal control system set up*

In addition to the application of all regulatory control mechanisms, DG HOME will apply its antifraud strategy, which was adopted on 9 April 2013. This strategy was developed following the Commission's new anti-fraud strategy (CAFS) adopted on 24 June 2011, therefore it ensures inter alia that internal anti-fraud related controls are fully aligned with the CAFS and that its fraud risk management approach is geared to identify fraud risk areas and adequate responses.

Also, DG HOME has adopted on 4 November 2015 an Audit Strategy for the shared management part of AMIF and the Internal Security Fund (ISF). A Control Strategy for AMIF/ISF shared management is currently being developed by DG HOME. This strategy will include all controls needed for the management of the national programmes under AMIF and ISF.

- *Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error*

Negligeable control costs and very low error risk.

- **Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

As regards shared management, Member States are obliged, in accordance with Article 5 of Regulation (EU) No. 514/2014, to put in place fraud prevention measures which are effective and proportionate to the identified fraud risks.

As regards indirect management, the measures foreseen to combat fraud are laid down in Article 35 of Regulation (EU) 1077/2011 which provides as follows:

1. In order to combat fraud, corruption and other unlawful activities, Regulation (EC) No 1073/1999 shall apply.
2. The Agency shall accede to the Interinstitutional Agreement concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall issue, without delay, the appropriate provisions applicable to all the employees of the Agency.
3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks among the recipients of the Agency's funding and the agents responsible for allocating it.

In accordance with this provision, the decision of the Management Board of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Union's interests was adopted on 28 June 2012.

Also, the Commission's anti-fraud strategy will apply.

- **ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**
- **Heading(s) of the multiannual financial framework and expenditure budget line(s) affected**

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	3 Security and citizenship	Diff./Non-diff. <sup>39</sup>	from EFTA countries <sup>40</sup>	from candidate countries <sup>41</sup>	from third countries	within the meaning of Article 21(2) (b) of the Financial Regulation
	18.030101- Strengthening and developing the common European asylum system and enhancing solidarity and responsibility-sharing between the Member States	Diff.	NO	NO	YES*	YES
	18.0207- European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice	Diff.	NO	NO	YES*	NO

*\* possible contribution from the Schengen Associated Countries if these would participate in the new Dublin system*

<sup>39</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>40</sup> EFTA: European Free Trade Association.

<sup>41</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

- **Estimated impact on expenditure**
- *Summary of estimated impact on expenditure*

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	Number	3 Security and citizenship
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COMMISSION			Year 2017	Year 2018	Year 2019	Year 2020	Subsequent years	TOTAL
• Operational appropriations								
Number of budget line 18.030101	Commitments	(1)	445	460	460	460		1825
	Payments	(2)	33,3	261,35	457,35	460	613	1825
Number of budget line 18.0207	Commitments	(1a)	1,750	0,983	0,135	0,735		3,603
	Payments	(2a)	1,750	0,983	0,135	0,735		3,603
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>42</sup>								
Number of budget line		(3)						
<b>TOTAL appropriations for COMMISSION</b>	Commitments	=1+1a +3	446,75	460,983	460,135	460,735		1828,603
	Payments	=2+2a +3	35,05	262,333	457,485	460,735	613	1828,603
	Commitments	=4+ 6	446,75	460,983	460,135	460,735		1828,603

<sup>42</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.



<b>TOTAL appropriations under HEADING 3</b> of the multiannual financial framework	Payments	=5+ 6	35,05	262,333	457,485	460.735		613	1828,603
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**If more than one heading is affected by the proposal / initiative:**

• TOTAL operational appropriations	Commitments	(4)							
	Payments	(5)							
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)							
<b>TOTAL appropriations under HEADINGS 1 to 4</b> of the multiannual financial framework (Reference amount)	Commitments	=4+ 6	446,75	460,983	460,135	460,735			1828,603
	Payments	=5+ 6	35,05	262,333	457,485	460.735		<b>613</b>	1828,603

<b>Heading of multiannual financial framework</b>	<b>5</b>	‘Administrative expenditure’
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EUR million (to three decimal places)

		Year 2017	Year 2018	Year 2019	Year 2020	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
COMMISSION									
• Human resources		0,536	0,536	0,536	0,536				2,144
• Other administrative expenditure		0,06	0,06	0,03	0,03				0,18
<b>TOTAL</b>	Appropriations	0,596	0,596	0,566	0,566				2,324

<b>TOTAL appropriations under HEADING 5 of the multiannual financial framework</b>	(Total commitments = Total payments)	0,596	0,596	0,566	0,566				2,324
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EUR million (to three decimal places)

		Year 2017	Year 2018	Year 2019	Year 2020	Subsequent years	TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b>	Commitments	447,346	461,579	460,701	461,301		1830,927
	Payments	35,646	262,929	458,051	460735,5 66	613	1830,927

- *Estimated impact on operational appropriations*

- ☐ The proposal/initiative does not require the use of operational appropriations
- ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

*Commitment appropriations in EUR million (to three decimal places)*

Indicate objectives and outputs  ↓			Year 2017		Year 2018		Year 2019		Year 2020		Year 2021						TOTAL	
	OUTPUTS																	
	Type <sup>43</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 <sup>44</sup> ...																		
- Output	IT system and maintenance	n/a	1	1,750	1	0,983	1	0,135	1	0,735								3,603
- Output	Transfers	0,0005	150 000	75	200 000	100	200000	100	200000	100								375

<sup>43</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>44</sup> As described in point 1.4.2. 'Specific objective(s)...'

- Output	Reception places	0,002	50000	100														100
- Output	Running costs	0,0018	150000	270	200000	360	200000	360	200000	360								1350
<b>TOTAL COST</b>				446,75		460,983		460,135		460,735								1828,603

- *Estimated impact on appropriations of an administrative nature*

- Summary

- ☐ The proposal/initiative does not require the use of appropriations of an administrative nature
- ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year 2017	Year 2018	Year 2019	Year 2020	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
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<b>HEADING 5 of the multiannual financial framework</b>								
Human resources	0,536	0,536	0,536	0,536				2,144
Other administrative expenditure	0,06	0,06	0,03	0,03				0,18
<b>Subtotal HEADING 5 of the multiannual financial framework</b>	0,596	0,596	0,566	0,566				2,324

<b>Outside HEADING 5<sup>45</sup> of the multiannual financial framework</b>								
Human resources								
Other expenditure of an administrative nature								
<b>Subtotal outside HEADING 5 of the multiannual financial framework</b>								

<b>TOTAL</b>	0,596	0,596	0,566	0,566				2,324
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>45</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

### 1.1.1.1. Estimated requirements of human resources

- ☐ The proposal/initiative does not require the use of human resources.
- ☒ The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	Year 2017	Year 2018	Year 2019	Year 2020	Enter as many years as necessa ry to show the duratio n of the impact (see point 1.6)		
<b>• Establishment plan posts (officials and temporary staff)</b>							
18 01 01 01 (Headquarters and Commission's Representation Offices)	4	4	4	4			
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>46</sup></b>							
XX 01 02 01 (AC, END, INT from the 'global envelope')							
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)							
<b>XX 01 04 yy<sup>47</sup></b>	- at Headquarters						
	- in Delegations						
XX 01 05 02 (AC, END, INT - Indirect research)							
10 01 05 02 (AC, END, INT - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>			

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Support, process and monitor the activities related to the implementation of this
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<sup>46</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

<sup>47</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

	proposal, mainly regarding the transfer of applicants for international protection.
External staff	N/A

- *Compatibility with the current multiannual financial framework*

- ✓ The financial needs are compatible with the current multiannual financial framework and may entail the use of special instruments as defined in the Council Regulation (EU, Euratom) No 1311/2013.<sup>48</sup> □ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

[...]

- □ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

[...]

- *Third-party contributions*

- ✓ The proposal/initiative does not provide for co-financing by third parties.
- ✓ The proposal/initiative provides for the co-financing estimated below\*:

Appropriations in EUR million (to three decimal places)

	Year 2017	Year 2018	Year 2019	Year 2020	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body	pm	pm	pm	pm				pm
TOTAL appropriations co-financed	pm	pm	pm	pm				pm

\* *possible contribution from the Schengen Associated Countries if these would participate in the new Dublin system*

<sup>48</sup> Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).