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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.12.2008  
COM(2008) 820 final

2008/0243 (COD)

Proposal for a

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

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

(Recast)

{SEC(2008) 2962}

{SEC(2008) 2963}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal is a recasting of Council Regulation (EC) No 343/2003/EC of 18 February 2003 on 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 (hereafter: the Dublin Regulation).<sup>1</sup>

The Commission's Evaluation Report of the Dublin system issued on 6 June 2007 (hereafter: the Evaluation Report on Dublin)<sup>2</sup> as well as contributions received by various stakeholders in response to the Green Paper<sup>3</sup> consultation process have identified a number of deficiencies related mainly to the efficiency of the system put in place by the current legislative provisions and the level of protection afforded to applicants for international protection which are subject to the Dublin procedure. The Commission therefore wishes to amend the Dublin Regulation in order, on the one hand, to enhance the system's efficiency and, on the other, to ensure that the needs of applicants for international protection are comprehensively addressed under the responsibility determination procedure. Moreover, in line with the Policy Plan on Asylum<sup>4</sup>, the proposal is aimed at addressing situations of particular pressure on Member States' reception capacities and asylum systems, as well as situations where there is an inadequate level of protection for applicants for international protection.

- As announced in the Policy Plan on Asylum, this proposal is part of a first package of proposals which aim to ensure a higher degree of harmonisation and better standards of protection for the Common European Asylum System (hereafter: CEAS). It is adopted at the same time of the recast of the Eurodac Regulation<sup>5</sup> and the recast of the Reception Conditions Directive<sup>6</sup>. In 2009, the Commission will propose to amend the Qualification Directive<sup>7</sup> and the Asylum Procedures Directive<sup>8</sup>. In addition, in the first quarter of 2009

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

<sup>2</sup> Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system, COM (2007) 299 final, SEC (2007) 742. The "Dublin system" aims to determine which Member State is responsible for examining an asylum application lodged by a third-country national on the territory of one of the Member States. It consists of the Dublin and Eurodac Regulations.

<sup>3</sup> Green Paper on the future of the Common European Asylum System, COM (2007) 301.

<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the 'Policy Plan on Asylum an Integrated Approach to Protection Across the EU' of 17 June 2008, COM (2008) 360, COM (2008) 360.

<sup>5</sup> Proposal for a Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...] [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], COM (2008) 825.

<sup>6</sup> Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers, COM (2008) 815.

<sup>7</sup> Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, 30.9.2004, p.12.

<sup>8</sup> Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326, 13.12.2005, p.13.

the Commission will propose the establishment of a European Asylum Support Office, which will aim to provide practical assistance to Member States in taking decisions on asylum claims. The Support Office will also provide assistance to Member States who are faced with particular pressures on their national asylum system, notably because of their geographical position, to comply with requirement of Community legislation, by providing specific expertise and practical support. **General context**

In an area without controls at the internal borders of the Member States, a mechanism for determining responsibility for asylum applications lodged in the Member States was needed in order, on the one hand, to guarantee effective access to the procedures for determining refugee status and not to compromise the objective of the rapid processing of asylum applications and, on the other, to prevent abuse of asylum procedures in the form of multiple applications for asylum submitted by the same person in several Member States with the sole aim of extending his/her stay in the Member States.

Arrangements for determining responsibility for considering asylum applications were initially part of the intergovernmental Schengen Convention, and were replaced with the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, known as the "Dublin Convention"<sup>9</sup>. To support the operation of the Dublin Convention, Council Regulation 2725/2000/EC of 11 December 2000 for the establishment of Eurodac (a Community-wide system for the comparison of the fingerprints of asylum applicants) was adopted (hereafter: the Eurodac Regulation)<sup>10</sup>.

In order to implement Article 63(1)(a) of the EC Treaty which required the replacement of the Dublin Convention with a Community legal instrument and to respond to the wish expressed by the Tampere European Council's conclusions of October 1999, the Dublin Regulation was adopted in February 2003.

The Dublin Regulation is considered the first cornerstone of the CEAS. It significantly improved the Dublin Convention, including a number of innovations, and it was based on the same general principles, in particular the fact that the responsibility for examining an application should primarily lie with the Member State which played the greatest part in the applicant's entry into and residence in the territories of the Member States, with some exceptions designed to protect family unity.

The Hague Programme invited the Commission to conclude the evaluation of the first-phase of legal instruments on asylum and to submit the second-phase instruments and measures to the Council and the European Parliament with a view to their adoption before the end of 2010. The Evaluation Report on Dublin concluded that overall, the main objectives of the system, notably to establish a clear and workable mechanism for determining responsibility for asylum applications, have, to a large extent, been achieved, but that some concerns remain, both regarding the practical application and the effectiveness of the system. Moreover, the responses to the Green Paper also identified an important number of shortcomings in the protection afforded to applicants for international protection who are affected by the Dublin Regulation.

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<sup>9</sup> OJ C 254, 19.08.1997, p.1. The Convention entered into force on 1 September 1997 for the twelve original signatories, on 1 October 1997 for Austria and Sweden, and on 1 January 1998 for Finland.

<sup>10</sup> OJ L 316, 15.12.2000, p.1.

Accordingly, this proposal to amend the Dublin Regulation responds to the invitation of the Hague Programme and is aimed at addressing the deficiencies identified in the implementation of the Dublin Regulation.

Moreover, the proposal aims to ensure consistency with developments in the EU asylum *acquis*, in particular with the Asylum Procedures Directive, with the Qualification Directive, and with the Council Directive 2003/9/EC on minimum standards for the reception of asylum seekers (hereafter: the Reception Conditions Directive)<sup>11</sup>.

A detailed analysis of the problems identified in relation to this Regulation and concerning the preparation carried out for its revision, the identification and assessment of policy sub-options and the identification and assessment of the preferred policy option is included in the Impact Assessment, annexed to the present proposal.

- **Existing provisions in the area of the proposal**

The "Dublin system" consists of the Dublin and Eurodac Regulations, and their two Implementing Regulations: Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 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 (hereafter: the Dublin Implementing Regulation)<sup>12</sup> and Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention<sup>13</sup>.

The Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny<sup>14</sup>, adapted several provisions of the Dublin Regulation to the regulatory procedure with scrutiny. These are incorporated into the current proposal.

- **Consistency with other policies**

This proposal is fully in line with the Tampere European Council Conclusions of 1999 and the Hague Programme of 2004 in relation to the establishment of the CEAS. It is also fully compatible with the Charter of Fundamental Rights of the European Union, in particular as regards the right to asylum and the protection of personal data.

## **2. CONSULTATION OF INTERESTED PARTIES**

The Commission undertook a two-track approach for the evaluation of the Dublin system: a technical and a policy evaluation. The technical evaluation (the Evaluation Report on Dublin) was based on a wide range of contributions from Member States, including answers to a

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<sup>11</sup> OJ L 31, 6.2.2003, p.18.

<sup>12</sup> OJ L 222, 5.9.2003, p.3.

<sup>13</sup> OJ L 62, 5.3.2002, p.1.

<sup>14</sup> OJ L 304, 14.11.2008, p.80.

detailed questionnaire sent by the Commission in July 2005, regular discussions in expert meetings and statistics. Contributions from other stakeholders, in particular from the UNHCR and "civil society" organisations have also been carefully considered. The consultation based on the Green Paper on the future of the CEAS served as a policy evaluation. The response to this public consultation included 89 contributions from a wide range of stakeholders. The issues raised and the suggestions put forward during the consultation have provided the main basis for the preparation of the Policy Plan on Asylum, which sets out a road-map for the coming years and lists the measures that the Commission intends to propose in order to complete the second phase of the CEAS, including *inter alia* the proposal to amend the Dublin Regulation.

On 5 March 2008 the Commission services informally discussed the broad outline of this proposal with the Member States in the Committee on Immigration and Asylum (CIA). Furthermore, expert meetings were also organised between October 2007 and July 2008 with Member States' practitioners, UNHCR and NGOs, lawyers and judges and Members of the European Parliament in order to seek their views on the improvements needed to the Dublin Regulation.

From the consultation process it emerged that the majority of Member States favour maintaining the founding principles of the Dublin Regulation, while acknowledging the need to improve certain aspects, primarily related to its efficiency. On the other hand, many civil society organisations and the UNHCR argue for a fundamentally different approach, based on allocating responsibility according to where an application for international protection is made. However, in the absence of political will for such a change, they call for better addressing within the Regulation the protection needs of applicants for international protection. The European Parliament in a report adopted on 2 September 2008 on the evaluation of the Dublin system<sup>15</sup>, suggested a number of improvements to the current system, most of which are protection-oriented.

The Commission's proposal takes into account the concerns expressed by all interested parties. While proposing to uphold the underlying principles of the Dublin Regulation, the Commission considers that it is particularly important to address in the current proposal both the efficiency and the protection related concerns.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

The main aim of the proposal is to increase the system's efficiency and to ensure higher standards of protection for persons falling under the "Dublin procedure". At the same time, the proposal aims to contribute to better addressing situations of particular pressure on Member States' reception facilities and asylum systems.

The proposal retains the same underlying principles as in the existing Dublin Regulation, namely that responsibility for examining an application for international protection lies primarily with the Member State which played the greatest part in the applicant's entry into or

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<sup>15</sup> P6\_TA-PROV(2008)0385

residence on the territories of the Member States, subject to exceptions designed to protect family unity.

Moreover, it generally maintains the nature of the instrument which is to essentially lay down the Member States' obligations vis-à-vis each other, and to include provisions regulating the Member States' obligations vis-à-vis asylum seekers subject to the Dublin procedure only in so far as those provisions affect the course of the proceedings between Member States or are necessary to ensure consistency with other asylum instruments. However, it is proposed both that the existing procedural safeguards be ameliorated so as to ensure a higher degree of protection and that new legal safeguards be included so as to better respond to the particular needs of the persons subject to the Dublin procedure, while at the same time seeking to avoid any loopholes in their protection.

The proposal addresses the following issues:

### ***1. Scope of the Regulation and consistency with asylum acquis***

The proposal extends the scope of the application of the Regulation in order to include applicants for (and beneficiaries of) subsidiary protection. This modification is considered necessary with a view to ensuring consistency with the EU *acquis*, namely with the Qualification Directive which introduced the legal notion of subsidiary protection. The proposal moreover aligns the terminology and definitions used in the Regulation with those contained in the other asylum instruments.

### ***2. Efficiency of the system***

With the aim of ensuring that the responsibility determination procedure operates smoothly, several modifications are proposed, in particular:

- Deadlines for submitting take back requests are established and the deadline for replying to requests for information is reduced; a deadline for replying to requests on humanitarian grounds is introduced and it is clarified that requests on humanitarian grounds can be made at any time. These modifications aim to ensure that the responsibility determination procedure will become more efficient and rapid;
- The cessation of responsibility clauses have been clarified as regards in particular the circumstances under which the cessation clauses should apply, the Member State which bears the burden of proof and the consequences of the cessation of responsibility. These clarifications aim to ensure a more uniform application of the Regulation and to diminish divergences of interpretation by the Member States which may complicate or delay the determination of the Member State responsible;
- The circumstances and procedures for applying the discretionary clauses (humanitarian and sovereignty) have been clarified, with the aim *inter alia* of ensuring a more uniform and efficient application of the Regulation by the Member States. The details of the modifications made to these clauses are inserted under point 4;
- Rules on transfers have been added, i.e. on erroneous transfers and costs for transfers. A new provision on the sharing of relevant information before transfers are carried out is added (details are given under point 5), in view of *inter alia* facilitating cooperation between Member States on practical arrangements for transfers;
- The existing dispute settlement mechanism, provided currently by the Dublin Implementing Regulation only for divergences between Member States in the application of the humanitarian clause, has been extended in order to cover matters of dispute on the application of the entire Regulation;
- In order for the authorities to gather all necessary information in view of identifying the Member State responsible and, if need be, in order to inform orally the applicant about the application of the Regulation, a provision on the organisation of a compulsory interview is inserted. This aims at both increasing the efficiency of the system, by facilitating its application, and at providing adequate safeguards for the applicants for international protection.



### ***3. Legal safeguards for the persons falling under the Dublin procedure***

In order to strengthen the legal safeguards for applicants for international protection and enable them to better defend their rights, the proposal introduces a number of modifications:

- The content, form and the timing for providing information to applicants for international protection are specified in greater detail in the Regulation. Moreover, the proposal foresees the adoption of a common information leaflet to be used across the Member States. Better informing applicants for international protection of the implications of the Dublin Regulation will increase their awareness of the responsibility determination procedure, which could *inter alia* contribute to reducing the phenomenon of secondary movements;
- The right to appeal against a transfer decision, together with the obligation for the competent authorities to decide whether or not its enforcement should be suspended and to allow the person concerned to remain on the territory pending such a decision, are laid down. Moreover, the right to legal assistance and/or representation, and where necessary to linguistic assistance, is clarified and the notification process is further clarified in order to ensure a more effective right to seek a remedy;
- A new provision recalling the underlying principle that a person should not be held in detention for the sole reason that he/she is seeking international protection is included. This principle confirms the EU acquis on detention, in particular the Asylum Procedures Directive and also ensures compliance with the EU Charter of Fundamental Rights and with international human rights instruments such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and the UN Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment. Moreover, in order to ensure that detention of asylum-seekers under the Dublin procedure is not arbitrary, limited specific grounds for such detention are proposed. The same level of treatment as for all detained asylum-seekers, regulated under the proposal amending the Reception Conditions Directive, has to be applied also for Dublin cases. As in the proposal amending the Receptions Conditions Directive, the special situation of minors and that of unaccompanied minors is taken into account by laying down specific rules for them. Since this provision only concerns the limited grounds for detaining persons falling under the Dublin procedure, it is logical to include it in this Regulation rather than in the proposal amending the Reception Conditions Directive;
- Several provisions are clarified in order to guarantee respect for the principle of effective access to the asylum procedure.

### ***4. Family unity, sovereignty clause and humanitarian clause***

In order to strengthen the right to family unity and to clarify the interactions with and between the sovereignty and humanitarian clauses it is proposed to:

- Extend the right to family reunification to include family members who are beneficiaries of subsidiary protection and who reside in another Member State;
- Make compulsory the reunification of dependent relatives (i.e. either a relative which is dependant on an applicant or an applicant which is dependant on a relative) and of unaccompanied minors with relatives who can take care of them. This is achieved by essentially moving the current provisions dealing with these two issues from the

humanitarian clause and inserting them under the binding responsibility determination criteria;

- Extend the definition of "family members" as far as minors are concerned, in order to ensure better protection of the "best interests of the child";
- Exclude the possibility of sending back an applicant for whom one of the family unity criteria can be applied at the time of the most recent application, on condition that the Member State where the first application was lodged has not already taken a first decision regarding the substance. The aim is to ensure in particular that possible new elements regarding the family situation of the asylum seeker can duly be taken into account by the Member State on whose territory the asylum seeker is, in line with the obligations laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- For reasons of clarity, the "sovereignty" and the "humanitarian" clauses are brought together under the same Chapter, called "discretionary clauses", and are revised. It is proposed that the "sovereignty clause" be used mainly for humanitarian and compassionate reasons. Regarding the circumstances for applying the "humanitarian clause", it is proposed to keep a general clause allowing Member States to use it whenever the strict application of the binding criteria will lead to a separation of family members or of other relatives;
- Several aspects of the procedure regarding the application of the discretionary clauses are also clarified. In order to ensure that the sovereignty clause is not applied against the interests of the applicant, the obligation to obtain the consent of the applicant is retained.

##### ***5. Unaccompanied minors and other vulnerable groups***

In order to better take into consideration the interests of unaccompanied minors during the Dublin procedure, the proposal clarifies and expands the scope of the existing provision on unaccompanied minors and lays down further protection safeguards:

- A new provision dealing with guarantees for minors is added, spelling out *inter alia* the criteria Member States have to take into account when assessing the best interests of the child and specifying the right of being represented;
- The protection afforded to unaccompanied minors is enlarged to allow for reunification not only with the nuclear family but also with other relatives present in another Member State who can take care of them, as mentioned above. It is further clarified that, in the absence of a family member or another relative, the Member State responsible is the one where the applicant lodged his/her most recent application, provided this is in his/her best interests.

Regarding in general the protection of vulnerable groups within the Dublin procedure:

With the primary aim of ensuring continuity in the protection offered to applicants under the Dublin procedure subject to transfer decisions to the responsible Member State, the proposal includes a mechanism on sharing of relevant information between Member States before transfers being carried out.

##### ***6. Particular pressure or inadequate level of protection***

In order to avoid that, in cases of particular pressure on certain Member States with limited reception and absorption capacities, Dublin transfers add to the burden on those Member States, a new procedure is inserted in the Regulation allowing for the suspension of Dublin transfers towards the responsible Member State. Such a procedure can also be used in cases where there are concerns that Dublin transfers could result in applicants not benefiting from adequate standards of protection in the responsible Member State, in particular in terms of reception conditions and access to the asylum procedure.

- **Linguistic corrections**

One linguistic correction had to be inserted in the Italian version of this proposal, namely in its Article 3(3), where the reference to "third" before "country" was added. This aligns the Italian version of Article 3(3) of Regulation 343/2003/EC with the other linguistic versions of that Regulation and is needed in order to prevent any risk of misinterpreting that Article.

- Other linguistic corrections may equally occur in other language versions of the Regulation. **Legal basis**

This proposal amends Regulation 343/2003/EC and uses the same legal base as that act, namely Article 63, first paragraph, point (1)(a) of the EC Treaty.

Title IV of the Treaty is not applicable to the United Kingdom and Ireland, unless those two countries decide otherwise, in accordance with the provisions set out in the Protocol on the position of the United Kingdom and Ireland attached to the Treaties.

The United Kingdom and Ireland are bound by Regulation 343/2003/EC following their notice of their wish to take part in the adoption and application of that Regulation based on the above-mentioned Protocol. The position of these Member States with regard to Regulation 343/2003 does not affect their possible participation with regard to the amended Regulation.

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark attached to the Treaties, Denmark does not take part in the adoption of this Regulation and is not bound by it nor subject to its application. However, given that Denmark applies the current Dublin Regulation, following an international agreement that it concluded with the EC in 2006,<sup>16</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.

- **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 Community concluded, or is in the process of doing so, several agreements associating these countries also to the Dublin/Eurodac acquis:

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<sup>16</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 Iceland and Norway, concluded in 2001<sup>17</sup>;
- the agreement associating Switzerland, concluded on 28 February 2008<sup>18</sup>;
- the protocol associating Liechtenstein, signed on 28 February 2008<sup>19</sup>.

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 Community and the associated countries<sup>20</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 Council and the European Parliament. In case Norway, Iceland, Switzerland or Liechtenstein do not accept an act amending or building upon the Dublin/Eurodac acquis, the "guillotine" clause is applied and the respective agreements will be terminated, unless the Joint/Mixed Committee established by the agreements decides otherwise by unanimity.

- **Subsidiarity principle**

Title IV of the EC Treaty ('TEC') on visas, asylum, immigration and other policies related to free movement of persons confers certain powers in relation to these matters on the European Community. These powers must be exercised in accordance with Article 5 TEC, 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 Community.

The current legal basis for Community action regarding the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum

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<sup>17</sup> Agreement between the European Community and the 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 or in Iceland or Norway, OJ L 93, 3.4.2001, p.40.

<sup>18</sup> 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, OJ L 53, 27.2.2008, p. 5.

<sup>19</sup> Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of Liechtenstein to the Agreement between the European Community and Switzerland concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a the Member State or in Switzerland (COM (2006)754, conclusion pending).

<sup>20</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 (2006/0257 CNS, concluded on 24.10.2008, publication in OJ pending) 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 57, 28.2.2006, p.16).

submitted by a national of a third country in one of the Member States, is Article 63 (1)(a) TEC.

Due to the trans-national nature of the problems related to asylum in general, the EU is well placed to propose solutions in the framework of the Common European Asylum System (CEAS) to the issues identified as problems regarding the application of the Dublin Regulation. Although a considerable degree of harmonization was achieved in the Regulation adopted in 2003, there is still room for EU action so as to ensure a more efficient and a more protective Dublin system.

- **Proportionality principle**

The impact assessment on the amendment of the Dublin Regulation carefully assessed each option for addressing the problems identified, with a view to achieving a balance between costs and benefits, before reaching the conclusion that opting for the EU action put forward in this proposal does not go beyond what is necessary to achieve the objective of solving those problems.

- **Impact on fundamental rights**

This proposal was made subject to an in-depth scrutiny in order to ensure that its provisions are fully compatible with fundamental rights as general principles of Community as well as international law. Particular emphasis was put on the need to strengthen the legal and procedural safeguards for persons subject to the Dublin procedure and to enable them to better defend their rights as well as on the need to ensure better respect for the right to family unity and to improve the situation of vulnerable groups in particular that of unaccompanied minors in order to better address their special needs.

Ensuring a higher degree of protection for the persons subject to the Dublin procedure will have an overall strong positive impact for asylum-seekers from a fundamental rights point of view. 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 could 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, in particular by: laying down the right to appeal against a transfer decision and the right of not being transferred until a decision on the need to suspend the enforcement of the transfer is taken; providing that a person notified with a transfer decision should be granted a reasonable period of time to seek a remedy; laying down the right to legal assistance and/or representation. **The principle of an effective access to the asylum procedure**, which is part of **the right to asylum**, will be strengthened by clarifying the obligation for the Member State responsible to proceed to a full assessment of the protection needs of asylum-seekers transferred to it under the Dublin procedure. **The right to liberty and freedom of movement** will be reinforced by providing that detention of persons under the Dublin procedure should only be allowed in an exceptional case prescribed under the Regulation and only if it is in line with the principles of necessity and proportionality. Due account must be taken of the situation of minors whose detention is only allowed if it is in their best interests, whereas unaccompanied minors must never be detained.

**The right to family reunification** will be considerably reinforced, in particular by enlarging the scope of the Regulation to include applicants and beneficiaries of subsidiary protection, by

making compulsory the reunification of dependent relatives and by forbidding, subject to certain conditions, the sending back of an applicant for whom one of the family unity criteria can be applied at the time of his/her most recent application. These safeguards will not only provide for an increased standard of protection for asylum-seekers but will also contribute to reduce the level of secondary movements, as the personal situation of each asylum-seeker will be better taken into account in the process of determining the Member State responsible.

Finally, the specific situations of **vulnerable groups** will be more adequately addressed in particular by strengthening the **rights of unaccompanied minors** through, *inter alia*, better defining the principle of the best interests of the child and by setting out a mechanism on exchange of relevant information, notably on medical conditions of the person to be transferred, with the primary aim of ensuring continuity in the protection and rights afforded to that person.

Member States are obliged to apply the provisions of this Regulation in full respect of fundamental rights. A monitoring and evaluation requirement is foreseen in the Regulation. This monitoring will also cover those provisions impacting on fundamental rights.

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↓ 343/2003/EC  
⇒ new

2008/0243 (COD)

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

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63, first paragraph, point (1)(a) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>21</sup>,

Having regard to the opinion of the Committee of the Regions<sup>22</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>23</sup>,

Whereas:

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↓ new

- (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>24</sup>. In the interests of clarity, that Regulation should be recast.

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<sup>21</sup> OJ C [...], [...], p. [...].

<sup>22</sup> OJ C [...], [...], p. [...].

<sup>23</sup> OJ C [...], [...], p. [...].

<sup>24</sup> OJ L 50, 25.2.2003, p.1.

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↓ 343/2003/EC recital 1

- (2) A common policy on asylum, including a Common European Asylum System, 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 Community.

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↓ 343/2003/EC recital 2

- (3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, 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, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement. In this respect, and without affecting the responsibility criteria laid down in this Regulation, Member States, all respecting the principle of non-refoulement, are considered as safe countries for third-country nationals.

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↓ 343/2003/EC recital 3

- (4) The Tampere conclusions also stated that this system 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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↓ 343/2003/EC recital 4

⇒ new

- (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 determining ~~refugee~~ ⇒ international protection ⇐ status and not to compromise the objective of the rapid processing of ~~asylum~~ applications ⇒ for international protection ⇐ .

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↓ 343/2003/EC recital 5

~~As regards the introduction in successive phases of a common European asylum system that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, it is appropriate at this stage, while making the necessary improvements in the light of experience, to confirm the principles underlying the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities(4), signed in Dublin on 15 June 1990~~



~~(hereinafter referred to as the Dublin Convention), whose implementation has stimulated the process of harmonising asylum policies.~~

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↓ new

- (6) The first phase in the creation of a Common European Asylum System that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, has now been achieved. The European Council of 4 November 2004 adopted The Hague Programme which sets 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 Council and the European Parliament with a view to their adoption before 2010.
- (7) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying the Regulation (EC) No 343/2003, while making the necessary improvements in the light of experience to enhance the effectiveness of the system and the protection granted to applicants for international protection under this procedure.
- (8) In view of ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with current EU asylum *acquis*, in particular with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted,<sup>25</sup> it is appropriate to extend the scope of this Regulation in order to include applicants for subsidiary protection and persons enjoying subsidiary protection.
- (9) In order to ensure equal treatment of all asylum seekers, Directive [...]/.../EC of ... laying down minimum standards for the reception of asylum seekers<sup>26</sup> should apply to the procedure regarding the determination of the Member State responsible as regulated under this Regulation.
- (10) In accordance with the 1989 United Nations Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States in the application of this Regulation. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.

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<sup>25</sup> OJ L 304, 30.9.2004, p. 12.

<sup>26</sup> OJ L [...], [...], p. [...].

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↓ 343/2003/EC recital 6

~~Family unity should be preserved in so far as this is compatible with the other objectives pursued by establishing criteria and mechanisms for determining the Member State responsible for examining an asylum application.~~

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↓ new

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

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↓ 343/2003/EC (recital 7)

⇒ new

(12) The processing together of the ~~asylum~~ 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 and the decisions taken in respect of them are consistent ~~⇒and that the members of one family are not separated⇐~~.

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↓ new

(13) In order to ensure full respect for the principle of family unity and of the best interests of the child, the existence of a relationship of dependency between an applicant and his/her extended family on account of pregnancy or maternity, their state of health or great age, should become binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a relative on the territory of another Member State who can take care of him/her should also become binding responsibility criterion.

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↓ 343/2003/EC (recital 7)

⇒ new

(14) ~~Any Member States~~ should be able to derogate from the responsibility criteria, ~~so as to make it possible to bring family members together where this is necessary on humanitarian grounds~~ ~~⇒in particular for humanitarian and compassionate reasons 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 the Regulation, provided that the concerned Member State and the applicant agree thereto. ⇐~~

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↓ new

- (15) A personal interview should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection and, where necessary, to orally inform applicants about the application of this Regulation.
- (16) In accordance in particular with Article 47 of the Charter of Fundamental Rights of the European Union, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established to guarantee effective protection of the rights of the individuals concerned.
- (17) In accordance with the case-law of the European Court of Human Rights, the effective remedy 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 in order to ensure that international law is respected.
- (18) Detention of asylum seekers should be applied in line with the underlying principle that a person should not be held in detention for the sole reason that he is seeking international protection. In particular, detention of asylum seekers must be applied in line with Article 31 of the Geneva Convention and under the clearly defined exceptional circumstances and guarantees prescribed in Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers]. Moreover, the use of detention for the purpose of transfer to the Member State responsible should be limited and subject to the principle of proportionality with regard to the means taken and objective pursued.
- (19) In accordance with Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003<sup>27</sup>, transfers to the Member State responsible may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers and should ensure that supervised or escorted transfers are undertaken in a human manner, in full respect for fundamental rights and human dignity.

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↓ 343/2003/EC recital 8

- (20) The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the Treaty establishing the European Community and the establishment of Community 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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<sup>27</sup> OJ L222, 5.9.2003, p.3.

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↓ new

- (21) The application of this Regulation may, in certain circumstances, create additional burdens on Member States faced with a particularly urgent situation which places an exceptionally heavy pressure on their reception capacities, asylum system or infrastructure. In such circumstances, it is necessary to lay down an efficient procedure to allow the temporary suspension of transfers towards the Member State concerned and to provide financial assistance, in accordance with existing EU financial instruments. The temporary suspension of Dublin transfers can thus contribute to achieve a higher degree of solidarity towards those Member States facing particular pressures on their asylum systems, due in particular to their geographical or demographic situation.
- (22) This mechanism of suspension of transfers should be applied also when the Commission considers that the level of protection for applicants for international protection in a given Member State is not in conformity with Community legislation on asylum, in particular in terms of reception conditions and access to the asylum procedure, in view of ensuring that all applicants for international protection benefit from an adequate level of protection in all Member States
- (23) 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>28</sup> applies to the processing of personal data by the Member States in application of this Regulation.
- (24) The exchange of applicant's personal data, including sensitive data concerning health, to be transferred before a transfer is carried out 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 provision should be made to ensure the protection of data relating to applicants involved in this situation, in conformity with Directive 95/46/EC.

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↓ 343/2003/EC recital 9 (adapted)

- (25) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communications 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>28</sup> OJ L 281, 23.11.1995, p. 31.

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↓ 343/2003/EC recital 10  
(adapted)

- (26) Continuity between the system for determining the Member State responsible established by the ~~Dublin Convention~~  Regulation (EC) No 343/2003  and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and ~~Council~~ Regulation (EC) No ~~2725/2000 of 11 December 2000~~ [...] [concerning the establishment of "~~Eurodac~~ EURODAC" for the comparison of fingerprints for the effective application of the Dublin ~~Convention~~ <sup>29</sup>  Regulation .
- 

↓ 343/2003/EC recital 11  
(adapted)  
⇒ new

- (27) The operation of the ~~Eurodac~~ EURODAC system, as established by Regulation (EC) No ~~2725/2000~~ [...]  [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation]  and in particular the implementation of Articles ~~4~~ 6 and ~~8~~ 10 contained therein should facilitate the ~~implementation~~  application  of this Regulation.
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↓ new

- (28) 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 short-stay visas<sup>30</sup>, and in particular the implementation of Articles 21 and 22 contained therein should facilitate the application of this Regulation.
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↓ 343/2003/EC recital 12

- (29) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.

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<sup>29</sup> OJ L 316, 15.12.2000, p. 1

<sup>30</sup> OJ L 218, 13.8.2008, p. 60.

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↓ 343/2003/EC recital 13

- (30) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>31</sup>.
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↓ 1103/2008/EC pt. 3, first subparagraph of the Annex (adapted)  
⇒ new

- (31) ~~As regards Regulation (EC) No 343/2003,~~ ☒ In particular, ☒ the Commission should be empowered to adopt the conditions and procedures for ~~the implementing of the humanitarian clause~~ ⇒ the provisions regarding unaccompanied minors and the reunification of dependent relatives ⇐ and to adopt the criteria necessary for carrying out transfers. Since those measures are of general scope and are designed to amend non-essential elements of ☒ this ☒ Regulation ~~(EC) No 343/2003~~ by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
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↓ new

- (32) The measures necessary for the implementation of Regulation (EC) No 343/2003 have been adopted by Regulation (EC) No 1560/2003. Certain provisions of Regulation (EC) No 1560/2003 should be incorporated into this Regulation, for reasons of clarity or because they can serve a general objective. In particular, it is important both for the Member States and the asylum seekers 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 whole of this Regulation.
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↓ 343/2003/EC recital 14 (adapted)  
⇒ new

- (33) ⇒ The effective monitoring of ⇐ ~~the~~ application of ~~the~~ ☒ this ☒ Regulation ~~should~~ ☒ requires that it ☒ be evaluated at regular intervals.

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<sup>31</sup> OJ L 184, 17.7.1999, p. 23.

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↓ 343/2003/EC	recital	15
(adapted)		
⇒ new		

(34) ~~The~~ ~~⊗~~ This ~~⊗~~ Regulation ~~observes~~ ~~⊗~~ respects ~~⊗~~ the fundamental rights and ~~⊗~~ observes the ~~⊗~~ the principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union<sup>32</sup>. In particular, ~~⊗~~ this Regulation ~~⊗~~ ~~≠~~ seeks to ensure full observance of the right to asylum guaranteed by Article 18 ~~⇒~~ and to promote the application of Articles 1, 4, 7, 24 and 47 of the said Charter and has to be applied accordingly ~~⇐~~.

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↓ 343/2003/EC	recital	16
⇒ new		

(35) Since the objective of the proposed measure, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an ~~asylum~~ application ~~⇒~~ for international protection ~~⇐~~ lodged in one of the Member States by a third-country national ~~⇒~~ or a stateless person ~~⇐~~, cannot be sufficiently achieved by the Member States and, given the scale and effects, can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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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↓ 343/2003/EC	recital	17
(adapted)		

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland gave notice, by letters of 30 October 2001, of their wish to take part in the adoption and application of this Regulation.~~

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↓ 343/2003/EC	recital	18
(adapted)		

~~In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it nor subject to its application.~~

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<sup>32</sup> OJ C 364, 18.12.2000, p. 1.

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↓ 343/2003/EC (adapted)	recital	19
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~~The Dublin Convention remains in force and continues to apply between Denmark and the Member States that are bound by this Regulation until such time an agreement allowing Denmark's participation in the Regulation has been concluded.~~

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↓ 343/2003/EC (adapted) ⇒ new
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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 Member State responsible for examining an application for ~~asylum~~ ⇒ international protection ⇐ lodged in one of the Member States by a third-country national ⇒ or a stateless person ⇐.

#### *Article 2*

##### *⊗ Definitions ⊗*

For the purposes of this Regulation:

(a) "third-country national" means ~~anyone~~ ⊗ any person ⊗ who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community ⇒ and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of Regulation (EC) No 562/2006 of the European Parliament and of the Council<sup>33</sup> ⇐;

~~(b) "Geneva Convention" means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;~~

~~(c) "application for asylum" means the application made by a third-country national which can be understood as a request for international protection from a~~

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<sup>33</sup> OJ L 105, 13.4.2006, p.1.



~~Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless a third-country national explicitly requests another kind of protection that can be applied for separately;~~

↓ new

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

↓ 343/2003/EC (adapted)

⇒ new

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

~~(d)~~(e) "examination of an ~~asylum~~ application ⇒ for international protection ⇐" means any examination of, or decision or ruling concerning, an application for ~~asylum~~ ⇒ international protection ⇐ by the competent authorities in accordance with ~~national law~~ ⇒ Council Directive 2005/85/EC<sup>34</sup>, ⇐ except for procedures for determining the Member State responsible in accordance with this Regulation ⇒ , and Directive 2004/83/EC ⇐;

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

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

↓ new

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

<sup>34</sup> OJ L 326, 13.12.2005, p.13.

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↓ 343/2003/EC (adapted)  
⇒ new

- (h) "unaccompanied minor" means ~~unmarried persons below the age of eighteen~~ ⇒ a minor who ~~arrive~~ ⊗ arrives ⊗ in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of ~~the~~ Member States;
- (i) "family members" means, insofar as the family already existed in the country of origin, the following members of the applicant's family who are present in the territory of the Member States:
- (i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;
  - (ii) the minor children of couples referred to in point (i) or of the applicant, on condition that they are unmarried ~~and dependent~~ and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

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↓ new

- (iii) the married minor children of couples referred to in point (i) or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law, where it is in their best interests to reside with the applicant;

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↓ 343/2003/EC (adapted)  
⇒ new

- ~~(iv)~~(iii) the father, mother or guardian ~~when~~ ⊗ of ⊗ the applicant ~~or refugee~~ ⊗ when the latter ⊗ is a minor and unmarried, ⇒ or when he is a minor and married but it is in his/her best interests to reside with his/her father, mother or guardian ⇐;

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↓ new

- (v) the minor unmarried siblings of the applicant, when the latter is a minor and unmarried, or when the applicant or his/her siblings are minors and married but it is in the best interests of one or more of them that they reside together;

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↓ 343/2003/EC  
⇒ new

- (j) "residence document" means any authorisation issued by the authorities of a Member State authorising a third-country national ⇒ or a stateless person ⇐ to stay in its territory, including the documents substantiating the authorisation to remain in the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the responsible Member State as established in this Regulation or during examination of an application for asylum ⇐ ⇒ international protection ⇐ or an application for a residence permit;
- (k) "visa" means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:
- (i) "long-stay visa" means the authorisation or decision of a Member State required for entry for an intended stay in that Member State of more than three months;
- (ii) "short-stay visa" means the authorisation or decision of a Member State required for entry for an intended stay in that State or in several Member States for a period whose total duration does not exceed three months;
- (iii) "transit visa" means the authorisation or decision of a Member State for entry for transit through the territory of that Member State or several Member States, except for transit at an airport;
- (iv) "airport transit visa" means the authorisation or decision allowing a third-country national specifically subject to this requirement to pass through the transit zone of an airport, without gaining access to the national territory of the Member State concerned, during a stopover or a transfer between two sections of an international flight;

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↓ new

- (l) "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 decision may abscond.

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↓ 343/2003/EC (adapted)  
⇒ new

## CHAPTER II

### GENERAL PRINCIPLES AND SAFEGUARDS

#### Article 3

Access to the procedure for examining an application for international protection

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

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↓ 343/2003/EC Article 13  
⇒ new

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

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↓ 343/2003/EC  
⇒ new

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

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↓ 343/2003/EC Article 3(4)  
(adapted)  
⇒ new

#### Article 4

~~⊗~~ *Right to information* ~~⊗~~

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

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↓ new

- (a) the objectives of this Regulation and the consequences of making another application in a different Member State;
  - (b) the criteria for allocating responsibility and their hierarchy;
  - (c) the general procedure and time-limits to be followed by the Member States;
  - (d) the possible outcomes of the procedure and their consequences;
  - (e) the possibility to challenge a transfer decision;
  - (f) the fact that the competent authorities can exchange data on him/her for the sole purpose of implementing the obligations arising under this Regulation;
  - (g) the existence of the right of access to data relating to him/her, and the right to request that inaccurate data relating to him/her be corrected or that unlawfully processed data relating to him/her be deleted, including the right to receive information on the procedures for exercising those rights and the contact details of the National Data Protection Authorities which shall hear claims concerning the protection of personal data.
2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant 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, at the interview organised pursuant to Article 5.
- Member States shall provide the information in a manner appropriate to the age of the applicant.
3. A common leaflet containing at least the information referred to in paragraph 1 shall be drawn up in accordance with the procedure referred to in Article 40(2).

## Article 5

### *Personal interview*

1. The Member State carrying out the process of determining the Member State responsible under this Regulation, shall give applicants the opportunity of a personal interview with a qualified person under national law to conduct such an interview.
2. The personal interview shall be for the purpose of facilitating the process of determining the Member State responsible, in particular for allowing the applicant to submit relevant information necessary for the correct identification of the responsible Member State, and for the purpose of informing the applicant orally about the application of this Regulation.
3. The personal interview shall take place in a timely manner following the lodging of an application for international protection and, in any event, before any decision is taken to transfer the applicant to the responsible Member State pursuant to Article 25(1).
4. The personal interview shall take place in a language that the applicant is reasonably supposed to understand and in which he is able to communicate. Where necessary, Member States shall select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the personal interview.
5. The personal interview shall take place under conditions which ensure appropriate confidentiality.
6. The Member State conducting the personal interview shall make a short written report containing the main information supplied by the applicant at the interview and shall make a copy of that report available to the applicant. The report shall be attached to any transfer decision pursuant to Article 25(1).

## Article 6

### *Guarantees for minors*

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.
2. Member States shall ensure that a representative represents and/or assists the unaccompanied minor with respect to all procedures provided for in this Regulation. This representative may also be the representative referred to in Article 23 of Directive [...]/.../EC [laying down minimum standards for the reception of asylum seekers].
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, taking into particular consideration the minor's ethnic, religious, cultural and linguistic background;
- (c) safety and security considerations, in particular where there is a risk of the child being a victim of trafficking;
- (d) the views of the minor, in accordance with his/her age and maturity.

4. Member States shall establish procedures in national legislation for tracing the family members or other relatives present in the Member States of unaccompanied minors. They shall start to trace the members of the unaccompanied minor's family or other relatives as soon as possible, after the lodging of the application for international protection whilst protecting his/her best interests.
5. The competent authorities referred to in Article 33 who deal with requests concerning unaccompanied minors shall receive appropriate training concerning the specific needs of minors.

↓ 343/2003/EC (adapted)  
 ⇒ new

### *CHAPTER III*

#### ~~HIERARCHY OF CRITERIA~~

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

##### *Article ~~5~~ 7*

##### ⊠ *Hierarchy of criteria* ⊠

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

↓ new

3. By way of derogation from paragraph 2, in order to ensure respect for the principle of family unity and of the bests interests of the child, the Member State responsible

in accordance with the criteria laid down in Articles 8 to 12 shall be determined on the basis of the situation obtaining when the asylum seeker lodged his/her most recent application for international protection. This paragraph shall apply on condition that the previous applications of the asylum seeker have not yet been subject of a first decision regarding the substance.

↓ 343/2003/EC (adapted)  
⇒ new

Article ~~6~~ 8

☒ Unaccompanied minors ☒

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

↓ 343/2003/EC Article 15(3)  
(adapted)  
⇒ new

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

↓ new

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

↓ 343/2003/EC  
⇒ new

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



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↓ 1103/2008/EC, pt. 3(1) of the Annex  
⇒ new

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

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↓ 343/2003/EC (adapted)  
⇒ new

*Article ~~79~~*

*⊗ Family members who are persons granted international protection ⊗*

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

*Article ~~810~~*

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

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

*Article ~~1511~~*

*⊗ Dependent relatives ⊗*

21. <sup>⊗</sup> Where <sup>⊗</sup> ~~In cases in which~~ the person concerned <sup>⊗</sup> asylum seeker <sup>⊗</sup> is dependent on the assistance of ~~the other~~ <sup>⊗</sup> a relative <sup>⊗</sup> ~~present in another Member~~

State on account of pregnancy or a new-born child, serious illness, severe handicap or old age, ☒ or where a relative ☒ ~~present in another Member State~~ ☒ is dependent on the assistance of the asylum seeker ☒ ⇒ for the same reasons, the Member State responsible for examining the application shall be the one considered the most appropriate for keeping them together or reunifying them, ⇐ ~~Member States shall normally keep or bring together the asylum seeker with another relative present in the territory of one of the Member States,~~ provided that family ties existed in the country of origin ⇒ and that the persons concerned expressed their desire in writing. In determining the most appropriate Member State, the best interests of the persons concerned shall be taken into account, such as the ability of the dependent person to travel ⇐.

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↓ 1560/2003 Article 11(1)  
(adapted)

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

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↓ 1103/2008/EC, pt. 3(1) of the Annex

2.5 The conditions and procedures for implementing ~~this Article paragraph 1 including, where appropriate, conciliation mechanisms for settling differences between Member States concerning the need to unite the persons in question, or the place where this should be done,~~ shall be adopted by the Commission. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article ~~27(3)~~ 40(3).

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↓ 343/2003/EC (adapted)  
⇒ new

#### Article ~~14-12~~

#### ☒ Family procedure ☒

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

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

*Article ~~9~~13*

*⊗ Issuance of residence documents or visas ⊗*

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

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

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

#### Article ~~10~~14

##### $\boxtimes$ Entry and/or stay $\boxtimes$

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article ~~22~~18(3), including the data referred to in Chapter III of Regulation  $\boxtimes$  [concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Regulation]  $\boxtimes$  (EC) No [.../...] ~~2725/2000~~, that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for ~~asylum~~  $\Rightarrow$  international protection  $\Leftarrow$ . This responsibility shall cease 12 months after the date on which the irregular border crossing took place.
2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1, and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article ~~22~~18(3), that the asylum seeker - who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established - ~~at the time of lodging the application~~ has been ~~previously~~ living for a continuous period of at least five months in a Member State  $\boxtimes$  before lodging the application for international protection  $\boxtimes$ , that Member State shall be responsible for examining the application for ~~asylum~~  $\Rightarrow$  international protection  $\Leftarrow$ .

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

#### Article ~~11~~15

##### $\boxtimes$ Visa waived entry $\boxtimes$

1. If a third-country national  $\Rightarrow$  or a stateless person  $\Leftarrow$  enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member

State shall be responsible for examining his or her application for ~~asylum~~  
⇒ international protection ⇐.

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

*Article ~~12~~16*

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

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

**CHAPTER IV**

**HUMANITARIAN CLAUSE**

**⊗ DISCRETIONARY CLAUSES ⊗**

*Article ~~15~~17*

*⊗ Discretionary clauses ⊗*

↓ 343/2003/EC Article 3(2)  
(adapted)  
⇒ new

1. ~~2.~~ By way of derogation from ~~Article 3, paragraph (1)~~, each Member State may ⇐ in particular for humanitarian and compassionate reasons, ⇐ ⊗ decide to ⊗ examine an application for ~~asylum~~ ⇒ international protection ⇐ lodged with it by a third-country national ⇐ or a stateless person ⇐ , even if such examination is not its responsibility under the criteria laid down in this Regulation, ⇐ provided that the applicant agrees thereto ⇐.

In such an event, that Member State shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where ~~appropriate~~ ⊗ applicable ⊗, it shall inform the Member State previously responsible, the Member State conducting a procedure for

determining the Member State responsible or the Member State which has been requested to take charge of or take back the applicant ⇒ by using the DublinNet electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003 ⇐.

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

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↓ 343/2003/EC (adapted)  
⇒ new

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

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↓ 1560/2003 Article 13(2)

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

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↓ 1560/2003 (adapted) Article 13(3)  
⇒ new

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

↓ 343/2003/EC (adapted)  
⇒ new

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

↓ 343/2003/EC (adapted)  
⇒ new

## CHAPTER V

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

#### ~~☒~~ OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE ~~☒~~

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

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

1. The Member State responsible for examining an application for ~~asylum~~  
⇒ international protection ⇐ under this Regulation shall be obliged to:
  - (a) take charge, under the conditions laid down in Articles ~~21~~~~17 to 19~~, 22 and 28, of an asylum seeker who has lodged an application in a different Member State;
  - ~~(b)~~~~(c)~~ take back, under the conditions laid down in Articles 23, 24 and 28 ~~20~~, an applicant whose application is under examination and who ⇒ made an application in another Member State or who ⇐ is in the territory of another Member State without ~~permission~~ ⇒ a residence document ⇐;
  - ~~(c)~~~~(d)~~ take back, under the conditions laid down in Articles 23, 24 and 28 ~~20~~, an applicant who has withdrawn the application under examination and made an application in another Member State;
  - ~~(d)~~~~(e)~~ take back, under the conditions laid down in Articles 23, 24 and 28 ~~20~~, a third-country national ⇒ or a stateless person ⇐ whose application ~~is~~ has been rejected and who ⇒ made an application in another Member State or who ⇐ is in the territory of another Member State without ~~permission~~ ⇒ a residence document ⇐ .
- ~~☒~~ 2. The Member State responsible shall ~~☒~~ ⇒ in all circumstances referred to in paragraph 1 (a) to (d) examine or ⇐ ~~(b)~~ complete the examination of the application for ~~asylum~~ ⇒ international protection made by the applicant, within the meaning of

Article 2(d). When the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant, it shall revoke that decision and complete the examination of the application, within the meaning of Article 2(d)↵.

### Article 19

#### ↗ Cessation of responsibilities ↖

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

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↓ new

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

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↓ 343/2003/EC (adapted)  
⇒ new

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

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↓ new

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



## CHAPTER VI

### ⊗ PROCEDURES FOR TAKING CHARGE AND TAKING BACK ⊗

#### ⊗ SECTION I: Start of the procedure ⊗

##### Article 420

#### ⊗ Start of the procedure ⊗

1. The process of determining the Member State responsible under this Regulation shall start as soon as an application for ~~asylum~~ ⇒ international protection ⇐ is first lodged with a Member State.
2. An application for ~~asylum~~ ⇒ international protection ⇐ shall be deemed to have been lodged once a form submitted by the applicant ~~for asylum~~ or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.
3. For the purposes of this Regulation, the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member set out in Article 2, point (i) shall be indissociable from that of his parent or guardian and shall be a matter for the Member State responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐ of that parent or guardian, even if the minor is not individually an asylum seeker ⇒ , provided that this is in his/her best interests ⇐ . The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.
4. Where an application for ~~asylum~~ ⇒ international protection ⇐ is lodged with the competent authorities of a Member State by an applicant who is in the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for ~~asylum~~ ⇒ international protection ⇐ was lodged.

The applicant shall be informed in writing of this transfer and of the date on which it took place.

5. An asylum seeker who is present in another Member State and there lodges an application for ~~asylum~~ ⇒ international protection ⇐ after withdrawing his ~~first~~ application ~~made~~ in a different Member State ~~during~~ the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles ~~20~~ 23, 24 and 28, by the Member State with which that application for ~~asylum~~ ⇒ international protection ⇐ was ~~firstly~~ lodged, with a view to completing the process of determining the Member State responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐.

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

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↓ new

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

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↓ 343/2003/EC (adapted)  
⇒ new

~~Section II: Procedures for take charge requests~~

Article ~~17~~ 21

~~Submitting a take charge request~~

1. Where a Member State with which an application for ~~asylum~~ ⇒ international protection ⇐ has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within three months of the date on which the application was lodged within the meaning of Article ~~42~~ 20(2), ~~call upon~~ request ⇐ the other Member State to take charge of the applicant.

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

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

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

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

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

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

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

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of the date on which the request was received.
2. In the procedure for determining the Member State responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐ established in this Regulation, elements of proof and circumstantial evidence shall be used.
3. In accordance with the procedure referred to in Article ~~27(2)~~ 40(2) two lists shall be established and periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria:
  - (a) Proof:
    - (i) This refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary.
    - (ii) The Member States shall provide the Committee provided for in Article 27 40 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs.
  - (b) Circumstantial evidence:
    - (i) This refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them.
    - (ii) Their evidentiary value, in relation to the responsibility for examining the application for ~~asylum~~ ⇒ international protection ⇐ shall be assessed on a case-by-case basis.
4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.

5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.
6. Where the requesting Member State has pleaded urgency, in accordance with the provisions of Article ~~17(2)~~ 21(2), the requested Member State shall make every effort to conform to the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give the reply after the time limit requested, but in any case within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.
7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the ~~provisions~~  obligation to provide  for proper arrangements for arrival.

*Section III. Procedures for take back requests*

Article ~~20~~ 23

*Submitting a take back request*

↓ 343/2003/EC (adapted)  
 ⇒ new

1. ~~An asylum seeker shall be taken back~~ ⇒ Where a Member State with which a subsequent application for international protection has been lodged or on whose territory an applicant or another person as referred to in Article 18(1)(d) is staying without a residence document, considers that another Member State is responsible  in accordance with Article 420(5) and Article ~~1618(1) (e)(b), (e)(c) and (e)(d), as follows~~ ⇒ it may request that other Member State to take back that person.

↓ new

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

If the request to take back the applicant who lodged a subsequent application for international protection is based on evidence other than data obtained from the EURODAC system, it shall be sent to the requested Member State within three

months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

- 3 Where there is no subsequent application for international protection, and in case the requesting Member State decides to search the EURODAC system in accordance with Article 13 of Regulation (EC) No [...] [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation], the request to take back the person concerned shall be made as quickly as possible and in any case within two months of receiving the EURODAC hit, pursuant to Article 13(4) of that Regulation.

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

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

↓ 343/2003/EC (adapted)  
⇒ new

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

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

#### Article 24

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

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

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

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

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

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

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

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

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

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

## Section IV. Procedural safeguards

### Article 25

#### Notification of a transfer decision

1. Where the requested Member State ~~accepts~~ agrees to take charge of or to take back an applicant or another person as referred to in Article 18(1)(d), the requesting Member State in which the application for asylum was lodged shall notify the applicant or the person concerned of the decision not to examine the application, and of the obligation of the decision to transfer him/her the applicant to the responsible Member State and, where applicable, of not examining his/her application for international protection. ⇒ Such notification shall be made in writing, in a language which the person is reasonably supposed to understand and within no more than fifteen working days from the date of receipt of the reply from the requested Member State ⇐.
2. The decision referred to in paragraph 1 shall set out the grounds on which it is based, including a description of the main steps in the procedure leading to the decision. It shall contain information on available legal remedies and the time-limits applicable for seeking such remedies, as well as information on persons or entities that may provide specific legal assistance and/or representation to the person ⇐. It shall contain details of the time limit for carrying out the transfer and shall, if necessary, contain information on the place where, and the date at which the applicant or the person concerned should appear, if he/she is travelling to the responsible Member State responsible by his/her own means. ⇐ The time-limits for carrying out the transfer shall be set in order to allow the person a reasonable period of time to seek a remedy in accordance with Article 26. ⇐ This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case by case basis if the national legislation allows for this.

↓ new

### Article 26

#### Remedies

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

3. In the event of an appeal or review concerning the transfer decision referred to in Article 25, the authority referred to in paragraph 1 of this Article shall, acting ex-officio, decide, as soon as possible, and in any case no later than seven working days from the lodging of an appeal or of a review, whether or not the person concerned may remain on the territory of the Member State concerned pending the outcome of his/her appeal or review.
4. No transfer shall take place before the decision referred to in paragraph 3 is taken. A decision not to allow the person concerned to remain on the territory of the Member State concerned pending the outcome of his/her appeal or review, shall state the reasons on which it is based.
5. Member States shall ensure that the person concerned has access to legal assistance and/or representation and, where necessary, to linguistic assistance.
6. Member States shall ensure that legal assistance and/or representation be granted free of charge where the person concerned cannot afford the costs involved.

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

#### *Section V. Detention for the purpose of transfer*

##### *Article 27*

##### *Detention*

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for international protection in accordance with Directive 2005/85/EC.
2. Without prejudice to Article 8(2) of Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers], when it proves necessary, on the basis of an individual assessment of each case, and if other less coercive measures cannot be applied effectively, Member States may detain an asylum-seeker or another person as referred to in Article 18(1)(d), who is subject of a decision of transfer to the responsible Member State, to a particular place only if there is a significant risk of him/her absconding.
3. When assessing the application of other less coercive measures for the purpose of paragraph 2, Member States shall take into consideration alternatives to detention such as regular reporting to the authorities, the deposit of a financial guarantee, an obligation to stay at a designated place or other measures to prevent the risk of absconding.
4. Detention pursuant to paragraph 2 may only be applied from the moment a decision of transfer to the responsible Member State has been notified to the person concerned in accordance with Article 25, until that person is transferred to the responsible Member State.



5. Detention pursuant to paragraph 2 shall be ordered for the shortest period possible. It shall be no longer than the time reasonably necessary to fulfil the required administrative procedures for carrying out a transfer.
6. Detention pursuant to paragraph 2 shall be ordered by judicial authorities. In urgent cases it may be ordered by administrative authorities, in which case the detention order shall be confirmed by judicial authorities within 72 hours from the beginning of the detention. Where the judicial authority finds detention to be unlawful, the person concerned shall be released immediately.
7. Detention pursuant to paragraph 2 shall be ordered in writing with reasons in fact and in law, in particular specifying the reasons on the basis of which it is considered that there is a significant risk of the person concerned absconding as well as the time period of its duration.

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

8. In every case of a detained person pursuant to paragraph 2, the continued detention shall be reviewed by a judicial authority at reasonable intervals of time either on request by the person concerned or ex-officio. Detention shall never be unduly prolonged.
9. Member States shall ensure access to legal assistance and/or representation in cases of detention pursuant to paragraph 2 that shall be free of charge where the person concerned cannot afford the costs involved.

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

10. Minors shall not be detained unless it is in their best interests, as prescribed in Article 7 of this Regulation and in accordance with an individual examination of their situation in accordance with Article 11(5) of Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers].
11. Unaccompanied minors shall never be detained.
12. Member States shall ensure that asylum-seekers detained in accordance with this Article enjoy the same level of reception conditions for detained applicants as those laid down in particular in Articles 10 and 11 of Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers].

⊗ Section VI: Transfers ⊗

Article ~~19~~28

⊗ Modalities and time-limits ⊗

~~13.~~ The transfer of the applicant ⊗ or of another person as referred to in Article 18(1)(d) ⊗ from the ⊗ requesting ⊗ Member State ~~in which the application was lodged~~ to the ⊗ responsible ⊗ Member State ~~responsible~~ shall be carried out in accordance with the national law of the ⊗ requesting ⊗ ~~first~~ Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request ~~that charge be taken~~ ⊗ by another Member State to take charge or to take back the person concerned ⊗ or of the ⇒ final ⇐ decision on an appeal or review where ~~there is~~ a suspensive effect ⇒ is granted in accordance with Article 26(3) ⇐.

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

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

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

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

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

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

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↓ new

## Article 29

### *Costs of transfers*

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

## Article 30

### *Exchange of relevant information before transfers being carried out*

1. In all cases of transfers, the transferring Member State shall inform the receiving Member State if the person concerned is fit for the transfer. Only persons who are fit for the transfer shall be transferred.
2. The Member State carrying out the transfer shall communicate to the responsible Member State such personal data concerning the applicant to be transferred as is appropriate, relevant and non-excessive for the sole purposes of ensuring that the competent asylum authorities in the responsible Member State are in a position to provide the applicant with adequate assistance, including the provision of necessary medical care, and to ensure continuity in the protection and rights afforded by this

Regulation and by Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers]. That information shall be communicated at an early stage and at the latest seven working days before a transfer is carried out, except when the Member State becomes aware of it at a later stage.

3. Member States shall in particular exchange the following information:

(a) contact details of family members or of other relatives in the receiving Member State, where applicable;

(b) in the case of minors, information in relation to their level of education;

(c) information about the age of an applicant;

(d) any other information that the sending Member State deems essential in order to safeguard the rights and special needs of the applicant concerned.

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

5. Any information mentioned in paragraph 4 shall only be transmitted by the transferring Member State to the responsible Member State after the explicit consent of the applicant and/or of his representative has been obtained or when this is necessary to protect the vital interests of the individual or of another person where he/she is physically or legally incapable of giving his/her consent. Once the transfer has been completed, this information shall be deleted immediately by the transferring Member State.

6. The processing of personal health data shall only be carried out by a health professional subject under national law or rules established by national competent bodies to the obligation of professional secrecy or by another person subject to an equivalent obligation of secrecy. These health professionals and persons receiving and processing this information shall receive appropriate medical training as well as training regarding the appropriate processing of sensitive personal data relating to health.

7. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 33 using the 'DubliNet' electronic communication network set-up under Article 18 of Regulation EC (No) 1560/2003. The authorities notified according to Article 33 of this Regulation shall also specify the health professionals authorized to process the information mentioned in paragraph 4. The information exchanged shall only be used for the purposes set out in paragraph 2 and 4 of this Article.

8. With a view to facilitating the exchange of information between Member States, a standard form for transferring the data required pursuant to this Article shall be adopted in accordance with the procedure laid down in Article 40(2).
9. The rules laid down in Article 32(8) to (12) shall apply to the exchange of information pursuant to this Article.

### *Section VII: Temporary suspension of transfers*

#### *Article 31*

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

The request shall be addressed to the Commission. It shall indicate the grounds on which it is based and shall in particular include:

- (a) a detailed description of the particularly urgent situation which places an exceptionally heavy burden on the requesting Member State's reception capacities, asylum system or infrastructure, including relevant statistics and supporting evidence;
- (b) a substantiated forecast of the likely evolution of this situation in the short-term;
- (c) a substantiated explanation of the further burden that the transfer of applicants for international protection in accordance with this Regulation could add to the requesting Member State's reception capacities, asylum system or infrastructure, including relevant statistics and other supporting evidence.

2. When the Commission considers that the circumstances prevailing in a Member State may lead to a level of protection for applicants for international protection which is not in conformity with Community legislation, in particular with Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers and with Directive 2005/85/EC, it may decide in conformity with the procedure laid down in paragraph 4, that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.
3. When a Member State is concerned that the circumstances prevailing in another Member State may lead to a level of protection for applicants for international protection which is not in conformity with Community legislation, in particular with Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers and with Directive 2005/85/EC, it may request that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.

The request shall be addressed to the Commission. It shall indicate the grounds on which it is based and shall in particular include detailed information on the situation in the concerned Member State pointing to a possible lack of conformity with

Community legislation, in particular Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers and Directive 2005/85/EC.

4. Following the receipt of a request pursuant to paragraphs 1 or 3, or upon its own initiative pursuant to paragraph 2, the Commission may decide that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended. Such decision shall be taken as soon as possible and at the latest one month following the receipt of a request. The decision to suspend transfers shall state the reasons on which it is based and shall in particular include:

(a) an examination of all the relevant circumstances prevailing in the Member State towards which transfers could be suspended;

(b) an examination of the potential impact of the suspension of transfers on the other Member States;

(c) the proposed date on which the suspension of transfers shall take effect;

(d) any particular conditions attached to such suspension.

5. The Commission shall notify the Council and the Member States of the decision to suspend all transfers of applicants in accordance with this Regulation to the Member State concerned. Any Member State may refer the decision of the Commission to the Council within one month from the receipt of the notification. The Council, acting by qualified majority, may take a different decision in one month from the date of the referral by a Member State.

6. Following the decision of the Commission to suspend transfers to a Member State, the other Member States in which the applicants whose transfers have been suspended are present, shall be responsible for examining the applications for international protection of those persons.

The decision to suspend transfers to a Member State shall take due account of the need to ensure the protection of minors and of family unity.

7. A decision to suspend transfers to a Member State pursuant to paragraph 1 shall justify the granting of assistance for the emergency measures laid down in Article 5 of Decision No 573/2007/EC of the European Parliament and of the Council<sup>35</sup>, following a request for assistance from that Member State.

8. Transfers may be suspended for a period which cannot exceed six months. Where the grounds for the measures still persist after six months, the Commission may decide, upon a request from the Member State concerned referred to paragraph 1 or upon its own initiative, to extend their application for a further six months period. Paragraph 5 applies.

9. Nothing in this Article shall be interpreted as allowing Member States to derogate from their general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations arising out of the Community

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<sup>35</sup> OJ L 144, 6.6.2007, p.1.

legislation on asylum, in particular this Regulation, Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers, and Directive 2005/85/EC.

↓ 343/2003/EC (adapted)

⇒ new

## CHAPTER ~~VI~~VII

### ADMINISTRATIVE COOPERATION

#### Article ~~21~~32

##### ⊠ Information sharing ⊠

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker as is appropriate, relevant and non-excessive for:
  - (a) the determination of the Member State responsible for examining the application for ~~asylum~~ ⇒ international protection; ⇐
  - (b) examining the application for ⇒ international protection ⇐ ~~asylum~~;
  - (c) implementing any obligation arising under this Regulation.
2. The information referred to in paragraph 1 may only cover:
  - (a) personal details of the applicant, and, where appropriate, the members of his family (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);
  - (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);
  - (c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EC) No ~~2725/2000~~ [.../...] ⊠ [concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation] ⊠ ;
  - (d) places of residence and routes travelled;
  - (e) residence documents or visas issued by a Member State;
  - (f) the place where the application was lodged;

(g) the date any previous application for ~~asylum~~ ⇒ international protection ⇐ was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

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

4. Any request for information shall ⇒ only be sent in the context of an individual application for international protection. It shall ⇐ set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means asylum seekers enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to the individual asylum seeker.

5. The requested Member State shall be obliged to reply within ~~six~~ ⇒ four ⇐ weeks. ⇒ Any delays in the reply shall be duly justified. If the research carried out by the requested Member State which did not respect the maximum time-limit, yield information which shows that it is responsible, that Member State may not invoke the expiry of the time-limit provided for in Articles 21 and 23 as a reason for refusing to comply with a request to take charge or take back. ⇐

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission ⇒ in accordance with Article 33(1) ⇐ ~~which shall inform the other Member States thereof.~~

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

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

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



(c) implementing any obligation arising under this Regulation.

8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that that Member State has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.
9. The asylum seeker shall have the right to be informed, on request, of any data that is processed concerning him/her.

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

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

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↓ new

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

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↓ 343/2003/EC (adapted)  
⇒ new

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

### Article ~~22~~33

#### Competent authorities and resources

1.  Each  Member States shall notify the Commission  without delay  of the  specific  authorities responsible for fulfilling the obligations arising under this Regulation  , and any amendments thereto.  They  ~~and~~ shall ensure that

those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back asylum seekers.

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↓ new

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

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↓ 343/2003/EC (adapted)  
⇒ new

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

#### Article ~~23~~34

##### ⊗ Administrative arrangements ⊗

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:
  - (a) exchanges of liaison officers;
  - (b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back asylum seekers;
2. The arrangements referred to in paragraph 1 shall be communicated to the Commission. The Commission shall ⇒ approve ⇐ ~~verify that~~ the arrangements referred to in paragraph 1(b), ⊗ after it has verified that they ⊗ do not infringe this Regulation.

⊞ CHAPTER VIII ⊞

*Conciliation*

Article 1435

⊞ Conciliation ⊞

1. Where the Member States cannot resolve a dispute, ~~either on the need to carry out a transfer or to bring relatives together on the basis of Article 15 of Regulation (EC) No 343/2003, or on the Member State in which the person concerned should be reunited,~~ ⇒ on any matter related to the application of this Regulation, ⇐ they may have recourse to the conciliation procedure provided for in paragraph 2 ~~of this Article.~~
2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article ~~2740~~ 2740 ~~of Regulation (EC) No 343/2003.~~ By agreeing to use the conciliation procedure, the Member States concerned undertake to take the utmost account of the solution proposed.

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

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

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

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↓ 343/2003/EC

CHAPTER ~~VIII~~

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

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↓ new

Article 36

*Penalties*

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

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↓ 343/2003/EC (adapted)

Article ~~24~~37

⊠ Transitional measures ⊠

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

~~2. However, to ensure continuity of the arrangements for determining the Member State responsible for an application for asylum, wWhere an application has been lodged after the date mentioned in the second paragraph of Article ~~29~~44, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date, with the exception of the events mentioned in Article ~~14(2)~~40(2).~~

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

Article ~~25~~38

~~⊗~~ Calculation of time-limits ~~⊗~~

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

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

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

Article ~~26~~39

~~⊗~~ Territorial scope ~~⊗~~

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

Article ~~27~~40

~~⊗~~ Committee ~~⊗~~

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

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

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↓ 1103/2008/EC, pt. 3(4) of the Annex

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

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↓ 343/2003/EC (adapted)

*Article ~~28~~41*

*☒ Monitoring and evaluation ☒*

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

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

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↓ new

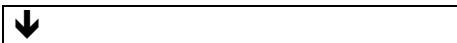
*Article 42*

*Statistics*

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council<sup>36</sup>, Member States shall communicate to the Commission (Eurostat), statistics concerning the application this Regulation and of Regulation (EC) No 1560/2003.

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<sup>36</sup> OJ L 199, 31.7.2007, p.23.



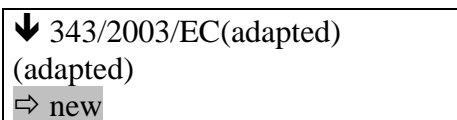
*Article 43*  
*Repeal*

Regulation (EC) 343/2003 is repealed.

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

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

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*Article ~~2944~~*

*⊗ Entry into force and applicability ⊗*

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

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

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

Done at [...]

*For the European Parliament*  
*The President*  
[...]

*For the Council  
The President  
[...]*





**ANNEX I**

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

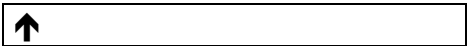
Council Regulation (EC) No 343/2003

(OJ L 50, 25.2.2003)

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

(OJ L 222, 5.9.2003)

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**ANNEX II**

**CORRELATION TABLE**

Regulation (EC) 343/2003	This Regulation
Article 1	Article 1
Article 2(a)	Article 2(a)
Article 2(b)	deleted
Article 2(c)	Article 2(b)
Article 2(d)	Article 2(c)
Article 2(e)	Article 2(d)
Article 2(f)	Article 2(e)
Article 2(g)	Article 2(f)
-	Article 2(g)
Article 2(h) to (k)	Article 2(h) to (k)
-	Article 2(l)
Article 3(1)	Article 3(1)
Article 3(2)	Article 17(1)

Article 3(3)	Article 3(3)
Article 3(4)	Article 4(1), introductory wording
-	Article 4(1)(a) to (g)
-	Article 4(2) and (3)
Article 4 (1) to (5)	Article 20 (1) to (5)
-	Article 20 (5), third sub-paragraph
-	Article 5
-	Article 6
Article 5(1)	Article 7(1)
Article 5(2)	Article 7(2)
-	Article 7(3)
Article 6, first paragraph	Article 8(1)
-	Article 8(3)
Article 6, second paragraph	Article 8(4)
Article 7	Article 9
Article 8	Article 10
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