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OUTCOME OF PROCEEDINGS

of: JHA Counsellors
on 23 February 2012

No Cion proposal: 16929/08 ASILE 26 CODEC 1758

Subject: Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast)

1. At its meeting on 23 February 2012, the JHA Counsellors examined Presidency compromise suggestions in relation to draft Recitals 8, 18A (former recital X) and 18B (former recital X+1), as well as to Articles 2, 4, 5, 6, 8, 11, 17, 26, 27 and 31.
2. The results of the above discussions are set out in the Annex to this Note, with delegations' comments in the footnotes. The remainder of the document reflects the state-of-play of the negotiations on the proposal as it was set out in doc. 6143/12, save where delegations have notified changes in their views, during the above-mentioned meeting.

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

ANNEX

↓ 343/2003/EC

⇒ new

⇒ Council

2008/0243 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the criteria and mechanisms for determining the Member State responsible for examining an **asylum** application ⇒ for international protection ⇐ lodged in one of the Member States by a third-country national ⇒ or a stateless person ⇐¹

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ⇒ [...] ⇐ ⇒ on the Functioning of the European Union (TFEU) ⇐ , and in particular ⇒ point 1 (e) of Article 78 ⇐ ⇒ [...] ⇐ thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee²,

¹ **SI:** scrutiny reservation on the **Pres** compromise suggestions, contained in doc. 5806/12. **DE, ES, IE, AT, RO, SI** expressed their preference for a discussion at the AWP, especially in relation to the new provisions of draft Article 31 on an Early Warning Mechanism. **FR, UK** could also support such an approach, although they could also live with the current choice of the Council body for its discussion.

² OJ C [...], [...], p. [...].

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 294 of the TFEU⁴,

Whereas:⁵

↓ 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 national⁶. In the interests of clarity, that Regulation should be recast.

↓ 343/2003/EC recital 1
↻ Council

(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 Union.

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ **DE, FI, FR, IT, AT:** scrutiny reservations on all the Recitals (except Recitals 14, 15, 30 and 31, as well as Recitals 18A and 18B).

⁶ OJ L 50, 25.2.2003, p.1.

↓ 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.

↓ 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.

↓ 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 ⇐ .

↓ 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.~~

↓ new

➡ Council

(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.

⇒ (6a) In the Stockholm Programme the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity in accordance with Article 78 TFEU, for those granted international protection, by 2012 at the latest. Furthermore it emphasized that the Dublin System remains a cornerstone in building the Common European Asylum System, as it clearly allocates responsibility for the examination of asylum applications. ⁷

(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 ⇒ [...] ⇒ Directive ⇒ [...] ⇒ 2011/xx/EU of 13 December 2011 on standards for the qualification and status of third country nationals or stateless persons as ⇒ beneficiaries of international protection for a uniform status for ⇒ refugees or ⇒ for ⇒ [...] ⇒ persons ⇒ eligible for subsidiary ⇒ [...] ⇒ protection and ⇒ for ⇒ the content of the protection granted,⁸ ⇒ [...] ⇒ the scope of this Regulation ⇒ [...] ⇒ encompasses ⇒ **persons whose applications for subsidiary protection has been admitted in accordance with national law** ⇒ [...] ⇒⁹

⁷ **EL, SI:** scrutiny reservations on this Recital. **SI:** pointed out that the 2012 deadline should not be reiterated in this draft Regulation.

⁸ OJ L 304, 30.9.2004, p. 12.

⁹ **IE:** reservation on this Recital, considering that it should not be permissible under EU law for a TCN to apply for subsidiary protection in a MS and never to be assessed as an applicant for refugee status. **Cion:** this Recital purports to confirm that an application covers both the examination for refugee status and for subsidiary protection. **FI:** scrutiny reservation on the **Pres** compromise. It was suggested to replace “admitted” with “made”. **IT:** delete the wording “in accordance with national law”. **HU, IE, NL** suggested submitting the issue to the AWP (see also footnote 1).

(9) ➡ [...] ⬅

10

(10) In accordance with the 1989 United Nations Convention on the Rights of the Child and ➡ as recognised in ⬅ 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.

↓ 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.~~

↓ new

➡ Council

(11) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and ➡ as recognised in ⬅ the Charter of Fundamental Rights of the European Union, respect for family ➡ life ⬅ ➡ [...] ⬅ should be a primary consideration of Member States when applying this Regulation.

10 **DE** suggested adding the following new Recital 9A: "In view of ensuring the application of the general rules and principles of the Members States on the representation of minors this Regulation does not oblige the Member States to introduce rules for the representation of unaccompanied minors which go beyond the existing national rules." **EL** supported this wording. **Cion** pointed out that the suggested wording contradicts the relevant current draft definition of Article 2. In relation to this suggestion, see also comments under footnote 46.

↓ 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 ⇐.
-

↓ new

⇒ Council

- (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 ⇒ [...] ⇐ ⇒ ⇒ [...] ⇐ relatives ⇐ on account of ⇒ the applicant's ⇐ pregnancy or maternity, ⇒ [...] ⇐ state of health or ⇒ [...] ⇐ ⇒ old ⇐ age, should become binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a ⇒ family member ⇒ [...] ⇐ a ⇒ [...] ⇐ sibling, or ⇒ [...] ⇐ ⇐ ⇒ [...] ⇐ relative on the territory of another Member State who can take care of him/her should also become binding responsibility criterion.¹¹

¹¹ **Delegations** which have registered their reservations on Arts 8 and 11 are deemed to have similar concerns on the **Pres** compromise regarding this draft Recital.

↓ 343/2003/EC (recital 7)

⇒ new

⇒ Council

- (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 ⇒ so as to make it possible to bring family members ⇒ and other relatives including minor unmarried siblings together¹² 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 ⇒ [...] . ⇐

↓ new

⇒ Council

- (15) A personal interview ⇒ [...] ⇒ may be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection ⇒ [...] ⇒ The asylum seeker should be informed, as soon as the application for international protection is lodged, on the application of the present Regulation and should be provided with the opportunity to request an interview with the purpose of providing information regarding the presence of family members or other relatives in the Member States .¹³

¹² ES, supported by BE suggested adding after “together”: “as well as other relatives, including minor unmarried siblings”. CY, DE, AT: scrutiny reservations on this wording.

¹³ SE: reservation, SI: scrutiny reservation on the Recital, the latter linked with its reservation on Article 5(1).

(16) In accordance in particular with the rights recognised in 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) [...]¹⁴

(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.¹⁵ Detention should be only be possible under clearly defined exceptional circumstances and be subject to the principles of necessity and proportionality. In particular, detention of asylum seekers must be applied in line with Article 31 of the Geneva Convention [...]. Moreover, the use of detention for the purpose of transfer to the Member State responsible should be limited¹⁶ [...].

¹⁴ **BE:** scrutiny reservation on the deletion of this Recital, suggesting alternatively amending its wording. **LU, CLS, Cion:** expressed strong concerns on the deletion, because they consider that this Recital was offering guidance for the implementation of this draft Regulation and was serving as a reminder for observance of the relevant case law on fundamental rights. **FI:** could live with the deleted Recital. **IE, NL, SE, UK:** supported the deletion.

¹⁵ **DE** suggested adding the following wording: "Detention should be only be possible under clearly defined exceptional circumstances and be subject to the principles of necessity and proportionality". **EL, Cion** could live with this suggestion.

¹⁶ **CZ, DE, ES, FR, IE, MT, NL, SI, UK:** reservations, **EL:** scrutiny reservation on the Recital. **DE, ES, NL, AT** consider that an agreement on the operative part related to detention should be reached before adapting this Recital, all the more because the corresponding draft Article 27 is still largely unclear and under negotiation. **CZ:** points out that this Recital's conditions are very hard to be met in practice. **FR** reiterated that the detention provisions should be gathered in the RCD proposal (for which the negotiations are ongoing). **EE, IT, MT, NL, UK:** suggested deleting the word "exceptional" (as **UK** stressed, the risk of absconding does not constitute an exceptional case in the Dublin system). In the same vein, **ES, IE** underscored that the second sentence of the Recital goes beyond the scope of draft Article 27. **CY:** the Recital could become clearer, but it supported the **Pres** compromise in general. **Cion:** could support the latest **Pres** compromise and would prefer maintaining the last sentence of the Recital and tally it with the final wording of Article 27.

☞ (18A ☞ [...] ☞)¹⁷ ☞ [...] ☞ **Deficiencies** or collapses of asylum systems, **often aggravated** ☞ [...] ☞ or contributed to by particular pressures on them, can destabilise the proper functioning of the system put in place by the present Regulation. A process for early warning, preparedness and management of asylum crises serving to prevent such deteriorations or collapses with EASO playing a key role using its powers under Regulation (EU) 439/2010 should be established both in order to ensure that cooperation within the framework of this Regulation is robust as well as to develop mutual trust among the Member States with respect to asylum policy. The process should ensure that the Union is alerted as soon as possible of situations in which a concern exists that the smooth functioning of the system set up by this Regulation is jeopardized because the asylum systems of one or more Member States are subject to particular pressure and/or¹⁸ due to deficiencies in the asylum systems of one or more Member States. Such a process would allow the Union to promote preventive measures at an early stage and afford such situations the appropriate political attention. Solidarity is a pivotal element in the CEAS and solidarity and mutual trust go hand in hand. By enhancing such trust, this process could improve the steering of concrete measures of genuine and practical solidarity towards the Member State or Member States concerned **in order** ☞ [...] ☞ to assist the affected Member States in general and the asylum seekers in particular. ☞

¹⁷ **CZ, EL, HU, RO:** reservations and **FR, IT:** scrutiny reservations on this Recital, in relation to their concerns about draft Art. 31 and the need for solidarity among MS. **NL:** The new draft Recitals in relation with draft Art. 31 should correspond with the contents and the scope of that Article.

¹⁸ **ES, MT:** reservations, suggesting deleting the word "**or**". **SK:** reservation on the inclusion of the word "**and**".

☞ (18B¹⁹ ☞ [...] ☞) Member States should collaborate with the European Asylum Support Office in the gathering of information concerning their ability to manage particular pressure on their asylum and reception systems, in particular in the framework of the application of this Regulation. The European Asylum Support Office should regularly report on the information gathered in accordance with Regulation (EU) No 439/2010. ☞

(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 343/2003²⁰, 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.

↓ 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.

¹⁹ CZ, EL, HU: reservations on the Recital, in relation to their concerns about draft Art. 31.

²⁰ OJ L222, 5.9.2003, p.3.

↓ new

↻ Council

(21) ↻ [...] ↻

(22) ↻ [...] ↻

(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 data²¹ 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.

²¹ OJ L 281, 23.11.1995, p. 31.

↓ 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.

↓ 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~~²² 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.

²² ~~OJ L 316, 15.12.2000, p.1~~

↓ 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 visas²³, and in particular the implementation of Articles 21 and 22 contained therein should facilitate the application of this Regulation.

↓ 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.²⁴ They shall comply with their obligations under the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms in particular and take into account the relevant case-law of the European Court of Human Rights, including the case-law regarding effective remedy.²⁵

²³ OJ L 218, 13.8.2008, p. 60.

²⁴ **SE:** suggested deleting the last part of the the Recital "...including the case-law regarding effective remedy" as redundant.

²⁵ In the light of their comments related to new compromise draft Art. 26(3)A, delegations also pointed out the following: **UK:** it should be clarified that, in the Dublin framework, the scope of the rights provided for under the Charter of Fundamental Rights could not extend beyond what is recognised by the ECHR. **CZ, DE, ES, FR, IE, AT, SI:** reservations, **BE, EE:** scrutiny reservations on the new **Pres** compromise. Certain **delegations** among them expressed concerns that the way this Recital is worded might imply that MS do not comply with their obligations deriving from the Fundamental Rights acquis and therefore, the added part should be deleted. **DE** suggested deleting the last part of the provision ("... and take into account the relevant case-law...effective remedy") as redundant.

↓ 343/2003/EC recital 13

↻ Council

- (30) ↻ [...] ↻ In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. of the European Parliament and of the Council of 16 February 2011 ↻ laying down ↻ [...] ↻ the rules and general principles concerning mechanisms for control by the Member States of ↻ the Commission ↻ 's exercise of implementing powers ↻²⁶.

↓ 1103/2008/EC pt. 3, first sub-paragraph of the Annex

↻ Council

- (31) ↻ [...] ↻ The examination procedure should be used for the adoption of an information leaflet on Dublin/Eurodac, of procedures related to the implementation of measures concerning the reunification of unaccompanied minors and dependent persons with relatives, of procedures for preparing and transmitting take charge and take back requests, of establishing and revising the two lists indicating the elements of proof regarding a take charge request, the design of the laissez-passer, the procedures for carrying out transfers and meeting their costs, drawing a standard form of data exchange, the practical arrangements on the transfer of health data, the rules relating to the establishment of secure electronic transmission channels for all written correspondence, given that those acts are of general scope. ↻²⁷

²⁶ **CY, EL, AT, SI:** scrutiny reservations on this Recital because of its relation with the implementing acts-related provisions of the proposal.

²⁷ **EL, AT, SI** (in relation to the issue of family reunification and the transfer costs): scrutiny reservations on this Recital because of its relation with the implementing acts-related provisions of the proposal.

↓ 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.

↓ 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.

↓ 343/2003/EC recital 15 (adapted)

⇒ new

⇒ Council

- (34) ~~The~~ This Regulation ~~observes~~ respects the fundamental rights and observes the principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union²⁸. In particular, this Regulation ~~it~~ seeks to ensure full observance of the right to asylum guaranteed by Article 18 and ~~[...]~~ the rights recognized by Articles 1, 4, 7, 24 and 47 of the said Charter and ~~[...]~~ should be applied accordingly.

↓ 343/2003/EC recital 16

⇒ new

⇒ Council

- (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.

²⁸ OJ C 364, 18.12.2000, p. 1.

↓ 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.~~

↓ 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.~~

↓ 343/2003/EC recital 19 (adapted)

~~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.~~

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT-MATTER AND DEFINITIONS

Article 1

⊗ Subject-matter ⊗

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

Article 2

⊗ Definitions ⊗

For the purposes of this Regulation:

- (a) "third-country national" means ~~anyone~~ ⊗ any person ⊗ who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community ⇒ and who is not ⇒ [...] ⇐ ⇒ national of a state which participates in this Regulation by virtue of an agreement with the European Community. ⇐ ⇐;

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

~~(c)~~ "application for asylum" means the application made by a third country national which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless a third country national explicitly requests another kind of protection that can be applied for separately;

↓ 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

☉ Council

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

- ~~(d)~~(e) "examination of an ~~asylum~~ application ~~⇒~~ for international protection ~~⇐~~" means any examination of, or decision or ruling concerning, an application for ~~asylum~~ ~~⇒~~ international protection ~~⇐~~ by the competent authorities in accordance with ~~national law~~ ~~⇒~~ Council Directive 2005/85/EC²⁹ ~~⇒~~ and Directive 2004/83/EC ~~⇐~~, ~~⇐~~ except for procedures for determining the Member State responsible in accordance with this Regulation ~~⇒~~ ~~⇐~~ [...] ~~⇐~~;
- ~~(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 ~~⇒~~ [...] ~~⇐~~ ~~⇒~~ entitled to ~~⇐~~ international protection as defined in Article 2(a) of Directive 2004/83/EC ~~⇐~~ ~~qualifying for the status defined by the Geneva Convention and authorised to reside as such on the territory of a Member State~~;

²⁹ OJ L 326, 13.12.2005, p.13.

↓ new

→ Council

→ [...] → ³⁰ (g) "family members" means, insofar as the family already existed in the country of origin, the following members of the applicant's family who are present in the territory of the Member States: →

→ (i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to → [...] → third country nationals; →

→ (ii) the minor children of couples referred to in point (i) or of the applicant, on condition that they are unmarried → [...] → and regardless of whether they were born in or out of wedlock or adopted as defined under the national law; →

³⁰ **EL, RO** reservations on the new **Pres** compromise, as they would prefer the previous version of the compromise with a wider scope, as set out in doc 5223/12. **FR:** scrutiny reservation on the definition of family members in the context of this draft Regulation.

↓ new

☞ Council

☞ [...] ☞

☞ (iii) when the applicant is a minor and unmarried the father, mother or another adult ☞ [...] ☞ responsible for the ☞ [...] ☞ him/her whether by ☞ [...] ☞ law or ☞ [...] ☞ by the national practice³¹ of the Member State where the adult is present, ☞ [...] ☞ ☞

☞ (iv) when the person granted international protection is a minor and unmarried the father, mother or another adult responsible for ☞ [...] ☞ him/her by law or by the national practice³² of the Member State where the person granted international protection is present ☞ ☞ [...] ☞

☞ [...] ☞

☞ [...] ☞

³¹ **IT:** reservation on the reference to national practice, instead of solely to national law, which could cause uncertainty and give raise to disputes on interpretation among MS.

³² **IT:** reservation, idem with footnote 32.

⇒ ga) “relative” ⇒ [...] ³³ means: ⇒

– ⇒ the sibling³⁴ or grandparent of the applicant ⇒

– ⇒ the aunt/uncle or great-grandparent³⁵ who has previously been responsible for the applicant’s care; ³⁶ ⇒

⇒ regardless of whether they were born in or out of wedlock or adopted as defined under national law. ³⁷ ⇒

³³ **IE:** pointed out that the wording "withing the meaning of Article 8" - or "Article 11" in (gb) is redundant.

³⁴ **DE, SK:** should qualify the reference to sibling as "who was previously responsible for the applicant's care". **DE** also suggested deleting the reference to grandparents and great-grandparents (in the next indent - see also footnote 37). **DE** could accept the inclusion in the definition of only **adult** aunts/uncles. **RO** recalled that provision has already been made for adult relatives in point g(iii) of this Article, which has a wider scope. **BG:** a coherent reference to adult relatives previously responsible for the minor concerned should exist throughout the text.

³⁵ **HU:** add “of the applicant” for the sake of clarity of the provision.

³⁶ **SE** suggested transferring the wording "who has been previously responsible for the applicant's care" to Article 8(2) as a criterion for the application of that provision. **EL, Cion** expressed concerns about the limitation of the opportunities for family reunification for the unaccompanied minors by virtue of the prior responsibility condition.

³⁷ **IT,** (has concerns in particular related to the inclusion of aunts/uncles, due to the practical difficulty of verifying such a relation), **CY, ES, AT, RO, SI, SK, UK:** reservations, **BE, BG, EE, EL, FR, HU, SE:** scrutiny reservations, on the **Pres** compromise (most concerns linked mainly with the scope of the definition –generally considered as too broad - and were in conjunction with delegations’ preoccupations for the relevant provisions of Art. 8). **SK** suggested excluding aunts/uncles and great-grandparents from this definition. **LV, SE, SI:** have similar concerns with **IT** about the practical implications of verifying a relation with aunts/uncles, but **LV** could live with the wording if it were acceptable by a majority of delegations. **Cion** pointed out that the onus to prove the relation would be borne by the applicant and not by the national administration. **ES, SI** suggested to not expanding the scope of the provision beyond the second-degree relatives. **RO** would prefer the previous version of the compromise, as set out in doc 5223/12. In reply to **EL, Pres** pointed out that an aunt previously responsible with the minor could be reunited with him/her pursuant to Art. 17 of this draft Regulation.

⇒ [...] ⇐

⇒ [...] ⇐

⇒ [...] ⇐

⇒ gb) “a relation³⁸ ⇒ [...] ⇐ means: ⇐

– ⇒ the **child**, sibling,³⁹ **parent**, grandparent or grandchild of the applicant; ⇐

– ⇒ the aunt/uncle, nephew/niece⁴⁰ who has previously been responsible for the applicant's care;⁴¹ ⇐

⇒ regardless of whether they were born in or out of wedlock or adopted as defined under national law. ⇐⁴²

³⁸ **MT, UK:** the distinction between “relative” and “relation” is not clear and could lead to confusion. **RO** suggested choosing the term "kinship" instead of "relation".

³⁹ **DE:** should qualify the reference to sibling as "who was previously responsible for the applicant's care" and delete the reference to grandparents/grandchildren and aunts/uncles, as well as nephews/nieces.

⁴⁰ **HU:** add “of the applicant” for the sake of clarity of the provision.

⁴¹ **SE** suggested transferring the wording "who has been previously responsible for the applicant's care" to Article 11(1) as a criterion for the application of that provision. **EL, Cion** expressed concerns about the limitation of the opportunities for family reunification for the dependent applicant by virtue of the prior responsibility condition.

⁴² **IT,** (has concerns in particular related to the inclusion of aunts/uncles due to the practical difficulty of verifying the relation), **CY, ES, FR** (in relation with the inclusion of children and parents in the scope of the definition), **AT, RO, SI, SK, UK,** reservations, **BE, BG, EE, EL, FI, HU, SE:** scrutiny reservations on the **Pres** compromise (most concerns linked mainly with the scope of the definition and in conjunction with the delegations’ preoccupations for the relevant provisions of Art. 11). **SK** suggested excluding aunts/uncles and nephews/nieces from this definition. **LV, SE, SI:** have similar concerns with **IT** about the practical implications of verifying a relation with aunts/uncles, but **LV** could live with the wording if it were acceptable by a majority of delegations. **Cion** pointed out that the onus to prove the relation would be borne by the applicant and not by the national administration. **SI** suggested to not expanding the scope of the provision beyond the second-degree relatives. **RO** would prefer the previous version of the compromise, as set out in doc 5223/12.

⇒ [...] ⇐

⇒ [...] ⇐

↓ 343/2003/EC

⇒ Council

⇒ [...] ⇐

⇒ [...] ⇐ ⇒ (h) ⇐ “minor” means a third-country national or a stateless person below the age of 18 years;⁴³

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

⇒ [...] ⇐ ⇒ (i) ⇐ "unaccompanied minor" means ~~unmarried persons below the age of eighteen~~ ⇒ ⇒ an unmarried⁴⁴ ⇐ ⇒ [...] ⇐ minor who ⇐ arrive ⊗ arrives ⊗ in the territory of the Member States unaccompanied by an adult responsible for ⇒ [...] ⇐ ⇒ him/her ⇐ whether by law or by ⇒ the national practice of the Member State concerned ⇐ ⇒ [...] ⇐ , and for as long as ⇒ [...] ⇐ ⇒ he/she ⇐ ⇒ [...] ⇐ ⇒ is ⇐ not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of ~~the~~ Member States;

⇒ [...] ⇐

⁴³ DE: see footnote 64.

⁴⁴ DE (for concerns about forced marriages) ES, SE: reservations on the qualification of the “unaccompanied minor” as “unmarried”.

↓ new

☞ Council

☞ [...] ☹

☞ [...] ☹☹ (j) "representative" means ☞ [...] ☹☹ a person or an organisation appointed by the competent bodies ☞ [...] ☹☹☹ ☞ [...] ☹☹☹ ☞ [...] ☹☹☹ ☞ [...] ☹☹☹ ☞ [...] ☹☹☹ in order to assist and represent the unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the child's best interests and exercising legal capacity for the minor where necessary. Where an organisation ☞ [...] ☹☹ is appointed as a representative, it shall ☞ [...] ☹☹ designate a person responsible for carrying out the ☞ [...] ☹☹ duties of this organisation in respect of the minor, in accordance with this Regulation. ☹☹⁴⁵

⁴⁵ **FR:** this provision should be consistent with Art. 6(2); the role of the representative differs from the one entrusted to the assistant of the unaccompanied minors. Thus, the wording should be amended to "... in order to assist and / or represent the unaccompanied minors...). **EL, IT, PL, UK:** scrutiny reservations on the provision; **SI:** reservation, a single definition on "representative" should be in the APD proposal; alternatively, it suggested replacing "procedures provided for in this Regulation" with "procedures for international protection". **BE:** questioned the added value of the definition (although it could go along with it), as it is an unnecessary restriction of the scope. **IT:** suggested referring to the "legal capacity to act" on behalf of the minor, as the key element for the appointee. **Cion:** although it could be improved, the compromise brings about greater consistency among the relevant instruments; it would not be necessary to appoint a person for each procedure, for every instrument.

↓ 343/2003/EC

⇒ new

⇒ Council

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

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

- (i) "long-stay visa" means ⇒ [...] ⇄ ⇒ an ⇄ authorisation or decision ⇒ issued by ⇒ [...] ⇄ one of the ⇄ ⇒ [...] ⇄ Member ⇒ [...] ⇄ States in accordance with its national law or EU law ⇒ [...] ⇄ ⇄ required for entry for an intended stay in that Member State of more than three months;
- (ii) "short-stay visa" means ⇒ [...] ⇄ ⇒ an ⇄ authorisation or decision of a Member State ⇒ with a view to transit through or an intended stay in the territory of one, more or all the Member States of a duration of no more than three months in any six-month period from the date of first entry in the territory of the Member States; ⇄ ⇒ [...] ⇄

⇒ [...] ⇐

⇒ [...] ⇐ ⇒ (iii) ⇐ "airport transit visa" means ⇒ [...] ⇐ ⇒ a visa valid for transit through the international transit areas of one or more airports, of the Member States. ⇐ ⇒ [...] ⇐

↓ new

⇒ Council

⇒ [...] ⇐

↓ 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.

↓ 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.

↓ 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 ⇐.

↓ 343/2003/EC Article 3(4) (adapted)

⇒ new

⇒ Council

Article 4

⊗ Right to information ⊗⁴⁶

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

↓ new

⇒ Council

(a) the objectives of this Regulation and the consequences of making another application in a different Member State ⇒ as well as the consequences of moving from a Member State to another one during the determination of the Member State responsible under this Regulation and during the examination of the application for international protection ◐;⁴⁷

⁴⁶ **CZ, ES, RO:** reservations on this Article (for **ES** the evaluation of these provisions should be linked with the APD debate on relevant issues); **CY, AT:** scrutiny reservation.

⁴⁷ **ES, FR, PT, SI, SK:** query about the scope of the obligation to inform the applicant with regard to the consequences of moving from one MS to another during the determination of the competent MS period.

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

Where necessary for the proper understanding of the applicant, the information shall also be supplied orally **for example** in connection with the personal interview as stipulated in Article 5.⁵¹

[...]

3. A common leaflet, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1 shall be drawn up in accordance with the procedure referred to in Article 40(2).⁵² This common leaflet shall also include information regarding the application of the Regulation concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Regulation (EC) No [.../...] and in particular the purpose for which the data of the asylum seeker concerned will be processed within EURODAC.

[...]

[...]

⁵¹ CZ, SI: reservations, FR scrutiny reservation on the provision, linked mainly with its reservation in Art. 5, regarding an obligation to conduct an interview with the applicant.

⁵² CY, EL, AT: scrutiny reservations on the choice of the implementing acts procedure in the proposal.

Article 5

Personal interview⁵³

1. The Member State carrying out the process of determining the Member State responsible under this Regulation **and before a decision is made in this respect**, shall ⁵⁴ conduct a personal interview in order to facilitate the process of determining the Member State responsible and/or⁵⁵ in order to ensure the proper understanding of the information supplied to the applicant in accordance with Article 4.

⁵⁶

⁵³ **CZ, ES, IE:** reservations on the entire Article, **AT:** scrutiny reservation. **BE:** scrutiny reservation; it queried whether providing the information to the applicant under Art. 4 might be considered as granting him/her an interview under this Article. **FR, IE, IT, SI** (albeit acknowledging the clarification that it would not necessarily have to be a Dublin interview): reservations in particular on the obligation for MS to grant an interview at the request of the applicant. **ES, MT, RO:** reservations and **HU, PT** scrutiny reservations on paragraph 1. **ES, MT, RO** suggested replacing “shall” with “may” in relation to the obligation of a MS to conduct an interview (**Pres** stressed that it suggested this amendment as long as it would not have to be an exclusive Dublin-purposes interview), **PT, RO,** suggested reverting to the wording of doc. 12069/11. **Cion** pointed out that it should be made clear to the applicant that the interview would also cover the Dublin purposes.

⁵⁴ **LU:** scrutiny reservation on the mandatory wording for conducting an interview, although it acknowledged the clarification that it would not necessarily have to be a Dublin interview. In reply to **RO,** (which preferred replacing “shall” with “**may**”, in order to avoid any impediment to the procedure if there is a EURODAC hit), **Pres** (supported by **Cion**) pointed out that the current compromise could expedite the procedure even under the circumstances invoked by **RO.**

⁵⁵ **BE:** the “and/or” wording weakens the obligation for the MS, thus it should be rephrased. In the same vein, **IT** suggested emphasizing that “...the interview **will ensure the proper understanding ...**” **Cion:** would prefer maintaining only the word “or”.

⁵⁶ **PT:** preferred reinserting paragraph 1A as set out in doc. 12069/11.

2.⁵⁷ [...] An interview may be omitted if:

(a) the applicant has absconded; or

[...]

(b) [...]) [...] after having received the information referred to in Article 4 the applicant [...] has already provided his/her information by any other means. [...] ⁵⁸

[...]

[...] [...]

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

⁵⁷ **FR** (in connection with its reservation on para. 1), **AT**: reservations on this paragraph. **ES**, **IT** suggested replacing “A” with “**The**” in order to stress that there should be only one interview.

⁵⁸ **FR, NL, SI**: reservations and **HU, AT** scrutiny reservations on this point; **FR, SI** suggested replacing the first part of the sentence "after having... Article 4", with "according to this Article has already been conducted, or the applicant was given the opportunity...". **IT, UK**: scrutiny reservations on the point. **HU**: suggested rewording the text as follows: "after having received ... **regarding the presence of his / her family members within the meaning of Article 2(g) or other relatives / relations in the MS, at a personal interview held in accordance with the guarantees set out in this Article** or has already provided information by any other means".

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

5. [...] The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law.⁵⁹

6. [...] The Member State conducting the personal interview shall make a [...] written [...] summary containing at least the main information supplied by the applicant at the interview [...]. This summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant and/or a legal advisor or other counsellor who is representing him/her have timely access to the [...] summary.⁶⁰

⁵⁹ **ES, FR, NL** (which suggested deletion of the last sentence of this paragraph): reservations on the scope of the term "qualified". In the same vein, **IE** underscored that this person has just to provide information and therefore no particular qualifications would be needed and suggested deletion of the obligation to have these qualifications provided for in national law, as excessive. **AT** although could live with the provision, stressed that reference to national law could be omitted. **Pres:** recalled that this wording was in Art 5(1) of the original **Cion** proposal. With regard to the scope of this notion, it pointed out that the person in question should have the necessary skills / training for this work.

⁶⁰ **FR, SE:** reservations on the paragraph; **FR:** in relation with the obligation to draw up a written summary, **SE:** because it considers that the added part about the form of the outcome of the interview is superfluous; it would prefer reverting to the previous wording of this provision. It was pointed out that this wording, which offers less leeway to MS was chosen in order to provide them the guidance they sought. **IT:** scrutiny reservation on the paragraph.

Article 6

Guarantees for ↻ [...] ☹ minors⁶¹

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.
2. Member States shall ensure that a representative represents and/or assists the unaccompanied minor with respect to all procedures provided for in this Regulation.
↻ [...] ☹ ↻ The representative shall ↻ [...] ☹ have the necessary expertise in view of ensuring that the best interests of the minor are taken into consideration **therefore he/she shall have access to the content of the relevant documents in the applicant's file** ↻ [...] ☹ ↻ [...] ☹ including the specific leaflet for unaccompanied minors. ☹⁶²
3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:
 - (a) family reunification possibilities;
 - (b) the minor's well-being and social development ↻ [...] ☹;
 - (c) safety and security considerations, in particular where there is a risk of the child being a victim of trafficking;
 - (d) the views of the minor, in accordance with his/her age and maturity.

⁶¹ **AT:** reservation on Art. 6.

⁶² In connection with scrutiny reservations from **HU, NL, SE**, (the last two also suggested drawing on draft Art. 23 of APD for the drafting of this provision), **Pres** confirmed that the representative shall be given access to the applicant's file and not being handed the documents as of the beginning of the procedure. **HU:** suggested replacing "including" with "**and to**". **DE, RO** queried about the concept of "relevant documents". **DE** reservation on the provision, preferring an age threshold of 16 years - in connection with the definition of a minor under Art. 2(h). **UK:** scrutiny reservation on the provision.

☞ [...] ☞

☞ 4. ☞ [...] ☞ For the purpose of applying Article 8 of this Regulation, the Member State where the application for international protection was lodged by the unaccompanied minor shall, ☞ [...] ☞ on account ☞ [...] ☞ of information⁶³ ☞ [...] ☞ ☞ [...] ☞ ☞ making it possible to identify the ☞ family ☞ member within the meaning of Article 2(g) ☞ [...] ☞ ☞ or other⁶⁴ relatives ☞ as referred to in Article 2 (ga) ☞ [...] ☞ ☞, ☞ [...] ☞ on the territory of Member States ☞ [...] ☞ ☞, ☞ [...] ☞ collect such information, for example, by sharing information with other Member States, as outlined in Article 32, whilst protecting ☞ [...] ☞ the minor's best interests. ☞⁶⁵

☞ [...] ☞

☞ 5. Procedures for implementing paragraph 4 shall be adopted in accordance with the procedure referred to in Article 40(2).⁶⁶ ☞

⁶³ **SI:** it should be clarified that the burden of proof remainw with the applicant and his/her representative and not the MS.

⁶⁴ **LV:** the word "other" is redundant.

⁶⁵ **DE:** reservation and **CY, EL, IT, HU, SE, SI, SK, UK:** scrutiny reservations on the provision, mainly in connection with their concerns about Art. 2(g)(a) and with the reference to Art. 32; **HU** suggested providing for an obligation to trace a relative legally present on the territory of the MS concerned and reinserting reference to "credible information". **Pres** pointed out that a "credible information" may not suffice for triggering up the tracing mechanism, whereas if the information is qualified as "usable" then the national administration would have concrete evidence on which it could base its tracing efforts. **Cion** recalled that there is an absolute obligation under Arts 8(1)(2) to reunite unaccompanied minors, with the persons who meet the relevant criteria and Art. 6(4) only provides the modalities of this unification, without dealing with the question of whether there is an entitlement for such unification. **Cion** also expressed concerns about the possible negative impact of choosing Art. 32 procedure for the tracing in the context of Art. 6 and suggested deleting the wording "for example". **Cion** moreover recalled that in the context of tracing there is only an obligation for action, not for a result. **Cion** also agreed with the deletion of "credible information" due to its vagueness.

⁶⁶ **AT** reservation, **EL, ES, SI:** scrutiny reservations on the implementing acts' procedure. **ES:** reservation on the possibility to adopt additional rules for the implementation of paragraph 4. **SI:** suggested referring to the provision in Article 40(2) in order to prevent **Cion** from adopting a draft implementing act where no opinion is delivered by the Committee in accordance with Article 5(4) of Regulation No 182/2011.

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

☞ Council

☞ [...] ☹

☞ 3. In view of the application of the criteria referred to in Article 8, 10 and 11, Member States shall take into consideration any available evidence regarding the presence ☞ [...] ☹ on the territory of a Member State of family members within the meaning of Article 2(g) or of other relatives , including minor unmarried siblings of the applicant for international protection, ☞ [...] ☹ on condition that such evidence is produced ☞ [...] ☹ before the acceptance of the request by another Member State to take charge or take back the person concerned, pursuant to Articles 22 and 24 respectively and that the previous applications for international protection of the asylum seeker have not yet been subject of a first decision regarding the substance. ☹

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 ⇒ within the meaning of Article 2(g) or his/her sibling ⇐ [...] ⁶⁷ ⇐ is legally present, provided that this is in the best interest ⇐ [...] ⇐ of the ⇐ [...] ⇐ minor.

⁶⁷ **BE, DE, HU, LV, SI:** reservations to the **Pres** compromise, pointed out that it could not accept going beyond the minor unmarried siblings in the scope of the provision, recalling that in para. 2 reference is made to relatives in general, (provided that the conditions of the provision are met). **SK:** scrutiny reservation on the **Pres** compromise. **NL** suggested including **minor siblings** in the provision (thus deleting the word "unmarried"). **EL, RO:** reservations and **FR** scrutiny reservation on the current **Pres** compromise, in connection with their concerns on Art. 2(ga); **EL** would prefer the previous version of the compromise, as set out in doc 5223/12. **UK:** scrutiny reservation on Art. 8 in general and on the compromise, which would entail a widening of the scope of the provision.

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

~~23~~ ¶ ☒ Where ☒ ⇒ the applicant ⇐ ~~asylum-seeker~~ is an unaccompanied minor who has a
 ⇒ [...] ⇐ relative ⇒ , who is ⇒ [...] ⇐ ⇐ [...] ⇐ or relatives ⇒ legally ⇒ [...] ⇐
 ⇒ resident or ⇒ [...] ⇐ asylum seeker ⇐ ⇐ in another Member State ⇒ [...] ⇐ ⇒ and
 where it is established, based on an individual examination, that the relative ⇐ can take
 care of him or her, ☒ that ☒ Member States shall ⇒ unite the minor with his/her relative
 and ⇐ ~~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 interest ⇒ [...] ⇐
 of the minor.⁶⁸

⁶⁸ **SE:** reservation on the provision as it would entail practical problems, mainly related to a lengthy procedure. **DE** would prefer to maintain Art. 15(3) of the current Dublin Regulation. **CY, EL, AT, SI, SK, UK:** reservations (against the inclusion of the asylum seekers, or in connection with their concerns on Art. 2(g)(a)). **BG, EL, IT:** reservations because they consider that the scope of the provision is limited as they are against the deletion of the reference to the relatives "legally present"), **HU:** scrutiny reservation on the **Pres** compromise for the provision. **Cion** cannot support the **Pres** compromise because it considers it counter to the best interest of the child as long it deprives it of the possibility to be taken care of by a relative on short or long-term visa, in the process of obtaining a longer-term residence permit.

↓ new

↻ Council

3. Where ↻ family ↻ members ↻ or relatives as mentioned in paragraphs 1 and 2 ↻ ↻ [...] ↻ ↻ [...] ↻ ↻ [...] ↻ are ↻ [...] ↻ ↻ staying ↻ in more than one Member State, the Member State responsible for examining the application shall be decided on the basis of what is in the best interests of the ↻ unaccompanied ↻ minor.⁶⁹

↓ 343/2003/EC

⇒ new

↻ Council

4. In the absence of a family member ↻ or a relative as mentioned in paragraphs 1 and 2⁷⁰ ↻ ↻ [...] ↻ ↻ [...] ↻ the Member State responsible for examining the application shall be that where the ↻ unaccompanied ↻ minor has lodged his or her ⇒ ↻ [...] ↻ ↻ first ↻ ⇐ application for asylum ⇒ international protection, provided that this is in the best interests of the ↻ [...] ↻ minor. ⇐⁷¹

↻ [...] ↻

⁶⁹ **CY, FI, IE, IT, AT, UK:** scrutiny reservations on the **Pres** compromise for the provision. **DE** suggested the following alternative wording: "Where family members or relatives as mentioned in paragraphs 1 and 2 are staying - while legally residents or asylum seekers - in more than one MS, the MS responsible for examining the application ...".

⁷⁰ **DE** reservation in relation with its concerns on paras 1 and 2.

⁷¹ **ES, IT:** reservations on the deletion of the principle of the most recent application, serving as a basis for the examination of the minor's application. **IT, Cion:** preferred reference to the most recent application.

2. Where the **relation** is legally resident in another Member State than the one where the asylum seeker is present, the Member State responsible for examining the application shall be the one where the **relation** is legally resident⁷⁶ unless the concerned asylum seeker's health condition prevents him/her during a significant period of time from travelling to that Member State.⁷⁷

Where the concerned asylum seeker's health condition prevents him/her during a significant period of time from travelling to another Member State, the Member State responsible for examining his/her application shall be the one where he/she is present.⁷⁸ Becoming the Member State responsible due to the applicant's inability to travel does not entail the obligation of bringing the **relation** to that Member State.

↓ 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.~~

⁷⁶ See footnote 70 in relation to certain **delegations** concerns about the limitation of the scope of the provision due to the deletion of the reference to relatives "legally present".

⁷⁷ **SI:** scrutiny reservation on the point.

⁷⁸ **AT:** reservation linked to abuse and to the allegedly automatic obligation for MS to bring the relatives to their territory to join the dependent relative, under the Dublin system. **Pres / Cion:** there is no such obligation for the MS; abuse is unlikely because dependence and family links have to be proven. More detailed rules could be decided in the comitology / delegated acts framework.

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

⇒ [...] ⇒ 3. ⇒ [...] The ⇒ [...] procedures for implementing ~~this Article~~
⇒ [...] ⇒ this Article including, where appropriate, conciliation mechanisms for
~~settling differences between Member States concerning the need to unite the persons in~~
~~question, or the place where this should be done,~~ ⇒ [...] ⇒ shall be adopted
⇒ [...] in accordance with the ⇒ [...] procedure ⇒ [...] referred to in Article
~~27(3)~~ 40 (2) ⇒ [...].⁷⁹

↓ 343/2003/EC (adapted)
⇒ new
⇒ Council

Article ~~14~~ 12

⊗ Family procedure ⊗

Where several members of a family ⇒ within the meaning of Article 2(g) ⇒ [...] and/or
~~minor unmarried siblings~~ 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:

⁷⁹ **SI:** considers this provision unnecessary. **CY, EL, AT, SI:** scrutiny reservations on the choice of the implementing acts procedure in the proposal. **SI:** suggested referring to the provision in Article 40(2) in order to prevent **Cion** from adopting a draft implementing act where no opinion is delivered by the Committee in accordance with Article 5(4) of Regulation No 182/2011.

- (a) responsibility for examining the applications for ~~asylum~~ ⇒ international protection ⇐ of all the members of the family ⇒ within the meaning of Article 2(g) ⇒ [...] and/or minor unmarried siblings shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of ⇒ them ⇒ [...];
- (b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

Article 913

✕ 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 ⇒ on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on visas ⇒ [...]. In such a case, the ⇒ represented ⇒ [...] Member State shall be responsible for examining the application for ⇒ international protection ⇐ ~~asylum~~ ⇒ [...].
3. Where the asylum-seeker is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for ⇒ international protection ⇐ ~~asylum~~ shall be assumed by the Member States in the following order:

- (a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;
- (b) the Member State which issued the visa having the latest expiry date where the various visas are of the same type;
- (c) where visas are of different kinds, the Member State which issued the visa having the longest period of validity, or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.

4. Where the asylum seeker is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than six months previously and which enabled him/her actually to enter the territory of a Member State, paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the territories of the Member States.

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

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

Article ~~1014~~

~~Entry and/or stay~~

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article ~~2218~~(3), including the data referred to in Chapter III of Regulation ~~2725/2000~~ [concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Regulation]~~(EC) No [.../...]~~ (EC) No [.../...], that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐ . This responsibility shall cease 12 months after the date on which the irregular border crossing took place.
2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1, and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article ~~2218~~(3), that the asylum seeker - who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established - ~~at the time of lodging the application~~ has been ~~previously~~ living for a continuous period of at least five months in a Member State ~~before lodging the application for international protection~~, that Member State shall be responsible for examining the application for ~~asylum~~ ⇒ international protection ⇐ .

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

Article ~~11~~15

⊗ Visa waived entry ⊗

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

Article ~~12~~16

⊗ Application in an international transit area of an airport ⊗

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

CHAPTER IV

~~HUMANITARIAN CLAUSE~~

⊠ DISCRETIONARY CLAUSES ⊠

Article ~~15~~17

⊠ Discretionary clauses ⊠

↓ 343/2003/EC Article 3(2) (adapted)

⇒ new

↻ Council

1. ~~2~~ By way of derogation from ~~Article 3 paragraph (1)~~, each Member State may ~~↻ [...]~~ ⊠ decide to ⊠ examine an application for ~~asylum~~ ⇒ international protection ⇐ lodged with it by a third-country national ⇒ or a stateless person ⇐, even if such examination is not its responsibility under the criteria laid down in this Regulation. ~~↻ [...]~~ ⁸⁰

⁸⁰ **Cion:** regrets the deletion of the reference to the consent of the asylum seeker, which it considers that it was meant to ensure a proper application of family unity criterion.

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

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

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

2.⁸¹ ~~1 Any Member State, even where it is not responsible under the criteria set out in this Regulation,~~ ☒ The Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, or the Member State responsible, ☒ may, ⇒ at any time ⇒ before a first decision regarding the substance is taken ☒, request another Member State to take charge of an applicant in order to ⇐ bring together family ⇒ [...] ☒ members ⇒ within the meaning of Article 2(g) ☒, as well as other⁸² ~~dependent~~ relatives ⇒ **or relations** including minor unmarried siblings⁸³ ☒, 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 ☒.

↓ 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.

⁸¹ **RO, UK:** reservations in relation with its concerns on Art. 2(g)(a) and (g). **CY, FI, SE** scrutiny reservations on the Article. **DE, SK:** reservations in relation with their concerns on the terms "relatives" and "relations".

⁸² **LV, AT, UK:** the term "other" is redundant.

⁸³ **NL:** the wording "including minor unmarried siblings" is not needed.

↓ 1560/2003 (adapted) Article 13(3)
 ⇨ new
 ⇨ Council

⊗ The requested Member State shall carry out ~~⊗ the necessary~~ any necessary checks ~~to establish, where applicable, humanitarian reasons, particularly of a family or cultural nature, the level of dependency of the person concerned or the ability or commitment of the other person concerned to provide the assistance desired.~~ ⇨ to ⇨ [...] ⇨ examine ⇨ the humanitarian reasons cited, and shall ⇨ [...] ⇨ [...] ⇨ [...] ⇨ [...] ⇨ **reply** to the requesting Member State ⇨ within two months of the date on which the request was received ⇨ by using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003 . ⇨ [...] ⇨ [...] ⇨ [...] ⇨ [...] ⇨ **A reply refusing the request shall state the reasons on which it is based.** ⇨ [...] ⇨ . ⇨⁸⁴

↓ 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.

⁸⁴ NL would prefer a clear reference to a decision by the requested MS on the request.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

CHAPTER V

~~TAKING CHARGE AND TAKING BACK~~

⊗ OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE ⊗

Article ~~16~~18

⊗ *Obligations of the Member State responsible* ⊗⁸⁵

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 ⇐;

⁸⁵ **IT:** reservation because it is not clear whether the MS which has asked another MS to take back the applicant is obliged to examine the application at any rate.

~~(c)~~(d) take back, under the conditions laid down in Articles 23, 24 and 28 ~~20~~, ~~...~~ ~~...~~ ~~...~~ who has withdrawn the application under examination and made an application in another Member State ~~or who is in the territory of another Member State without a residence document~~;

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

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

~~...~~ For the cases referred in paragraph 1 (c), when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant ~~before a decision on substance in first instance has been taken~~, it shall ~~ensure that the applicant is entitled to request that the examination of his/her application is completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as defined in Directive [2005/85/EC] [Procedures Directive]. In such cases, Member States shall ensure that the examination of the application is completed~~, within the meaning of Article 2(d).⁸⁶

⁸⁶ **AT:** reservation in order to provide for a time limit putting an end to the procedure, after which the case could not be reopened.
DE: requests deletion of the second and the third sentence of paragraph 2.

⇒ For the cases referred to under paragraph 1 (d), where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has or has had, the opportunity to access an effective remedy, pursuant to Article 39 of Directive 2005/85/EC. Ⓞ ⇒ [...] Ⓞ⁸⁷

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) Ⓞ (c) or Ⓞ (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.

↓ 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.

⁸⁷ **CZ:** reservation on this subparagraph, suggested deleting it; has concerns related to the fact that the person concerned will not be in the territory of the MS (because he has absconded) and the notification cannot be made to him/her), therefore it is likely that courts may consider that he/she has no access to an effective remedy (see doc. 17073/1/10 for an analysis of the reservation grounds).

↓ 343/2003/EC (adapted)
⇒ new
↻ Council

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) ↻ (c) or ↻ (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. ⇐

↓ 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.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

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 [...], shall be indissociable from that of his /her family member and shall be a matter for the Member State responsible for examining the application for asylum ⇒ international protection ⇐ of that [...], family member, , even if the minor is not individually an asylum seeker ⇒ , provided that this is in his/her best interests ⇐ . The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for asylum ⇒ international protection ⇐ is lodged with the competent authorities of a Member State by an applicant who is in the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for asylum ⇒ international protection ⇐ was lodged.

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

5. An asylum seeker who is present in another Member State [...] without a residence document or who there lodges an application for asylum international protection after withdrawing his first application made in a different Member State during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles 2023, 24 and 28., by the Member State with which that application for asylum international protection was firstly lodged, with a view to completing the process of determining the Member State responsible for examining the application for asylum international protection.

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 Member State.

↓ 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.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

⊗ 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.

⇒ In case of a EURODAC hit with data recorded pursuant to Article 10 of Regulation (EC) No [.../...] concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Regulation, the request shall be sent within two months of receiving that hit pursuant to Article 11(2) of that Regulation. ◀

Where the request to take charge of an applicant is not made within the period of three months ~~or two months respectively~~, 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)~~.⁸⁸

⁸⁸ **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

Article ~~18~~22

⊗ 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:⁸⁹
 - (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.

⁸⁹ **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

(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 ➡ when a new application has been lodged in the requesting Member State ⌂ ✘

➡ 1. Where a Member State with which a person as referred to in Article 18(1)(b), (c) or (d) lodged a new application for international protection, considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) and (d), it may request that other Member State to take back that person.

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

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

4. The request for the person concerned 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, enabling the authorities of the requested Member State to check whether it is responsible.

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 40(2). ⁹⁰

➤ Article 23A

Submitting a take back request when no new application for international protection has been lodged in the requesting Member State

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

⁹⁰ **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

2.⁹¹ By derogation from Article 6(2) of Directive 2008/115/EC, where a Member State on whose territory a person is staying without a residence document 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 a person as referred to in Article 18 (1) (b) or (c), or a person as referred to in article 18 (1) (d) whose application for international protection not has been rejected by a final decision 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.

3. Where the request to take back the person concerned, is not made within the periods laid down in paragraph 2, the Member State on whose territory the person concerned is staying without a residence document shall give the person the opportunity to lodge a new application ➡ [...] ⤵.⁹²

⁹¹ **AT:** scrutiny reservation on the paragraph.

⁹² **FI, SE:** scrutiny reservations on the paragraph.

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

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

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

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 40(2). ⁹³

⁹³ **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

⇒ [...] ⇐

↓ new
⇒ Council

⇒ [...] ⇐

⇒ [...] ⇐

↓ 343/2003/EC (adapted)
⇒ new
⇒ Council

Article 24

⊗ *Replying to a take back request* ⊗

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

~~(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 1925

Notification of a transfer decision⁹⁴

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

⁹⁴ **CZ:** maintained a reservation, suggesting excluding from the scope of this Article those third-country nationals to whom a return decision has already been issued, but have not been removed (concerns related with regard to the link between the Dublin and the Return Directive systems). **Cion:** against this proposal because the Dublin Regulation and the Return Directive constitute two different legal systems with different consequences and rights attached to them. The notification of a decision affecting a person is crucial in order to allow him/her be informed about this situation and exercise any effective remedies applicable.

⁹⁵ **CZ:** suggested reverting to the original language of the provision: "... communicate to the applicant the decision not to examine the application and of the obligation to transfer..." to ensure that the transfer decision is issued only in cases where the application for international protection has been lodged on the territory of the transferring MS. **SK:** supported this suggestion, **FI:** scrutiny reservation on it, preferring the current **Pres** compromise. **Cion:** cannot support this wording.

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

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

☞ 3. When the person concerned⁹⁶ is not assisted or represented by a legal advisor or other counsellor, Member States shall ☞ [...] ☞ inform him/her ☞ [...] ☞ of the main elements of the decision, which shall always include information on available legal remedies and the time-limits applicable for seeking such remedies, in a language the person concerned understands or may be reasonably ☞ [...] ☞ presumed to understand. ☞

⁹⁶ CZ: suggested replacing “person concerned” with “applicant” throughout the text.

↓ new

→ Council

Article 26

*Remedies*⁹⁷

1. The applicant or another person as referred to in Article 18(1) → (c) or ← (d)⁹⁸ shall have the right to an effective → [...] ← remedy, in the form of an appeal or a review, in fact and in law, → [...] ← → against ← the transfer decision referred to in Article 25, before a court or tribunal.
2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his/her right to an effective → [...] ← remedy pursuant to paragraph 1.
- 3.⁹⁹ In the event of an appeal or review concerning the transfer decision referred to in Article 25, → and where the right to remain in the Member State concerned pending the outcome of → [...] ← the appeal or review is not foreseen under national legislation → [...] ←, that Member → [...] ← State shall give the person concerned the opportunity to request → [...] ← → [...] ← a court or tribunal → [...] ← to suspend the implementation of the transfer decision ← pending the outcome of his/her appeal or review.

⁹⁷ **IE:** reservation and **CY** scrutiny reservation on Article 26.

⁹⁸ **CZ, SK:** suggested deleting “or another person... or (d)”.

⁹⁹ **BE:** scrutiny reservation on this paragraph due to the likely implications of the case law related to asylum acquis. **CZ, DE, EL, ES, IT, SI:** scrutiny reservation on this paragraph.

☞ [...] ☞

☞ The introduction of such a request ☞ [...] ☞ may have a suspensive effect on the implementation of the transfer ☞ [...] ☞ decision¹⁰⁰ ☞ [...] ☞ ☞ [...] ☞.

Member States' competent authorities may ☞ [...] ☞ decide acting ex officio ☞ [...] ☞ to suspend the implementation of the transfer decision pending the outcome of the appeal or review, ☞ [...] ☞ ☞ [...] ☞.

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

☞ [...] ☞ A decision ☞ rejecting the request for the suspension of the implementation of the transfer decision ☞ ☞ [...] ☞ ☞ [...] ☞ pending the outcome of ☞ the ☞ ☞ [...] ☞ appeal or review shall state the reasons on which it is based.¹⁰¹

☞ [...] ☞¹⁰²

¹⁰⁰ **Cion:** this sentence could be deleted, inasmuch as it is clearly indicated at the end of the next paragraph that no transfer could be carried out before a decision on the suspension of the implementation is taken.

¹⁰¹ **AT:** reservation on this subparagraph.

¹⁰² **FR:** reservation on the deletion of the paragraph and in relation with the proposed relevant draft statement of the European Parliament and the Council. **BE, EL, IT:** scrutiny reservations on the deletion of this provision. **A significant number of delegations** supported this deletion.

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

➔ [...] ➔ ¹⁰³5. ➔ Member States shall ensure that legal assistance ➔ [...] ➔ be granted ➔ on request ➔ [...] ➔ free of charge where the person concerned cannot afford the costs involved ➔ , and insofar as it is necessary to ensure his/her effective access to justice ➔ [...] ➔ . Member States may provide that, as regards fees and other costs the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance. ➔

➔ Without arbitrarily restricting access to legal assistance, Member States may limit free legal assistance to cases where the appeal or review is likely to succeed. ➔¹⁰⁴

➔ [...] ➔

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

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

¹⁰³ **EL, MT:** reservations on the principle of free legal assistance, in the context of this provision, due to the administrative burden and the costs it will entail. **CZ:** the wording of this point shall be aligned with the Return Directive. It was recalled that the Return Directive refers to the APD.

¹⁰⁴ **CY, SE:** reservation suggesting deletion of the **Pres** compromise, **EL, FI:** scrutiny reservations on it.

SECTION V.

DETENTION FOR THE PURPOSE OF TRANSFER

Article 27

Detention¹⁰⁵

☞ [...] ☞

☞_☞ [...] ☞ Member States may detain persons¹⁰⁶ ☞ [...] ☞ in order to secure a transfer to the responsible Member State¹⁰⁷ in accordance with this Regulation when there is a **serious**¹⁰⁸ risk of **absconding, on the basis of an individual assessment, if other less coercive alternative measures cannot be applied effectively. Detention shall be no longer than the time reasonably necessary to fulfill the required administrative procedures for carrying out the responsibility determination under this Regulation.**

-
- ¹⁰⁵ See also Annexes V-VII for alternative compromise wordings on the provision.
FR, AT: general reservations on all the provisions related to detention as they considered that this issue should not be dealt with in the asylum acquis. **FR** also pointed out that it maintained its misgivings in relation with separating the ground of detention in the context of this draft Regulation from the other relevant grounds provided for in national law. **EL, FI, FR, IE, HU, LT, PT, SI, SK, UK:** scrutiny reservation on all the compromise suggestions in relation to detention. **SE:** scrutiny reservation on the **Pres** compromise. **Certain delegations** could support the **Pres** compromise. **CZ:** scrutiny reservation on all, but the compromise from **DE**. **BE, HU, PT, SI** pointed out that detention should be possible for the interim period during which the administrative procedures for the transfer are to be carried out. **UK** suggested improving the wording of the last sentence of subpara. 1 as follows: Detention shall be no longer than the time reasonably **required to fulfil the administrative procedures necessary to implement this Regulation in full**".
- ¹⁰⁶ **DE:** suggested adding "or hold in detention". **Pres** pointed out that "detain" inevitably entails holding someone in detention, therefore the addition is redundant.
- ¹⁰⁷ **DE:** sought clarification on whether the transfer has to be already accepted by the requested Member State as a condition for detention.
- ¹⁰⁸ **FI, FR, SI, UK:** suggested deleting the word "serious" (see also the compromise of **NL** in Annex VI).

Member States shall lay down provisions on conditions for detention of and on guarantees applicable to persons detained [...] in order to secure a transfer to the responsible Member State in their national legislation, **in accordance with relevant EU and international instruments, as applicable.** ¹¹⁰

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

⊗ SECTION VI: TRANSFERS ⊗

Article ~~19~~28

⊗ *Modalities and time-limits* ⊗

¹⁰⁹ **DE:** suggested adding the following subparagraph: "In order to secure a transfer Member States may also detain or hold a person in detention, who has been arrested after an illegal entry, who is enforceably required to leave the country under national law and for whom there is evidence that another Member is responsible according to the criteria laid down in this Regulation.". **CLS** expressed strong concerns underlying that if this wording refers to the detention of a TCN to be transferred for whom there is a risk of absconding, the current draft text covers it; if however, the TCN has been arrested after illegal entry and cannot be detained under the grounds provided for in the current draft Article, then it is without legal basis and out of the scope of the proposal. In the same vein, **Pres** added that if the suggested wording refers to transfers to third countries the Return Directive is to be applied while if it refers to transfers to other MS, the current text is sufficient. **Cion** shared the views of **CLS**, **NL** considered the suggested addition superfluous. **Pres. CY, CZ, RO, SK** expressed their initial positive reaction towards the **DE** suggestion. **FI** pointed out that although preferring the current text, it could live with the **DE** approach if need be. **EL, MT, SE, SI, UK:** scrutiny reservations on the **DE** suggestion.

¹¹⁰ **FR:** questions the added value of this paragraph. **Pres:** it is there in order to establish the link with the RCD.

13. The transfer of the applicant ~~or~~ or of another person as referred to in Article 18(1) ~~(c)~~ or ~~(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~~ ~~there is~~ a suspensive effect ~~[...]~~ ~~in accordance with Article 26(3)~~ ~~or (3A)~~.¹¹¹

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.~~

¹¹¹ The reservations / remarks made by **delegations** on the occasion of draft Art. 26(3)A (see footnote 95) also pertain to this provision.

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.

⇩ new

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

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

→ Council

45 → [...] → The procedures for implementing this Article shall be adopted in accordance with the procedure referred to in Article 40(2).¹¹²

↓ new

→ Council

Article 29

Costs of transfers

1. The costs necessary to transfer an applicant or another person as referred to in Article 18(1) → (c) or → (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.

¹¹² **EL, FR, AT:** scrutiny reservations on the choice of the implementing acts procedure for this Article. **CLS, Cion** considered that the modifications were in line with the principles for distinguishing between Articles 290 and 291 TFEU, but stressed the fact that the choice of the implementing acts instead of delegated acts procedure would affect the scope and the substance of the measures to be adopted under the proposed procedure.

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

4.  [...]  The procedures for implementing this Article shall be adopted in accordance with the procedure referred to in Article 40(2). ¹¹³

Article 30

Exchange of relevant information before transfers being carried out

 [...] 

¹¹³ **EL, FR, AT:** scrutiny reservations on the choice of the implementing acts procedure for this Article. **SI:** suggested referring to the provision in Article 40(2) in order to prevent **Cion** from adopting a draft implementing act where no opinion is delivered by the Committee in accordance with Article 5(4) of Regulation No 182/2011; **SI** also has a reservation in relation to the inclusion of the costs of transfer to this provision because it maintains that these costs should be paid by the MS which will carry out the transfer, therefore no more rules are needed. **CLS, Cion** considered that the modifications were in line with the principles for distinguishing between Articles 290 and 291 TFEU, but stressed the fact that the choice of the implementing acts instead of delegated acts procedure would affect the scope and the substance of the measures to be adopted under the proposed procedure.

➔ [...] ➔ 1. The Member State carrying out the transfer shall ➔ [...] communicate to the responsible Member State such personal data concerning the ➔ [...] person to be transferred as is appropriate, relevant and non-excessive for the sole purposes of ensuring that the competent ➔ [...] authorities ➔ in accordance with national law¹¹⁴ in the responsible Member State are in a position to provide the ➔ [...] person concerned with adequate assistance, including the provision of ➔ [...] immediate health care required in order to protect the vital interest of the person concerned, and to ensure continuity in the protection and rights afforded by this Regulation and by ➔ other relevant asylum legal instruments. ➔ [...] This information shall be communicated to the responsible Member State within a reasonable period of time before a transfer is carried out, in order to ensure that the competent authorities in accordance with national law in the responsible Member State have sufficient time to take the measures required.

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

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

¹¹⁴ **DE** scrutiny reservation on the reference to the national law. In the same vein, **CLS, Cion:** have concerns about the purpose this addition is supposed to serve. **IT:** the added wording may help to clarify (for internal purposes) the authority which has to be the recipient of the information.

➔ [...] ➔ (b) contact details of family members ➔ within the meaning of Article 2(g) or of other relatives ➔ including minor unmarried siblings in the receiving Member State, where applicable;

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

➔ [...] ➔ (d) information about the ➔ assessment of the ➔ age of an applicant.

➔ [...] ➔

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

➔ [...] ➔

➔ 4. With a view to facilitating the exchange of information between Member States, a standard form for transferring the data required pursuant to this Article shall be adopted in accordance with the procedure laid down in Article 40(2).¹¹⁵

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

¹¹⁵ IT: prefer the delegated acts procedure. CY, EL, AT: scrutiny reservations on the choice of the implementing acts procedure in the proposal.

Article 30 A [...]

Exchange of health data before transfer is being carried out

1. For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors and persons that have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, insofar as available to the competent authority in accordance with national law, transmit to the responsible Member State information about any special needs of the person to be transferred, which in specific cases may include information about the state of the physical and mental health of the person to be transferred. The information shall be transferred in a common health certificate with the necessary documents attached. This common health certificate shall be drawn up in accordance with the procedure referred to in Article 40(2).¹¹⁶ The responsible Member State shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

¹¹⁶ **CY** (in relation to the comitology procedure), **FR, AT, SE**: scrutiny reservations on the new **Pres** compromise. **FR** expressed concerns about the practical implementation of the provision, i.e. translation issues, contacts with doctors, guarantee of confidentiality of personal data, etc. **Pres**: this form would be elaborated under the comitology procedure. **EE, NL, Cion**: could support the **Pres** compromise.

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

[...]

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

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

¹¹⁷ DE reservation, FR: scrutiny reservation on the deletion of the wording: "or to transmitting the information referred to in paragraph 1 provided that it necessary to protect the vital interests of the individual". CZ, FI, IE, LV, NL, AT, SE, Cion supported this proposal made by UK.

☞ [...] ☞

☞ [...] ☞ ☞ 5. ☞ [...] ☞ The procedures and practical arrangements for exchanging
☞ [...] ☞ the information referred to in paragraph 1, ☞ shall be adopted in accordance
with the procedure laid down in Article 40(2).¹¹⁸

☞ [...] ☞

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

☞ [...] ☞

☞ [...] ☞

☞ [...] ☞

¹¹⁸ **IT:** prefer the delegated acts procedure. **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

¹¹⁹ See footnote 1, in relation to delegations' suggestion to discuss certain issues at the AWP and Annex IV for delegations comments on an alternative wording presented by **Cion**. **EL, HU, RO, UK:** reservations, **PT:** scrutiny reservation on this draft Article. **ES** would prefer the previous version of the **Pres** compromise contained in 6586/12. **CZ:** reservation on the draft Article, in relation to its concerns about the efficiency of the proposed Early Warning Mechanism (also in relation with the lack of criteria to compare the asylum systems of MS and in relation to the unclear wording providing for the passage to the phase of the crisis management plan). It also pointed out that non-compliance with the *acquis* should not constitute a ground for requesting solidarity from other MS. **Cion** pointed out that there should no be any automatic application of abstract criteria to MS in the context of the mechanism; its assessment should take into account the specificities of each MS asylum system. **CY, EL, ES, IT, MT:** This mechanism does not provide for a genuine, practical solidarity towards the MS faced with problems in their asylum systems (see their suggestions in footnotes 113 to 117). **ES, HU:** There are practical issues to clarify related to the contents of the prevention and crisis management action plans, etc. **CZ, HU, LV, RO:** Attention should be paid to avoid overlapping and confusion among the mechanism provided under this Article, the early warning framework provided under the EASO Regulation and the Working Plan of FRONTEX, in relation to the sudden arrival of large numbers of irregular immigrants. **Cion** pointed out that the Early Warning mechanism under this draft Article has a larger scope and a wider objective to be attained than the relevant mechanism provided for in the EASO Regulation. **NL:** provision should be made (possibly a Recital) in order to clarify that the Dublin mechanism should not be considered inapplicable towards the MS concerned, due to the deficiencies indicated in the preventive action plan. **Cion** recalled that there is no means to prevent ECJ or a national Court from ruling on such a situation. **SI:** concerns about the compatibility of the EASO's mandate and potential capabilities with the role attributed to it by virtue of this draft Article, especially if it would be called upon to assess politically sensitive issues, such as progress made or failure of a programme. **FI** (which entered a scrutiny reservation on the role of EASO), **FR, IE, LV, RO, SE, SI, UK:** the Institutional balance in the context of this Article should be clearly depicted. **Delegations** in general supported an enhanced role for EASO (within the remit of its mandate) and Council. **UK** also has concerns whether the binding nature of the Early Warning Mechanism would be necessary, or if a context of proactive cooperation based on solidarity could meet the challenge. **Cion** pointed out that a non-binding mechanism would be deprived of its added value. **LV:** provision should be made in the mechanism for coping with an unexpected, sudden asylum-system crisis. **Cion** recalled that EASO as an Agency (and not an EU Institution) could not go beyond its mandate.

➔ 1. Where, based in particular on the information gathered by EASO pursuant to Articles 9 and 11 of Regulation (EU) 439/2010¹²⁰ or the assessment of the needs of a Member State pursuant to Article 9(1) of Regulation (EU) 439/2010, the Commission identifies problems in the functioning of the asylum system of a Member State which may jeopardise the future application¹²¹ of this Regulation, the Commission, in cooperation with EASO, ➔ [...] ➔ shall¹²² address recommendations to that Member State inviting it to draw up a preventive action plan designed to counter the problems identified. The Member State concerned shall inform the Council and the Commission whether it intends to present a preventive action plan following the Commission's recommendations. ➔

¹²⁰ **IT:** reference to Art. 10 of the EASO Regulation should also be added.

¹²¹ **FR:** query about the scope of the term “**future** application of this Regulation”. **EL, IT:** all grounds which could generate the activation of the mechanism should be taken into account, thus, the following should be added: "...may jeopardise **inter alia** the application of this Regulation...". **Pres:** reference to the mixed migration flows as a potential ground for asylum crisis would be made accordingly in the Council Conclusions on solidarity.

¹²² **ES, FR, MT:** suggested reverting to "**may**". **FI:** scrutiny reservation on this amendment. **DE:** supported the mandatory character of the provision, as well as of the whole Article, which should be broadly reflected in the obligations taken up by those involved in the functioning of the mechanism.

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

➤ 2. a) Where a preventive action plan is drawn up, the Member State concerned shall submit it as well as regular reports on its implementation to the Council and the Commission. Where necessary¹²³, the Commission shall submit reports on its implementation to the Council. ◀

➤ b) The Council may request further information on this subject and provide political guidance, including on the necessity to adopt a crisis management action plan **and any other measures of solidarity as it deems appropriate.**¹²⁴ ◀

➤ 3. a) The Member State concerned shall, in cooperation with the Commission and EASO, elaborate a crisis management action plan if the preventive action plan does not lead to an improvement of the situation.¹²⁵ Before the plan becomes operational, the Council shall have a political discussion on the crisis management action plan. ◀

¹²³ **CY, DE** suggested deleting the wording “Where necessary...”. **IT** suggested reflecting on the possibility of adopting other extraordinary measures pursuant to Art. 78 TFEU.

¹²⁴ **MT, AT:** query about the scope of the concept “any other measures of solidarity”. **FR:** would prefer strengthening the role of the Council by saying: “The Council **shall** provide political guidance...”.

¹²⁵ **ES:** query about who would take the decision that the preventive action plan did not bring about the necessary improvement. **SI:** query about what would happen if the MS concerned did not agree with the **Cion** on the need to draw up a crisis management action plan.

- ➔ b) The Member State concerned shall submit reports at least every three months on the implementation of the crisis management action plan to the Commission and EASO. Based on a discussion in the Council, the Commission may, in cooperation with the Member State concerned and after informing EASO, amend the crisis management action plan to take into account any developments revealed by the regular reports.

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¹²⁶ **BG, DE, HU, IE, IT, LV, MT, PT, RO:** The MS concerned should be entitled to amend the crisis management action plan, in co-operation with **Cion** and EASO. **BG:** MS should, at least, be entitled to introduce an amendment in parallel with **Cion**. It queried whether MS would have a say on **Cion**'s amendments. **Cion** recalled that a third body (Cion) would be necessary to check out in a binding way whether amendments would be needed in order to address the persisting problems.
EL: concerns about the appropriate steps to take (over and beyond the waiting for a court decision) if, despite the best endeavours of the MS concerned, the problem is not resolved, in particular due to persisting mixed migration flows. **Pres** recalled that in last December COREPER's and Council's conclusion was that suspension of transfers could not be discussed in the context of the Dublin Regulation. **Cion** recalled that the relevant case-law is part of the *acquis*.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

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.

¹²⁷ **ES, NL:** the former para. 4 (contained in 5223/12) “This Article is without prejudice to Articles 258, 259 and 260 of the Treaty on the Functioning of the European Union” should be reinserted. **ES:** reference to Art. 78(3) TFEU should also be included in this paragraph if reintroduced. **EL, IT, RO, Cion** (as Cion is the only Institution which could oversee the implementation of the acquis): considered that the former paragraph would be superfluous. **IT** suggested replacing it with a Recital to this effect.

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 within the meaning of Article 2(g), or other relatives, including minor unmarried siblings (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 ⇐ [...] ⇐ ⇐ **requesting** ⇐ Member State ⇐. ☒ In this case, the applicant must know for what information he/she is giving his/her approval. ☒

4. Any request for information shall \Rightarrow only be sent in the context of an individual application for international protection. It shall \Leftarrow 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~~ \Rightarrow [...] \Leftarrow \Rightarrow five \Leftarrow weeks. \Rightarrow Any delays in the reply shall be duly justified. \Rightarrow Non-compliance with the \Rightarrow [...] \Leftarrow five week time limit does not relieve the requested Member State of the obligation to reply. \Leftarrow 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. \Leftarrow \Rightarrow In that case, the time-limits provided for in Articles 21 and 23 for submitting a request to take charge or take back shall be extended with a period of time which shall be equivalent to the delay in the reply by the requested Member State. \Leftarrow

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.

↓ new

↻ Council

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

↓ 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.

↓ 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.

↓ 343/2003/EC (adapted)

⇒ new

⇒ Council

24. Rules relating to the establishment of secure electronic transmission channels between the authorities mentioned in paragraph 1 for transmitting requests ⇒, replies and all written correspondence ⇐ and ensuring that senders automatically receive an electronic proof of delivery shall be established in accordance with the procedure referred to in Article 40(2)~~27(2)~~.¹²⁸

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;

¹²⁸ **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

- 2. Member States may also maintain the administrative arrangements concluded under Regulation (EC) No 343/2003. To the extent that such arrangements are not compatible with this Regulation, the Member States concerned shall amend the arrangements in such a way as to eliminate ➤ [...] ☒ any incompatibilities ➤ [...] ☒ observed. ☒
- 3. Before concluding or amending any arrangement referred to in paragraph 1(b), the Member States concerned shall consult the Commission as to the compatibility of the arrangement with this Regulation. ☒
- [...] ☒ ➤ 4. If the Commission considers the arrangements referred to in paragraph 1(b) to be incompatible with this Regulation, it shall, within a reasonable period, notify the Member States concerned. The Member States shall take all appropriate steps to amend the arrangement concerned within a reasonable period in such a way as to eliminate ➤ [...] ☒ any incompatibilities ➤ [...] ☒ observed. ☒
- 5. Member States shall notify the Commission of all arrangements referred to in paragraph 1, and of any denunciation thereof, or amendment thereto. ☒

⊗ CHAPTER VIII ⊗

Conciliation

Article 435

⊗ 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 2740¹²⁹ ~~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.

¹²⁹ **CY, EL, AT:** scrutiny reservations on the choice of the implementing acts procedure in the proposal.

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.

↓ 343/2003/EC

↻ Council

CHAPTER ~~VIII~~IX

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

↻ Article 35 A ↻ [...] ↻

Data security and data protection

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

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

Article 35 B ↻ [...] ⌂

Confidentiality

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

↓ 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.

↓ 343/2003/EC (adapted)

↻ Council

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

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

Article ~~2538~~

⊠ 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 ~~2639~~

~~⊗~~ Territorial scope ~~⊗~~

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

Article ~~2740~~

~~⊗~~ Committee ~~⊗~~¹³⁰

1. The Commission shall be assisted by a committee. ~~⊗~~ That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. ~~⊗~~
2. Where reference is made to this paragraph, Article 5 ~~⊗~~ of Regulation (EU) No 182/2011 ~~⊗~~ ~~⊗~~ [...] ~~⊗~~ shall apply.

~~⊗~~ [...] ~~⊗~~

↓ 1103/2008/EC, pt. 3(4) of the Annex
~~⊗~~ Council

~~⊗~~ [...] ~~⊗~~

¹³⁰ **CY, EL, FR, AT, SI:** scrutiny reservations on the choice of the implementing acts procedure in the proposal; **SI** in relation with its request to have a wording added in this provision to the effect of preventing **Cion** from adopting a draft implementing act when no opinion is delivered by the Committee (in accordance with Article 5(4) of Regulation No 182/2011) as regards the implementing acts procedures in Articles 6(5), 8(5) and 11(3).

↓ 343/2003/EC (adapted)

☉ Council

☉ [...] ☉

☉ [...] ☉

☉ [...] ☉

☉ [...] ☉¹³¹

☉ [...] ☉

Article ~~28~~41

☒ Monitoring and evaluation ☒

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

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

¹³¹ **EL, FR, AT:** scrutiny reservations for the deletion of former Articles 40A, 40B and 40C.

↓ new

Article 42

Statistics

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

↓

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.

↓ 343/2003/EC(adapted) (adapted)

⇒ new

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

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

Done at [...]

For the European Parliament

For the Council

The President

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)

ANNEX II

Joint statement of the Council and the European Parliament¹³²

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

¹³² **BE, DE** reservations against the **Pres** approach to suggest this draft Statement. **BE, Cion** pointed out that the *acquis* should be somehow reflected in the Regulation and recalled that the "Metock" case of the ECJ (C-127-08) related to the free movement of persons, where the Cion was called upon to present such Guidelines was in a rather different setting (Directive 2004/38/EC which was not under negotiations). **SE** scrutiny reservation on the draft Statement. **FR, UK:** suggested examining in detail the impact of such a Statement, before accepting it. **AT:** if the approach is accepted, MS should be involved in the drafting of the guidelines. See also comments under footnote 14.

ANNEX III

CORRELATION TABLE

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

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

-	Article 19(2), second sub-paragraph
Article 16(4)	Article 19(3)
	Article 19(3), second sub-paragraph
Article 17	Article 21
Article 18	Article 22
Article 19(1)	Article 25(1)
Article 19(2)	Article 25(2) and Article 26(1)
-	Article 26(2) to (6)
Article 19(3)	Article 28(1)
Article 19(4)	Article 28(2)
-	Article 28(3)
Article 19(5)	Article 28(4)
Article 20(1), introductory wording	Article 23(1)
-	Article 23(2)
-	Article 23(3)
-	Article 23(4)
Article 20(1)(a)	Article 23(5), first sub-paragraph
Article 20(1)(b)	Article 24(1)
Article 20(1)(c)	Article 24(2)
Article 20(1)(d)	Article 28(1), first sub-paragraph
Article 20(1)(e)	Article 25(1), (2), Article 26(1), Article 28(1), second and third sub-paragraphs;
Article 20(2)	Article 28(2)
Article 20(3)	Article 23(5), second sub-paragraph
Article 20(4)	Article 28(4)
-	Article 27

-	Article 29
-	Article 30
-	Article 31
Article 21(1) to (9)	Article 32(1) to (9) first to third sub-paragraph
	Article 32(9) fourth sub-paragraph
Article 21(10) to (12)	Article 32(10) to (12)
Article 22(1)	Article 33(1)
-	Article 33(2)
-	Article 33(3)
Article 22(2)	Article 33(4)
Article 23	Article 34
Article 24(1)	deleted
Article 24(2)	Article 37
Article 24(3)	deleted
Article 25(1)	Article 38
Article 25(2)	deleted
Article 26	Article 39
Article 27(1), (2)	Article 40 (1), (2)
Article 27(3)	deleted
Article 28	Article 41
Article 29	Article 44
-	Article 35
-	Article 36
-	Article 42
-	Article 43

Regulation (EC) 1560/2003	This Regulation
Article 11(1)	Article 11(1)
Article 13(1)	Article 17(2), first sub-paragraph
Article 13(2)	Article 17(2), second sub-paragraph
Article 13(3)	Article 17(2), third sub-paragraph
Article 13(4)	Article 17(2), first sub-paragraph
Article 14	Article 35
Article 17(1)	Articles 9, 10, 17(2), first sub-paragraph
Article 17(2)	Article 32(3)

ANNEX IV

Article 31

*Early warning and preparedness*¹³³

1. Where, based in particular on the information gathered by EASO pursuant to Regulation (EU) 439/2010, a situation of particular pressure on a Member State's asylum system is identified or where the Commission identifies problems in the functioning of the asylum system of a Member State which may jeopardise the future application of this Regulation, the Commission, in cooperation with EASO, shall address recommendations to that Member State inviting it to draw up a preventive action plan designed to counter the problems identified.

The Member State concerned shall inform the Council and the Commission whether it intends to present a preventive action plan following the Commission's recommendations.

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

2. a) Where a preventive action plan is drawn up, the Member State concerned shall submit it as well as regular reports on its implementation to the Council and the Commission. Where necessary, the Commission shall submit reports on its implementation to the Council and inform the European Parliament.

¹³³

Cion suggested an alternative wording for draft Art. 31.

CY, CZ, DE, EL, FI, FR, HU, IE, MT, PT, SI, UK: scrutiny reservations on the **Cion** suggestions. **EL, FI, HU, LV, RO, SI:** without prejudice to their general reservations / concerns about the Early Warning Mechanism, the suggestions from the **Cion** are worth considering, as these **delegations** deem them, at first glance, clearer to a large extent than the current **Pres** compromise.

- b) Where the implementation of the preventive action plan does not remedy the deficiencies identified or where there is a serious risk that the asylum situation in that Member State develops into a crisis, the Commission may request the adoption of a crisis response action plan.
3. a) Following the request from the Commission, the Member State concerned shall, in cooperation with the Commission and EASO, elaborate a crisis management action plan. .
- b) The Member State concerned shall submit reports at least every two months on the implementation of the crisis management action plan to the Commission, which shall inform the European Parliament and the Council on progress.
4. The Council will regularly follow the situation, including the implementation of the present *article* and the possible needs of additional¹³⁴ solidarity measures.
-

¹³⁴ **CY:** delete "additional" and transfer the wording of this paragraph within the context of para. 2. **FR:** the Council should have a more prominent role by way of providing political guidance in the implementation of the mechanism.

ANNEX V

*Suggestion from the German delegation*¹³⁵

Article 27

Detention

1. ~~**Without prejudice to other grounds for detention determined in national legislation,**~~
Member States may detain persons in order to secure transfer procedures in accordance with this Regulation when there is a **serious** risk of absconding, **on the basis of an individual assessment, if other less coercive alternative measures cannot be applied effectively. Detention shall be**¹³⁶ as short as possible and **no longer than the time reasonably necessary to fulfill the required administrative procedures for carrying out the responsibility determination until the transfer**¹³⁷ **under this Regulation.**

Member States shall lay down provisions on conditions for detention of and on guarantees applicable to persons detained according to paragraph 1 in their national legislation, **in accordance with relevant EU and international instruments, as applicable.**

¹³⁵ **CZ, AT, RO:** This wording could be worth considering.

¹³⁶ **RO** suggested deleting the word "for".

¹³⁷ **RO** suggested adding "until the transfer is carried out"

ANNEX VI

Suggestion from the Netherlands delegation¹³⁸

Member States may detain persons in order to secure transfer procedures in accordance with this Regulation when there is a ~~serious~~ risk of absconding, on the basis of an individual assessment **and only insofar as the detention is proportional**, if other less coercive alternative measures cannot be applied effectively. Detention shall be no longer than the time reasonably necessary ~~to fulfill the required administrative procedures for carrying out the responsibility determination until the transfer under this Regulation~~ **expediently execute the transfer of the third-country national.**

Member States shall lay down provisions on conditions for detention of and on guarantees applicable to persons detained according to paragraph 1 in their national legislation, in accordance with relevant EU and international instruments, as applicable.

¹³⁸ ~~HU, LV:~~ This wording could be worth considering.

ANNEX VII

Suggestion from the Commission

Article 27

Detention

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

Alternative solution (inspired from Return Directive):

¹⁴⁰**(2) only maintained as long as transfer arrangements are in progress and executed with due diligence.**

Member States shall lay down provisions on conditions for detention of and on guarantees applicable to persons detained ~~in order to secure a transfer to the responsible Member State~~ **according to paragraph 1** in their national legislation, **in accordance with relevant EU and international instruments, as applicable.**

¹³⁹ NL scrutiny reservation on this compromise option, which it deems worth considering.

¹⁴⁰ LV: This wording could be worth considering.