

# International protection: criteria and mechanisms for determining the Member State responsible for examining an application lodged by a third-country national or a stateless person. Recast

2008/0243(COD) - 07/06/2013 - Council position

The Council adopted its position at first reading on the proposal for a recast of the 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.

The position at first reading is based on a compromise reached between Parliament and the Council. This compromise provides, in particular, for **strengthened legal safeguards and rights for the applicants for international protection**, while focusing in particular on the needs of vulnerable groups such as unaccompanied minors and dependent persons. At the same time, the compromise caters for **reducing abuses of the system set up by the Dublin Regulation** and for ensuring that disputes among Member States in its context are tackled more efficiently. The compromise also provides for addressing in a timely manner problems in the application of this Regulation owed to particular pressure on a Member State's asylum system, or because of its malfunctioning, through the setting up of a mechanism for early warning, preparedness and crisis management.

The key aspects of the compromise may be summarised as follows:

**A. A mechanism for early warning, preparedness and crisis management** (Art. 33): this mechanism is a new element added during the negotiations, replacing the so-called "suspension mechanism" contained in the original recast proposal of the Dublin Regulation. It is designed to address effectively and in a timely manner situations where the application of the Dublin Regulation may be jeopardised (with direct effects on the applicants who are in the Member State concerned), due to a particular pressure on a Member State's asylum system, or problems arising in the functioning of the asylum system of a Member State. It aims at ensuring effective cooperation and developing **mutual trust and solidarity among Member States** by way of preventing or managing a crisis in the asylum system of one or more Member States.

**B. Remedies** (Arts. 27 & 3(2)): the compromise emphasises the right of the person concerned to an **effective remedy against the transfer decision** before a court or a tribunal. The Member State shall provide for a reasonable period of time within which the aforementioned remedy may be exercised in order to be effective. As regards the issue of the suspension of the implementation of the transfer decision until a decision on a remedy against it is taken, Member States shall **at least ensure in their national legislation that an effective remedy can be exercised** by suspending the transfer until a decision on the first suspension request is taken. The recast also delineates the framework within which the person concerned will have access to legal assistance, free of charge where appropriate, in order to exercise effectively his/her right to an effective remedy.

As a corollary to Art. 27 on remedies, a provision has been added to make provision for the determination of the Member State responsible for examining the application, **where the transfer of the person**

**concerned is impossible due to a real risk of violation of fundamental rights.** In this case, the Member State which carries out the determination procedure shall become the Member State responsible.

**C. Detention** (Art. 28): the compromise text provides for a comprehensive framework whereby the conditions under which a person concerned may be detained on the basis of “Dublin grounds”. These conditions are when there is a significant risk of the absconding of the person concerned, and an individual assessment of each case is made before a decision is taken on whether to impose detention. The compromise also deals with the time limits of the detention period, stating that it shall be for **as short a period as possible**.

As regards the detention *per se*, the most important consequence **is the obligation of the Member State which detains him/her** (and which did not meet its deadlines) **to release the detainee**, while it is clarified that there is no shifting of the responsibility under the Dublin procedure.

**D. Unaccompanied minors & the definition of relatives** (Arts. 2(h) & 8): the compromise text provides for the legal framework under which an unaccompanied minor (provision is also made for the married minors whose spouse are not legally present on the territory of a Member State) shall be united with family members, siblings, or relatives, along with the relevant conditions of each provision, with a view to rendering responsible for the examination of the application the Member State where the reunification will take place. The ultimate check on all cases provided for under this Article is that **any reunification shall be in the best interest of the minor**.

The best-interest-of -the-minor requirement also applies **in the absence of any of the above family relations**, in which case the Member State responsible is the one where the unaccompanied minor lodged his/her application. In the context of this occasion, the European Parliament, the Council and the Commission have submitted a statement, inviting the latter to consider a possible revision of Art. 8(4).

The compromise also meets the concerns of the Council for fighting abuse in the context of the asylum procedures. In this context, the compromise text provides for **the scope of the term "relative"** as the applicant's adult aunt or uncle or grandparent, who is present in the territory of a Member State.

**E. Dependent persons** (Art. 16): the compromise on this provision deals with cases where the applicant, due to certain grounds of vulnerability, is dependent on the assistance of his/her child, sibling or parent legally resident in one of the Member States, or with cases where these persons depend on the applicant's assistance on the same grounds. The compromise provides for the legal framework on the basis of which Member States shall normally keep or bring together the applicant with the above persons, provided that certain conditions are met.

The following issues dealt with in the compromise text are also worth noting:

- **definition of unaccompanied minor** (Art. 2(j)): the text provides that the unaccompanied minor may be married or unmarried;
- **right to information** (Arts 4 & 5): the text provides for the right of the applicant to receive, in writing (or orally, where appropriate) and in a language that the applicant understands detailed information regarding the contents of the Dublin Regulation upon the lodging of his/ her application. A common leaflet (and a special one on unaccompanied minors) containing at least the information to which the applicant is entitled, shall be drawn up;
- **personal interview** (Art. 5): the compromise provides for an obligation to hold a personal interview with the applicant, in a timely and appropriate manner, with a view to facilitating the

process of determining the Member State responsible. However, a Member State which omits the interview shall give the applicant the opportunity to present all further, relevant information, before a decision is taken on the transfer of the applicant;

- **guarantees for minors** (Art. 6): the text regarding the guarantees for minors should be considered in the context of the best-interest-of-the-child principle. It requires Member States' to ensure proper representation of the minor, as well as to take, as soon as possible, appropriate action to identify family members, siblings or relatives of an unaccompanied minor on the territory of another Member State;
- **discretionary clauses** (Art. 17): the text provides for a derogation from the criteria for establishing the Member State responsible. The scope of the provision has been extended more explicitly by the deletion of the reference to "**humanitarian and compassionate grounds**", as a basis for the derogation has been deleted, as well as the provision for a prior consent from the applicant in order to use this Article;
- **obligations of the Member State responsible** (Chapters V & VI in general): within the context of these Chapters, which regulate the obligations of the Member State responsible, the text provides for legally and procedurally enhanced requirements aiming at safeguarding all the relevant rights of the applicant, as well as making the practical cooperation among the Member States concerned more efficient.

**Implementing and delegating acts:** lastly, the text provides for implementing powers (using the examination procedure) for the purpose of certain provisions where this kind of empowerment to the Commission was deemed sufficient. The option of delegated acts is provided for in the context of Art. 8 (reunification of the unaccompanied minor with family members, siblings or relatives) in particular regarding the assessment of whether the relevant criteria were met and Art. 16 (reunification of dependent applicants with children, parents or siblings, or vice versa) also in particular regarding the assessment of whether the relevant criteria were met.