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Proposal for a

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

**amending Regulation (EU) No 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- Grounds for the proposal

This proposal is an amendment of Article 8, paragraph 4 of Regulation (EU) No 604/2013 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<sup>1</sup> (hereafter: the Dublin III Regulation).

During the negotiations on the Dublin III Regulation, the co-legislators agreed to leave the issue of unaccompanied minors who are applicants for international protection in the European Union and who have no family member, a sibling or a relative present in the territory of the Member States open and the related provision - Article 8(4) - essentially unchanged (i.e. reflecting the text of Article 6, second paragraph, of Council Regulation (EC) No 343/2003/EC of 18 February 2003 on the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (hereafter: the Dublin Regulation)<sup>2</sup> and to make a Declaration, attached to the Regulation, with the following content:

"The Council and the European Parliament invite the Commission to consider, without prejudice to its right of initiative, a revision of Article 8(4) of the Recast of the Dublin Regulation once the Court of Justice rules on case C-648/11 *MA and Others* vs. Secretary of State for the Home Department and at the latest by the time limits set in Article 46 of the Dublin Regulation. The European Parliament and the Council will then both exercise their legislative competences, taking into account the best interests of the child."

The Commission agreed, through the same Declaration, with the suggested approach:

"The Commission, in a spirit of compromise and in order to ensure the immediate adoption of the proposal, accepts to consider this invitation, which it understands as being limited to these specific circumstances and not creating a precedent."

On 6 June 2013, the Court of Justice of the European Union delivered its judgment in the case C-648/11, ruling that:

"The second paragraph of Article 6 of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as meaning that, in circumstances such as those of the main proceedings, where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the 'Member State responsible'".

- Objectives of the proposal

This proposal takes highest account of the Court of Justice's ruling in case C-648/11. It is aimed at addressing the current ambiguity of the provision on unaccompanied minors who have no family, siblings or relatives on the territory of the Member States, by providing legal

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<sup>1</sup> OJ L 180/31, 29.6.2013, p. 31

<sup>2</sup> OJ L 50, 25.2.2003, p.1

certainty in respect of responsibility for examining the application for international protection in such cases.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

Specific consultations and impact assessments in preparation of the current proposal were not necessary since this narrowly targeted proposal constitutes a follow-up to the comprehensive consultation and impact assessments already undertaken by the Commission in preparation of its proposal COM(2008)820 final to recast Council Regulation (EC) No 343/2003/EC. Therefore, the consultations carried out by the Commission in preparation of that proposal apply to the present proposal.

The Commission considers that the proposal to amend Article 8(4) should be put forward as soon as possible, in order to ensure legal certainty as regards the provisions on unaccompanied minors in the 'Dublin procedure'. Moreover, it is indispensable to have a final version of this Article before proceeding to providing supplementary rules on unaccompanied minors on the basis of Article 290 of the Treaty of the Functioning of the European Union.

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

- Summary of the proposed action

The present proposal addresses the issue of responsibility for examining the asylum application of an unaccompanied minor with no family, siblings or relatives on EU territory. The proposed provision covers the two possible cases of unaccompanied minors found in such a situation:

Paragraph 4a covers the situation similar to that described in case C-648/11, i.e. an unaccompanied minor with no family, sibling or relatives on EU territory and who lodged multiple asylum applications, including in the Member State where he or she is currently present. In this case, the Member State responsible is established according to the Court of Justice's judgment, i.e. responsibility belongs to the Member State where the minor lodged an application and is currently present. The purpose of this rule is to ensure that the procedure for determining the Member State responsible is not unnecessarily prolonged, and that unaccompanied minors have prompt access to the procedures for determining international protection status. The reference to the minor's best interests is introduced in order to allow exceptions from this rule in cases where individual circumstances might indicate that remaining in the territory of the Member State where he or she is present might jeopardize the minor's best interests.

Paragraph 4b addresses the situation where a minor who is an applicant for international protection is present in the territory of a Member State without having lodged an application there. The proposal is that the Member State should provide the minor with the opportunity to lodge an application there, after having informed him or her of such a right and its implications. The minor has therefore two options: either to apply for international protection in that Member State or not to apply. Where an application is lodged with the authorities of that Member State, the circumstances of paragraph 4a apply, i.e. that Member State becomes responsible for examining that application. Thus, the minor will remain in the Member State where he/she is present and have his or her application examined there, provided that this corresponds to the minor's best interests. The alternative is that the minor should be transferred to the Member State which the consideration of the minor's best interests indicates as most suitable (which can include, though it cannot be limited to, the fact that a procedure

for examining the application for international protection might be on-going or closed with a final decision, etc.).

The case of a minor who decides not to lodge a new application in the Member State where he/she is present is not addressed by case C-648/11. However, this situation needs to be covered in the Regulation, in order to avoid loopholes in the responsibility criteria. The solution proposed is that the Member State responsible should be the one where the minor has lodged his or her most recent application. This rule aims to ensure that there is certainty in establishing the Member State responsible, by introducing a rule that is certain and predictable. The reference to the minor's best interests is added in order to ensure, as in paragraph 4a, that transfers contrary to his or her best interests are avoided.

Paragraph 4c aims at ensuring that the assessment of the minor's best interests is made in cooperation between the requested and the requesting Member States, in order to establish in common the Member State responsible for the minor and avoid conflicts of interest.

The guarantees for minors provided in Article 6 of Regulation 604/2013 apply to all minors that are subject to the procedures of this Regulation. Therefore, an explicit reference to the provisions of Article 6 in respect of unaccompanied minors found in one of the situations described in Article 8(4) was not considered necessary.

Paragraph 4d does not contain a criterion for establishing responsibility, but provides a rule allowing Member States to inform each other of a newly assumed responsibility. This allows the Member State previously responsible for carrying out a 'Dublin procedure' to close the case in its internal administration. This is particularly relevant in order to avoid situations of abuse of the system, where the minor moves on to another Member State for no other reason than to prolong his or her stay on EU territory. The provision is similar to that in Article 17(1)(2) of Regulation 604/2013, where the same information rule is introduced in respect of the sovereignty clause.

- Variable geometry

This proposal amends Regulation (EU) No 604/2013 and uses the same legal base as that act, namely Article 78, second paragraph, point (e) of the Treaty on the Functioning of the European Union.

Title V of the TFEU is not applicable to the United Kingdom and Ireland, unless those two countries decide otherwise, in accordance with the provisions set out in the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union (TEU) and to the TFEU.

The United Kingdom and Ireland are bound by Regulation 604/2013, following their notice of their wish to take part in the adoption and application of that Regulation based on the above-mentioned Protocol. The position of these Member States with regard to Regulation 604/2013 does not affect their possible participation with regard to the amended Regulation.

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

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<sup>3</sup> Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any

Commission of its decision whether or not to implement the content of the amended Regulation.

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

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

- the agreement associating Iceland and Norway, concluded in 2001<sup>4</sup>;
- the agreement associating Switzerland, concluded on 28 February 2008<sup>5</sup>;
- the protocol associating Liechtenstein, signed on 28 February 2008<sup>6</sup>.

In order to create rights and obligations between Denmark – which as explained above has been associated to the Dublin/Eurodac acquis via an international agreement – and the associated countries mentioned above, two other instruments have been concluded between the Community and the associated countries<sup>7</sup>.

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

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other Member State of the European Union and “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L66, 8.3.2006, p.38

<sup>4</sup> Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway (OJ L 93, 3.4.2001, p. 40)

<sup>5</sup> Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (OJ L 53, 27.2.2008, p. 5).

<sup>6</sup> Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (OJ L 160 18.6.2011 p. 39)

<sup>7</sup> Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (concluded on 24.10.2008, OJ L 161, 24.06.2009, p. 8) and Protocol to the Agreement between the Community, Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State, Iceland and Norway (OJ L 93, 3.4.2001).

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>8</sup>,

Having regard to the opinion of the Committee of the Regions<sup>9</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 604/2013 of the European Parliament and of the Council<sup>10</sup> determines the Member State where the unaccompanied minor has lodged the application for international protection as the Member State responsible for examining that application.
- (2) After adoption of the Regulation (EU) No 604/2013 the Court of Justice ruled in case C-648/11 that, where an unaccompanied minor with no family member legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated as the Member State responsible.
- (3) The situation of an unaccompanied minor with no family member legally present in the territory of a Member State, who has lodged asylum applications in one or more Member States, and who is present in the territory of a Member State without having lodged an application there, has not been addressed by the judgment. In order to ensure a coherent provision on unaccompanied minors in this Regulation and avoid legal uncertainty, the criterion for establishing the Member State responsible in such a situation should equally be provided for.
- (4) According to the judgment, the Member State responsible should inform accordingly the Member State with which the first application has been lodged. Since the asylum application is required to be examined only by a single Member State, the Member

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<sup>8</sup> OJ C , , p. .

<sup>9</sup> OJ C , , p. .

<sup>10</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

State responsible should inform of its decision 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 or take back the minor, as the case may be.

- (5) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation.]
- (6) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (7) Regulation (EU) No 604/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

In Regulation (EU) No 604/2013 paragraph 4 of Article 8 is replaced by the following:

- "4a. Where the unaccompanied minor has no family member, sibling or relative legally present in a Member State as referred to in paragraphs 1 and 2, the Member State responsible shall be the one where the unaccompanied minor has lodged an application for international protection and is present, provided that this is in the best interests of the minor.
- 4b. Where an applicant as referred to in paragraph 4a is present in the territory of a Member State without having lodged an application there, that Member State shall inform the unaccompanied minor of the right to make an application and give him or her an effective opportunity to lodge an application in that Member State.  
  
Where the unaccompanied minor referred to in the first subparagraph lodges an application in the Member State where he or she is present that Member State shall become responsible for examining that application, provided this is in the best interests of the minor.  
  
Where the unaccompanied minor referred to in the first subparagraph does not lodge an application in the Member State where he or she is present, the Member State responsible shall be the one where the unaccompanied minor has lodged his or her most recent application, unless this is not in the best interests of the minor.
- 4c. The Member State requested to take back an unaccompanied minor shall cooperate with the Member State where the unaccompanied minor is present in order to assess the best interests of the minor.
- 4d. The Member State, which is responsible pursuant to paragraph 4a, shall inform the following Member States, as applicable, thereof:
  - (a) the Member State previously responsible;
  - (b) the Member State conducting a procedure for determining the Member State responsible;

- (c) the Member State which has been requested to take charge of the unaccompanied minor;
- (d) the Member State which has been requested to take back the unaccompanied minor.

That information shall be sent using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003."

#### *Article 2*

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

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*