

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

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report drawn up by Jeanine HENNIS-PLASSCHAERT (ALDE, NL)) amending, under the first reading of codecision procedure, the proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

The main amendments are as follows:

Definitions: Members made some amendments to the definition of “family members” and “unaccompanied minor”.

Guarantees for minors: the committee inserted a new provision stating that within the framework of the application of this Regulation and under the conditions laid down in Article 17 of Directive 2005/85/EC, Member States may use medical examinations to determine the age of unaccompanied minors. In cases where medical examinations are used, Member States shall ensure that they are conducted in a reasonable and thorough manner, as required by scientific and ethical standards.

Hierarchy of criteria: the committee deleted the derogation in the proposal, stating that this would make the determination of responsibility too complicated and encourage abuse.

Submitting a take back request: once there is a hit in the EURODAC system there is no need for a long delay in filling the request to take back the person concerned. The committee reduced the deadline from 2 months to 1 month.

Remedies: Member States shall provide for a reasonable period of time within which the person concerned may exercise his/her right to an effective judicial remedy. That period of time shall be not less than 10 working days as from the date of notification of a transfer decision.

Mode of carrying out transfers: a new clause states that the Member State carrying out the transfer shall promote voluntary transfers by providing adequate information to the applicant. If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

Temporary suspension of transfers: the report stipulated that the decision to suspend transfers shall include indicia of measures, benchmarks and timetables to be established in order to assess progress toward resolution of the circumstances requiring a suspension. A Member State shall take effective and timely steps to remedy the situation that led to the temporary suspension of transfers.

The committee also added a clause stating that on a proposal by the Commission, and acting in accordance with the codecision procedure, **instruments shall be enacted, binding on all Member States**, in order to provide effective support to those Member States which are faced with specific and disproportionate pressures on their national systems due, in particular, to their geographical or demographic situation. Those instruments shall enter into force no later than 31 December 2011 and in any event make provision for the following: a) **the secondment of officials** from other Member States, under the aegis of the European Asylum Support Office, who assist those Member States which are faced with specific pressures and where the applicants cannot benefit from adequate standards of protection; (b) a **scheme to reallocate beneficiaries of international protection** from Member States which are faced with specific and disproportionate pressures to others, in consultation with the Office of the United Nations High Commissioner for Refugees, while ensuring that the reallocation follows non-discretionary, transparent and unequivocal rules.

The article on temporary suspension of transfers shall cease to apply as soon as the instruments referred to above have entered into force, and in any event on 31 December 2011 at the latest.

Members note that experience has shown that the existing forms of practical cooperation among Member States in order to align their interpretation of the principle of 'solidarity and fair sharing of responsibility' are not in any way sufficient to address the problems that a number of Member States are facing. It is essential to look at the heavy burden posed on the resources of a number of Member States from a wider perspective of general migratory pressures. Binding responsibility-sharing instruments seem to be the only way forward. At the same time the Commission should make full use of its possibilities to start up infringements procedures in cases where non-compliance with community law persists.

A further new clause in the text states that as part of the monitoring and evaluation, the Commission shall review the application of the article on temporary suspensions and report to the European Parliament and the Council no later than 30 June 2011. In its report, the Commission shall assess whether there is a justified need to extend the application of this Article beyond 31 December 2011. If the Commission considers it appropriate, it shall submit a proposal for such an extension to the European Parliament and the Council in accordance with the codecision procedure.