International protection: Member State responsible for examining the application of unaccompanied minors

2014/0202(COD) - 26/06/2014 - Legislative proposal

PURPOSE: to amend 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.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: during the negotiations on 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 (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.

They made 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 with the proposed approach.

At the same time, on 6 June 2013, the Court of Justice of the European Union delivered its judgment in the case C-648/11, ruling that Council Regulation (EC) No 343/2003 (Dublin II) 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'**.

Therefore, the Commission presents this proposal aiming to address 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 certainty in respect of responsibility for examining the application for international protection in such cases**.

CONTENT: 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:

- **First case**: Paragraph 4a covers the situation where 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, **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 right jeopardize the minor's best interests.

- **Second case**: 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 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:

1. either to apply for international protection in that Member State,
2. 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,** 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.

Minor's best interest: 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.

Cooperation between Member States: Paragraph 4d 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.