Basic information

2016/0133(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure lapsed or withdrawn
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 Repealing Regulation (EU) No 604/2013 2008/0243(COD) **Subject** 7.10.06 Asylum, refugees, displaced persons; Asylum, Migration and Integration Fund (AMIF)	

Key players

Council of the European Union	**Council configuration**	**Meetings**	**Date**
	Justice and Home Affairs (JHA)	3508	2016-12-09
	Justice and Home Affairs (JHA)	3490	2016-10-14
	Transport, Telecommunications and Energy	3545	2017-06-09
European Commission	**Commission DG**	**Commissioner**	
	Migration and Home Affairs	AVRAMOPOULOS Dimitris	

Key events

Date	Event	Reference	Summary
04/05/2016	Legislative proposal published	COM(2016)0270	Summary
12/09/2016	Committee referral announced in Parliament, 1st reading		
14/10/2016	Debate in Council		
09/06/2017	Debate in Council		
19/10/2017	Vote in committee, 1st reading		
19/10/2017	Committee decision to open interinstitutional negotiations with report adopted in committee		
06/11/2017	Committee report tabled for plenary, 1st reading	A8-0345/2017	Summary
13/11/2017	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
16/11/2017	Results of vote in Parliament		
16/11/2017	Request for a plenary vote on the Committee decision to enter into interinstitutional negotiations (Rule 72)		

16/11/2017	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72 - vote)		
21/10/2019	Resumption of business from the previous parliamentary term		
23/04/2021	Proposal withdrawn by Commission		

Technical information

Procedure reference	2016/0133(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Regulation
Amendments and repeals	Repealing Regulation (EU) No 604/2013 2008/0243(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 078-p2
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/9/00150

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE599.751	24/02/2017	
Committee opinion	AFET	PE599.593	04/05/2017	
Committee opinion	BUDG	PE597.582	17/05/2017	
Committee report tabled for plenary, 1st reading/single reading		A8-0345/2017	06/11/2017	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2016)0270	04/05/2016	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Reasoned opinion	HU_PARLIAMENT	PE589.336	22/09/2016	
Contribution	PT_PARLIAMENT	COM(2016)0270	06/10/2016	
Reasoned opinion	RO_CHAMBER	PE592.320	21/10/2016	
Reasoned opinion	SK_PARLIAMENT	PE592.316	24/10/2016	

Reasoned opinion	CZ_CHAMBER	PE592.321	24/10/2016	
Reasoned opinion	PL_SENATE	PE592.443	07/11/2016	
Reasoned opinion	IT_SENATE	PE592.432	08/11/2016	
Contribution	RO_SENATE	COM(2016)0270	10/11/2016	
Contribution	DE_BUNDESRAT	COM(2016)0270	14/11/2016	
Reasoned opinion	PL_SEJM	PE593.982	16/11/2016	
Reasoned opinion	CZ_SENATE	PE592.441	21/11/2016	
Contribution	IT_CHAMBER	COM(2016)0270	15/12/2016	
Contribution	FR_ASSEMBLY	COM(2016)0270	30/01/2020	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N8-0002/2017 OJ C 009 12.01.2017, p. 0003	21/09/2016	
EESC	Economic and Social Committee: opinion, report	CES2981/2016	19/10/2016	
CofR	Committee of the Regions: opinion	CDR3267/2016	08/12/2016	

Additional information

Source	Document	Date
European Parliament	Briefing	
European Commission	EUR-Lex	

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

2016/0133(COD) - 06/11/2017 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Cecilia WIKSTRÖM (ALDE, SE) on 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 of the Dublin III Regulation).

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Access to the procedures for granting an application for international protection: Member States shall ensure that any third-country national or stateless person on their territory, including at the external border, in the territorial sea or in their transit zones or at border crossing points, including transit zones at external borders, who can reasonably be expected to apply for international protection in a Member State are given the **effective possibility to be registered**.

If no Member State responsible for examining the application can be designated on the basis of the criteria laid down in the Regulation, the Member State responsible shall be determined **in accordance with the corrective allocation mechanism** provided for in the Regulation.

Security verification: all applicants would be subject to mandatory security checks including checks against relevant national and European databases.

If necessary, Member State shall carry out a **personal security interview** in order to establish whether the applicant can, for serious reasons, be considered to be a danger to national security or public order of that Member State. Applicants that pose a security risk will not be transferred to other countries.

Right to information: The applicant shall be informed of his rights and obligations with regard to the **registration of the application** for international protection. Once the application has been registered, the applicant shall obtain information on:

- the provisions on **family reunification** and the need to provide information as soon as possible to help establish the whereabouts of family members or relatives in other Member States;
- the possibility of **choosing one of the four Member States** with the lowest number of applicants in relation to their fair share in accordance with the reference key for the purposes of the corrective mechanism;
- the possibility of **challenging a transfer decision**, and the arrangements for doing so, as well as the existence of the right to an effective remedy before a court, including in a situation where no transfer decision is taken;
- in the case of an **unaccompanied minor**, the role and responsibilities of the guardian and the procedure to be followed to file, in confidence and security, any complaint against a guardian;
- the right to request free **legal assistance** and representation at all stages of the proceedings.

Safeguards granted to minors: Members proposed securing strong safeguards for minors, both accompanied and unaccompanied. Among the main provisions are strengthened rules on best interest assessments, strict requirements on the provision of guardians and the provision of **adapted information to children**. No transfers of unaccompanied minors will be made without a best-interest assessment by a **multidisciplinary team** and the presence of a guardian in the receiving Member State. In assessing the best interests of the minor, the minor's right to be heard must be guaranteed.

Moreover, **minors shall not be detained**. Member States shall accommodate minors and families with minors in non-custodial, community-based placements while their application is processed.

Costs of reception: Members are of the opinion that the reception costs of an applicant met by a determining Member State, from the time when the application for international protection was registered until the transfer of the applicant to the Member State responsible, or until the determining Member State assumes responsibility for the applicant, **shall be refunded from the general budget of the Union**.

The **Asylum Agency** shall become responsible for the transfer of applicants for, or beneficiaries of, international protection in all cases provided for under this Regulation.

Academic or professional diplomas: where the applicant has a diploma or other qualification issued by an educational institution established in a Member State, that Member State shall be responsible for examining the application for international protection.

Sponsorship: a Member State may provide for organisations that have been approved by that Member State in accordance with specific requirements preventing abuse and trafficking in human beings provided for in national law to have the possibility to become the sponsor of an applicant who has lodged an application for international protection in the Union.

Family reunification procedure: Members introduced indicators for the conducting a **special family reunification procedure** for the applicant to ensure swift family reunification and access to asylum procedures for applicants for whom there are sufficient evidence that they are likely to be eligible for family reunification.

Members also plan to introduce a **light procedure** when there is sufficient indicators showing that an applicant has meaningful links with a given Member State.

Placement in detention for the purposes of transfer: detention of applicants shall be ordered in writing by judicial authorities. The detention order shall state the reasons in fact and in law on which it is based and shall contain a reference to the consideration of the available alternatives and the reasons as to why they could not be applied effectively. The costs necessary to transfer an applicant to the Member State responsible shall be met by the general budget of the Union.

Corrective allocation mechanism: the allocation mechanism shall be **applied to all applications for which a responsible Member State cannot be determined** on the basis of the criteria set out in the Regulation. For the purposes of the corrective mechanism, the reference key assigned to each Member State would be determined using a reference formulae.

On the basis of the reference key, a **short list of four Member States** with the lowest number of applicants relative to their share pursuant to that reference key shall be determined by means of the automated system.

Within five days of that communication the applicant shall be given the **opportunity to select a Member State of allocation among the four Member States included in the short list**. If the applicant does not select a Member State, the determining Member State shall allocate the applicant to the Member State on the short list with the lowest number of applicants relative to their share pursuant to the reference key.

Members proposed that applicants will also be allowed to register as **groups of maximum 30 people**. Registering as a group does not give applicants a right to seek protection in a specific country, as in the case for example of family ties, but it gives applicants that have formed close bonds either before leaving their home country or during the journey to remain together and be transferred to the same Member State. This should also reduce risks of secondary movements.

Financial solidarity: Members **deleted** these provisions from the proposal. They considered that the corrective allocation mechanism is intended to balance the unfair sharing of responsibilities under a system that places a lot of efforts on frontline Member States. Members are opposed to the concept of Member States paying for avoiding a responsibility to assist people in need of international protection.

Reciprocal solidarity: Members have provided for **coercive measures** for those Member States that do not comply with the rules. Where front-line Member States systematically refuse to register applicants, the relocation of applicants from their territory would be terminated.

Member States refusing to accept relocation of applicants to their territory would face **limits on their access to EU-funds** and would not be able to use EU-funds for returns of applicants that had their asylum claims rejected.

Transitional arrangements: Members have included a **three-year transition period**, during which Member States that have historically received many asylum-seekers will continue to shoulder a greater responsibility and where member states with a more limited experience of welcoming asylum seekers would start with a lower share of the responsibility.

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

2016/0133(COD) - 04/05/2016 - Legislative proposal

PURPOSE: to amend Regulation (EU) No 604/2013 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 (Dublin III reform).

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: as set out in its 6 April Communication "Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe", the migratory and refugee crisis exposed **significant structural weaknesses and shortcomings** in the design and implementation of the European asylum system, and of the Dublin rules in particular. The current Dublin system was not designed to ensure a sustainable sharing of responsibility for applicants across the Union. This has led to situations where a limited number of individual Member States had to deal with the vast majority of asylum seekers arriving in the Union, putting the capacities of their asylum systems under strain and leading to some disregard of EU rules. In addition, the effectiveness of the Dublin system is undermined by a set of complex and disputable rules on the determination of responsibility as well as lengthy procedures. In particular, this is the case for the current rules which provide for a shift of responsibility between Member States after a given time.

It is clear that the Dublin system must be reformed, both to simplify it and enhance its effectiveness in practice, and to be equal to the task of dealing with situations when Member States' asylum systems are faced with disproportionate pressure.

This proposal on the reform of the Dublin III Regulation is part of a **first set of legislative proposals** the Commission is presenting in the context of a major reform of the Common European Asylum System. These proposals include:

- **this draft Regulation** 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;
- a draft Regulation which aims to extend the scope of the Eurodac Regulation to include the possibility for Member States to store and search data belonging to third-country nationals or stateless persons who are not applicants for international protection and found irregularly staying in the EU;
- a draft Regulation on the European Union Agency for Asylum which aims to strengthen the mandate of the European Asylum Support Office (EASO).

A **second stage of legislative proposals** reforming the Asylum Procedures and Qualification Directives, as well as the Reception Conditions Directive is due to follow to ensure the full reform of all parts of the EU asylum system.

CONTENT: this proposal is a recast 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 ("the Dublin III Regulation").

A summary of the main provisions is as follows:

New fairness mechanism: a new automated system will allow for the registration of all asylum applications made in the EU and the monitoring on a daily basis of the number of applications made in each Member State. The automated system will record every asylum application made in the EU as well as the number of persons in need of protection each Member State effectively resettles from outside the EU.

The new system will automatically establish when a country is handling a **disproportionate number of asylum applications**. If the number of asylum applications made in a Member States is above 150% of the reference share, **the fairness mechanism is automatically triggered**. This reference number is identified on the basis of a key, taking account of the country's population size, and the size of its economy. Once the fairness mechanism is triggered, all new applications in the Member State concerned are allocated to other Member States, after an admissibility check has been carried out, until the number of applications is back below the 150% level.

The fairness mechanism will also factor in the effort being made by a Member State to resettle those in need of international protection direct from a third country.

Criteria for the reference key: the reference key is based on two criteria with equal 50% weighting:

- the size of the population, and
- the total GDP of a Member State.

The number of applications for which a given Member State is responsible and the numbers of persons effectively resettled by a Member State form the basis for the calculation using the reference key and threshold.

NB: a Member State will also have the option to **temporarily not take part** in the allocation. In that case, it would have to make a financial solidarity contribution of EUR 250 000 to the Member State receiving an applicant for whom it would otherwise have been responsible under the fairness mechanism.

Streamlined procedures: procedures will be streamlined, in particular through shorter time limits for the different steps of the determination procedure, transfers and access to the asylum procedure:

- take charge requests, asking another Member State to take over responsibility for an application, have to be sent within one month and a decision taken by the receiving country within one month of receipt of the request. No reply will be tantamount to accepting the request;
- requests from one Member State to another to **take back an applicant** for whom the latter is responsible and who has absconded ('take back requests') will be transformed into simple take back notifications. Such notifications have to be submitted within two weeks of registration and do not require a reply, only a confirmation of receipt. All Member States will be under a clear obligation to take back applicants they are responsible for;
- appeals against transfer decisions will be dealt with within 15 days;
- proper registration of all asylum applications in the EU should help detect multiple applications and **prevent irregular secondary movements**.

Obligations for applicants: the new system introduces clear legal obligations for applicants:

- explicit obligation for applicants to apply for asylum in the Member State of first irregular entry or in the Member State where a person has stayed legally prior to the application for asylum. This will make clear that **applicants do not have the right to choose in which Member State they submit their application**. In case an asylum applicant does not comply with this new obligation, Member States must examine the application in an accelerated procedure;
- applicants will also be obliged to provide all relevant information for determining the Member State responsible for their claim in a timely manner and failure to comply will have proportionate procedural consequences, such as the preclusion of information submitted unjustifiably late;
- to discourage secondary movements, applicants will only be entitled to material reception rights in the country where he or she is required to be present, with the exception of emergency healthcare;
- an obligation for the Member State of application to **check whether the applicant comes from a first country of asylum or a safe third country**. The Member State making this admissibility check will be considered responsible for these applications. The Member State of application must also check whether the applicant comes from a safe country of origin or presents a security risk, in which case they have to examine the application through an accelerated procedure.

Best interests of children and unaccompanied minors: under the new system, the rights of unaccompanied minors will be enhanced and the assessment of the best interests of the child reinforced. The proposal clarifies that the Member State where the minor first lodged his or her application for international protection will be responsible, unless it is demonstrated that this is not in the best interests of the minor. Appeals will be accelerated but will have automatic suspensive effects, meaning no transfers will be carried out while the appeal is ongoing. The rights of unaccompanied minors have been strengthened through better defining the principle of the best interests of the child and by setting out a mechanism for making a best interests of the child-determination in all circumstances implying the transfer of a minor.

New safeguards for asylum seekers:

- **reinforced family reunification**: the right to family reunification of asylum seekers present on the EU territory will be reinforced and the scope will be extended to also include siblings of an applicant as well as families formed in transit, after leaving the country of origin but before arrival on the territory of the Member State;
- **detention**: under the new system, the detention period for the purpose of transfers has been significantly reduced, from six to four weeks.

Review clause: the Commission will review the functioning of the fairness mechanism 18 months after entry into force of the Regulation and annually from then on in order to assess whether the objective of ensuring a proportionate sharing of responsibility between Member States and of relieving disproportionate pressure on certain Member States is met. This review will in particular verify that the threshold for triggering the mechanism is effective.

Territorial provisions: the United Kingdom and Ireland may participate in this proposal, but are not required to do so, in accordance with the relevant Protocols attached to the Treaties. As regards Denmark, it has an opt out and does not participate in justice and home affairs measures. However, Denmark applies the current Regulation on the basis of an international agreement concluded in 2006. Under that agreement, Denmark may opt in to the recast Regulation.

BUDGETARY IMPLICATIONS: the total financial resources necessary to support the implementation of this proposal amount to **EUR 1828.6 million** foreseen for the period 2017-2020. This would cover the transfer costs once the corrective allocation mechanism has been triggered for the benefit of a Member State, the establishment and operation of the IT system for the registration and automatic allocation of asylum applicants.