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Alliance des Avocats
pour les droits de l'Homme

Memorandum

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THE DUBLIN III REGULATION

I. EXECUTIVE SUMMARY

1. Regulation (EU) No 604/2013, commonly known as the Dublin III Regulation (the ***Regulation***), sets out the criteria and mechanisms for determining which Member State is *responsible* for examining an *application for international protection* (ie, an application for asylum) lodged in a Member State by a third-country national or stateless person.

2. For the purposes of the Regulation *Member States* are European Union (***EU***) Member States and associated countries (Norway, Iceland, Switzerland and Liechtenstein). The Regulation applies to all applications for international protection lodged from 1 January 2014.

3. Responsibility is determined according to criteria relating to family unity, an existing residence document or visa, and the point of entry or place of residence of the person concerned.

4. If responsibility for examining the application cannot be determined on the basis of those criteria, the Member State where an application was first lodged will be responsible.

5. The information that forms the basis for determining the responsible Member State according to the criteria is obtained from the applicant in a personal interview.

6. Member States retain the discretion to examine applications for which they are not responsible according to the criteria in the Regulation referred to at paragraph 3 above.

7. Where the application involves a minor (under 18 years of age), Member States must take into account the best interests of the child. Additional protections are afforded to

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unaccompanied minors.

8. If a Member State that has received an application for international protection, or a Member State on whose territory an applicant for international protection is present, considers that another Member State is responsible for examining the application, the first Member State may issue a "take charge" or "take back" request to the other Member State within a given timeframe (generally **two to three months** of the application reaching the first Member State's competent authorities).

9. A Member State that is *responsible* under the Regulation must:

   (a) *take charge* of an applicant who has lodged an application in another Member State;

   (b) *take back* a person who has previously lodged an application in that Member State.

10. A Member State in receipt of either request must examine it and reply to it within a given timeframe (generally within **one to two months**).

11. If that Member State accepts the take charge or take back request, the person concerned will be notified of the transfer decision, and transferred to that Member State, generally within **six months** of the transfer decision.

12. During the period leading up to a transfer, Member States may detain persons concerned, where such detention is necessary and proportionate. An expedited timeline applies in respect of detained persons.

II. PROCESS AND CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

A. GENERAL PRINCIPLES FOR DETERMINING THE MEMBER STATE RESPONSIBLE

13. Under the Regulation, Member States must examine any application for international protection made by a *third-country national* or *stateless person* who makes an application on their territory, including at the border or in a transit zone (Article 3(1)).

   (a) A "third-country national" is defined as any person who is not a citizen of the EU and who is not a national of a state which participates in the Regulation by virtue of an agreement with the EU (Article 2(a)).

   (b) "International protection" is defined as a request by a third-country national or a stateless person for "refugee status or subsidiary protection status".[1]

[1] Article 2(h) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

(i) Subsidiary protection status is granted to persons who do not qualify as refugees but who would face a real risk of suffering serious harm if returned to their country of origin, or, in the case of a stateless person, habitual residence.[2]

14. Each application for international protection shall be examined by a *single Member State*. The Regulation lays down criteria for determining which Member State is responsible for examining the application for international protection (the ***Chapter III criteria***) (Article 3(1)). These criteria are described in Section C below.

15. Where no Member State can be identified as responsible under the Chapter III criteria, the first Member State in which the application was lodged will be responsible for examining the application (Article 3(2)).

16. An applicant will not be transferred to the Member State identified as responsible where systemic flaws in its asylum procedure or reception conditions might result in a risk of inhuman or degrading treatment. In such a case, the Member State determining which Member State is responsible will apply the Chapter III criteria to determine whether an alternative Member State can be designated (Article 3(2)).

(a) "Applicant" is defined as a third-country national or stateless person who has made an application in respect of which a final decision has not yet been taken. Where the Regulation refers to a person without a current application, the more general term "person" is used.

17. Where transfer cannot be made to another Member State on the basis of the Chapter III criteria or to the Member State where the application was first lodged, the Member State determining responsibility must assume such responsibility itself (Article 3(2)).

B. COMMENCEMENT AND MODE OF DETERMINATION

18. The process of determining which Member State is responsible for examining the application begins as soon as the application is lodged with a Member State (Article 20(1)). An application is deemed to have been lodged once the application reaches the competent authorities of the Member State concerned (Article 20(2)).

19. The information used to determine the Member State responsible is gathered in a personal interview with the applicant (Article 5(1)). The interview must be conducted in a timely manner (Article 5(3)), in a language the applicant understands and in which the applicant is able to communicate (Article 5(4)), and in conditions ensuring confidentiality (Article 5(5)). The Member State's authorities are responsible for recording a written summary of the interview (Article 5(6)).

[2] Article 2(f) of Directive 2011/95/EU.

C. CRITERIA FOR DETERMINING WHICH MEMBER STATE IS RESPONSIBLE

20. The criteria for determining which Member State is responsible for examining the application are listed in the Regulation in descending order of importance (Article 7(1)).

21. These criteria are assessed as of the time when the application was first lodged by the applicant (Article 7(2)).

Criteria Set 1 - Family Unity

22. The most important set of criteria relates to applicants with family members or relatives already legally present in a Member State or who have already made an application there (Articles 8 to 11). As explained below, these provisions promote family unity by allowing members of a family to have their applications for international protection examined in the same Member State or, in some cases, reside in the Member State where a family member is located while their application is examined.

Unaccompanied minors

23. *Unaccompanied minors*, including those that are married, will have their applications examined in the Member State where a *family member* or sibling is legally present, provided this is in the best interests of the minor (Article 8(1)).

    (a) "Unaccompanied minor" is defined as a person below the age of 18 years who arrives in a Member State unaccompanied by an adult responsible for him or her or is left unaccompanied upon arrival (Articles 2(i) and 2(j)).

    (b) A "family member" of an unaccompanied minor includes a spouse or unmarried partner in a stable relationship or, where the unaccompanied minor is unmarried, the father, mother or another adult responsible for the minor (Article 2(g)).

24. Where the unaccompanied minor has a *relative*, that is, an uncle, aunt or grandparent (Article 2(h)), who is legally present in a Member State and can take care of the unaccompanied minor, that Member State will unite the minor with the relative and shall be the Member State responsible (Article 8(2)).

25. Where the unaccompanied minor has family members, siblings and relatives in multiple Member States, the responsible Member State will be determined on the basis of what is in the best interests of the minor (Article 8(3)).

26. In the absence of family members, siblings and relatives, an unaccompanied minor will have its application examined in the Member State where the application was lodged (Article 8(4)).

Family Members

27. Where an applicant has a *family member* who has *obtained* (Article 9) or *applied for* (Article 10) international protection in a Member State, that Member State shall be

responsible for examining the application of the applicant, provided that the persons involved express their desire in writing.

(a) "Family member" is defined as a spouse or unmarried partner in a stable relationship, minor children, whether born in or out of wedlock, and where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant (Article 2(g)).

Family Procedure

28. Where several family members lodge applications in a Member State simultaneously and the application of the criteria in the Regulation would lead to the family being separated, responsibility for examining the applications shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them and, if this does not resolve the issue, the oldest family member (Article 11).

Criteria Set 2 - Residence Document or Visa

29. The second most important set of criteria in the hierarchy relates to applicants in possession of a *residence document* or *visa* (Article 12). These criteria will apply in order only if none of the family unity criteria are applicable.

30. Where the applicant is in possession of a *valid residence document*, the Member State that issued the document will be responsible for examining the application (Article 12(1)).

(a) A "residence document" is any authorisation issued by a Member State allowing a person to stay on its territory (Article 2(l)).

31. Where the applicant is in possession of a *valid visa*, the Member State that issued the visa will be responsible for examining the application, unless the visa was issued on behalf of another Member State, in which case the latter Member State will be responsible (Article 12(2)).

(a) A "visa" is any authorisation or decision issued by a Member State required for transit or entry for an intended stay in the Member State (Article 2(m)).

32. Where the applicant has *multiple residence documents or visas*, the Member State responsible will be the one which issued:

(a) the residence document with the longest period of residency or, when identical, the residence document with the latest expiry date (Article 12(3)(a));

(b) the visa with the latest expiry date if the visas are of the same type (Article 12(3)(b)); or

(c) for visas of different types, the visa with the longest duration or, if the durations are identical, with the latest expiry date (Article 12(3)(c)).

33. Where a residence document or visa has expired within a limited period prior to the application and the applicant has not left the Member State that issued the document during that period, the issuing Member State remains responsible (Article 12(4)).

34. If a document was issued based on a false or assumed identity or forged, counterfeit or invalid documents, this is not relevant to determining which Member State is responsible (Article 12(5)).

Criteria Set 3 – Entry into a Member State

35. The third set of criteria in the hierarchy relates to an applicant's point of entry into, or presence in, a Member State (Articles 13 to 15). These criteria will apply in order only if none of the family unity criteria, or residence document or visa criteria, are applicable.

36. Where an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State first entered will be responsible for examining the application for international protection (Article 13(1)). This responsibility shall cease **twelve months** after the date on which the border crossing took place (Article 13(1)).

37. When the Member State responsible under this rule cannot, or is no longer obliged to assume responsibility, or where the point of entry of an applicant cannot be determined, a Member State will be responsible if the applicant has been living in that Member State for a continuous period of **five months** prior to lodging an application (Article 13(2)).

38. Where a Member State waives the need for an applicant to have a visa (Article 14), or where an application is made in the international transit area of an airport of a Member State (Article 15), that Member State shall be responsible for examining the application.

D. FIRST APPLICATION FOR INTERNATIONAL PROTECTION

39. Where no Member State can be designated as responsible for examining an application for international protection under the criteria described above, the first Member State in which the application for international protection was lodged shall be responsible for examining it (Article 3(2)).

E. DEPENDENT PERSONS AND DISCRETION IN DETERMINING THE MEMBER STATE RESPONSIBLE

40. Where an applicant is, due to pregnancy, a new-born child, severe illness, disability or old age, dependent on assistance from a legally resident child, sibling or parent, or where a legally resident child, sibling or parent is dependent on the applicant, they will normally be united with the person on which they are dependent (Article 16(1)). The Member State responsible will generally be the state where the child, sibling or parent is legally resident (Article 16(1)).

41. Any Member State may decide to examine an application for international protection even if doing so is not its responsibility under the criteria laid down in the Regulation (Article 17(1)).

42. If a Member State decides to assume responsibility for examining the application, it shall assume the obligations associated with that responsibility and shall indicate this within the *Eurodac database* (Article 17(1)).

    (a) The Eurodac database is the EU's asylum fingerprint database established pursuant to Regulation (EU) No 603/2013.

43. Any Member State may request, at any time before a decision on the application has been made, that another Member State take charge of an applicant to bring together family relations, on humanitarian grounds based in particular on family or cultural considerations (Article 17(2)).

III. CHILD APPLICANTS

44. The "best interests of the child" are a primary consideration of Member States with respect to all procedures under the Regulation (Article 6(1)).

45. Member States must ensure that unaccompanied minors are provided with a representative (Article 6(2)).

46. In assessing the best interests of the child, Member States must take full account of the possibility for family reunification, the minor's well-being and social development, safety and security considerations, and the views of the minor (Article 6(3)).

47. Member States must take appropriate action to identify the family members, siblings and relatives of an unaccompanied minor and may call on the assistance of international organisations in order to do so (Article 6(4)).

IV. TAKE CHARGE AND TAKE BACK PROCEDURE AND TIMELINES

48. Chapter V (Articles 18 and 19) sets out Member States' obligations arising out of *take charge* and *take back* requests.

A. TAKING CHARGE

49. A Member State identified as *responsible* under the Regulation is obliged to take charge of an applicant who has lodged an application in a different Member State (Article 18(1)(a)).

50. The responsible Member State obliged to take charge of the applicant must examine, or complete the examination of, the application for international protection on its merits (Article 18(2)).

51. The procedures and timelines applicable for take charge requests are set out in Part 1 of the Annex.

B. TAKING BACK

52. A Member State responsible under the Regulation is obliged to take back certain applicants and other persons who previously lodged an application with that Member State, in the circumstances described below. As noted in paragraph 16(a), where this previous application has been withdrawn or rejected, the Regulation uses the more general description of "person" instead of applicant.

53. A Member State that is responsible under the Regulation must take back:

(a) an *applicant* who has lodged an *active* application with that Member State and has now either lodged an application with a different Member State or is currently located in a different Member State without a residence document (Article 18(1)(b));

(i) The Member State responsible must examine, or complete the examination of, the application for international protection on its merits (Article 18(2)).

(b) a *person* who had lodged, but subsequently *withdrew*, an application with that Member State and has now either lodged an application with a different Member State or is currently located in a different Member State without a residence document (Article 18(1)(c));

(i) The Member State responsible must then allow the person who withdrew the application to lodge a new one or request the examination of the previous application on its merits. The Member State must ensure that the examination of the application is completed (Article 18(2)).

(ii) If a first application was withdrawn before the Member State responsible was determined, then (subject to certain limitations) the Member State where an application was first lodged must (a) take back the person who lodged but subsequently withdrew the application and (b) complete the process of deciding which Member State is responsible (Article 20(5)).

(c) a *person* who had lodged an application which was *rejected* by that Member State and has now either lodged an application with a different Member State or is currently located in a different Member State without a residence document (Article 18(1)(d)).

(i) The Member State responsible must then allow a person who had their application rejected at first instance only to seek a remedy (Article 18(2)).[3]

(ii) Where the person who is subject to a take back request has already had an application finally rejected after an examination on its merits by the

[3] Pursuant to Article 46 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

requested Member State, the Member State where the person is located may make a take back request, or carry out a *return procedure*[4] to the applicant's country of origin, a country of transit, or another third country (Article 24(4)).

54. The procedures and timelines applicable for take back requests are set out in Part 2 of the Annex.

C. NOTIFICATION OF A TRANSFER DECISION

55. Where a Member State accepts a take charge or take back request, the Member State that placed the request shall notify the person concerned of the transfer decision (Article 26(1)).

56. If the person concerned has a legal advisor, the transfer decision can be notified to the legal adviser instead of the person concerned (Article 26(1)). The notification must contain information on any available legal remedies and the means by which an applicant or other person can avail him or herself of these remedies (Article 26(2)). The notification must be made in a language that the person understands or is reasonably supposed to understand (Article 26(3)).

D. REMEDIES

57. An applicant or other person may appeal or seek the review of a transfer decision before a court or tribunal in the Member State that made the take charge or take back request (Article 27(1)). Member States must provide a reasonable period of time in which the applicant or other person may exercise this right (Article 27(2)).

58. Member States must ensure the person concerned has access to legal assistance and, where necessary, linguistic assistance (Article 27(5)). Legal assistance must be provided free of charge in cases where the person concerned cannot afford its cost (Article 27(6)), other than in cases that the competent authority or a court or tribunal considers have no prospect of success.

E. TRANSFER

59. The transfer of an applicant or other person from a Member State that has issued a take charge or take back request to the Member State responsible for examining the application must be carried out in accordance with the national law of the requesting Member State, after consultation between the two Member States involved in the transfer (Article 29(1)).

60. The transfer must take place as soon as practically possible and, at the latest, within **six months** of the acceptance of the request or the final ruling on an appeal or review of the transfer decision (Article 29(1)).

[4] In accordance with Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, see Article 3(3).

61. Member States must ensure that transfers by supervised departure or under escort (as opposed to transfers effected on a voluntary basis) are carried out in a humane manner and with full respect for fundamental rights and human dignity (Article 29(1)).

62. The responsible Member State receiving the person concerned shall inform the requesting Member State of their safe arrival or that they did not arrive within the applicable time limit (Article 29(1)).

63. Where the transfer does not take place within **six months**, the Member State responsible shall be relieved of its obligations to take charge of or take back the person concerned (Article 29(2)). This time limit may be extended to a maximum of **one year** if the transfer could not take place due to the imprisonment of the person, or to a maximum of **eighteen months** if the person absconds.

64. The costs of a transfer shall be met by the Member State that issued the request to take charge or take back the person concerned (Article 30(1)).

65. If the transfer has been carried out erroneously or if a transfer decision is overturned on appeal after the transfer has taken place, the transferring Member State must promptly accept the person back (Article 29(3)) and shall be responsible for the costs of the transfer (Article 30(2)).

F. CONCILIATION

66. Where Member States cannot resolve a dispute on any matter related to the application of the Regulation, they may have recourse to conciliation under the procedure provided for in the Regulation (Article 37(1)).

V. DETENTION

A. PURPOSE

67. Prior to a transfer, a person may only be detained when, on the basis of an individual assessment, there is a significant risk of their absconding, and only in so far as detention is proportional and less coercive alternative measures cannot be applied effectively (Article 28(2)).

68. Detention will be for as short a period as possible and for no longer than reasonably necessary to fulfil the required administrative procedures with due diligence (Article 28(3)).

B. EXPEDITED TIMELINE

69. When a person is detained, the period for submitting a take charge or take back request shall not exceed **one month** from the date the application is lodged (Article 28(3)).

70. In such cases, the requesting Member State shall request an urgent reply from the requested Member State, which must be given within **two weeks** of the receipt of the request (Article 28(3)).

71. If the requested Member State does not adhere to this timeline, responsibility for examining the application is deemed to have been accepted by it (Article 25(2)).

72. When a person is detained, the transfer of that person must take place as soon as practically possible and, at the latest, within **six weeks** of the acceptance of the request (or of the moment that an appeal or review no longer suspends the effect of the transfer decision) (Article 28(3)).

73. When a requesting Member State fails to comply with the deadlines for submitting a request or when the transfer does not occur within a **six week period**, the person may no longer be detained (Article 28(3)).

C. RIGHTS OF DETAINED PERSONS

74. Member States should apply certain provisions of Directive 2013/33/EU on laying down standards for the reception of applicants for international protection (the ***Directive***) to persons detained on the basis of the Regulation (Article 28(4)).

75. Detained applicants have the right to be immediately informed in writing, in a language which they understand, of the reasons why they are being detained, and that they have the right to appeal a detention order and to legal assistance in making such an appeal (Directive, Article 9(4)).

76. Member States shall ensure that family members and legal advisers or counsellors have the opportunity to communicate with and visit an applicant where they are being detained, in conditions that respect privacy (Directive, Article 10(4)).

VI. ANNEX

A. PART 1: TAKE CHARGE PROCEDURE

Take Charge Request

77. A take charge request made by the Member State where an application is lodged to the Member State that may be responsible for examining that application must be made as quickly as possible and within **three months** of the date when the application was lodged (Article 21(1)).

78. If the request is based on evidence from Eurodac (that is, the person's fingerprints), the request must be made within **two months** of the Eurodac hit (Article 21(1)).

79. If the Member State making the take charge request does not adhere to these timelines, that state will be responsible for examining the application (Article 21(1)).

80. Member States making a take charge request may request an urgent reply in certain circumstances (Article 21(2)).

81. The form in which the take charge request must be made is specified in Article 21(3).

Reply to Take Charge Request

82. The Member State that receives the take charge request must make the necessary checks and give a decision on the request within **two months** of receiving it (Article 22(1)).

83. If an urgent reply has been requested (Article 21(2)), then the Member State must either provide a reply within the period allotted in the request for an urgent reply (which must be at least **one week**), or a notice that its reply will be provided after the requested time frame (Article 22(6)). The requested Member State must in any case reply within **one month**.

84. If the requested Member State does not adhere to these timelines, responsibility for examining the application is deemed to have been accepted by it (Article 22(7)).

B. PART 2: TAKE BACK PROCEDURE

Take Back Request

85. Where a person who is the subject of a take back request has lodged a new application in the Member State making the request, such request must be made as quickly as possible and within **three months** of the date when the new application was lodged (Article 23(2)).

    (a) If the request is based on evidence from Eurodac (that is, the person's fingerprints), the request must be placed within **two months** of the Eurodac hit (Article 23(2)).

    (b) If the Member State making the take back request does not adhere to these timelines, that state will be responsible for examining the application (Article 23(3)).

    (c) The form the take back request must take is specified in Article 23(4).

86. Where a person who is the subject of a take back request has not lodged a new application in the Member State making the request, such request must be made as quickly as possible and within **three months** of the date the Member State placing the request became aware that another Member State may be responsible for the person who is the subject of the take back request (Article 24(2)).

    (a) If the request is based on evidence from Eurodac, the request must be placed as quickly as possible and within **two months** of the Eurodac hit (Article 24(2)).

    (b) If the Member State making the take back request does not adhere to these timelines, that state must provide the person with an opportunity to lodge a new application (Article 24(3)).

    (c) The form the take back request must take is specified in Article 24(5).

Reply to Take Back Request

87. A Member State that has received a take back request must make the necessary checks and reply as quickly as possible and within **one month** of receiving a request (Article 25(1)).

88. If the request is based on evidence from Eurodac, the reply must be made within **two weeks** of receiving the take back request (Article 25(1)).

89. If the requested Member State does not adhere to these timelines, responsibility for examining the application is deemed to have been accepted by it (Article 25(2)).