



EUROPEAN PARLIAMENT

2014 - 2019

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*Committee on Civil Liberties, Justice and Home Affairs*

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**2014/0202(COD)**

5.2.2015

## **AMENDMENTS**

### **5 - 19**

**Draft report**

**Cecilia Wikström**

(PE544.476v01-00)

on the 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

Proposal for a regulation

(COM(2014)0382 – C8-0040/2014 – 2014/0202(COD))

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PE546.820v01-00

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**Amendment 5**

**Laura Ferrara, Ignazio Corrao**

**Proposal for a regulation**

**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) This Regulation should take account of the 2008 UNHCR Guidelines on Determining the Best Interests of the Child.***

Or. it

**Amendment 6**

**Timothy Kirkhope, Helga Stevens, Jussi Halla-aho**  
on behalf of the ECR Group

**Proposal for a regulation**

**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) The provisions of this Regulation should not negate the responsibilities of the first Member State where the application is lodged to be in charge of initially processing the application of the minor in question, and should not remove the obligations of the first Member State to be responsible for the welfare of the minor during his/her presence.***

Or. en

**Amendment 7**

**Timothy Kirkhope, Helga Stevens, Jussi Halla-aho**  
on behalf of the ECR Group

**Proposal for a regulation**

**Recital 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***(4b) This Regulation is intended to minimise the movement of minors across the Union; it is not intended to replace the requirements and obligations as set out in Regulation (EU) No 604/2013.***

Or. en

**Amendment 8**  
**Ramon Tremosa i Balcells**

**Proposal for a regulation**  
**Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) This Regulation should not interfere with the division of regional or local competences within the Member States, including regional and local self-government.***

Or. en

**Amendment 9**  
**Malin Björk**

**Proposal for a regulation**  
**Article 1 – paragraph -1 a (new)**  
Regulation (EU) 604/2013  
Recital 13

*Present text*

*Amendment*

"In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary

***-1a. Recital 13 shall be replaced by the following:***

**"13.** In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary

consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability."

consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. ***The assessment of the best interests of the child in the context of the decision on the determination of the Member State responsible for examining an application for international protection should always be carried out on an individual basis\* and before the decision on the Member State responsible is taken.*** In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability ***in line with 2008 UNHCR Guidelines on Determining the Best Interests of the Child.***

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***\* General comment N°14 (2013) on the Right of the Child to have his or her best interests taken as a primary consideration (Art. 3 (1)), 48 (CRC/CGC/14)). "***

Or. en

#### *Justification*

*Applying the UNHCR guidelines would enhance the protection of the child's best interest.*

**Amendment 10**  
**Kristina Winberg**

**Proposal for a regulation**  
**Article 1 – paragraph -1 a (new)**  
Regulation (EU) 604/2013  
Recital 13 a (new)

*Present text*

*Amendment*

***-1a. The following recital shall be inserted:***

***"(13a) Particular attention should be given to the possibility of lodging applications in multiple Member States. This option might not always be in the best interest of the child as it can make them more vulnerable to human traffickers."***

Or. en

## **Amendment 11**

**Malin Björk**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1**

Regulation (EU) No 604/2013

Article 8 – paragraph 4a

*Text proposed by the Commission*

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***.

*Amendment*

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 ***child***.

Or. en

### *Justification*

*It is important to be consistent with international law, and always use "the best interest of the child" when referring to persons under 18 years of age.*

**Amendment 12**  
**Caterina Chinnici**

**Proposal for a regulation**

**Article 1 – paragraph 1**

Regulation (EU) No 604/2013

Article 8 – paragraph 4a

*Text proposed by the Commission*

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.

*Amendment*

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, ***unless this is against*** the best interests of the minor.

Or. it

*Justification*

*The wording ‘unless this is against the best interests’, already used at the end of paragraph 4b, seems preferable to ‘provided that this is in the best interests’ also in paragraph 4a. This is not so much for reasons of consistency (indeed, one could ‘standardise to the contrary’), but rather because the wording ‘unless this is against the best interests’ provides greater safeguards (also with regard to the burden of proof) and, above all, greater certainty, demonstrating clearly the relationship between rule and exception.*

**Amendment 13**  
**Malin Björk**

**Proposal for a regulation**

**Article 1 – paragraph 1**

Regulation (EU) No 604/2013

Article 8 – paragraph 4b – first subparagraph

*Text proposed by the Commission*

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

*Amendment*

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.

right to make an application *in a child-sensitive way and adapted to the age, literacy, and level of maturity of the child* and give him or her an effective opportunity *and assistance, including legal advice and social services*, to lodge an application in that Member State.

Or. en

#### *Justification*

*It is important to highlight that providing information and assisting children raises specific demands and has to be done in a child-sensitive way in order to de facto ensure the rights of children in the asylum procedure.*

#### **Amendment 14** **Emilian Pavel**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1**

Regulation (EU) No 604/2013

Article 8 – paragraph 4b – first subparagraph

#### *Text proposed by the Commission*

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.

#### *Amendment*

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, ***within six months from the arrival of the minor***, of the right to make an application and give him or her an effective opportunity to lodge an application in that Member State.

Or. en

#### *Justification*

*It is important for the unaccompanied minor to be informed by the Member State within a specific time frame, that he/she can lodge an application in the Member State in which they are present. Without setting up a clear deadline, the process can last for a long time and this*

*is not in the best interest of the minor.*

**Amendment 15**  
**Caterina Chinnici**

**Proposal for a regulation**  
**Article 1 – paragraph 1**  
Regulation (EU) No 604/2013  
Article 8 – paragraph 4b – second subparagraph

*Text proposed by the Commission*

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.

*Amendment*

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, ***unless*** this is ***against*** the best interests of the minor.

Or. it

*Justification*

*The wording ‘unless this is against the best interests’, already used at the end of the following paragraph, seems preferable to ‘provided that this is in the best interests’ in this paragraph too. This is not so much for reasons of consistency (indeed, one could ‘standardise to the contrary’), but rather because the wording ‘unless this is against the best interests’ provides greater safeguards (also with regard to the burden of proof) and, above all, greater certainty, demonstrating clearly the relationship between rule and exception.*

**Amendment 16**  
**Laura Ferrara, Ignazio Corrao**

**Proposal for a regulation**  
**Article 1 – paragraph 1**  
Regulation (EU) No 604/2013  
Article 8 – paragraph 4c

*Text proposed by the Commission*

4c. The Member State requested to take back an unaccompanied minor shall cooperate with the Member State where the

*Amendment*

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.

unaccompanied minor is present in order to assess the best interests of the minor.

*In accordance with paragraphs 4, 4a and 4b, Member States shall assess the best interests of the minor on an individual basis and before the decision has been taken by the Member State responsible. In particular, in their assessment, Member States shall take due account of the following criteria:*

*(a) the time necessary for completing asylum application procedures;*

*(b) the need to avoid unnecessary transfers as much as possible;*

*(c) the development and social welfare of the minor, with particular reference to his or her social and cultural background;*

*(d) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking.*

Or. it

**Amendment 17**  
**Caterina Chinnici**

**Proposal for a regulation**  
**Article 1 – paragraph 1**  
Regulation (EU) No 604/2013  
Article 8 – paragraph 4c a (new)

*Text proposed by the Commission*

*Amendment*

*4ca. The decisions relating to the assessment of the best interests of the minor and to the subsequent determination of the Member State responsible must be taken with the participation of the minor, must take account of the opinions expressed by the latter and shall be adopted, validated and/or in any case be liable to monitoring by the judicial authorities in the country*

*in which the minor is currently living.*

Or. it

*Justification*

*This new paragraph seeks to introduce some minimum safeguards (participation of the minor, requirement to take into consideration his or her opinions, monitoring by the judicial authorities) where it is considered that the solutions set out initially in the Regulation are, or might be, against the interests of the minor.*

**Amendment 18**

**Malin Björk**

**Proposal for a regulation**

**Article 1 – paragraph 1 a (new)**

Regulation (EU) No 604/2013

Article 27 – paragraph 1

*Present text*

"1. The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, ***before a court or tribunal.***"

*Amendment*

***1a. In Article 27 paragraph 1 is replaced by the following:***

"1. The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, ***before a court or tribunal***, against a transfer decision, ***a failure to submit a take-charge or take-back request as referred to in Articles 21, 23 and 24, or a decision on the request to take charge or to take back as referred to in Articles 22 and 25.***"

Or. en

*Justification*

*In line with the changes in Art. 8, Art. 27 should be amended in order to clarify that effective remedies must also be possible against a decision not to transfer an applicant to another Member State.*

## Amendment 19

Laura Ferrara, Ignazio Corrao

### Proposal for a regulation

#### Article 1 – paragraph 1 a (new)

Regulation (EU) No 604/2013

Article 27 – paragraph 1

#### *Present text*

"1. The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal ***or a review, in fact and in law***, against a transfer decision, ***before a court or tribunal***."

#### *Amendment*

#### ***1a. Article 27(1) is replaced by the following:***

"1. The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal, ***in fact and in law, before a court or tribunal***, against a transfer decision, ***the failure to submit a take back request pursuant to Articles 21, 23 and 24, or a decision relating to the take back request pursuant to Articles 22 and 25 or a review of the above.***"

Or. it