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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Cecilia Wikström

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2014)0382),
 - having regard to Article 294(2) and Article 78(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0040/2014),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 15 October 2014¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0000/2014),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Article 1 – paragraph -1 a (new) Regulation (EU) No 604/2013

Recital 13

¹ Not yet published in the Official Journal.

(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.

-1 a. 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. ***The assessment of the best interests of the child in the context of a 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^{1a} 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.

^{1a} 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(*This amendment seeks to amend a provision within the existing act – Recital 13 – that was not referred to in the Commission proposal.*)

Justification

It is important to stress that the principal rule set out in Article 8(4a and 4b) is subject to an exception, based on the best interests of the child to be assessed by the relevant authorities and/or courts with full knowledge of the facts, so having regard to the particular circumstances of each individual case. This assessment should always be done before each

decision based on Article 8(4a/4b) is taken or reviewed.

Amendment 2

Proposal for a regulation

Article 1 – paragraph -1 b (new) Regulation (EU) No 604/2013

Recital 15 a (new)

Text proposed by the Commission

Amendment

-1 b. The following Recital shall be inserted:

'(15 a) The objective of this Regulation is to guarantee effective access to an assessment of the applicant's international protection status. As unaccompanied minors as applicants form a category of particularly vulnerable persons, the procedure for determining the Member State responsible should not be prolonged more than is strictly necessary and, therefore, considering primarily the best interests of the child, unaccompanied minors should not, as a rule, be transferred among Member States and their application should be examined by the Member State where the unaccompanied minor is present after having lodged an application.'

Or. en

Justification

The Court, by setting the principal rule of responsibility of the Member State where the unaccompanied minor has lodged an application and where he or she is present, proposed an all-inclusive interpretation for the current Article 8(4), whereby the scheme of the Dublin regulation is integrated with the principles derived, in particular, from the Charter, assuming that this enables the minor's best interests to be established most effectively.

Amendment 3

Proposal for a regulation

Article 1 – paragraph -1 c (new) Regulation (EU) No 604/2013

Text proposed by the Commission

Amendment

-1 c. The following Recital shall be inserted:

'(15 b) Since Article 8 provides for the only provision specifically dealing with unaccompanied minors, it contains the only criteria applicable for determining the Member State responsible for examination of an application for international protection lodged by these unaccompanied minors, irrespective of the procedural stage of former applications in other Member States or of situations envisaged in other Articles of this Regulation. This group of vulnerable persons should in no case be made to engage in travelling that can be avoided. When examining the application for international protection, Council Directive 2005/85/EC^{1a} or Directive 2013/32/EU of the European Parliament and of the Council^{1b} should apply in full, in accordance with the transitional provisions of Directive 2013/32/EU.

^{1a} Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

^{1b} 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 (OJ L 180, 29.6.2013, p. 60).'

Or. en

Justification

In case C-648/11 the CoJ ruled that, when a former application by the unaccompanied minor

in another MS was rejected, the MS where he/she lodged another application and is present is still responsible for examining that application. The pending or completed status of the procedure in another MS was irrelevant to the Court. The authorities responsible however can duly apply all provisions of the APD. Art 8 should be considered as a 'Special Code' for unaccompanied minors with answers to all situations in which they might find themselves, guided by the best interest of the child and the objectives of clarity and speed advocated for in the Dublin procedure.

Amendment 4

Proposal for a regulation

Article 1 – paragraph 1

Regulation (EU) No 604/2013

Article 8 – paragraph 4 d – subparagraph 1 – introductory part

Text proposed by the Commission

4d. The Member State, which is responsible pursuant to paragraph 4a, shall inform the following Member States, as applicable, thereof:

Amendment

4d. The Member State, which is responsible pursuant to paragraph 4a **or 4b**, shall inform the following Member States, as applicable, thereof:

Or. en

EXPLANATORY STATEMENT

During the negotiations on the recast of the Dublin II Regulation, which was formally adopted in June 2013 as part of the Common European Asylum System, the co-legislators could not agree on a final text for Article 8(4).

The Parliament was convinced that, in case an unaccompanied minor without family in the Union lodges an application in a Member State, the Member State where the minor is present should be the Member State responsible for examining his/her application for international protection, in order to, in the best interests of the child, avoid unnecessary transfers of this minor. This was also suggested in the Commission proposal on the Recast Dublin Regulation of 3 December 2008 (COM(2008) 820 final).

The Council was convinced that the unaccompanied minor should be sent back to the Member State where he/she made the first application for asylum.

The final political agreement at that time kept Article 8(4)¹ unchanged as compared to the former version of the Dublin Regulation (the corresponding Article 6), except that EP managed to have the new Article 8(4) completed with the addition “provided that it is in the best interests of the minor”.

However, as Court case C-648/11 was pending with the Court of Justice and the outcome of that case would contain the guiding principle for shaping the rule of Article 8(4), the co-legislators agreed that the rule to be decided by the Court would eventually become the final new rule in Article 8(4). This political agreement was reflected in a Declaration made by the three institutions and attached to the legislative act, published in the OJ together with the legislative act. ["The Council and the EP 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-64811 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 (...)"]

Following that declaration and commitment of the three Institutions, the Commission has issued on 26 June 2014 a proposal to make the content of Article 8(4) coherent with the outcome of the new case-law.

C-64811 MA and Others vs. Secretary of State for the Home Department - 6 June 2013

The Court decision gives clear guidance as to the interpretation of the old Article 6 - which is

¹ Article 8(4) in the current Dublin regulation: "In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the child." The corresponding Article 6 in the previous Dublin Regulation read as follows: "In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum."

the corresponding text for the current Art. 8(4) - using the fundamental principles valid for all Union legislation: the best interests of the child imposed by the Charter (Art. 24(2)) and referred to in Recital 15 and Article 6 itself.

The Court's judgement is clearly stating that efficient application of the best interest of the child, should result in no unnecessary transfers and no unnecessary prolongation of the procedure for determining the MS responsible and guarantee for immediate access to the refugee determination procedure.

The final conclusion of the Court is that when an unaccompanied minor without legally present family in the Union has lodged asylum applications in more than one Member State, the Member State where the minor is present after having lodged his/ her application is responsible for the examination of the determination procedure.

The Commission Proposal

The Court tried to set up a general rule in its interpretation exercise. The Commission proposal translates this rule: it is the Member State where the minor is present after having lodged his/her application that is responsible for the examination of the determination procedure.

The Commission proposal has provided for a Member State's obligation to inform an unaccompanied minor that is present on its territory without having lodged an application, of his/her right to make an application and give him/her the opportunity to lodge one, in order not to discriminate among informed and uninformed unaccompanied minors and secure them the same protection, out of their nature being a highly vulnerable group of applicants.

Rapporteur

The Rapporteur is of the opinion that the political agreement made at the end of the former negotiations was to adhere to the Court's Decision and orientation. The Decision of the Court is coherent with EP's unanimous position developed during the negotiations, and with the initial Recast Commission proposal for Article 8(4). The Rapporteur therefore highly recommends to stick to the principles set out in the new Commission Proposal as they fully reflect the spirit of the corresponding Court Judgment.

The Court retains that the principal rule is applicable to all situations of unaccompanied minors, regardless of the stage of the determination procedure in a former Member State. The Court still retains the Member State of presence responsible for dealing with the minor's file, even when a final decision elsewhere has taken place, but of course allows Member States for the application of the full range of possibilities the Asylum Procedures Directive offers to deal quickly with such cases.

The Court therefore consciously measured the prevalence of avoiding transfers of minors above all other considerations of pending procedures elsewhere.

Your Rapporteur suggests that those principles from the Court decision should be clarified in

the report.

Furthermore, the best interest of the child always prevails on the basis of an individual examination of the case. So if there are specific reasons in a specific case to derogate from the general presumption that the Member State of presence should do the examination, the best interests of the child will overrule the general principle in that specific case. The burden of proof of that a transfer would be in the best interest of the unaccompanied minor is on the Member State where he/she is present.