Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

COMMISSION IMPLEMENTING REGULATION (EU) No 118/2014

of 30 January 2014

amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 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[(1)], and in particular Articles 4(3), 6(5), 8(6), 16(4), 21(3), 22(3), 23(4) and 24(5), Article 29(1) and (4), Article 31(4), Article 32(1) and (5), and Article 35(4) thereof,

Whereas:

(1) By Commission Regulation (EC) No 1560/2003[(2)] a number of specific arrangements needed for the application of Council Regulation (EC) No 343/2003[(3)] were adopted.

(2) In June 2013 a Regulation (EU) No 604/2013 was adopted, recasting Regulation (EC) No 343/2003. A number of further specific arrangements should be established for the effective application of Regulation (EU) No 604/2013.

(3) In order to increase the efficiency of the system and improve the cooperation between national authorities, the rules regarding the transmission and processing of requests for the purpose of taking charge and taking back, the requests for information, the cooperation on reuniting family members and other relatives in the case of unaccompanied minors and dependent persons, as well as carrying out of transfers, need to be amended.

(4) A common leaflet on Dublin/Eurodac, as well as a specific leaflet for unaccompanied minors, a standard form for the exchange of relevant information on unaccompanied minors, uniform conditions for the consultation and exchange of information on minors and dependent persons, a standard form for the exchange of data before a transfer; a common health certificate, of uniform conditions and practical arrangements for the exchange of information on a person's health data before a transfer, are not provided for in Regulation (EC) No 1560/2003. Consequently, new provisions should be added.

Changes to legislation: There are outstanding changes not yet made to Commission Implementing Regulation (EU) No 118/2014. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(5) Regulation (EU) No 603/2013 of the European Parliament and of the Council[4] replaces Council Regulation (EC) No 2725/2000[5] and introduces changes to the Eurodac system. Therefore, Regulation (EC) No 1560/2003 should be adapted in order to properly reflect the interaction between the procedures laid down in Regulation (EU) No 604/2013 and the application of Regulation (EU) No 603/2013.

(6) Regulation (EC) No 767/2008 of the European Parliament and of the Council[6] provides for rules on the facilitation of application of Regulation (EU) No 604/2013. Consequently, the uniform conditions for preparation and submission of requests to take charge of applicants should be amended to include rules on the use of Visa Information System data.

(7) Technical adaptations are necessary in order to respond to the evolution of the standards applicable and the practical arrangements for using the electronic transmission network set up by Regulation (EC) No 1560/2003 to facilitate the implementation of Regulation (EU) No 604/2013.

(8) Directive 95/46/EC of the European Parliament and of the Council[7] should apply to processing carried out pursuant to this Regulation.

(9) Regulation (EU) No 604/2013 applies to applications for international protection lodged as from 1 January 2014. It is therefore necessary that this Regulation enters into force as soon as possible to enable Regulation (EU) No 604/2013 to be fully applied.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Committee set up by Article 44(2) of Regulation (EU) No 604/2013.

(11) Therefore, Regulation (EC) No 1560/2003 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 1560/2003

Regulation (EC) No 1560/2003 is amended as follows:

(1) in Article 1, the following paragraph is inserted:

2a. Where the request is based on a positive result (hit) transmitted by the Visa Information System (VIS) in accordance with Article 21 of Regulation (EC) No 767/2008 of the European Parliament and of the Council[8] after comparison of the fingerprints of the applicant for international protection with fingerprint data previously taken and sent to the VIS in accordance with Article 9 of that Regulation and checked in accordance with Article 21 of that Regulation, it shall also include the data supplied by the VIS.;

(2) Article 2 is replaced by the following:

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Article 2

Preparation of requests for taking back

Requests for taking back shall be made on a standard form in accordance with the model in Annex III, setting out the nature of the request, the reasons for it and the provisions of Regulation (EU) No 604/2013 of the European Parliament and of the Council[9] on which it is based.

The request shall also include, as applicable:

(a) a copy of all the proof and circumstantial evidence showing that the requested Member State is responsible for examining the application for international protection, accompanied, where appropriate, by comments on the circumstances in which it was obtained and the probative value attached to it by the requesting Member State, with reference to the lists of proof and circumstantial evidence referred to in Article 22(3) of Regulation (EU) No 604/2013, which are set out in Annex II to this Regulation;

(b) the positive result (hit) transmitted by the Eurodac Central Unit, in accordance with Article 4(5) of Regulation (EC) No 2725/2000, after comparison of the applicant's fingerprints with fingerprint data previously taken and sent to the Central Unit in accordance with Article 4(1) and (2) of that Regulation and checked in accordance with Article 4(6) of that Regulation.;

(3) in Article 8, a new paragraph is added:

3. The standard form set out in Annex VI shall be used for the purpose of transmitting to the responsible Member State the data essential to safeguard the rights and immediate needs of the person to be transferred. This standard form shall be considered a notice in the meaning of paragraph 2.;

(4) in Article 9, a new paragraph is inserted:

1a. Where a transfer has been delayed at the request of the transferring Member State, the transferring and the responsible Member States must resume communication in order to allow for a new transfer to be organised as soon as possible, in accordance with Article 8, and no later than two weeks from the moment the authorities become aware of the cessation of the circumstances that caused the delay or postponement. In such a case, an updated standard form for the transfer of the data before a transfer is carried out as set out in Annex VI shall be sent prior to the transfer.;

(5) in Article 9, paragraph 2 is replaced by the following:

2. A Member State which, for one of the reasons set out in Article 29(2) of Regulation (EU) No 604/2013, cannot carry out the transfer within the normal time limit of six months from the date of acceptance of the request to take charge or take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect, shall inform the Member State responsible before the end of that time limit. Otherwise, the responsibility for processing the application for international protection and the other obligations under Regulation (EU) No 604/2013 falls to the requesting Member State, in accordance with Article 29(2) of that Regulation.;

(6) in Article 11, a new paragraph is added:

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6. Where the applicant is present on the territory of Member State other than the one where the child, sibling or parent as referred to in Article 16(1) of Regulation (EU) No 604/2013 are present, the two Member States shall consult each other and exchange information in order to establish:

a the proven family links between the applicant and the child, sibling or parent;

b the dependency link between the applicant and the child, sibling or parent;

c the capacity of the person concerned to take care of the dependent person;

d where necessary, the elements to be taken into account in order to assess the inability to travel for a significant period of time.

In order to carry out the exchange of information referred to in the first subparagraph, the standard form set out in Annex VII to this Regulation shall be used.

The requested Member State shall endeavour to reply within four weeks from the receipt of the request. Where compelling evidence indicates that further investigations would lead to more relevant information, the requested Member State shall inform the requesting Member State that two additional weeks are needed.

The request for information pursuant to this Article shall be carried out ensuring full compliance with the deadlines presented in Articles 21(1), 22(1), 23(2), 24(2) and 25(1) of Regulation (EU) No 604/2013. This obligation is without prejudice to Article 34(5) of Regulation (EU) No 604/2013.;

(7) in Article 12, the following paragraphs are added:

3. With a view to facilitating the appropriate action to identify the family members, siblings or relatives of an unaccompanied minor, the Member State with which an application for international protection was lodged by an unaccompanied minor shall, after holding the personal interview pursuant to Article 5 of Regulation (EU) No 604/2013 in the presence of the representative referred to in Article 6(2) of that Regulation, search for and/or take into account any information provided by the minor or coming from any other credible source familiar with the personal situation or the route followed by the minor or a member of his or her family, sibling or relative.

The authorities carrying out the process of establishing the Member State responsible for examining the application of an unaccompanied minor shall involve the representative referred to in Article 6(2) of Regulation (EU) No 604/2013 in this process to the greatest extent possible.

4 Where in the application of the obligations resulting from Article 8 of Regulation (EU) No 604/2013, the Member State carrying out the process of establishing the Member State responsible for examining the application of an unaccompanied minor is in possession of information that makes it possible to start identifying and/or locating a member of the family, sibling or relative, that Member State shall consult other Member States, as appropriate, and exchange information, in order to:

a identify family members, siblings or relatives of the unaccompanied minor, present on the territory of the Member States;

b establish the existence of proven family links;

c assess the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State.

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5 Where the exchange of information referred to in paragraph 4 indicates that more family members, siblings or relatives are present in another Member State or States, the Member State where the unaccompanied minor is present shall cooperate with the relevant Member State or States, to determine the most appropriate person to whom the minor is to be entrusted, and in particular to establish:

a the strength of the family links between the minor and the different persons identified on the territories of the Member States;

b the capacity and availability of the persons concerned to take care of the minor;

c the best interests of the minor in each case.

6 In order to carry out the exchange of information referred to in paragraph 4, the standard form set out in Annex VIII to this Regulation shall be used.

The requested Member State shall endeavour to reply within four weeks from the receipt of the request. Where compelling evidence indicates that further investigations would lead to more relevant information, the requested Member State will inform the requesting Member State that two additional weeks are needed.

The request for information pursuant to this Article shall be carried out ensuring full compliance with the deadlines presented in Articles 21(1), 22(1), 23(2), 24(2) and 25(1) of Regulation (EU) No 604/2013. This obligation is without prejudice to Article 34(5) of Regulation (EU) No 604/2013.;

(8) in Article 15(1), the first subparagraph is replaced by the following:

Requests, replies and all written correspondence between Member States concerning the application of Regulation (EU) No 604/2013 shall be sent through the "DubliNet" electronic communications network, set up under Title II of this Regulation.;

(9) a new Article 15a is inserted:

Article 15a

Uniform conditions and practical arrangements for exchanging health data before a transfer is carried out

The exchange of health data prior to a transfer and, in particular, the transmission of the health certificate set out in Annex IX shall only take place between the authorities notified to the Commission in accordance with Article 35 of Regulation (EU) No 604/2013 using the "DubliNet".

The Member State carrying out the transfer of an applicant and the responsible Member State shall endeavour to agree prior to the transmission of the health certificate on the language to be used in order to complete that certificate, taking into account the circumstances of the case, in particular the need for any urgent action upon arrival.;

(10) a new Article 16a is inserted: