Commission Regulation (EC) No 1560/2003 of 2 September 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 REGULATION (EC) No 1560/2003

of 2 September 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 COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 343/2003 of 18 February 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[(1)], and in particular Article 15(5), Article 17(3), Article 18(3), Article 19(3) and (5), Article 20(1), (3) and (4) and Article 22(2) thereof,

Whereas:

(1) A number of specific arrangements must be established for the effective application of Regulation (EC) No 343/2003. Those arrangements must be clearly defined so as to facilitate cooperation between the authorities in the Member States competent for implementing that Regulation as regards the transmission and processing of requests for the purposes of taking charge and taking back, requests for information and the carrying out of transfers.

(2) To ensure the greatest possible continuity between the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities[(2)], signed in Dublin on 15 June 1990, and Regulation (EC) No 343/2003, which replaces that Convention, this Regulation should be based on the common principles, lists and forms adopted by the committee set up by Article 18 of that Convention, with the inclusion of amendments necessitated by the introduction of new criteria, the wording of certain provisions and of the lessons drawn from experience.

(3) The interaction between the procedures laid down in Regulation (EC) No 343/2003 and the application of Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention[(3)] must be taken into account.

(4) It is desirable, both for the Member States and the asylum seekers concerned, that there should be a mechanism for finding a solution in cases where Member States differ

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over the application of the humanitarian clause in Article 15 of Regulation (EC) No 343/2003.

(5) The establishment of an electronic transmission network to facilitate the implementation of Regulation (EC) No 343/2003 means that rules must be laid down relating to the technical standards applicable and the practical arrangements for using the network.

(6) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(4)] applies to processing carried out pursuant to the present Regulation in accordance with Article 21 of Regulation (EC) No 343/2003.

(7) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark, which is not bound by Regulation (EC) No 343/2003, is not bound by the present Regulation or subject to its application, until such time as an agreement allowing it to participate in Regulation (EC) No 343/2003 is reached.

(8) In accordance with Article 4 of the Agreement of 19 January 2001 between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining an application for asylum lodged in a Member State or in Iceland or Norway[(5)], this Regulation is to be applied by Iceland and Norway as it is applied by the Member States of the European Community. Consequently, for the purposes of this Regulation, Member States also include Iceland and Norway.

(9) It is necessary for the present Regulation to enter into force as quickly as possible to enable Regulation (EC) No 343/2003 to be applied.

(10) The measures set out in this Regulation are in accordance with the opinion of the Committee set up by Article 27 of Regulation (EC) No 343/2003,

HAS ADOPTED THIS REGULATION:

TITLE I

PROCEDURES

CHAPTER I

PREPARATION OF REQUESTS

Article 1

Preparation of requests for taking charge

1 Requests for taking charge shall be made on a standard form in accordance with the model in Annex I. The form shall include mandatory fields which must be duly filled in and

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other fields to be filled in if the information is available. Additional information may be entered in the field set aside for the purpose.

The request shall also include:

a a copy of all the proof and circumstantial evidence showing that the requested Member State is responsible for examining the application for asylum, 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 18(3) of Regulation (EC) No 343/2003, which are set out in Annex II to the present Regulation;

b where necessary, a copy of any written declarations made by or statements taken from the applicant.

2 Where the request is based on a 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 asylum seeker's fingerprints with fingerprint data previously taken and sent to the Central Unit in accordance with Article 8 of that Regulation and checked in accordance with Article 4(6) of that Regulation, it shall also include the data supplied by the Central Unit.

[F1 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[6] 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.**]**

3 Where the requesting Member State asks for an urgent reply in accordance with Article 17(2) of Regulation (EC) No 343/2003, the request shall describe the circumstances of the application for asylum and shall state the reasons in law and in fact which warrant an urgent reply.

Textual Amendments

F1 Inserted by 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.

*[*F2 *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[7] 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

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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.**]**

Textual Amendments

F2 Substituted by 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.

CHAPTER II

REACTION TO REQUESTS

Article 3

Processing requests for taking charge

1 The arguments in law and in fact set out in the request shall be examined in the light of the provisions of Regulation (EC) No 343/2003 and the lists of proof and circumstantial evidence which are set out in Annex II to the present Regulation.

2 Whatever the criteria and provisions of Regulation (EC) No 343/2003 that are relied on, the requested Member State shall, within the time allowed by Article 18(1) and (6) of that Regulation, check exhaustively and objectively, on the basis of all information directly or indirectly available to it, whether its responsibility for examining the application for asylum is established. If the checks by the requested Member State reveal that it is responsible under at least one of the criteria of that Regulation, it shall acknowledge its responsibility.

Article 4

Processing of requests for taking back

Where a request for taking back is based on data supplied by the Eurodac Central Unit and checked by the requesting Member State, in accordance with Article 4(6) of Regulation (EC) No 2725/2000, the requested Member State shall acknowledge its responsibility unless the checks carried out reveal that its obligations have ceased under the second subparagraph of Article 4(5) or under Article 16(2), (3) or (4) of Regulation (EC) No 343/2003. The fact that obligations have ceased on the basis of those provisions may be relied on only on the basis of material evidence or substantiated and verifiable statements by the asylum seeker.

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Article 5

Negative reply

1 Where, after checks are carried out, the requested Member State considers that the evidence submitted does not establish its responsibility, the negative reply it sends to the requesting Member State shall state full and detailed reasons for its refusal.

2 Where the requesting Member State feels that such a refusal is based on a misappraisal, or where it has additional evidence to put forward, it may ask for its request to be re-examined. This option must be exercised within three weeks following receipt of the negative reply. The requested Member State shall endeavour to reply within two weeks. In any event, this additional procedure shall not extend the time limits laid down in Article 18(1) and (6) and Article 20(1)(b) of Regulation (EC) No 343/2003.

Article 6

Positive reply

Where the Member State accepts responsibility, the reply shall say so, specifying the provision of Regulation (EC) No 343/2003 that is taken as a basis, and shall include practical details regarding the subsequent transfer, such as contact particulars of the department or person to be contacted.

CHAPTER III

TRANSFERS

Article 7

Practical arrangements for transfers

1 Transfers to the Member State responsible may be carried out in one of the following ways:

a at the request of the asylum seeker, by a certain specified date;

b by supervised departure, with the asylum seeker being accompanied to the point of embarkation by an official of the requesting Member State, the responsible Member State being notified of the place, date and time of the asylum seeker's arrival within an agreed time limit;

c under escort, the asylum seeker being accompanied by an official of the requesting Member State or by a representative of an agency empowered by the requesting Member State to act in that capacity and handed over to the authorities in the responsible Member State.

2 In the cases referred to in paragraph 1(a) and (b), the applicant shall be supplied with the laissez-passer referred to in Article 19(3) and Article 20(1)(e) of Regulation (EC) No 343/2003, a model of which is set out in Annex IV to the present Regulation, to allow him to enter the Member State responsible and to identify himself on his arrival at the place and time