AN AMBITIOUS AND PRAGMATIC REFORM OF THE DUBLIN SYSTEM

Selected amendments to the Draft Report by MEP Cecilia Wikström

Marcello Di Filippo – Gianfranco Schiavone (March 16th 2017)[1]

Explanatory note

The authors have greatly appreciated the draft report of MEP Cecilia Wikström and are strongly convinced that it is an excellent basis for the next steps of the debate on the reform of the Dublin system. Many general remarks accompanying the text of the draft report deserves full appreciation and set the ground for a more balanced discussion, if compared with the debatable assumptions of the proposal published by the Commission in May 2016.
On some aspects, the authors think that the draft report is too cautious, and that targeted changes are needed in order to develop into concrete terms the same general assumptions of the document elaborated by Ms Wikström.

Those changes, together with the others proposed by the draft report, would finally start a new season for the Dublin system and the whole CEAS. We believe to have demonstrated that a different Dublin is possible, a new Dublin system grounded on a genuine link approach and on guiding principles such as full respect of Article 78 (1) TFEU, rationality, fair sharing of responsibility and solidarity.

The key points here submitted are the following:

- the basic message: any MS must assume competence for a share of asylum seekers (see the reference key), but to the largest extent possible the applicant allocated to each MS will have meaningful ties with that country (minor costs, disincentives for secondary movements, better perspectives of integration). In order to do so, criteria for determining the competence and the procedure for verifying the relevant requirements must undergo some innovations (in part, already sketched in the draft report) which must always apply (and not only in periods of "crisis" or massive inflow);

- the criteria for allocating competence (*meaningful links instead of "bureaucratic" factors or first entry; a more courageous and objectively applicable matching tool*):
  - an expanded definition of family ties, including relatives (Articles 10 and 11);
  - a tailored provision for unaccompanied minors, avoiding forcible transfers but in the same time promoting compliance with the system (Article 12);
  - a realistic provision on meaningful links embracing private sponsors (for too long considered as a taboo), previous regular stays, holding of professional or academic diplomas, linguistic skills (Article 14). A delegate act should add specific requirements. As for private sponsors, such

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provisions will be drafted in a pragmatic fashion and taking inspiration from previous experiences in the field of private sponsored resettlement schemes (Canada, Germany, Italy among others);
    - a default criterion inspired by the need that the MSs under their share must fulfil their duty (Article 16);
    - no room for the criterion of first entry, which is only an incident determined by geography and by smugglers' tactics. In the same time, if the applicant does not comply with the duty to register at the first occasion, the "sanction" would consist in the casual allocation through the automated system (as aptly provided in the draft report) (Article 15 modified).

- the procedure: recurrent weaknesses of the Dublin III regulation are the lengthy and the cost of the procedures, the trend by asylum seekers to abscond, the tensions between MSs. In the same time, a possible objection to the meaningful links approach is that it would require assessments and bureaucratic activities that are even more complicated, making the whole machinery unworkable. For these reasons, a generalization of an excellent intuition of the draft report is proposed: the "light family reunification procedure" should become the standard procedure, and a delegated act should clarify some implementation details (Article 24).

- the correction mechanism: if the criteria spelled in Chapter III are revised in the direction here proposed, there will be no need of robust ex post remedies against the effect of the ordinary criteria. To put it differently, the mechanism will not be an instrument to allocate persons in a different and extraordinary way (the "relocation" idea) but, instead, a tool for introducing ancillary corrections. It will concern situations where a State is obliged to accept competence over its share, due to the primacy of the need to safeguard minors, or family life; or situations where the designated State is already over its quota and new allocations through other meaningful links might arise. The compensatory measures are a relevant financial support or the transfer of responsibility to another State that is under its share, with clear and simple rules not leaving room to controversy or uncertainty. When a MS refuses to comply with its obligation to assume competence, the idea of the draft report to establish a nexus with structural funds is excellent, while it seems punitive the idea to suspend the mechanism (whatever it is) when a MS is in difficulty in managing its external border (the unpleasant consequences already spelled in the regulation 2016/1624 being more than sufficient).

- other proposed changes refer to a wider definition of resettled persons (in order to encourage Member States to promote not only UNHCR-sponsored resettlement but even other legal avenues to reach European soil for recognised refugees or asylum seekers), the limits to transfer of persons at risk of violation of Articles 4 and 19 EUCFR (in accordance with the recent case law of the ECtHR), the authority responsible for deciding the transfer of an unaccompanied minor, the detention.

The text of amendments (enumerated with the formula A1, A2, etc. to avoid confusion with the ones proposed by the draft report) is accompanied by a dedicated explanation. It is understood that on the aspects here not touched the authors support the improvements proposed in the draft report. On the transitional period we preferred not to take position, given its inherent political dimension. Although we tried to address the main aspects of coherence of the changes here proposed with the contents of the draft report, it is highly probable that a need of coordination with some provisions here not recalled will arise.

For lack of time, it has not been possible to work on recitals.

No.	Proposal	Draft Report	Amendment	Justification
	DEFINITION OF	**FAMILY MEMBERS**		
A1	Art. 2, lett. g (g)'family members' means, insofar as the family already existed before the applicant arrived on the territory of the Member States, the following members of the applicant's family who are present on the territory of the Member States: –the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals, –the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law, –when the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present, –when the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present; -the sibling or siblings of the applicant;	*untouched*	Art. 2, lett. g (g)'family members' means, insofar as the family already existed before the applicant arrived on the territory of the Member States, the following members of the applicant's family who are present on the territory of the Member States: –the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals, –**the direct descendants** of couples referred to in the first indent or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under national law, **-the direct relatives in the ascending line** -when **the applicant** is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present; -the sibling or siblings of the applicant;	*In the spirit of a new approach to allocating criteria - more focused on the substantial links between the asylum seeker and the competent State - a broader and more realistic notion of family members is proposed, aimed* inter alia *at discouraging secondary movements and to assure the competent MS that the allocated asylum seeker is easier to integrate.*

	DEFINITION OF	**RELATIVES**		
A2	Art. 2, lett. h (h)'relative' means the applicant's adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;	*untouched*	(h)'relative' means the applicant's adult aunt or uncle or grandparent **or cousin or nephew or grandchild** who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;	*In the spirit of a new approach to allocating criteria - more focused on the meaningful links between the asylum seeker and the competent State - a broader and more realistic notion of relatives is proposed, aimed* inter alia *at discouraging secondary movements and to assure the competent MS that the allocated asylum seeker is easier to integrate (see Article 11).*
	DEFINITION OF	**SPONSOR**		
A3			**Art. 2, lett. k bis** **(k bis) 'sponsor' means a national of a Member State residing in one of the Member States, or a third country national authorized by a Member State to stay in its territory as holder of any residence permit issued under EU law or national law of that Member State for a period of one year or longer, or an entity registered according to the delegate act referred to in Article 14, para. 4.**	*In the spirit of a new approach to allocating criteria - more focused on the meaningful links between the asylum seeker and the competent State – it is submitted that, apart from family members and relatives (see above), private individuals – be them EU nationals or third country nationals (TCN) regularly residing in the EU – may act as point of reference or sponsor for a TCN, for instance due to previous professional or personal exchange developed during a stay in Europe or in third countries, or for humanitarian reasons. A similar reasoning might apply to non-profit organisations or firms, subject to some eligibility requisites, to be spelled in a delegated act.*
	DEFINITION OF	**RESETTLED PERSONS**		
A4	(q) 'resettled person' means a person subject to the process of resettlement whereby, on a request from the United Nations High Commissioner for Refugees ('UNHCR') based on a person's need for international protection, third-country nationals are transferred from a third country and established in a Member State where they are permitted to reside with one of the following statuses:		q) 'resettled person' means a person subject to **a** process of resettlement whereby, on a request **based on a person's need for international protection and coming** from the United Nations High Commissioner for Refugees ('UNHCR') **or from other entities or sponsors having concluded a dedicated agreement with the relevant Members State's authorities**, third-country nationals are transferred from a third country and established in a Member State where	*In the philosophy of the reference to resettled persons through the established procedures managed by the UNHCR, it is suggested to expand the notion of resettled person valid for the purpose of this regulation in order to embrace other legal avenues for seeking and obtaining international protection in the European soil, such as the sponsorship admitted in many Länder of Germany and the recent*

	(i) 'refugee status' within the meaning of point (e) of Article 2 of Directive 2011/95/EU; (ii) 'subsidiary protection status' within the meaning of point (g) of Article 2 of Directive 2011/95/EU; or (iii) any other status which offers similar rights and benefits under national and Union law as those referred to in points (i) and (ii);		they are permitted to reside with one of the following statuses: (i) 'refugee status' within the meaning of point (e) of Article 2 of Directive 2011/95/EU; (ii) 'subsidiary protection status' within the meaning of point (g) of Article 2 of Directive 2011/95/EU; or (iii) any other status which offers similar rights and benefits under national and Union law as those referred to in points (i) and (ii);	*experiment of "humanitarian corridors" managed by some religious organizations and the Italian government.*
A4a	Article 3 Access to the procedure for examining an application for international protection (…) 2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it. Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible. Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible.	Article 3 Access to the procedure for examining an application for international protection (…) 2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it. Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible. Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the Member State *responsible for examining the application for international*	Article 3 Access to the procedure for examining an application for international protection (…) 2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it. Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible. Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the Member State *responsible for examining the application for international*	*The amendment proposed by the rapporteur is sound.*

		protection shall *be determined in accordance with the procedure laid down in Article 24a*.	*protection* shall *be determined in accordance with the procedure laid down in Article 24a*. **2bis. Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because the applicant is affected by a serious disease or inability and the transfer would expose him/her to a risk of inhuman or degrading treatment within the meaning of Articles 4 and 19 of the Charter of Fundamental Rights of the European Union, the determining State shall assume the competence to examine the application.**	*However, in this article a sort of codification of the most recent case law of the ECtHR would be welcome (see the judgement of the Grand Chamber of 13/12/2016, case No 41738/10, Paposhvili v. Belgium)*
	OBLIGATIONS FOR THE	**APPLICANT: INFOs TO PROVIDE**		
A5	Article 4 Obligations of the applicant (…) 2. The applicant shall submit as soon as possible and at the latest during the interview pursuant to Article 7, all the elements and information relevant for determining the Member State responsible and cooperate with the competent authorities of the Member States.	Article 4 Obligations of the applicant (…) 2. The applicant shall submit as soon as possible *all the available elements and information relevant for determining the Member State responsible and cooperate with the competent authorities of the Member States. The competent authorities shall take into account* the elements and information relevant for determining the Member State responsible *only insofar as they have been submitted before the final decision determining* the Member *State responsible*.	Article 4 Obligations of the applicant (…) 2. The applicant shall submit as soon as possible *all the available elements and information relevant for determining the Member State responsible and cooperate with the competent authorities of the Member States. The competent authorities shall take into account* the elements and information relevant for determining the Member State responsible *only insofar as they have been submitted before the final decision determining* the Member *State responsible*. **In the period between the final decision and the actual transfer to a designated Member State, Member States shall exceptionally take into consideration other elements provided by the applicant if the delay in submitting them is due to *force majeure*.**	*Although appreciating the improvement proposed by the rapporteur, it seems useful to insert an additional guarantee for the applicant which takes into account the possibility that some relevant information are provided in the phase immediately after the adoption of the decision.*

A6	Article 6 Right to information 1. As soon as an application for international protection is *lodged* within the meaning of Article *21(2)* in a Member State, its competent authorities shall inform the applicant of the application of this Regulation *and of the obligations set out in Article 4 as well as the consequences of non-compliance set out in Article 5*, and in particular: (a) that the right to apply for international protection does not encompass any choice of the applicant which Member State shall be responsible for examining the application for international protection; (b) of the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of leaving the Member State where he or she is obliged to be present during the phases in which the Member State responsible under this	Article 6 Right to information 1. As soon as an application for international protection is *registered* within the meaning of Article *27 [Proposal for the Asylum Procedures Regulation]* in a Member State, its competent authorities shall inform the applicant of the application of this Regulation and in particular : *(a a) of the obligations on the applicant set out in Article 4 as well as the consequences on non-compliance set out in Article 5;* a) that the right to apply for international protection does not encompass any choice of the applicant which Member State shall be responsible for examining the application for international protection; (b) of the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of leaving the Member State where he or she is obliged to be present during the phases in which the Member State responsible under this	Article 6 Right to information 1. As soon as an application for international protection is *registered* within the meaning of Article *27 [Proposal for the Asylum Procedures Regulation]* in a Member State, its competent authorities shall inform the applicant of the application of this Regulation and in particular : *(a a) of the obligations on the applicant set out in Article 4 as well as the consequences on non-compliance set out in Article 5;* a) that the right to apply for international protection does not encompass **a** choice of the applicant which Member State shall be responsible for examining the application for international protection, **except when provided under the terms of Article 36 (3)**; **a b) of the right for the applicant to provide information about the presence in any Member State of meaningful links able to make it the competent State under the provisions of Part III of this Regulation** b) of the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of leaving the Member State where he or she is obliged to be present during the phases in which the Member State responsible under this Regulation is being determined and the	*Where the corrective system is triggered under Articles 34 and 36, a limited freedom of choice in favour of an unaccompanied minor must not appear a taboo, given that it may stimulate compliance with the system and make it easier for the chosen State to interact with the applicant.* *One of the main novelties of the future Regulation is to establish a new "alliance" between asylum seekers and MSs, making clear that the first country of entry is not necessarily the competent one and that the system is conceived as more user-friendly if compared with the current Regulation Dublin III.*

	Regulation is being determined and the application for international protection is being examined, *in particular that the applicant shall not be entitled to the reception conditions set out in Articles 14 to 19 of Directive 2013/33/EU in any Member State other than the one where he or she is required to be present, with the exception of emergency health care*;	Regulation is being determined and the application for international protection is being examined;	application for international protection is being examined;	
A7	Article 8 Guarantees for minors 1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation. 2. Each Member State where an unaccompanied minor is obliged to be present shall ensure that a representative represents and/or assists the unaccompanied minor with respect to the relevant procedures provided for in this Regulation. The representative shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such representative shall have access to the content of the relevant documents in the applicant's file including the specific leaflet for unaccompanied minors. This paragraph shall be without prejudice to the relevant provisions in Article 25 of Directive 2013/32/EU.	Article 8 Guarantees for minors 1. The best interests of the child shall be *the* primary consideration for Member States with respect to all procedures provided for in this Regulation. 2. Each Member State where an unaccompanied minor is present shall ensure that a *guardian* represents and/or assists the unaccompanied minor with respect to *all* procedures provided for in this Regulation. The *guardian* shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such *a guardian* shall have access to the content of the relevant documents in the applicant's file including the specific *information material* for unaccompanied minors. *The guardian shall be appointed as soon as possible, but at the latest within five days from the date of the making of the application*. This paragraph shall be without prejudice to the relevant provisions in Article 25 of Directive 2013/32/EU.	Article 8 Guarantees for minors 1. The best interests of the child shall be *the* primary consideration for Member States with respect to all procedures provided for in this Regulation. 2. Each Member State where an unaccompanied minor is present shall ensure that a *guardian* represents and/or assists the unaccompanied minor with respect to *all* procedures provided for in this Regulation. The *guardian* shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such *a guardian* shall have access to the content of the relevant documents in the applicant's file including the specific *information material* for unaccompanied minors. *The guardian shall be appointed as soon as possible, at the latest* The guardian shall be appointed as soon as possible, at the latest wit*hin five days from the identification of the minors, but at the latest within five days from the date of the making of the application*.	

		The guardian shall be involved in the process of establishing Member State responsibility under this Regulation to the greatest extent possible. To that end, the guardian shall support the minor to provide information relevant to the assessment of their best interests in accordance with paragraph 3, including exercising their right to be heard, and shall support the minor's engagement with other actors, such as family tracing organisations, where appropriate for this purpose, and with due regard to confidentiality obligations to the child.	This paragraph shall be without prejudice to the relevant provisions in Article 25 of Directive 2013/32/EU. *The guardian shall be involved in the process of establishing Member State responsibility under this Regulation to the greatest extent possible. To that end, the guardian shall support the minor to provide information relevant to the assessment of their best interests in accordance with paragraph 3, including exercising their right to be heard, and shall support the minor's engagement with other actors, such as family tracing organisations, where appropriate for this purpose, and with due regard to confidentiality obligations to the child.*	
	3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors: (a) family reunification possibilities; (b) the minor's well-being and social development; c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking; (d) the views of the minor, in accordance with his or her age and maturity.	3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors: (a) family reunification possibilities; (b) the minor's well-being and social development, *taking into particular consideration his or her ethnic, religious, cultural and linguistic background and the need for stability and continuity in the minor's care and custodial arrangements and access to health and education services*; (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking; (d) the views of the minor, in accordance with his or her age and maturity.	3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors: (a) family reunification possibilities; (b) the minor's well-being and social development, *taking into particular consideration his or her ethnic, religious, cultural and linguistic background and the need for stability and continuity in the minor's care and custodial arrangements and access to health and education services*; (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking; (d) the views of the minor, in accordance with his or her age and maturity.	
	4. Before transferring an unaccompanied minor to the Member State responsible or, where applicable, to the Member State of allocation, the transferring Member State shall make sure that the Member State	4. Before transferring an unaccompanied minor to the Member State responsible or, where applicable, to the Member State of allocation, the transferring Member State	4. Before transferring an unaccompanied minor to the Member State responsible or, where applicable, to the Member State of allocation, the transferring Member State	

	responsible or the Member State of allocation takes the measures referred to in Articles 14 and 24 of Directive 2013/33/EU and Article 25 of Directive 2013/32/EU without delay. Any decision to transfer an unaccompanied minor shall be preceded by an assessment of his/her best interests. The assessment shall be based on the factors listed in paragraph 3. The assessment shall be done swiftly by staff with the qualifications and expertise to ensure that the best interests of the minor are taken into consideration.	shall make sure that the Member State responsible or the Member State of allocation takes the measures referred to in Articles 14 and 24 of Directive 2013/33/EU and Article 25 of Directive 2013/32/EU without delay. Any decision to transfer an unaccompanied minor shall be preceded by an assessment of his/her best interests. The assessment shall be based on the factors listed in paragraph 3 *and the conclusions of the assessment on each of the factors shall be clearly stated in the transfer decision*. The assessment shall be done swiftly by *a multidisciplinary team* with the qualifications and expertise to ensure that the best interests of the minor are taken into consideration. *The multidisciplinary assessment shall involve competent staff with expertise in rights of the child and child psychology and development and shall also include the guardian of the minor.*	shall make sure that the Member State responsible or the Member State of allocation takes the measures referred to in Articles 14 and 24 of Directive 2013/33/EU and Article 25 of Directive 2013/32/EU without delay. Any decision to transfer an unaccompanied minor shall be preceded by an assessment of his/her best interests. The assessment shall be based on the factors listed in paragraph 3 *and the conclusions of the assessment on each of the factors shall be clearly stated in the transfer decision*. **Any decision to transfer of an unaccompanied minor shall be preceded by an assessment of his/her the best interests, carried out by the competent judicial or administrative authority according to the national law of the Member State. The relevant authority shall adopt a multidisciplinary approach, involving competent staff with expertise in rights of the child and child psychology and development and shall also consult the guardian of the minor.**	
	CHAPTER THREE	**CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE**		*Emphasis on meaningful or substantial links: a new "alliance" with genuine asylum seekers.* *As rightly underlined in Recital No. 34 of Decision No. 2015/1601 , "The integration of applicants in clear need of international protection into the host society is the cornerstone of a properly functioning CEAS. Therefore, in order to decide which specific Member State should be the Member State of relocation, specific account should be given to the specific qualifications and*

				characteristics of the applicants concerned, such as their language skills and other individual indications based on demonstrated family, cultural or social ties which could facilitate their integration into the Member State of relocation".
A8	Article 10 Minors 1. Where the applicant is an unaccompanied minor, only the criteria set out in this article shall apply, in the order in which they are set out in paragraphs 2 to 5.	Article 10 Minors 1. Where the applicant is an unaccompanied minor, only the criteria set out in this article shall apply, in the order in which they are set out in paragraphs 2 to 5.	Article 10 **Family members** **1. If a family member of the applicant, irrespective of the fact that the family already existed in the country of origin, is a national of a Member State, or is a third country national authorized by a Member State to stay in its territory as an asylum seeker, or as holder of any residence permit issued under EU law or national law of that Member State for a period of one year or longer, such Member shall be responsible for examining the application for international protection.** **The persons concerned must express their consent in writing.**	This amendment is to be read together with the proposed approach on the strengthening of meaningful links and with the proposal to change substantially Articles 11 to 13 too. *It seems reasonable to allocate the competence to the State where a family member is legally present in a wide sample of situations, being irrelevant that the applicant is a minor or not.* *Suffice it to think to a situation of an armed conflict or of grave breaches of human rights in a third country and to the regular presence in the EU of a certain number of nationals of that country. In the case that persons fleeing that country reach the territory of the EU, the family members already legally present in one MS might be impeded to take care of applicant and the latter might be allocated to a MS where no family member is present, with increased cost for the responsible State and lesser perspectives of social integration.*
	2. The Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the	2. The Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the	**2. Where the applicant is an unaccompanied minor, the determining Member State shall always conduct a previous assessment of the best interests of the minor.**	*This "filter" is necessary taking into account the peculiar situation of unaccompanied minors.* *The suppression is coherent with the provision of a dedicated provision to relatives (new Article 11, see below)*

	Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.	Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.		
	3. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.	3. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.	*Suppressed*	
	4. Where family members**,** siblings or relatives as referred to in paragraphs 2and 3, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.	4. Where family members, siblings or relatives as referred to in paragraphs 2 and 3, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.	**3. Where the applicant is an unaccompanied minor and family members as referred to in paragraph 1 stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor, after having heard his/her opinion.**	*This is a slight adaptation of the text, necessary to harmonize it with the major changes proposed to the text and scope of Article 10 and to the treatment of the link with relatives in the new Article 11.*
	5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be *that where the unaccompanied minor first has lodged his or her application for international protection*, unless it is *demonstrated* that this is not in the best *interests* of the *minor*.	5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be *determined by the Member State in which the applicant is present pursuant to the procedure in Article 15(1) or (1a)*, unless it is *determined* that this is not in the best *interests* of the minor. *Prior to such a determination the applicant shall be allowed to avail him or herself of the procedures referred to in Article 19.*	*Suppressed*	*See the new Articles 11 to 15*

	6. The Commission is empowered to adopt delegated acts in accordance with Article 57 concerning the identification of family members, siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing 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. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 8(3). 7. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).	6. The Commission is empowered to adopt delegated acts in accordance with Article 57 concerning the identification of family members, siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing 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. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 8(3). 7. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).	**4. The identification of family members and the criteria for establishing the existence of proven family links are established according to the procedure described in Article 24.**	*As far as the verification of the family links is concerned, see below (new Article 24) the proposal for the generalization of the* prima facie *approach spelled in the "light family reunification procedure" (described in the Amendment No. 93 of the Draft Report).*
A9	Article 11 Family members who are beneficiaries of international protection Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.	Article 11 Family members who are beneficiaries of international protection Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.	Article 11 **Relatives** **1. If a relative of the applicant is a national of a Member State, or is a third country national authorized by a Member State to stay in its territory as an asylum seeker, or as holder of any residence permit issued under EU law or national law of that Member State for a period of one year or longer, such Member shall be responsible for examining the application**	*The presence of relatives is under evaluated in the current Dublin III Regulation, being restricted to the case where the applicant is an unaccompanied minor. Here it is submitted that such link deserves a more careful consideration. In many countries of origin, relatives are as important in family life as core family members, due to the cultural conception of family and the related moral obligations of mutual assistance and care. Besides, in occasions where the original nuclear family may be dispersed or deceased, the only form of family life available to the applicant may be represented by a cousin, an aunt or an uncle, a nephew or a grandparent. Finally,*

			for international protection, subject to the following conditions: **- the persons concerned must express their consent in writing;** **- it is established, based on an individual examination, that the relative can take care of the applicant until the final decision on his/her claim for international protection [under Article 4 (d) of proposal for a new Procedures Regulation, 2016/0224 (COD)];** **- it is established, based on an individual examination, that the relative can cover the travel costs to the country of nationality in the case that the claim is not accepted with a final decision and a return decision is adopted.** **2. Where the applicant is an unaccompanied minor, the determining Member State shall always conduct a previous assessment of the best interests of the minor.** **3. Where the applicant is an unaccompanied minor and relatives as referred to in paragraph 1 stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor, after having heard his/her opinion.**	*many asylum seekers suffered a traumatic experience in the country of origin and/or in the journey to Europe, so that the closeness to persons coming from the same familiar milieu may prove fundamental for their psychological welfare and propensity to establish a collaborative and fruitful with the local officers managing the asylum procedure and the surrounding social environment.* *Some requirements are spelled in order to avoid that this criterion produces financial burdens on the public budget of the competent State* *In the corrective mechanism (see below, Article 36) it is foreseen that this criterion may be suspended when a certain threshold is triggered.* *This paragraph and the following are specular to the ones spelled in new Article 10* *As far as the verification of the kinship is concerned, see below (new Article 24) the proposal for the generalization of the prima facie approach spelled in the "light family*

			4. The identification of relatives and the criteria for establishing the existence of proven kinship are established according to the procedure described in Article 24.	*reunification procedure" (described in the Amendment No. 93 of the Draft Report).*
A10	Article 12 Family members who are applicants for international protection If the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.	Article 12 Family members who are applicants for international protection If the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.	**Article 12** **Unaccompanied minors** **1. Where the applicant is an unaccompanied minor and where Articles 10 or 11 are not applicable, the Member State where the unaccompanied minor is present shall verify whether the conditions laid down in Article 14 (1) (a) are fulfilled and this is in the best interests of the minor.** **2. Where no State may be declared competent under Article 14(1) (a) and the minor did not avail him or herself of the procedure referred to in Article 19, the competent State shall be the one where the minor is present.**	*It is submitted that the uneasy balance between the peculiar position of unaccompanied minors and the credibility of the system should be pursued outlining a careful mix of incentives to compliance and fair sharing among MSs. It must be discarded the idea that minors should be forcibly sent back to a State different from the one where they are (be it the State of first entry or a State determined by the automated system). In drafting this amendment, an indispensable reference has been represented by the ECJ judgement in C-648/11.* *At the same time the amendment is able to provide a speedy method for determining a responsible Member State ensuring the access to the asylum procedure in a reasonable time.* *See also the provision under the corrective mechanism for States whose shares are already fulfilled (Article 36, par. 3)*
A11	Article 14 Issue of residence documents or visas 1. Where the applicant is in possession of a valid residence document ð or a residence document which has expired less than two years before lodging the first application ï , the Member State which issued the document		**Article 14** **Other meaningful links with a Member State** **1. An applicant shall be allocated to a Member State different from the one where first has lodged his or her application for international protection, where the former State is determined**	*Instead of allocating applicants to a Member State according to an unsound criterion (such as the country of first entry) or to self-promoted relocation with irregular movements, the verification of the existence of meaningful links would represent a useful tool to encourage compliance by applicants and to establish a win-win situation where, to the largest possible extent, Member States receive persons having meaningful links with their*

	shall be responsible for examining the application for international protection. (….)		**according to one of the following situations:** **a) a sponsor expresses the intention and holds the capacity to take care of the applicant until the final decision on his/her claim for international protection [under Article 4 (d) of proposal for a new Procedures Regulation, 2016/0224 (COD)] and can cover the travel costs to the country of nationality in the case that the claim is not accepted with a final decision and a return decision is adopted;** **b) the State has released to the applicant a valid residence document, or the applicant held in the past a residence document for a stay not inferior to one year in that country for work, study or research purposes. This situation is not applicable if the residence document was revoked or not renewed for reasons of public security or public order;** **c) the applicant holds academic or professional diplomas or qualifications released by the authorities of one Member State, or by a third State in the framework of programs of international cooperation in the field of education or training**	*society and thus not raising serious difficulty in the course of the asylum procedures and in their prospective integration process.* *Apart from family members and relatives (see above), private individuals – be them EU nationals or third country nationals (TCN) regularly residing in the EU – may act as point of reference or sponsor for a TCN, for instance due to previous professional or personal exchange developed during a stay in Europe or in third countries, or for humanitarian reasons. A similar reasoning might apply to non-profit organisations or firms, subject to some eligibility requisites, to be spelled in an implementing act.* *If compared with the lack of any relevant "contact" with a national community, a previous regular residence is usually able to create a potential for integration, unless it is ascertained that during that stay anti-social behaviors occurred.* *The network of bilateral treaties already in force between MSs and third countries of origin requires proper evaluation, as well other activities of cooperation in the field of education and training, because they could offer pragmatic solutions where the then recognized refugee could easily play the role of an economic actor, instead of*

			managed, promoted or financed by a Member State, including but not limited to bilateral agreements of mutual recognition of diplomas or qualifications.	*depending heavily on public social assistance.*
			d) the applicant holds a satisfactory knowledge of one of the official languages of a Member State, to be ascertained through certificates or a linguistic test.	*The knowledge of the language is a tool facilitating the interaction with public authorities in the procedure for examining the asylum claim. In perspective, it helps the integration of the recognized holder of international protection, with saving of public funds and an enhanced and quicker integration into the society.*
			2. The assessment of the recurrence of the requisites spelled in para. 1 is conducted according to the procedure described in Article 24.	*A light* prima facie *procedure is fundamental in order to avoid loss of time and the associated costs.*
			3. A delegated act adopted according to the procedure described in Article 57, para. 2 shall determine: **- the formalities and the eligibility requisites to be satisfied by a sponsor under para. 1 lett. a, and the other necessary implementing measures;** **- the implementing measures for the situations under para. 1, lett. b, c, d.**	*Detailed implementing provisions will be adopted by the Commission. To this view, the experience gained by some Member States (Germany, Italy) or by significant third countries (such as Canada) in private sponsorship of recognized refugees or asylum seekers may provide useful insights.*
A12	Article 15 Entry Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) 25(4) of this Regulation, including the data referred to in Regulation [Proposal for a Regulation	Article 15 Entry Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 25(4) of this Regulation, including the data referred to in Regulation [Proposal for a Regulation	Article 15 Entry **deleted**	*The criterion of irregular entry ceases to be a general link to allocate competence.* *A plenty of studies and analysis demonstrated that establishing a linkage between the allocation of responsibility in the field of asylum and the respect of MS' obligations in the protection of the EU*

	recasting Regulation (EU) No 603/2013], that 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 thus entered shall be responsible for examining the application for international protection.	recasting Regulation (EU) No 603/2013], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come *directly* from a third country, the Member State thus entered shall be responsible for examining the application for international protection.		*external border is contrary to Articles 78 and 80 TFEU.* *The principle of non-refoulement (recalled by Art. 78 TFEU and by the EU Charter of fundamental rights) is applicable on entry regardless of the efficiency of checks at the external borders: a State managing an external border control cannot decide to authorize or not the irregular entry of an asylum seeker, but is obliged to grant access to an asylum procedure to who lodges an application to this end.* *Moreover – as everyone knows – the combined effect of current EU visa policy, EU/national carrier sanctions regimes, smugglers' tactics and the nature of flows to Europe unavoidably causes an overburden for frontline States (contrary to Article 80 TFEU), thus encouraging lax borders controls or illegal pushbacks and similar practices.*
		Where an applicant has crossed the border into the Member State where the application was lodged having come through another Member State and where it is not possible on the basis of proof or circumstantial evidence in accordance with paragraph 1 to establish clearly the Member State of first irregular entry the Member State responsible for examining the application for international protection shall be determined in accordance with the procedure laid down in Article 24a.	*Where an applicant has crossed **irregularly** the border into the Member State where the application was lodged having come through another Member State and where it is not possible on the basis of proof or circumstantial evidence, **as described in the two lists mentioned in Article 25(4) of this Regulation, including the data referred to in Regulation [Proposal for a Regulation recasting Regulation (EU) No 603/2013]**, to establish clearly the Member State of first irregular entry the Member State responsible for examining the application for international protection shall be determined in accordance with the procedure laid down in Article 24a.*	*In order to encourage compliance with the new regulation, this provision deserves appreciation, given that makes clear to applicants that there is a disincentive not to comply with the regulation. Any applicant registered in a state they could not have entered directly into from a third country would be automatically relocated to another Member State. This effectively removes the primary driver of secondary movements.*

A13	Article 16 Visa waived entry If a third-country national or a stateless person enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection.		Article 16 **Default criterion** **1. If the conditions laid down in Articles 10 to 15 are not met, the determining State shall consult the automated system referred to in Article 44(1) in order to identify the Member State with the lowest number of applicants in proportion to its share of the fair distribution.** **2. The competent State shall be the one with the lowest number of applicants in proportion to its share of the fair distribution at the moment when the determining State consulted the automated system.**	*If an applicant correctly registered its claim in the first country of arrival and no substantial link with a certain Member State could have been established, a competent State must be identified in a certain and quick way.* *The only rational method to determine the competent State is the one inspired to the fair sharing principle deriving from Article 80 TFEU. This residual rule is to a large extent able to avoid situations where a complicated ex post corrective allocation tool must be put in place. The winning idea is that as a rule applicants are distributed to MSs according to rational criteria (Articles 10 to 15) and to a criterion of fair sharing (Article 16).*
A14	Article 24 Submitting a take charge request 1. Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it shall, as quickly as possible and in any event within one months of the date on which the application was lodged within the meaning of Article 21(2), request that other Member State to take charge of the applicant. Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 of Regulation [Proposal for a Regulation recasting Regulation (EU) No 603/2013] ð or of a VIS		Article 24 Submitting a take charge request **1. The Member State with which an application for international protection has been lodged shall conduct a procedure to ascertain the occurrence of prima facie, sufficient indications to determine the competent State in accordance with Article 10, 11, 12 or 14.** **2. In establishing whether there are sufficient indications that the applicant has the relevant connections in the Member State he or she claims the determining Member State shall ensure that the applicant has understood the applicable definition of family members,**	*The draft report envisages a special light (prima facie) procedure applicable under the corrective mechanism and valid for purposes of (wide) family reunification. Here it is submitted that this prima facie procedure should become the ordinary procedure, tacking stock of the lessons learnt in the enforcement of the Dublin system and tackling a possible objection to the meaningful links approach based on the difficulties in the assessment of the existence of the relevant connecting factors.* *The applicants are not given the opportunity to self-declare the occurrence of connecting factors, but in the same time the standard of proof required is softened in order to avoid*

	hit with data recorded pursuant to Article 21(2) of Regulation (EU) 767/2008 ï , the request shall be sent within two weeks of receiving that hit pursuant to Article 15(2) of that Regulation. Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged. 2. In the cases referred to in paragraph 1, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 25(4) and/or relevant elements from the applicant's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation. The Commission shall, by means of implementing acts, adopt uniform conditions on the preparation and submission of take charge requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).		**of relatives and of the other connecting factors spelled in Article 14. The determining State shall also ensure that the applicant is certain that the alleged family members and/or relatives are not present in another Member State.** **3. The determining Member State shall ensure that the applicant understands that he or she will not be allowed to stay in the Member State where he or she claims to have family members, relatives or other meaningful links under Article 14, unless such a claim can be verified by that Member State. If the information provided by the applicant does not give manifest reasons to doubt the presence of family members, of relatives or of other meaningful links under Article 14 in the Member State indicated by the applicant it shall be concluded that, prima facie, there are sufficient indications that such Member State is the competent one.** **3. If it is determined pursuant to paragraph 1 and 2 that a Member State is, prima facie, the competent one in accordance with Article 10, 11, 12 or 14, the determining shall notify the Member State concerned thereof and the applicant shall be transferred to that Member State.** **4. The Member State receiving an applicant in accordance with the procedure referred to in paragraph 3 shall make the determination of whether the conditions for establishing its competence accordance with Article 10, 11, 12 or 14 are met. If it is determined that such**	*unnecessary delays and possible sterile controversies between Member States.* *The Member State where the applicant first applies does a light check to determine whether it is likely that the applicant has relevant connections somewhere in the European Union. If this is the case the applicant is transferred to this member state that has to make the full formal determination of whether the conditions for establishing its competence are fulfilled or not.* *In order to prevent abusive claims of family, social or cultural ties, if the mentioned*

			conditions reunification are not met the receiving Member State shall ensure that the applicant is relocated to another Member State in accordance with the procedure laid down in Article 24a. **5. The authorities responsible of the Member State where the applicant claims to have family members, relatives or other meaningful links present shall assist the authorities responsible of the determining Member State with answering any questions aimed at clarifying whether the alleged connecting factors are correct.** **6. A delegated act adopted under Article 57 shall establish a list of prima facie indications of the occurrence of factors establishing the competence of one Member State under Articles 10, 11, 12 and 14. In doing so, the delegated act shall make it clear that the absence of official documents released by the State of origin cannot be *per se* the sole reason for declaring not satisfied a certain requirement and that other evidence should be admitted, including statements coming from international organizations.**	*conditions are not fulfilled the applicant would be automatically relocated to another Member State.* *This procedure appears to strike a right balance between expeditiousness and responsibility of the concerned actor.*
A15	Article 29 Detention 1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.		Article 29 Detention 1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.	

	2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.		**2. In exceptional cases Member States may hold a person in detention in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only where the applicant has been intercepted after having tried to abscond or where it appears evident on the basis of his/her concrete behaviour that he/she intends to abscond. Detention shall be for as short a period as possible and shall be applied only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.**	*It is suggested to reinforce the guarantees surrounding the possibility to detain an applicant, spelling in a more detailed way the situations where this is possible.* *This is in line with the recent judgement of the ECJ in C-528/15*
	3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out. Where a person is detained pursuant to this Article, the period for submitting a take charge request or a take back notification shall not exceed two weeks from the lodging of the application. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply on a take charge request. Such reply shall be given within one week of receipt of the take charge request. Failure to reply within the one-week period shall be tantamount to accepting the take charge request and shall entail the obligation to take the person in charge, including the obligation to provide for proper arrangements for arrival. Where a person is detained pursuant to this Article, the transfer of that person from the		**3. Where the applicant may be considered, for serious reasons, a danger for the national security or the public order of one Member State, or where he/she has been expelled for serious reasons of national security or public order in accordance to the legislation of one Member State, the first country where the applicant has irregularly entered or, in case of avoidance of controls, the country where he/she is intercepted by public authorities shall detain the applicant.** **4 Detention of applicant shall be ordered in writing by judicial authorities, in accordance with the provisions of the Reception Directive [2016/0222(COD)] Under no circumstances whatsoever minors can be detained** **5. The claim for international protection lodged by the applicant detained under**	*see draft report Sophia in 't Veld on the recast reception directive* *Art. 9 para. 2* Detention of applicants shall be ordered in writing by judicial authorities. The detention order shall state the reasons in fact and in law on which it is based and shall contain a reference to the consideration of the available alternatives and the reasons as to why they could not be applied effectively.

	requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within four weeks from the final transfer decision. When the requesting Member State fails to comply with the deadlines for submitting a take charge or take back notification or where the transfer does not take place within the period of four weeks referred to in the third subparagraph, the person shall no longer be detained. Articles 24, 26 and 30 shall continue to apply accordingly. 4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply.		**paragraph 3 is examined in any case by the State having detained him/her.** **6.** As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply.	
A16	**CHAPTER VII** **CORRECTIVE ALLOCATION MECHANISM**		**CHAPTER VII** **CORRECTIVE MECHANISM**	*The effort made by the rapporteur to make more rational, workable and human the mechanism proposed by the Commission is appreciable.* *Nevertheless, if a robust revision of the Chapter III (the only capable to really change the Dublin poor record) is embraced, this part should become only a light complementary tool.* *The title "corrective mechanism" appear more appropriate, under an approach that sees the rules therein spelled as merely complementary to an ordinary system of allocation which is strongly inspired to substantial criteria (Articles 10 to 15) and to an horizontal principle of fair sharing under the reference key (see Article 16).*

A17	Article 34 General Principle 1. The allocation mechanism referred to in this Chapter shall be applied for the benefit of a Member State, where that Member State is confronted with a disproportionate number of applications for international protection for which it is the Member State responsible under this Regulation. 2. Paragraph 1 applies where the automated system referred to in Article 44(1) indicates that the number of applications for international protection for which a Member State is responsible under the criteria in Chapter III, Articles 3(2) or (3), 18 and 19, in addition to the number of persons effectively resettled, is higher than 150% of the reference number for that Member State as determined by the key referred to in Article 35. 3. The reference number of a Member State shall be determined by applying the key referred to in Article 35 to the total number of applications as well as the total number of resettled persons that have been entered by the respective Member States responsible in the automated system during the preceding 12 months. 4. The automated system shall inform Member States, the Commission and the European Union Agency for Asylum once	Article 34 General Principle 1. The allocation mechanism referred to in this Chapter shall be applied for the benefit of a Member State, where that Member State is confronted with a disproportionate number of applications for international protection for which it is the Member State responsible under this Regulation. 2. Paragraph 1 applies where the automated system referred to in Article 44(1) indicates that the number of applications for international protection for which a Member State is responsible under the criteria in Chapter III, Articles 3(2), 18 and 19, in addition to the number of persons effectively resettled, is higher than *100 %* of the reference number for that Member State as determined by the key referred to in Article 35 3. The reference number of a Member State shall be determined by applying the key referred to in Article 35 to the total number of applications as well as the total number of resettled persons that have been entered by the respective Member States responsible in the automated system during the preceding 12 months. 4. The automated system shall inform Member States, the Commission and the European Union Agency for Asylum once	Article 34 General Principle 1. The **corrective** mechanism referred to in this Chapter shall be applied for the benefit of a Member State, where that Member State is confronted with **a number** of applications for international protection for which it is the Member State responsible under this Regulation **higher than the reference number for that Member State.** 2. Paragraph 1 applies where the automated system referred to in Article 44(1) indicates that the number of applications for international protection for which a Member State is responsible under the criteria in Chapter III, Articles 3(2), 18 and 19, in addition to the number of persons effectively resettled, is **higher than 5% of the reference** number for that Member State as determined by the key referred to in Article 35 3. The reference number of a Member State shall be determined by applying the key referred to in Article 35 to the total number of applications as well as the total number of resettled persons that have been entered by the respective Member States responsible in the automated system during the preceding 12 months. 4. The automated system shall inform Member States, the Commission and the European Union Agency for Asylum once	*The term "disproportionate" is not coherent with the approach here proposed, where the corrective mechanism is a balancing tool for avoiding that the meaningful criteria spelled in Chapter III produce unfair results on some Member States (be them frontline countries or favorite countries of final destinations).* *The system must be able to offer some guarantees to a concerned Member State when during the year its reference number is reached.* *From this point of view, the corrections proposed (see Article 36) must be put in place as soon as the relevant number is reached, not seeing any reason to wait for the triggering of an amount equivalent to the double of the reference number (how it could be inferred by the sentence "higher than 100 % of the reference number" employed in the draft report).* *This hold true in particular for those obliged to accept competence on the basis of some criteria which do not allow a refusal (e.g. family links or unaccompanied minors; or relatives below a certain threshold). In these cases, a financial contribution is more than justified.* *When other criteria are applicable (e.g. Article 14), the basic idea is that the applicant will be allocated to other connected States (if present) or to other States which are under their share (see Article 36).*

	per week of the Member States' respective shares in applications for which they are the Member State responsible. 5. The automated system shall continously monitor whether any of the Member States is above the threshold referred to in paragraph 2, and if so, notify the Member States and the Commission of this fact, indicating the number of applications above this threshold. 6. Upon the notification referred to in paragraph 5, the allocation mechanism shall apply.	per week of the Member States' respective shares in applications for which they are the Member State responsible. 5. The automated system shall continously monitor whether any of the Member States is above the threshold referred to in paragraph 2, and if so, notify the Member States and the Commission of this fact, indicating the number of applications above this threshold. 6. Upon the notification referred to in paragraph 5, the allocation mechanism shall apply.	per week of the Member States' respective shares in applications for which they are the Member State responsible. 5. The automated system shall **continuously** monitor whether any of the Member States is above the threshold referred to in paragraph 2, and if so, notify the Member States and the Commission of this fact, indicating the number of applications above this threshold. 6. Upon the notification referred to in paragraph 5, the **corrective** mechanism shall apply.	
A18	Article 36 Application of the reference key 1. Where the threshold referred to in Article 34(2) is reached, the automated system referred to in Article 44(1) shall apply the reference key referred to in Article 35 to those Member States with a number of applications for which they are the Member States responsible below their share pursuant to Article 35(1) and notify the Member States thereof. 2. Applicants who lodged their application in the benefitting Member State after notification of allocation referred to in	Article 36 Application of the reference key 1. Where the threshold referred to in Article 34(2) is reached, the automated system referred to in Article 44(1) shall apply the reference key referred to in Article 35 to those Member States with a number of applications for which they are the Member States responsible below their share pursuant to Article 35(1) and notify the Member States thereof. 2. Applicants who lodged their application in the benefitting Member State after notification of allocation referred to in	Article 36 Application of the reference key 1. Where the threshold referred to in Article 34(2) is reached, **the attribution of competence under Articles 10 and 13 shall be adjusted in the following terms:** **- if more Member States would be competent under Article 10 or 13, the one which is under its share shall become the competent State;** **- if there is not another competent State under Article 10 or 13, the designed one shall retain competence and shall be awarded a financial contribution under Article 37.** **2. Where the threshold referred to in Article 34(2) is reached, the attribution of**	*Even under the corrective mechanism, it seems advisable not to suspend the attribution of competence in favor of family members, due to the paramount importance of the right to enjoy a family life and to the potential for integration that this kind of links expresses.* *In the same time, a financial contribution to the competent State looks fair.* *As for relatives, a minor degree of resistance of such links may be accepted.*

	Article 34(5) shall be allocated to the Member States referred to in paragraph 1, and these Member States shall determine the Member State responsible;	Article 34(5) shall, *if a responsible Member State could not be established pursuant to Article 19(2a) or Article 36b,* be allocated to the Member States referred to in paragraph 1, and these Member States shall determine the Member State responsible;	**competence under Article 11 shall be adjusted in the following terms:** **- if more Member States would be competent under Article 11, the one which is under its share shall become the competent State;** **- if there is not another competent State under Article 11, the designed one shall receive a financial contribution under Article 37. Nevertheless, the responsible State may refuse to assume competence if the number of applications for international protection for which such Member State is responsible under the criteria laid down in Articles 10, 11 and 13 exceeds or has already exceeded of 30% the assigned share.**	
	3. Applications declared inadmissible or examined in accelerated procedure in accordance with Article 3(3) shall not be subject to allocation.	*deleted*	**3. Where the threshold referred to in Article 34(2) is reached, the attribution of competence under Article 12 shall be adjusted in the following terms:** **- if the minor expresses the desire to be allocated to another Member State which is under its share and this is not against his/her best interest, this State shall become the competent State;** **- if the minor does not express any preference, the State competent under Article 12 shall be awarded a financial contribution under Article 37.**	*In order to alleviate the situation of frontline States and to avoid absconding by minors, it might be advisable to admit a certain degree of choice for the minor (provided that the usual guarantees under Article 8 for the genuine expression of this will and the consideration of his/her best interest are respected)*
		3a. The benefitting Member State shall ensure that applicants who lodged their application in the benefitting Member State after notification of allocation referred to in Article 34 shall have access to the procedure referred to in Article 19(2a) and Article 36b.		
	4. On the basis of the application of the reference key pursuant to paragraph 1, the automated system referred to in Article 44(1) shall indicate the Member State of allocation and communicate this information not later than 72 hours after the registration referred to in Article 22(1) to the benefitting Member State and to the Member State of allocation,	*deleted*	**4. Where the threshold referred to in Article 34(2) is reached, the attribution of competence under Article 14 shall be adjusted in the following terms:** **- if more Member States would be competent under Article 14, the one which**	*The competence arising out of Article 14 is discarded if the designated States is over its share and refuses to assume competence.*

	and add the Member State of allocation in the electronic file referred to in Article 23(2).		**is under its share shall become the competent State;** **- if there is not another competent State under Article 14, the designed one may refuse to assume competence, or may accept it under the condition to receive a financial contribution under Article 37.** **5. Where according to para. 2 or 4 the benefitting State refuses to assume competence, and no other State results to be competent or accepts competence under Article 19(2a), Article 16 shall apply.**	*The default criterion of Article 16 is the closure tool, reaffirming the principle of fair sharing of responsibilities.*
A19		*Article 36 a* *Determination of the Member State of allocation* *1. On the basis of the reference key referred to in Article 35, the automated system referred to in Article 44(1) shall indicate the six Member States with the lowest number of applicants relative to their share of the fair distribution.* *…….*	**delete**	*Under the rules proposed in the new Article 36, this article seems to be superfluous.*
A20		*Art. 36b* *Family reunification procedure in the case of corrective allocation* *…….*	**Delete**	*The deletion is justified by the fact that it is proposed to expand such procedure and transform it into the standard procedure to make the system work in a reasonable and pragmatic way (see the new proposed Article 24).*
A21	Article 37 Financial solidarity 1. A Member State may, at the end of the three-month period after the entry into force	deleted	Article 37 **Reciprocal** solidarity **1. A Member State which under Article 35 is obliged to retain competence or**	*This change is in line with several amendments of the rapporteur, for which a different sequence is proposed.* *It seems reasonable to recognize a contribution to the State which is over its*

	of this Regulation and at the end of each twelve-month period thereafter, enter in the automated system that it will temporarily not take part in the corrective allocation mechanism set out in Chapter VII of this Regulation as a Member State of allocation and notify this to the Member States, the Commission and the European Union Agency for Asylum. (….)		**voluntarily assumes it, notwithstanding the fulfilment of its share, shall receive a sum of 10.000 euros by the general budget of the Union for any applicant exceeding its share.** **2. The costs to transfer an applicant to the Member State under the corrective mechanism by the European Union Agency for Asylum shall be met by the general budget of the Union and be refunded by a lump sum of EUR 300 for each person transferred pursuant to Article 38(c).** **3. If a Member State does not fulfil its obligations under Chapters III or VII, the procedure as provided for by Article XXX of Regulation (EU) n° 1303/2013 as modified by Regulation (EU) n° XXXX, will apply.**	*quota and notwithstanding is obliged to exercise competence (due to family links) or voluntarily accepts to do it.* *It seems preferable to insert here the provision proposed by the rapporteur in Amendment No. 98.* *Amendment No. 102 is well conceived and deserves full support. Disruptive stances of some Member States purporting what should be termed "variable egoism" (more than "effective" or "flexible" solidarity) must be discarded.*
A22		*Art. 43 a* *Suspension of the corrective allocation mechanism* (….)	**delete**	*Amendment No. 101 would contradict the nature of the corrective mechanism and impose an extra burden on specific Member States. The consequence spelled in Regulation 2016/1624 are already very serious.*