

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one of the Member States by a third-country national (repealed)

CHAPTER V

TAKING CHARGE AND TAKING BACK

Article 16

1 The Member State responsible for examining an application for asylum under this Regulation shall be obliged to:

- a take charge, under the conditions laid down in Articles 17 to 19, of an asylum seeker who has lodged an application in a different Member State;
- b complete the examination of the application for asylum;
- c take back, under the conditions laid down in Article 20, an applicant whose application is under examination and who is in the territory of another Member State without permission;
- d take back, under the conditions laid down in Article 20, an applicant who has withdrawn the application under examination and made an application in another Member State;
- e take back, under the conditions laid down in Article 20, a third-country national whose application it has rejected and who is in the territory of another Member State without permission.

2 Where a Member State issues a residence document to the applicant, the obligations specified in paragraph 1 shall be transferred to that Member State.

3 The obligations specified in paragraph 1 shall cease where the third-country national has left the territory of the Member States for at least three months, unless the third-country national is in possession of a valid residence document issued by the Member State responsible.

4 The obligations specified in paragraph 1(d) and (e) shall likewise cease once the Member State responsible for examining the application has adopted and actually implemented, following the withdrawal or rejection of the application, the provisions that are necessary before the third-country national can go to his country of origin or to another country to which he may lawfully travel.

Article 17

1 Where a Member State with which an application for asylum has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within three months of the date on which the application was lodged within the meaning of Article 4(2), call upon the other Member State to take charge of the applicant.

Where the request to take charge of an applicant is not made within the period of three months, responsibility for examining the application for asylum shall lie with the Member State in which the application was lodged.

2 The requesting Member State may ask for an urgent reply in cases where the application for asylum was lodged after leave to enter or remain was refused, after an arrest for

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an unlawful stay or after the service or execution of a removal order and/or where the asylum seeker is held in detention.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. This period shall be at least one week.

3 In both cases, 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 18(3) and/or relevant elements from the asylum seeker'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 rules on the preparation of and the procedures for transmitting requests shall be adopted in accordance with the procedure referred to in Article 27(2).

Article 18

1 The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of the date on which the request was received.

2 In the procedure for determining the Member State responsible for examining the application for asylum established in this Regulation, elements of proof and circumstantial evidence shall be used.

3 In accordance with the procedure referred to in Article 27(2) two lists shall be established and periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria:

a Proof:

- (i) This refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary.
- (ii) The Member States shall provide the Committee provided for in Article 27 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs.

b Circumstantial evidence:

- (i) This refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them.
- (ii) Their evidentiary value, in relation to the responsibility for examining the application for asylum shall be assessed on a case-by-case basis.

4 The requirement of proof should not exceed what is necessary for the proper application of this Regulation.

5 If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

6 Where the requesting Member State has pleaded urgency, in accordance with the provisions of Article 17(2), the requested Member State shall make every effort to conform to the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give the reply after the time limit requested, but in any case within one month. In

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such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.

7 Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the provisions for proper arrangements for arrival.

Article 19

1 Where the requested Member State accepts that it should take charge of an applicant, the Member State in which the application for asylum was lodged shall notify the applicant of the decision not to examine the application, and of the obligation to transfer the applicant to the responsible Member State.

2 The decision referred to in paragraph 1 shall set out the grounds on which it is based. It shall contain details of the time limit for carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer unless the courts or competent bodies so decide on a case by case basis if national legislation allows for this.

3 The transfer of the applicant from the Member State in which the application for asylum was lodged to the Member State responsible shall be carried out in accordance with the national law of the first Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken or of the decision on an appeal or review where there is a suspensive effect.

If necessary, the asylum seeker shall be supplied by the requesting Member State with a *laissez passer* of the design adopted in accordance with the procedure referred to in Article 27(2).

The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the asylum seeker or of the fact that he did not appear within the set time limit.

4 Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

[^{F15} The Commission may adopt supplementary rules on carrying out transfers. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(3).]

Textual Amendments

- F1** Substituted by [Regulation \(EC\) No 1103/2008 of the European Parliament and of the Council of 22 October 2008 adapting a number of instruments subject to the procedure laid down in Article 251 of the Treaty to Council Decision 1999/468/EC, with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny Part Three.](#)

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Article 20

1 An asylum seeker shall be taken back in accordance with Article 4(5) and Article 16(1) (c), (d) and (e) as follows:

- a the request for the applicant to be taken back must contain information enabling the requested Member State to check that it is responsible;
- b the Member State called upon to take back the applicant shall be obliged to make the necessary checks and reply to the request addressed to it as quickly as possible and under no circumstances exceeding a period of one month from the referral. When the request is based on data obtained from the Eurodac system, this time limit is reduced to two weeks;
- c where the requested Member State does not communicate its decision within the one month period or the two weeks period mentioned in subparagraph (b), it shall be considered to have agreed to take back the asylum seeker;
- d a Member State which agrees to take back an asylum seeker shall be obliged to readmit that person to its territory. The transfer shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken by another Member State or of the decision on an appeal or review where there is a suspensive effect;
- e the requesting Member State shall notify the asylum seeker of the decision concerning his being taken back by the Member State responsible. The decision shall set out the grounds on which it is based. It shall contain details of the time limit on carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case-by-case basis if the national legislation allows for this.

If necessary, the asylum seeker shall be supplied by the requesting Member State with a *laissez passer* of the design adopted in accordance with the procedure referred to in Article 27(2).

The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the asylum seeker or of the fact that he did not appear within the set time limit.

2 Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer or the examination of the application could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

3 The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 27(2).

[^{F14} The Commission may adopt supplementary rules on carrying out transfers. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(3).]

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