



IRCT POSITION PAPER ON THE EUROPEAN COMMISSION'S PROPOSAL FOR THE REFORM OF THE DUBLIN SYSTEM (MAY 2016)

INTRODUCTION

On 4 May 2016, the European Commission released its first package of proposals as part of a broader reform of the Common European Asylum System¹, foreseen in the European Agenda on Migration adopted in 2015². Part of this package consists of three proposals that aim to (1) transform the European Asylum Support Office into a strengthened Agency; (2) adjust the EURODAC database to address new challenges and; (3) to reform the system for determining the Member State responsible for examining international protection claims in the Europe Union³ (hereafter the Dublin system). The latter aims to “enhance the system’s capacity to determine efficiently and effectively a single Member State responsible for examining the application for international protection”; “ensure fair sharing of responsibilities between Member States” and in this regard to “discourage abuses and prevent secondary movements of the applicants within the EU”⁴. If adopted, the reform would significantly change the current functioning of the determination system as defined by the Dublin III Regulation⁵.

The International Rehabilitation Council for Torture Victims (IRCT) strongly advocates for asylum procedures and reception conditions that respect and address the specific needs of torture victims. This paper will present the IRCT’s comments on the European Commission’s proposal for a reform of the Dublin system. The paper will focus specifically on the Dublin system’s impact on torture victims.

International Rehabilitation Council for Torture Victims

Vesterbrogade 149,
building 4, 3rd floor
1620 Copenhagen V
Denmark

Tel: +45 44 40 18 30
Fax: +45 44 40 18 54

irct@irct.org
www.irct.org

CVR No. 16 70 10 33

European Affairs Office
205, Rue Belliard
B-1040 Brussels
Belgium

Tel +32 2 230 15 04
Fax +32 2 230 15 49

¹ European Commission, Communication to the European Parliament and the Council, "Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe", COM(2016) 197 final, 6 April 2016.

² European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A European Agenda on Migration", COM(2015) 240 final, 13 May 2015.

³ European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), COM(2016) 270 final, 4 May 2016.

⁴ European Commission, COM(2016) 270 final, Explanatory Memorandum, p.4.

⁵ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), hereafter the Dublin III Regulation.

SUMMARY OF VIEWS

Integrating vulnerability into the Dublin system

The new Regulation is an opportunity to ensure that the Dublin system adheres to existing provisions in the Asylum Procedures Directive⁶ and the Reception Conditions Directive⁷ in relation to vulnerable applicants. The negative impact on vulnerable applicants of inappropriate asylum procedures, inadequate reception conditions and unsuitable transfers carried out by law enforcement officials often involving various forms of deprivation of liberty and the use of force, have been widely documented⁸. It is time for the Dublin system to take into account the special needs of vulnerable applicants.

The Dublin III Regulation, adopted in 2013 at the same time as the revised APD and RCD, scarcely included any provisions for vulnerable groups. Article 32 on the exchange of health data before a transfer is carried out is the only article providing additional guarantees on the basis of the applicant's vulnerability, which is restricted to medical considerations. As such, the Dublin III Regulation does not reflect the progress made in the revised APD and RCD to safeguard their rights. More recent acts, such as the 2015 decisions establishing emergency relocation schemes⁹ and the proposal for a permanent relocation mechanism¹⁰, have in fact integrated additional guarantees for vulnerable groups.

The IRCT urges the European Commission and the co-legislators to ensure coherence and consistency with other instruments of the Common European Asylum System by including specific safeguards for vulnerable groups, such as a systematic exclusion from detention and from accelerated procedures, and access to reception conditions adapted to their needs, even when the applicant is in another Member State than the one in which he or she is required to be present.

Indeed, detention can have long-term, debilitating effects on the mental and physical health on vulnerable asylum seekers, many of whom have suffered from traumatic experiences in their countries of origin¹¹. Furthermore, the detention of torture victims is incompatible with their right to rehabilitation as enshrined

⁶ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), hereafter the Asylum Procedures Directive - APD.

⁷ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), hereafter the Reception Conditions Directive - RCD.

⁸ See for instance: Filges T, Montgomery E, Kastrup M, Jørgensen, A-MK (2015). The Impact of Detention on the Health of Asylum Seekers: A Systematic Review. *Campbell Systematic Reviews*, 13; Schock K, Rosner R, Knaevelsrud C (2015). Impact of asylum interviews on the mental health of traumatized asylum seekers. *European Journal Of Psychotraumatology*, 6; Steel Z *et al.* (2006). Impact of immigration detention and temporary protection on the mental health of refugees. *The British journal of psychiatry : the journal of mental science*, Vol.188, pp.58-64; Hocking D, Kennedy G, Sundram S (2015). Mental Disorders in Asylum Seekers: The Role of the Refugee Determination Process and Employment. *Journal of Nervous and Mental Disease*, Vol.203(1), p.28, Carswell K, Blackburn P, Barker C (2011). The relationship between trauma, post-migration problems and the psychological well-being of refugees and asylum seekers. *The International journal of social psychiatry*, Vol.57(2), pp.107-19.

⁹ Council Decision 2015/1523 of 14 September 2016 and Council Decision 2015-1601 of 22 September 2015.

¹⁰ European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member States responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person.

¹¹ See footnote 9 for references.

in international law. In addition, the requirements under the recast RCD to provide vulnerable asylum seekers with adequate support and necessary treatment for torture victims cannot be guaranteed in a detention setting. As a result, the IRCT calls on co-legislators to not only protect torture victims from detention in the Dublin procedure, but also to amend the RCD accordingly.

The reformed Dublin Regulation should contain provisions for vulnerability assessments, including medical examinations where needed. In the absence of such a vulnerability evaluation, special needs, including those related to the person's physical or mental health, can only be assessed through self-identification or on the basis of visible signs or symptoms that would be proactively identified by liaison officers. To avoid the multiplication of assessments during the asylum procedure, the new Dublin Regulation could refer to the evaluation provided for by Article 22 RCD. To maximise its effects, this assessment should take place before the responsible Member State is determined.

Safeguarding appropriate reception conditions from a Dublin perspective

In addition, the results of the vulnerability assessment should not only inform the immediate adaptation of Dublin-related transfers but also anticipate further reception conditions needs. The capacity of both the Member State responsible and the Member State of allocation to effectively respond to these needs should be considered before any transfer takes place. Moreover, the reform of the Dublin system should build on the developments and progress achieved in the framework of the existing relocation mechanisms. In particular, the IRCT welcomed the prioritisation of vulnerable applicants for relocation from countries under great pressure to other Member States. While much needs to be done to implement these provisions, they constitute an additional safeguard for torture victims and should be integrated into the corrective mechanism.

In terms of proportionality, the establishment of a “sustainable” and “fair” system for determining the Member State for examining asylum applications must not be achieved at the expense of asylum seekers, especially vulnerable applicants. The IRCT strongly condemns the punitive measures introduced in the new Dublin regulation to “discourage abuses and prevent secondary movements” by imposing “material consequences” in cases where asylum seekers fail to comply with their obligations. These sanctions could disproportionately impact asylum seekers’ physical and psychological health and breach their fundamental right to health by restricting their access to health services during the transfer procedures. This “sanction” may leave thousands of torture victims awaiting their transfer with no access to rehabilitation services for prolonged periods of time while, as highlighted by the European Commission in its implementation report on the Dublin system¹², only about a quarter of the accepted requests actually result in a physical transfer. Entitlement to healthcare, as provided for by the RCD, should be authorised during this period and during the appeal procedure.

MAIN RECOMMENDATIONS

- A vulnerability assessment should be carried out before a decision is made on the responsible Member State (meaning right after the admissibility check) in order to allow vulnerable asylum seekers to access the special procedural guarantees and appropriate reception conditions to which they are entitled while waiting for their transfer, which may occur several weeks or months later.

¹² European Commission, COM (2016) 270 final, p.10



- Vulnerable applicants should be prioritised for relocation under the corrective mechanism, in the same way they are prioritised for relocation under the existing emergency relocation schemes.
- The information resulting from the vulnerability assessment should be circulated to the final country of destination in an appropriate manner in order to take the applicant's special needs into account for the entirety of the procedure.
- In line with relevant case law¹³, asylum seekers who are in a country other than the one responsible for their claim should be entitled to healthcare and other basic services, as determined by RCD, with additional guarantees provided for vulnerable applicants such as children, pregnant women and torture victims.

CONTACTS

For more information, please contact:

Mushegh Yekmalyan
Head of the European Affairs Office
Tel: +32 2 230 15 04
Email: my@irct.org

Asger Kjærum
Director of Advocacy
Tel: +45 44 40 18 50
Email: akj@irct.org

¹³ According to the Court of Justice of the European Union, the RCD applies to all asylum seekers, including those awaiting transfer to another State to have their asylum application examined. See: Court of Justice of the European Union, *Cimade and Groupe d'information et de soutien des immigrés (GISTI) v Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, C-179/11, 27 September 2012.

PROPOSALS FOR AMENDMENTS

In this section, changes proposed by the Commission are highlighted in grey, while amendments proposed by the IRCT are in blue.

Recitals

A **new recital 16** could be added following recital 15 on special procedural guarantees offered to unaccompanied minors, as torture victims also constitute a highly vulnerable group.

(16) new – In accordance with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Committee against Torture’s General Comment No 3, Member States should take due account of torture victims’ well-being as a consequence of the serious harm they have suffered. Specific procedural guarantees for torture victims should be laid down on account of their particular vulnerability.

The **new recital 33** should be amended in order to mention the following:

- the prioritisation of vulnerable applicants for relocation, as provided for by the existing relocation schemes;

(33) When the allocation mechanism applies, the applicants who lodged their applications in the benefitting Member State should be allocated to Member States which are below their share of applications on the basis of the reference key as applied to those Member States. Appropriate rules should be provided for in cases where an applicant may for serious reasons be considered a danger to national security or public order, especially rules as regards the exchange of information between competent asylum authorities of Member States. **Vulnerable applicants, as determined by the assessment mentioned at Article 3(3), shall be prioritised for relocation.** After the transfer, the Member State of allocation should determine the Member State responsible, and should become responsible for examining the application, unless the overriding responsible criteria, related in particular to the presence of family members, determine that a different Member State should be responsible.

Former recital 27 should not be deleted as it defines the scope of the exchange of data as a tool to guarantee the applicants’ rights, especially those with special needs, throughout the procedure.

(27) The exchange of an applicant’s personal data, including sensitive data on his or her health, prior to a transfer, will ensure that the competent asylum authorities are in a position to provide applicants with adequate assistance and to ensure continuity in the protection and rights afforded to them. Special provisions should be made to ensure the protection of data relating to applicants involved in that situation, in accordance with Directive 95/46/EC.

Article 2 – Definitions

Article 2 should be amended in order to introduce definitions of vulnerability and special needs, referring to RCD.

(s) ‘applicant with special needs’: means a vulnerable person, in accordance with Article 21 of Directive 2013/33/EU, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Regulation.

Article 3 – Access to the procedure for examining an application for international protection

Article 3, new paragraph 3 should be amended in two ways:

- a new section (b) should provide for an assessment of the applicant's vulnerability, referring to the assessments mentioned at Article 22 of RCD and Article 24 of APD, in order for vulnerable asylum seekers to comply with the obligations and benefit from the rights provided for by the Regulation and to avoid duplication of vulnerability assessments. This section should be introduced right after the admissibility check (section a) but before the examination of the inadmissible international protection claims in the accelerated procedure (former section b, newly section c). Indeed, the new Article 3(3) provides for the examination in the accelerated procedure of claims lodged by applicants from a safe country of origin or presenting a security risk, which are considered inadmissible. As a result, those groups do not benefit from the procedural guarantees provided by APD. To avoid vulnerable applicants coming from safe countries of origin or presenting a security risk to be subjected to the accelerated procedure without their special needs being taken into account, in line with Article 24 of APD, the vulnerability assessment should then take place before the examination of the claim under such conditions is started.
- in line with Article 24 of APD, vulnerable applicants shall not be subjected to accelerated procedures when their special needs cannot be met in this procedure.

3. Before applying the criteria for determining a Member State responsible in accordance with Chapters III and IV, the first Member State in which the application for international protection was lodged shall:

(a) examine whether the application for international protection is inadmissible pursuant to Article 33(2) letters b) and c) of Directive 2013/32/EU when a country which is not a Member State is considered as a first country of asylum or as a safe third country for the applicant; ~~and~~

(b) examine whether the applicant is in need of special procedural guarantees pursuant to article 24 of Directive 2013/32/EU and/or an adaptation of reception conditions pursuant to Article 21 of Directive 2013/33/EU, on the basis of the assessment mentioned at article 22 of Directive 2013/33/EU; and

(c) examine the application in accelerated procedure pursuant to Article 31(8) of Directive 2013/32/EU ~~except if the applicant requires special procedural guarantees that are incompatible with the accelerated procedure, according to Article 24 of Directive 2013/32/EU, in which case the application shall be examined in the regular procedure,~~ when the following grounds apply:

(i) the applicant has the nationality of a third country, or he or she is a stateless person and was formerly habitually resident in that country, designated as a safe country of origin in the EU common list of safe countries of origin established under Regulation [Proposal COM (2015) 452 of 9 September 2015]; or

(ii) the applicant may, for serious reasons, be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.

Article 5 – Consequences of non-compliance

The **new article 5** should first be amended to avoid subjecting vulnerable applicants to accelerated procedure, in line with Article 24 APD, when their special needs cannot be met in this procedure.

1. If an applicant does not comply with the obligation set out in Article 4(1), the Member State responsible in accordance with this Regulation shall examine the application in an accelerated procedure, in accordance with Article 31(8) of Directive 2013/32/EU, **except if the applicant requires special procedural guarantees that are incompatible with the accelerated procedure, according to Article 24 of Directive 2013/32/EU.**

Furthermore, **paragraph 3 of the new article 5** should be rejected as it will (1) negatively impact the physical and mental wellbeing of asylum seekers, especially vulnerable applicants, in a disproportionate manner; (2) breach several asylum seekers' fundamental rights, such as the right to health; (3) fail to comply with relevant case law (see footnote 13) which stipulates that the RCD is applicable to all asylum seekers, including those under the Dublin procedure. (4) be inconsistent with the requirement derived from RCD to adapt reception conditions to the special needs of vulnerable asylum seekers.

~~3. The applicant shall not be entitled to the reception conditions set out in Articles 14 to 19 of Directive 2013/33/EU, with the exception of emergency health care, during the procedures under this Regulation in any Member State other than the one in which he or she is required to be present.~~

Article 6 – Right to information

The **new article 6, paragraph 1, section b** should be amended as follows as previously stated regarding paragraph 3 of the new article 5.

1. As soon as an application for international protection is lodged within the meaning of Article 20–21(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 of:

(ab) ⊗ of ⊗ the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of ~~moving from one Member State to another~~ ⇒ 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 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~~ ⇐;

In addition, the **new article 6, paragraph 1** should include, through a new section (j), the right to be informed about the vulnerability assessment provided for by Article 22 RCD that should be carried out at the stage of the determination of the responsible Member State.

(j) of the vulnerability assessment pursuant to Article 22 of Directive 2013/33/EU , its purposes and consequences;

Article 7 - Personal interview

The **new article 7, paragraph 4** should be amended to include additional safeguards for vulnerable applicants, in line with Article 24 APD.

54. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law. **The vulnerability of the applicant shall be taken into account in the way it is carried out. If necessary, arrangements shall be made possible to meet with the special needs of an applicant.**

Article 8 - Guarantees for minors

The **new article 8, paragraph 3** should be amended to include additional safeguards for minors to reflect Article 23(4) RCD – although Article 23(1) RCD should also be amended to ensure consistency in this regard.

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, **physical and mental health** and social development, **in particular when there is a risk of the minor being a victim of torture, rape or other serious forms of psychological, physical or sexual violence**;
- (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.

The **new article 8** should be amended with the introduction of a new paragraph 4 safeguarding the rights of unaccompanied minors, as follows:

4. As soon as an unaccompanied minor has been identified, the Member State where he or she is present shall ensure his or her protection, given his or her particular vulnerability, according to Articles 14 and 24 of Directive 2013/33/EU.

Article 18 - Dependent persons

The **new article 18, paragraph 1** should be amended to include torture victims among the categories of potential dependent persons who could benefit from this provision. Indeed, dependency may result from acts of torture and ill-treatment without necessarily being labelled as “serious illness” or “severe disability”.

1. Where, on account of pregnancy, a new-born child, serious illness, severe disability, ~~or~~ old age, **mental disorders or past subjection to torture, rape or other serious forms of psychological, physical or sexual violence**, an applicant is dependent on the assistance of his or her child, sibling or parent legally resident in one of the Member States, or his or her child, sibling or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, sibling or parent, provided that family ties existed in the country of origin, that the child, sibling or parent or the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing.

Article 19 - Discretionary clauses

The changes made to the **new article 19** should be rejected as they restrict the use of discretionary clauses to family grounds. Member States should still be able to decide to examine any application on broader humanitarian grounds.

1. By way of derogation from Article 3(1) ~~⇒ and only as long as no Member State has been determined as responsible ⇐~~, each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person ~~⇒ based on family grounds in relation to wider family not covered by Article 2(g) ⇐~~, even if such examination is not its responsibility under the criteria laid down in this Regulation.

The Member State which decides to examine an application for international protection pursuant to this paragraph shall become the Member State responsible and shall assume the obligations associated with that responsibility. Where applicable, it shall inform, ~~using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003,~~ the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of, ~~or to take back,~~ the applicant. (...)

2. The Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, ~~or the Member State responsible,~~ may, at any time before ~~⇒ a Member State responsible has been determined ⇐~~ a first decision regarding the substance is taken, request another Member State to take charge of an applicant ~~in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations,~~ even where that other Member State is not responsible under the criteria laid down in Articles ~~8-10 to 11~~ 13 and ~~16~~ 18. The persons concerned must express their consent in writing.

Article 20 - Obligations of the Member State responsible

The new article 20, paragraph 3 should be amended in order to avoid vulnerable applicants to be subjected to the accelerated procedure, in line with Article 24 APD, when their special needs cannot be met in this procedure.

3. In a situation referred to in point (b) of paragraph 1, the Member State responsible shall examine or complete the examination of the application for international protection in an accelerated procedure in accordance with Article 31 paragraph 8 of Directive 2013/32/EU, ~~except if pursuant to Article 24 of Directive 2013/32/EU the applicant is in need of special procedural guarantees that are incompatible with the examination in the accelerated procedure.~~

Article 25 - Replying to a take charge request

The **new article 25, paragraph 7** should be amended to take into account the vulnerability of the applicant in the arrangements for the person's arrival following a take charge request.

7. ~~Failure to act~~ ⇒ Where the requested Member State does not object to the request ~~⇐ within the two month ⇒ one-month ⇐ period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6~~ ⇒ by a reply which gives substantiated reasons, or where applicable within the two weeks period mentioned in paragraph 2, this

↩ shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival, based on information obtained through the vulnerability assessment mentioned at Article 3(3), handled in the conditions defined by Article 33, in order to take into account any identified special need related to reception conditions.

Article 26 - Submitting a take back notification

The new article 26, paragraph 3 should be amended to take into account the vulnerability of the applicant in the arrangements for the person's arrival following a take back notification.

3. The Member State responsible shall confirm immediately the receipt of the notification to the Member State which made the notification. It shall provide for proper arrangements for arrival, based on information obtained through the vulnerability assessment mentioned at Article 3(3), handled in the conditions defined by Article 33, in order to take into account any identified special need related to reception conditions.

Article 29 – Detention

The new article 29, paragraph 1 should be amended in order to prevent vulnerable applicants from being detained.

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. Vulnerable applicants shall never be held in detention.

Article 32 – Exchange of relevant information before a transfer is carried out

The new article 32 should be amended in order to:

- be applicable to all transfers mentioned in the new Article 20 (1) (paragraph 1);
- reinforce the provision of special reception conditions to vulnerable applicants (paragraph 1);
- oblige the transferring Member State to proactively gather information related to the special needs of the applicant, and not only transmit when it is already available (paragraph 2);
- ensure the use of the results of the vulnerability assessment in the adaptation of the transfer and expand the use of these results to the adaptation of the reception conditions in the Member State responsible, further to immediate needs (paragraph 2).

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 18 20(1)(c) or (d) shall communicate to the Member State responsible such personal data concerning the person to be transferred as is adequate appropriate, relevant and ~~non-excessive~~ limited to what is necessary for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, and to ensure continuity in the protection and rights afforded by this Regulation and by other relevant asylum legal instruments, including the provision of special reception conditions to vulnerable applicants pursuant to Articles 21 and 22 of Directive 2013/33/EU. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in accordance with national law have sufficient time to take the necessary measures.

2. The transferring Member State shall, ~~in so far as such information is available to the competent authority in accordance with national law,~~ transmit to the Member State responsible any necessary information ~~that is essential~~ in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:

(a) any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care or other special reception conditions that may be required, ~~taking into account the vulnerability assessment carried out pursuant to Article 3(3);~~

(b) contact details of family members, relatives or any other family relations in the receiving Member State, where applicable;

(c) in the case of minors, information on their education;

(d) an assessment of the age of an applicant.

Article 33 – Exchange of health data before a transfer is carried out

The **new article 33, paragraph 1** should be amended as follows:

- include applicants with mental disorders who are mentioned at Article 21 RCD and may also be concerned by this exchange;
- oblige the transferring Member State to proactively gather information related to the special needs of the applicant, and not only transmit when it is already available;
- ensure the use of the results of the vulnerability assessment in the adaptation of the transfer;
- allow for mental health-related issues to be comprehensively reported in the common health certificate.

1. For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors, ~~persons with mental disorders~~ and persons who have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, ~~in so far as it is available to the competent authority in accordance with national law,~~ transmit to the Member State responsible information on any special needs of the person to be transferred, which in specific cases may include information on that person's physical or mental health. That information shall ~~include the results of the vulnerability assessment carried out pursuant to Article 3(3) and~~ be transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

The Commission shall, by means of implementing acts, draw up the common health certificate ~~which shall include sections related to the applicant's both physical and mental health~~. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article ~~44~~ 56(2).

The **new article 33, paragraph 2** should be amended in order to reinforce guarantees regarding the consent of the applicant for the transmission of health-related information. Except for in rare and



exceptional circumstances, the client's consent must be obtained before any transmission of personal data.

2. The transferring Member State shall only transmit the information referred to in paragraph 1 to the Member State responsible after having obtained the explicit consent of the applicant and/or of his or her representative or, if the applicant is physically or legally incapable of giving his or her consent, when such transmission is necessary ~~to protect public health and public security, or, if the applicant is physically or legally incapable of giving his or her consent,~~ to protect the vital interests of the applicant or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.

Article 36 - Application of the reference key

The **new article 36, paragraph 2** should be amended in order to prioritise vulnerable applicants for relocation, as provided for by the existing relocation schemes.

2. Applicants who lodged their application in the benefitting Member State after notification of allocation referred to in 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. **Vulnerable applicants, as determined by the assessment mentioned at Article 3(3), shall be prioritised for relocation.**