Reports of Cases

OPINION OF ADVOCATE GENERAL
WATHELET
delivered on 22 March 2018 [1]

Joined Cases C-47/17 and C-48/17

X (C-47/17),
X (C-48/17)
v
Staatssecretaris van Veiligheid en Justitie

(Request for a preliminary ruling
from the rechtbank Den Haag, zittingsplaats Haarlem (District Court, The Hague, sitting in Haarlem, the Netherlands))

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national — Regulation (EC) No 1560/2003 — Article 5(2) — Request to take charge of or take back an asylum seeker — Negative reply from the requested Member State — Request for re-examination — Time limit for replying — Failure to comply — Consequences)

I. Introduction

1. The questions referred for a preliminary ruling in the present cases, which were lodged at the Court Registry on 1 and 3 February 2017 by the rechtbank Den Haag, zittingsplaats Haarlem (District Court, The Hague, sitting in Haarlem, the Netherlands), concern the interpretation of Article 5(2) of Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. [2]

2. These requests for a preliminary ruling have been made in disputes between two asylum seekers and the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, the Netherlands, 'the State Secretary').

1 Original language: French.

2 OJ 2003 L 222, p. 3. Regulation No 1560/2003 has been amended inter alia by Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2014 L 39, p. 1). No amendment has been made to Article 5 of Regulation No 1560/2003.

II. Legal framework

A. EU law

1. The Dublin III Regulation

3. Regulation (EU) No 604/2013[3] lays down 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.[4] The following articles of that regulation are relevant:

4. Article 3(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 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.'

5. Article 17(1):

'By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.

…'

6. Article 20(1) and (5):

'1. The process of determining the Member State responsible shall start as soon as an application for international protection is first lodged with a Member State.

…

5. An applicant who is present in another Member State without a residence document or who there lodges an application for international protection after withdrawing his or her first application made in a different Member State during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles 23, 24, 25 and 29, by the Member State with which that application for international protection was first lodged, with a view to completing the process of determining the Member State responsible.

…'

3 Regulation 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 (OJ 2013 L 180, p. 31, 'the Dublin III Regulation').

4 The Dublin III Regulation repealed and replaced 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 (OJ 2003 L 50, p. 1, 'the Dublin II Regulation').

7. Article 21:

‘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 may, as quickly as possible and in any event within three months of the date on which the application was lodged within the meaning of Article 20(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 14 of Regulation (EU) No 603/2013 [of the European Parliament and of the Council of 26 June 2013 on the establishment of “Eurodac” for the comparison of fingerprints for the effective application of [the Dublin III Regulation] and on requests for the comparisons with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice [5]], the request shall be sent within two months 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. The requesting Member State may ask for an urgent reply in cases where the application for international protection was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order.

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

3. In the cases referred to in paragraphs 1 and 2, 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 22(3) 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 [European] Commission shall, by means of implementing acts, adopt uniform conditions on the preparation and submission of take charge requests. ...’

8. Article 22:

‘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 receipt of the request.

…

3. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence …

5 OJ 2013 L 180, p. 1, ‘the Eurodac Regulation’. The Eurodac system consists of a Central System which, among other things, operates a computerised central database of fingerprints, which are an important element in establishing the exact identity of applicants for international protection and of persons apprehended in connection with the unlawful crossing of the external borders of the European Union, as well as of electronic means of transmission between the Member States and the Central System. One of the main objectives of the Eurodac system is the effective application of the Dublin III Regulation. The Eurodac database was established ‘to allow each Member State to check whether a third-country national or stateless person found illegally staying on its territory has applied for international protection in another Member State’ (see recitals 4 to 6 of the Eurodac Regulation). Under Article 9(1) of the Eurodac Regulation, ‘each Member State shall promptly take the fingerprints of all fingers of every applicant for international protection of at least 14 years of age and shall, as soon as possible and no later than 72 hours after the lodging of his or her application for international protection, as defined by Article 20(2) of [the Dublin III Regulation], transmit them … to the Central System’.

…

6. Where the requesting Member State has pleaded urgency …, the requested Member State shall make every effort to comply with 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 its reply after the time limit requested, but in any event within one month. …

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 obligation to provide for proper arrangements for arrival.'

9. Article 23:

'1. Where a Member State with which a person as referred to in Article 18(1)(b), (c) or (d) has lodged a new application for international protection considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

2. A take back request shall be made as quickly as possible and in any event within two months of receiving the Eurodac hit, pursuant to Article 9(5) of [the Eurodac Regulation].

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

3. Where the take back request is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged.

4. A take back request shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the statements of the person concerned, 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 for the preparation and submission of take back requests. ...'

10. Article 25:

'1. The requested Member State shall make the necessary checks and shall give a decision on the request to take back the person concerned as quickly as possible and in any event no later than one month from the date on which the request was received. When the request is based on data obtained from the Eurodac system, that time limit shall be reduced to two weeks.

2. Failure to act within the one month period or the two weeks period mentioned in paragraph 1 shall be tantamount to accepting the request, and shall entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for arrival.'

11. Article 29:

‘1. The transfer of the applicant … from the requesting Member State to the Member State responsible 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 by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect …

…

2. Where the transfer does not take place within the six months’ time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. 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 person concerned or up to a maximum of eighteen months if the person concerned absconds.

…’

12. Article 37:

‘1. Where the Member States cannot resolve a dispute on any matter related to the application of this Regulation, they may have recourse to the conciliation procedure provided for in paragraph 2.

2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article 44. By agreeing to use the conciliation procedure, the Member States concerned undertake to take the utmost account of the solution proposed.

The Chairman of the Committee shall appoint three members of the Committee representing three Member States not connected with the matter. They shall receive the arguments of the parties either in writing or orally and, after deliberation, shall propose a solution within one month, where necessary after a vote.

…

Whether it is adopted or rejected by the parties, the solution proposed shall be final and irrevocable.’

2. Regulation No 1560/2003

13. Article 5 of Regulation No 1560/2003 provides:

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

2. Where the requesting Member State feels that such a refusal is based on a misappraisal, or where it has additional evidence to put forward, it may ask for its request to be re-examined. This option must be exercised within three weeks following receipt of the negative reply. The requested Member State shall endeavour to reply within two weeks. In any event, this additional procedure shall not extend the time limits laid down in Article 18(1) and (6) and Article 20(1)(b) of [the Dublin II Regulation].’

3. Directive 2013/32

14. Article 31(3) of 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 [6] provides:

'Member States shall ensure that the examination procedure is concluded within six months of the lodging of the application.

Where an application is subject to the procedure laid down in [the Dublin III Regulation], the time limit of six months shall start to run from the moment the Member State responsible for its examination is determined in accordance with that Regulation, the applicant is on the territory of that Member State and has been taken in charge by the competent authority.

Member States may extend the time limit of six months set out in this paragraph for a period not exceeding a further nine months, where:

(a) complex issues of fact and/or law are involved;

(b) a large number of third-country nationals or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit;

…

By way of exception, Member States may, in duly justified circumstances, exceed the time limits laid down in this paragraph by a maximum of three months where necessary in order to ensure an adequate and complete examination of the application for international protection.'

B. Netherlands law

15. The following articles of the Algemene wet bestuursrecht (General Law on administrative law, 'the Awb') are relevant:

16. Article 4:17(1):

'If an administrative authority fails to give a timely decision on an application, it shall forfeit a financial penalty to the applicant for each day that it is in default, up to a maximum of 42 days.'

17. Article 6:2(b):

'For the purposes of the provisions of law on objections and appeals, the failure to take a timely decision shall be equated with a decision.'

18. Article 6:12(2):

'A notice of appeal may be filed as soon as the administrative authority has failed to take a timely decision and two weeks have passed since the day on which the interested party sent the administrative authority written notice of default.'

6 OJ 2013 L 180, p. 60.

19. Article 8:55b(1):

'If an appeal is directed against a failure to take a timely decision, the administrative court shall give judgment in accordance with the provisions of Article 8:54 of the Awb within eight weeks after the notice of appeal is received and the requirements of Article 6:5 of the Awb are satisfied, unless the administrative court considers it necessary to hold a hearing.'

20. Article 8:55c:

'If the appeal is well founded, the administrative court shall also, on request, determine the amount of the penalty forfeited.'

21. Pursuant to Article 8:55d(1) of the Awb, if the appeal is well founded and no decision has yet been notified, the administrative court must direct the administrative authority to notify a decision within two weeks after the date on which the judgment is served. Under paragraph 2, the administrative court must, in its judgment, impose a further penalty for each day that the administrative authority fails to comply with the judgment.

III. The dispute in the main proceedings and the questions referred for a preliminary ruling

A. Case C-47/17

22. On 24 January 2016, the applicant in the main proceedings, a Syrian national, lodged an application for the grant of a temporary asylum residence permit with the State Secretary in the Netherlands. On the same date, the State Secretary received a Eurodac hit in respect of the applicant which indicated that the applicant had lodged an application for international protection with the Federal Republic of Germany on 22 January 2016. [7]

23. On 24 March 2016, on the basis of Article 18(1)(b) of the Dublin III Regulation, the State Secretary made a request to the German authorities to take back the applicant in the main proceedings.

24. On 7 April 2016, the German authorities rejected the take back request. [8]

25. On 14 April 2016, in accordance with Article 5(2) of Regulation No 1560/2003, the State Secretary made a re-examination request to the German authorities, to which no response was received.

26. By letter of 29 August 2016, the applicant in the main proceedings requested the State Secretary to examine his application and to deem the German authorities' rejection of 7 April 2016 to be a definitive rejection. The State Secretary did not respond substantively to that request.

27. On 14 November 2016, the applicant in the main proceedings went on a hunger and thirst strike.

7 In its written observations, the Commission asserts that the applicant in the main proceedings did not lodge an application for international protection with the Federal Republic of Germany. It states that 'a letter from the lawyer for the person concerned to the Netherlands authorities mentions a letter dated 4 July 2016 from the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees …), which reportedly indicates that the fingerprints of all foreign nationals entering Germany are taken and that they are all recorded in "category 1" of the Eurodac system — the category of asylum seekers, which is distinct from the category of persons apprehended in connection with the unlawful crossing of an external border — whether an asylum application has actually been lodged or not. In the meantime, the consequence of these recording arrangements has been that, as in the present case, the German authorities have refused requests from the Netherlands service on the ground that no asylum application was lodged' (see paragraph 8 of its observations).

8 According to the Commission, on 7 April 2016 the German authorities had replied 'in the negative for the time being in order to comply with the time limit for replying under Article 25(1) of the Dublin III Regulation. The reply require[d] further examination in Germany, of which [the Netherlands authorities] would be informed without the need to make a request to that effect' (see paragraph 5 of those written observations).

28. On 17 November 2016, the applicant in the main proceedings brought an action before the referring court in reliance upon a failure to take a timely decision on his application for the grant of a temporary asylum residence permit, requesting that court to order the State Secretary to pay a financial penalty from the moment that he failed to take a decision and to take a decision within a time limit to be determined by it, on pain of a further financial penalty of EUR 100 per day in default. [9]

29. On or about 23 November 2016, the applicant in the main proceedings resumed eating and drinking.

30. On 22 December 2016, the State Secretary notified the referring court that on 14 December 2016 he had withdrawn the take back request lodged with the German authorities and that the asylum application made by the applicant in the main proceedings would henceforth be processed under the Nederlandse Algemene Asielprocedure (Netherlands General Asylum Procedure).

31. By decision of 26 January 2017, the applicant in the main proceedings was granted refugee status.

32. The parties in the main proceedings are in dispute as to whether the period within which the State Secretary was required to take a decision on the application for a temporary asylum residence permit lodged by the applicant in the main proceedings on 24 January 2016 had since expired.

33. In this regard, the applicant in the main proceedings asserts inter alia that, after the expiry of the time limits laid down in Articles 23 and 25 of the Dublin III Regulation for the take back procedure, the Member State responsible must have been determined. In the event of a timely negative reply from the requested Member State to the take back request, responsibility rests from that moment onwards with the requesting Member State. Consequently, the period of six months for taking a decision on the asylum application starts to run from that moment. Since the German authorities rejected the take back request on 7 April 2016, the Kingdom of the Netherlands was responsible for examining the applicant's asylum application from that date, with the result that the period for a decision in respect of that application expired on 7 October 2016.

34. On the other hand, according to the State Secretary, the period for a decision in respect of the application started to run only from 14 December 2016, the date on which the Kingdom of the Netherlands declared that it was responsible for examining the application.

35. In these circumstances, the referring court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must the requested Member State, having regard to the objective, the content and the scope of the Dublin [III] Regulation and [Directive 2013/32], respond within two weeks to a re-examination request as contained in Article 5(2) of [Regulation No 1560/2003]?

(2) If the answer to the first question is in the negative, does the time limit of a maximum of one month as provided for in Article 20(1)(b) of [the Dublin II Regulation] (now Article 25(1) of the Dublin [III] Regulation) apply, having regard to the last sentence of Article 5(2) of [Regulation No 1560/2003]?

(3) If the answer to the first and second questions is in the negative, does the requested Member State, due to the use of the word "beijvert" (English: "shall endeavour") in Article 5(2) of [Regulation No 1560/2003], have a reasonable period of time to respond to the re-examination request?

9 At the hearing on 16 January 2018, the lawyer for the applicant in the main proceedings in Case C-47/17 confirmed that the financial penalty is to be understood as a sum to be paid for each for each day of default, including past default, in respect of the period prescribed for the decision taken by the administrative authority.

(4) If there is indeed a reasonable period of time within which the requested Member State should respond to the re-examination request under Article 5(2) of [Regulation No 1560/2003], can there, after over six months have passed, as in the present case, still be talk of a reasonable period of time? If the answer to that question is in the negative, what qualifies as a reasonable period of time?

(5) What should be the consequence of the requested Member State not responding within two weeks, one month or a reasonable period of time to a re-examination request? Is the requesting Member State then responsible for the substantive assessment of the foreign national's asylum application or is that the responsibility of the requested Member State?

(6) If one should proceed on the assumption that the requested Member State becomes responsible for the substantive examination of the asylum application due to the lack of a timely response to the re-examination request as referred to in Article 5(2) of [Regulation No 1560/2003], within what period of time should the requesting Member State, the defendant in the present case, notify the foreign national of that?'

B. Case C-48/17

36. On 22 September 2015, the applicant in the main proceedings, an Eritrean national, lodged an application in the Netherlands for the grant of a temporary asylum residence permit. According to the Eurodac database, he had already lodged an application for international protection in Switzerland on 9 June 2015.

37. Although the request for a preliminary ruling does not contain any information in this regard, the national case file would seem to indicate that at the end of May 2015 the applicant in the main proceedings arrived via the Mediterranean in Italy, where he was not, however, fingerprinted. He then travelled to Switzerland, where he arrived on 8 June 2015. On 17 September 2015, he left Switzerland and travelled via France to the Netherlands.

38. On 20 November 2015, the State Secretary made a request to the Swiss authorities to take back the applicant in the main proceedings pursuant to Article 18(1)(b) of the Dublin III Regulation.

39. On 25 November 2015, the Swiss authorities rejected that request on the ground that the Swiss Confederation had previously submitted a take charge or take back request to the Italian Republic, to which no response had been received, so that as of 1 September 2015 the Italian Republic had become responsible for processing the asylum application.

40. On 27 November 2015, the State Secretary made a request to the Italian authorities to take charge of or take back the applicant in the main proceedings under Article 18(1)(b) of the Dublin III Regulation.

41. On 30 November 2015, the Italian authorities rejected that request.

42. On 1 December 2015, the State Secretary made a re-examination request to the Italian authorities pursuant to Article 5(2) of Regulation No 1560/2003 and on 18 January 2016 he sent a reminder letter to the Italian authorities.

43. On 26 January 2016, the Italian authorities accepted the request to take back the applicant in the main proceedings. [10]

44. By decision of 19 April 2016, the State Secretary refused to examine the application for the grant of a temporary asylum residence permit lodged by the applicant in the main proceedings on the ground that the Italian Republic was responsible for processing the application.

45. The applicant in the main proceedings lodged an appeal against that decision before the referring court. He also requested the court hearing applications for interim measures to issue an injunction by way of an interim measure prohibiting the State Secretary from deporting him until four weeks after the referring court had ruled on the appeal. By order of 30 June 2016, the court hearing applications for interim measures granted the interim measure sought.

46. The parties are in dispute, inter alia, as to whether the State Secretary became responsible for examining the application for the grant of a temporary asylum residence permit lodged by the applicant in the main proceedings on 22 September 2015 because, after initially rejecting the take charge or take back request made by the State Secretary, the Italian authorities did not reply to the re-examination request within the prescribed period.

47. In these circumstances, the referring court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must the requested Member State, having regard to the objective, the content and the scope of the Dublin [III] Regulation and [Directive 2013/32], respond within two weeks to a re-examination request as contained in Article 5(2) of [Regulation No 1560/2003]?

(2) If the answer to the first question is in the negative, does the time limit of a maximum of one month as provided for in Article 20(1)(b) of [the Dublin II Regulation] (now Article 25(1) of the Dublin [III] Regulation) apply, having regard to the last sentence of Article 5(2) of [Regulation No 1560/2003]?

(3) If the answer to the first and second questions is in the negative, does the requested Member State, due to the use of the word “beijvert” (English: “shall endeavour”) in Article 5(2) of [Regulation No 1560/2003], have a reasonable period of time to respond to the re-examination request?

(4) If there is indeed a reasonable period of time within which the requested Member State should respond to the re-examination request under Article 5(2) of [Regulation No 1560/2003], can there, after the passage of seven and a half weeks, as in the present case, still be talk of a reasonable period of time? If the answer to that question is in the negative, what qualifies as a reasonable period of time?

(5) What should be the consequence of the requested Member State not responding within two weeks, or a reasonable period of time, to a re-examination request? Is the requesting Member State then responsible for the substantive assessment of the foreign national’s asylum application or is that the responsibility of the requested Member State?

10 Although the documents before the Court seem to indicate that the applicant in the main proceedings did not lodge an asylum application in Italy, so that the case is one of taking charge (rather than taking back), the notice of acceptance of transfer from the Italian authorities refers to Article 18(1)(b) of the Dublin III Regulation. I also note that, according to the Commission, on ‘8 April 2016, the lawyer for the person concerned observed out that Italy [had] not become responsible on 26 January 2016, but on 1 September 2015. The six-month period for the transfer provided for in Article 29 of the Dublin III Regulation had therefore already expired’ (see paragraph 23 of the Commission’s written observations).

(6) If one should proceed on the assumption that the requested Member State becomes responsible for the substantive examination of the asylum application due to the lack of a timely response to the re-examination request as referred to in Article 5(2) of [Regulation No 1560/2003], within what period of time should the requesting Member State, the defendant in the present case, notify the foreign national of that?'

IV. Procedure before the Court

48. By decision of the President of the Court of 13 February 2016, Case C-47/17 was joined with Case C-48/17 for the purposes of the written and oral stages of the procedure and the judgment, as the questions referred for a preliminary ruling by the national court in the two cases are, in essence, identical. [11]

49. Written observations were submitted by the applicant in the main proceedings in Case C-47/17, the Netherlands, Hungarian and United Kingdom Governments, the Government of the Swiss Confederation and the Commission.

50. By letter from the Court of 16 October 2017, the interested parties referred to in Article 23 of the Statute of the Court of Justice were requested to give a brief reply to written questions.

51. Written replies were submitted by the applicants in the main proceedings in Joined Cases C-47/17 and C-48/17, the Netherlands and German Governments and the Commission.

52. The applicants in the main proceedings in Joined Cases C-47/17 and C-48/17, the Netherlands, German and United Kingdom Governments and the Commission presented oral argument at the hearing held on 16 January 2018.

V. Analysis

A. Preliminary remarks

53. The principle of mutual confidence which underlies the Common European Asylum System led the EU legislature to adopt, inter alia, the Dublin III Regulation in order, first, to rationalise the treatment of applications for international protection and to avoid blockages in the system as a result of the obligation on States to examine multiple applications by the same applicant and, second, in order to increase legal certainty with regard to the determination of the State responsible for examining the asylum application and thus to avoid *forum shopping, it being the principal objective of all these measures to speed up the handling of claims in the interests both of asylum seekers and of the participating Member States.* [12]

11 The words '*after over six months have passed*' In the fourth question in Case C-47/17 are replaced in Case C-48/17 by the words '*after the passage of seven and a half weeks*' and the words '*one month*' in the fifth question in Case C-47/17 are absent from the first sentence of the fifth question in Case C-48/17.

12 See, to that effect, judgment of 10 December 2013, *Abdullahi* (C-394/12, EU:C:2013:813, paragraphs 53 and 54 and the case-law cited, emphasis added).

54. The subject matter of the Dublin III Regulation, according to Article 1 thereof, is concerned with laying down 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. [13]

1. Take charge and take back procedures

55. 'In accordance with Article 3(1) of the Dublin III Regulation, an application for asylum lodged by a national of a third country or by a stateless person in the territory of any one of the Member States, is, in principle, examined by the single Member State which the criteria set out in Chapter III indicate as being responsible'. [14] Article 7(1) of the Dublin III Regulation provides that the criteria for determining the Member State responsible are to be applied in the order in which they are set out in Chapter III of that regulation. However, in addition to the criteria set out in Chapter III of the Dublin III Regulation for designating a single Member State as responsible for examining an application for international protection, Chapter VI of that regulation establishes procedures for taking charge and taking back by another Member State which contribute, *in the same way as the criteria set out in Chapter III of the regulation*, to determining the Member State responsible. [15]

56. The rules governing the take charge and take back procedures introduced by the Dublin III Regulation provide for a series of mandatory time limits and consequences in the event of the expiry of those time limits. In my view, the objective of speeding up the handling of applications for international protection in the interests both of asylum seekers and of the participating Member States underlies the mandatory time limits laid down in Chapter VI of the Dublin III Regulation.

57. Accordingly, Article 21(1) of the Dublin III Regulation provides that the take charge request from one Member State to another Member State must be made as quickly as possible and in any event within three months of the date on which the application for international protection was lodged. [16] The EU legislature defined the effects of the expiry of those periods by specifying, in the third subparagraph of Article 21(1) of the Dublin III Regulation, that where the request is not made within those periods, responsibility for examining the application for international protection is to lie with the Member State in which the application was lodged. [17]

13 Recital 4 of the Dublin III Regulation states that the Common European Asylum System should include a clear and workable method for determining the Member State responsible for the examination of an asylum application. According to recital 5 of that regulation, 'such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.'

14 Judgment of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127, paragraph 56). Chapter IV of the Dublin III Regulation identifies the situations according to which a Member State may be considered responsible for examining an asylum application by way of derogation from these criteria.

15 See, to that effect, judgment of 25 October 2017, *Shiri* (C-201/16, EU:C:2017:805, paragraph 39). In paragraph 53 of the judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587), the Court ruled that 'while the provisions of Article 21(1) of that regulation are intended to provide a framework for the take charge procedure, they also contribute, in the same way as the criteria set out in Chapter III of that regulation, to determining the responsible Member State, within the meaning of that regulation. Therefore, a decision to transfer to a Member State other than the one with which the application for international protection was lodged cannot validly be adopted once the periods laid down in those provisions have expired.'

16 See judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587, paragraph 51). Notwithstanding this first time limit, in the case of a Eurodac hit with data recorded pursuant to Article 14 of the Eurodac regulation, the request must be made within two months of receiving that hit. In paragraph 67 of the judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587), the Court ruled that it is clear from the very wording of Article 21(1) of the Dublin III Regulation that the take charge request must absolutely be made within the periods laid down in that provision.

17 See judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587, paragraph 52). In paragraph 61 of that judgment, the Court ruled that the third subparagraph of Article 21(1) of the Dublin III Regulation 'provides, in the case of the expiry of the periods laid down in the two preceding subparagraphs, for a full transfer of responsibility to the Member State in which the application for international protection was lodged, without making that transfer subject to any reaction by the requested Member State'. In paragraph 54 of that judgment, the Court held that '[the] provisions [of Article 21(1) of the Dublin III Regulation] thus make a decisive contribution to achieving the objective of rapidly processing applications for international protection, referred to in recital 5 of the Dublin III Regulation, by ensuring, in the event of a delay in the conduct of the take charge procedure, that the examination of the application for international protection is carried out in the Member State in which the application was lodged, so as not to further delay that examination by the adoption and implementation of a transfer decision'.

58. In paragraph 62 of the judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587), the Court ruled that in accordance with Article 27(1) of the Dublin III Regulation an applicant for international protection may rely, in the context of an action brought against a decision to transfer him, on the expiry of a period laid down in Article 21(1) of that regulation.

59. In addition, Article 22(1) of the Dublin III Regulation provides that the requested Member State has two months to accept explicitly a take charge request.[18] Under Article 22(7) of the Dublin III Regulation, if the requested Member State fails to act on that request within the two-month period mentioned in paragraph 1,[19] that is tantamount to accepting the request implicitly and entails the obligation to take charge of the person.

60. Under the first subparagraph of Article 23(2) of the Dublin III Regulation, a take back request must be made as quickly as possible and in any event within two months of receiving the Eurodac hit. The second subparagraph of Article 23(2) of that regulation provides that, if the take back request is based on evidence other than data obtained from the Eurodac system, it must be sent to the requested Member State within three months of the date on which the application for international protection was lodged. Article 23(3) of the Dublin III Regulation provides that, where the take back request is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection lies with the Member State in which the new application was lodged.

61. Under Article 25(2) of the Dublin III Regulation, if the requested Member State fails to act on a take back request within the one-month period, or the two-week period when the request is based on data obtained from the Eurodac system, that is tantamount to accepting the request implicitly and entails the obligation to take back the person concerned.

62. It should be stated, however, that where the requested Member State replies negatively to a take charge or take back request within the time limits laid down by Article 22(1) and (6) and Article 25(1) of the Dublin III Regulation, the regulation *does not define the effects of such a reply*.[20]

63. In this regard, the Dublin III Regulation does not provide that such negative replies necessarily mean that the requesting Member State is responsible for examining the application for international protection.[21] Furthermore, in these circumstances, the Dublin III Regulation does not specify the period within which the Member State responsible for the application for international protection must be established.[22]

64. Notwithstanding this lack of clarity, I consider that where a Member State implements the Dublin III Regulation, the right to good administration, including the right of any person to have his or her affairs handled *within a reasonable period of time*, which constitutes a general principle of EU law, is applicable in procedures which are conducted by competent national authorities.[23] Accordingly, despite the absence of a mandatory time limit in some cases, the Member State responsible must be determined within a reasonable period of time.

18 Article 22(6) of the Dublin III Regulation provides for a time limit of one month for replying to the take charge request in certain circumstances.

19 Or the one-month period provided for in paragraph 6.

20 According to the Commission, 'the Dublin III Regulation does not contain any generally applicable provisions regarding the time limit within which the determination of the responsibility of a Member State must have been made where the requested Member State has given a negative reply within the time limit provided for in Article 22(1) and (6) and Article 25(1)' (see paragraph 3 of the replies to the written questions).

21 It remains to be seen whether the criteria established in Chapter III of the Dublin III Regulation are still applicable or whether responsibility is automatically transferred to the requesting Member State.

22 In this regard it would appear that the Dublin III Regulation has certain gaps.

23 Judgment of 8 May 2014, *N.* (C-604/12, EU:C:2014:302, paragraphs 49 and 50).

2. Transfers

65. In its requests for a preliminary ruling, the referring court makes several references to the transfer system provided for in Article 29 of the Dublin III Regulation and to the right to a remedy provided for in Article 27 of that regulation.

66. Under the first subparagraph of Article 29(1) of the Dublin III Regulation, the transfer of the person concerned is to be carried out as soon as practically possible and at the latest within six months *of acceptance of the request by another Member State* to take charge of or to take back that person or of the final decision on an appeal or review where there is a suspensive effect.

67. Article 29(2) of the Dublin III Regulation states that, where the transfer does not take place within the six-month time limit,[24] the Member State responsible is to be relieved of its obligations to take charge of or to take back the person concerned and responsibility is then to be transferred to the requesting Member State. According to the Court, this transfer to the requesting Member State is automatic, without it being necessary for the Member State responsible to refuse to take charge of or take back the person concerned.[25]

68. Article 27(1) of the Dublin III Regulation provides that the applicant for international protection is to have the right to an effective remedy before a court or tribunal in the form of an appeal or a review, in fact and in law, against a transfer decision. Furthermore, under Article 27(3)(c) of the Dublin III Regulation, where national law provides that the person concerned has the opportunity to request a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review, the court or tribunal in question must decide on that request within a reasonable period of time and state the reasons on which its decision is based if it rejects the request.

69. With regard to the six-month period provided for in Article 29(1) and (2) of the Dublin III Regulation, it is stated in paragraph 44 of the judgment of 25 October 2017, *Shiri* (C-201/16, EU:C:2017:805), that the applicant for international protection must have an effective and rapid remedy available to him which enables him to rely on the expiry of that period.

70. Since, in Case C-47/17, the German authorities rejected the request from the State Secretary to take charge of or take back the person concerned[26] and did not even respond to the re-examination request made by the State Secretary,[27] it would seem that, in the absence of determination of the Member State responsible, the question of a transfer pursuant to Article 29 of the Dublin III Regulation is premature or even immaterial.

71. I would also observe that, in its written observations on Case C-48/17, the Commission noted that, 'on 31 March 2016, the Netherlands authorities informed the lawyer for the person concerned of their intention not to examine his asylum application and to transfer it to Italy. … On 8 April 2016, the lawyer for the person concerned stated that the Italian Republic did not become responsible on 26 January 2016, but on 1 September 2015. The six-month period for the transfer under Article 29 of the Dublin III Regulation had therefore already expired. … On 27 September 2016, by way of

24 Under Article 29(2) of the Dublin III Regulation, 'this [six-month] 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 person concerned or up to a maximum of *eighteen months* if the person concerned absconds' (emphasis added).

25 Judgment of 25 October 2017, *Shiri* (C-201/16, EU:C:2017:805, paragraphs 27, 29 and 34). In paragraph 39 of that judgment, the Court ruled that 'the take charge and take back procedures established by the Dublin III Regulation must, in particular, be carried out in compliance with a series of mandatory time limits, which include the six-month time limit referred to in Article 29(1) and (2) of that regulation. Whilst those provisions are intended to provide a framework for those procedures, they also contribute, in the same way as the criteria set out in Chapter III of the regulation, to determining the Member State responsible'. In addition, in paragraph 41 of that judgment the Court held that 'the periods set out in Article 29 of the Dublin III Regulation are intended to provide a framework not only for the adoption but also for the implementation of the transfer decision'.

26 See point 24 of this Opinion.

27 See point 25 of this Opinion.

supplement to the grounds of appeal, the lawyer for the person concerned suggested that it would be helpful to refer a question for a preliminary ruling on the interpretation of Article 5 of Regulation No 1560/2003 and Article 29 of the Dublin III Regulation — the question indeed arises of the extent to which the Italian Republic is responsible for the asylum application lodged by the person concerned as it is not established that the Swiss Confederation extended the six-month period mentioned in Article 29 by informing the Italian Republic that he could not be transferred by the Swiss Confederation because he had left the country for an unknown destination'.

72. It should be stated that the referring court has not asked any questions regarding Article 29 of the Dublin III Regulation as its questions relate only to Article 5(2) of Regulation No 1560/2003. It follows that the question whether the time limits for transfer laid down in Article 29 of the Dublin III Regulation were complied with in Joined Cases C-47/17 and C-48/17 is not at issue before the Court.

3. Article 31(3) of Directive 2013/32

73. Article 31(1) of Directive 2013/32 provides that 'Member States shall process applications for international protection in an examination procedure ...'. In addition, under Article 31(3) of that directive, 'Member States shall ensure that the examination procedure is concluded within six months of the lodging of the application'. That same provision states that the time limit of six months starts to run from the moment the Member State responsible for its examination is determined in accordance with the Dublin III Regulation and the applicant is on the territory of that Member State and has been taken in charge by the competent authority.

74. Accordingly, the processing of applications for international protection *clearly follows on* from the determination of the Member State responsible in accordance with the Dublin III Regulation and, as the case may be, the transfer of the person concerned.[28] Even though certain mandatory time limits are set by the Dublin III Regulation, that determination and the transfer can take a relatively long time notwithstanding the need for rapid processing if the take charge or take back and transfer procedures are initiated and if the person concerned avails himself of the available means of appeal or review with suspensive effect.[29] It is therefore impossible in the abstract to determine a maximum period, or even a reasonable period of time, for that determination[30] despite the efforts made by the referring court to do so. Each case must be assessed individually.

75. It should also be noted that in the judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587, paragraph 102), the Court stated that provisions of the Dublin III Regulation and of Directive 2013/32 establish different procedures, which have their own requirements and are subject, in particular, in terms of time limits, to distinct schemes.

76. It is against this background that the questions asked by the referring court regarding the re-examination procedure provided for in Article 5(2) of Regulation No 1560/2003 should be examined.

28 According to the Commission, 'it is clear from the second subparagraph of Article 31(3) of Directive 2013/32 that the (extendable) time limit of six months for processing the asylum application starts to run from the moment the Member State responsible is determined in accordance with [the Dublin III Regulation] and the applicant is on the territory of that Member State and has been taken in charge by the competent authority' (see paragraph 72 of its observations).

29 In its replies to the Court's written questions, the German Government states that, despite the fact that the objective of the Dublin III Regulation is the rapid processing of applications for international protection 'it is not possible, however, to reduce the procedure to the shortest possible time in every case, as the procedure may be extended if the applicant appeals against the decision, absconds or is imprisoned. In such cases, the Dublin III Regulation itself provides for a delayed start or an extension of the six-month time limit provided for in the first subparagraph of Article 29(1)' (see paragraph 5 of its replies to the questions).

30 And, therefore, the maximum period for processing an application for international protection, which does not start to run until the determination of the Member State responsible, and only then if the other conditions laid down in Article 31(3) of Directive 2013/32 are met.

B. The first question

77. By its first question, the referring court asks whether the requested Member State should, having regard to the objective, the content and the scope of the Dublin III Regulation and Directive 2013/32, respond within two weeks to a re-examination request provided for in Article 5(2) of Regulation No 1560/2003. The question seeks specifically to determine whether the time limit prescribed in Article 5(2) of Regulation No 1560/2003 for replying to the re-examination request constitutes a mandatory time limit for the requested Member State, failure to comply with which means that that Member State is responsible for examining the application for international protection.

78. Before examining this question, it is necessary to consider the nature of the procedure established by Article 5(2) of Regulation No 1560/2003 and its possible legal basis. [31]

79. Recital 1 of Regulation No 1560/2003 states that the regulation seeks to establish a number of specific arrangements for the effective application of the Dublin III Regulation 'so as to facilitate cooperation between the authorities in the Member States competent for implementing that Regulation as regards the transmission and processing of requests for the purposes of taking charge and taking back, requests for information and the carrying out of transfers'.

80. As the Hungarian Government states, 'the purpose of Regulation No 1560/2003 is not to lay down rules on responsibility which are not laid down by [the Dublin III Regulation]'. [32]

81. The re-examination procedure established by Regulation No 1560/2003 is not explicitly provided for by the Dublin III Regulation, which, as the German Government states in its reply to the Court's written questions, does not include any express authorisation to introduce such a procedure. [33] Article 5(2) of Regulation No 1560/2003 itself makes clear that the procedure established therein is an additional procedure, the objective of which is, in my view, to allow the better application of the Dublin III Regulation. [34] This means that a re-examination request does not constitute a new take charge or take back request. [35] Furthermore, the rules for determining the Member State responsible for examining an application for international protection are laid down by the Dublin III Regulation alone. [36]

31 By its letter of 16 October 2017 sent to the interested parties referred to in Article 23 of its Statute, the Court questioned them about the legal basis for the additional procedure of re-examination established in Article 5(2) of Regulation No 1560/2003. The applicant in the main proceedings in Case C-48/17 takes the view that the Dublin III Regulation does not confer any power on the Commission to introduce a re-examination procedure. The German Government asserts that, although the Dublin III Regulation does not include any express authorisation to adopt the re-examination procedure, Regulation No 1560/2003 'states in [recital 1] that a number of specific arrangements must be established for the effective application of the Dublin III Regulation. One of the objectives is to facilitate the "processing" of the request. Article 5 of [Regulation No 1560/2003], which contains provisions regarding the processing of requests where they are rejected, also falls within that purpose.' The applicant in the main proceedings in Case C-48/17 stated at the hearing on 16 January 2018 that, in his view, the legal basis for the re-examination procedure at issue could not be Article 29(4) of the Dublin III Regulation. At the hearing the Commission argued that Article 17(3) of the Dublin II Regulation (which corresponds partially to Article 21(3) of the Dublin III Regulation) and Article 29(4) of the Dublin III Regulation constituted the legal basis for Article 5(2) of Regulation No 1560/2003. In this regard, the Netherlands Government concurred with the Commission's observations.

32 See paragraph 17 of the observations of the Hungarian Government.

33 Nor indeed does the Dublin II Regulation.

34 And the Dublin II Regulation in the past. See, to that effect, recital 1 of Regulation No 1560/2003.

35 I consider, in the light of Article 21(1) and Article 23(1) of the Dublin III Regulation and the judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587, paragraph 67), that following a negative reply from the requested Member State, the requesting Member State may submit a new take charge or take back request, *provided that the mandatory time limits laid down by Articles 21 and 23 of the Dublin III Regulation are complied with*. It follows that the possibility of parallel take charge or take back requests can be envisaged, at least in theory. However, if the time limits in question have expired, the requesting Member State may no longer submit such a request. The Commission's reply to the Court's written questions states that 'the re-examination request procedure is used in a significant number of cases (2 903 requests in 2015, 8 442 in 2016) and results in around one third of cases being accepted (1 019 requests made in 2015 and 2 489 requests made in 2016)'.

36 As I will state in point 111 of this Opinion, the requested Member State under Article 5(2) of Regulation No 1560/2003 is responsible for examining an application for international protection only if it *explicitly* accepts that responsibility within a reasonable period of time.

82. It is true that under Article 5(1) of Regulation No 1560/2003 the requested Member State to which a take charge or take back request is submitted must state reasons for its refusal; Article 5(2) provides that, where the requesting Member State feels that such a refusal is based on a misappraisal, or where it has additional evidence to put forward, it may, within a mandatory time limit [37] of three weeks following receipt of the negative reply, ask for its request to be re-examined. [38] In addition, under the same provision, the requested Member State must '*endeavour* [39] to reply within two weeks'. [40]

83. I will make two further reflections. First, aside from the fact that according to its very wording the time limit of two weeks is not mandatory, [41] Article 5(2) of Regulation No 1560/2003 does not attach any legal consequence either to non-compliance with that time limit or to failure to reply to a re-examination request. [42] Article 5(2) of Regulation No 1560/2003, unlike Article 22(7) and Article 25(2) of the Dublin III Regulation, does not provide that the requested Member State is obliged to take charge of or take back the person concerned.

37 In this regard, the wording of the provision leaves no doubt in its use of imperative terms: 'this option *must* be exercised within three weeks following receipt of the negative reply'.

38 In paragraph 53 of its observations, the Commission notes that 'the Dublin III Regulation and Regulation No 1560/2003, adopted to implement that regulation, contain a number of clearly mandatory time limits, but not everything is subject to mandatory time limits. For that reason it is not possible to adopt an interpretation which runs counter to clear wording. In the case of Article 5(2) of [Regulation No 1560/2003], there may actually be situations where the authorities of the requested Member State have to examine complex cases, connected with unaccompanied minors and possible family members for example; in such situations, a short mandatory time limit would run counter to the objective of the Member State responsible being correctly designated. A policy consideration therefore underlies the clear wording of Article 5(2) of Regulation No 1560/2003'.

39 In the Spanish version: 'se esforzará'; Danish version: 'bestraeber'; French version: 's'efforce'; Italian version: 'procura di'; Hungarian version: 'törekszik'; and Dutch version: 'zich beijveren'.

40 I agree with the Commission that the French term 's'efforce' and 'the similar expressions used in the overwhelming majority of the language versions of the regulation are perfectly clear' and 'do not impose an obligation to reply within two weeks' (see paragraphs 51 and 52 of its observations). The applicant in the main proceedings in Case C-47/17 maintains that the term 'zich beijveren ("endeavour"), which appears in the Dutch version of Article 5(2) of Regulation No 1560/2003, can only be interpreted to mean that the requested Member State is obliged to use its best efforts. The obligation to use best efforts cannot mean that the requested Member State *must* reply (see paragraph 3.1 of its observations). The Netherlands Government takes the view that the two-week time limit referred to in Article 5(2) of Regulation No 1560/2003 is not a mandatory time limit and that the requested Member State is not required to reply within two weeks (see paragraphs 36 to 38 of its observations). According to the United Kingdom Government 'the requested Member State must attempt to respond within a two-week period; but it is not obligatory for it to do so. … The word "endeavour" would be meaningless if the requested Member State were under an absolute obligation to respond within two weeks. The word indicates that serious and genuine efforts must be made to respond within that time but it recognises that this will not always be possible. This may be for a wide range of reasons: for example, the pressure of the volume of cases being dealt with by a requested Member State or difficulties in the individual case being considered. The requested Member State is not absolutely bound by the two-week period identified. … Similarly, the position may be contrasted with some of the time limits identified under the Dublin III Regulation: for example, under Article 22 of that Regulation, the requested Member State "shall give a decision on the request to take charge of an applicant within two months of receipt of the request". Under Article 25(1), the requested Member State "shall give a decision … as quickly as possible and in any event no later than one month from the date on which the request was received". *Where the EU legislator has wanted to impose an absolute obligation, it has done so in unambiguous terms*. The nature of the obligation in Article 5(2) of [Regulation No 1560/2003] is different' (see paragraphs 11, 12 and 14 of its observations, emphasis added).

41 According to the Netherlands Government, this time limit 'is merely a guideline for the requested Member State'. According to the Commission, Regulation No 1560/2003 'does not seek to impose a strictly mandatory time limit, but to set a guideline which should be followed as far as possible'. It is thus a purely indicative time limit. The Swiss Confederation, which submitted observations only on the first question referred for a preliminary ruling, is less absolute in asserting that 'the wording of the provision suggests that the time limit laid down in Article 5(2) of [Regulation No 1560/2003] is simply an indicative time limit and not a time-bar. It is thus clear, in particular in the light of certain language versions of Article 5(2), … that the obligation on the requested [Member State] to reply within a period of two weeks cannot be construed to mean that failure to comply with that time limit must immediately have legal consequences. On the contrary, the obligation to "endeavour" implies a degree of flexibility in the time for replying to the re-examination request. The requested State may thus legitimately reply to the request even after the period of two weeks has expired. The purpose of the Dublin III Regulation suggests, however, that the time limit provided for in Article 5(2) of Regulation … No 1560/2003 is an *obligation of principle to be respected and not just an irrelevant time indication*' (emphasis added).

42 The United Kingdom Government states that 'unlike, for example, Articles 22 and 25 of the Dublin III Regulation, there is no automatic transfer of responsibility where a requested Member State fails to respond within … two weeks …' (see paragraph 20 of its observations). According to the Hungarian Government, 'it will be noted that neither [the Dublin III Regulation] nor Regulation No 1560/2003 expressly attaches legal consequences to failure to reply to the re-examination request or the exceeding of the two-week time limit prescribed in this respect, and thus also no consequences that would affect responsibility for examining the application for international protection' (see paragraph 18 of its observations). In its replies to the Court's written questions, the German Government states that 'the Dublin III Regulation does not provide for any legal consequence in the event of failure to reply to the request to re-examine the take charge or take back request. … it should be noted that, in the absence of a legal basis in the Dublin III Regulation, the consequence of failure to reply cannot be a transfer of responsibility'.

84. Second, the Dublin III Regulation does not define the effects of a negative reply to a take charge or take back request within the time limits laid down in Article 22(1) and (6) and Article 25(1) of the Dublin III Regulation. In my view, the re-examination procedure under Article 5(2) of Regulation No 1560/2003 merely establishes a consultation or a structured dialogue between the requesting Member State and the requested Member State following such a negative reply in order to facilitate the determination of the Member State responsible in accordance with the Dublin III Regulation and thereby the achievement of the objectives of the Dublin III Regulation. If that additional procedure is concluded within a reasonable period of time and does not thus prejudice the objective of rapid processing of applications for international protection in the interests both of asylum seekers and of the participating Member States, it constitutes an instrument which contributes to the effective application of the Dublin III Regulation. In my view, the lack of any mandatory character for Article 5(2) of Regulation No 1560/2003[43] and its objective of facilitating the application of the Dublin III Regulation preclude any objection of invalidity.

85. Consequently, I consider that the first question should be answered in the negative. Although the requested Member State must endeavour to reply to a re-examination request provided for in Article 5(2) of Regulation No 1560/2003 within a period of two weeks, it has no legal obligation to reply within that period. In addition, Article 5(2) of Regulation No 1560/2003 does not attach any legal consequence to failure to reply to a re-examination request within that period.

C. The second question

86. By its second question, which is posed if the answer to the first question is in the negative, the referring court asks whether the time limit of a maximum of one month provided for in Article 25(1) of the Dublin III Regulation applies, having regard to the last sentence of Article 5(2) of Regulation No 1560/2003.

87. Article 5(2) of Regulation No 1560/2003 provides for a mandatory time limit of three weeks for making a re-examination request and a desirable time limit of two weeks for replying to it. It should be noted that, under the last sentence of that provision, in any event the time limits laid down in Article 22(1) and (6) and Article 25(1) of the Dublin III Regulation[44] are not extended or modified by the 'additional' procedure provided for in Article 5(2) of Regulation No 1560/2003.

88. The re-examination procedure is clearly distinct from the take charge and take back procedures under the Dublin III Regulation and has no bearing on the time limits laid down by the provisions of that regulation.

89. In view of this clear distinction, I consider that the time limits laid down by Article 5(2) of Regulation No 1560/2003 are not, inter alia, modified by the take back procedure under Article 25 of the Dublin III Regulation.[45] The time limits laid down in Article 25 of the Dublin III Regulation cannot therefore be transposed to the re-examination procedure established in Article 5(2) of Regulation No 1560/2003.

43 As is clear from the very wording of that provision, in particular the word 'endeavour'.

44 Article 5(2) of Regulation No 1560/2003 provides that 'the requested Member State shall endeavour to reply within two weeks. In any event, this additional procedure shall not extend the time limits laid down in *Article 18(1) and (6) and Article 20(1)(b) of [the Dublin II Regulation*]' (emphasis added). Article 18(1) and (6) and Article 20(1)(b) of the Dublin II Regulation correspond to Article 22(1) and (6) and Article 25(1) of the Dublin III Regulation.

45 The Commission asserts that these time limits cannot therefore be extended or 'result in a transfer of responsibility. *In other words, this means that after a negative reply within the meaning of Article 5(1) of Regulation No 1560/2003, a requested Member State can then become responsible only if it accepts responsibility itself. This can be explained by the fact that a re-examination request is not a new take charge request*. A re-examination request requires the requested Member State to re-examine the situation and to decide whether to abide by its negative reply, nothing more. Furthermore, any other interpretation would be contrary to the hierarchy of norms because it would allow an implementing regulation to derogate from the basic regulation' (emphasis added).

90. Consequently, I consider that the second question should be answered in the negative. The time limit of a maximum of one month provided for in Article 25(1) of the Dublin III Regulation is not applicable in the context of the re-examination procedure laid down in Article 5(2) of Regulation No 1560/2003.

D. The third and fourth questions

91. By its third question, which is posed if the answer to the second question is in the negative, the referring court asks whether the requested Member State has a reasonable period of time to respond to the re-examination request. By its fourth question, which is posed if the answer to the third question is in the affirmative, the referring court asks whether a period of seven and a half weeks [46] or six months [47] constitutes a reasonable period of time. If the fourth question is answered in the negative, the referring court asks what is a reasonable period of time.

92. Because they are connected, I consider that these two questions should be examined together.

93. Article 5(2) of Regulation No 1560/2003 provides that the requested Member State must *endeavour* to reply to a re-examination request within a period of two weeks. By this exhortation, the requested Member State is asked to act in a spirit of cooperation with a view to the rapid determination of the Member State responsible. [48] It is evident that, if the requested Member State does not comply with this indicative time limit, it must still reply to a re-examination request within a reasonable period of time so as not to undermine the objective of expeditiousness in the determination of the Member State responsible for processing applications for international protection and so as to observe the principle of good administration and the principle of effectiveness.

94. Accordingly, what constitutes a reasonable period of time in the context of the application of Article 5(2) of Regulation No 1560/2003 cannot be determined in advance and must be assessed in each individual instance according to the specific circumstances [49] of the case, having due regard to the need for expeditiousness, which is the guiding principle of the Dublin III Regulation. [50] Given that this analysis calls for a factual assessment of the circumstances at issue, I consider that it is for the referring court to assess in a specific case, having regard to all the relevant circumstances, [51] whether the requested Member State has taken a reasonable period of time to reply to a re-examination

46 Case C-48/17.

47 Case C-47/17. In Joined Cases C-47/17 and C-48/17, the referring court states that Article 31(3) of Directive 2013/32 provides that 'Member States must ensure that the examination procedure of an asylum application is concluded within six months of the lodging of the asylum application. It is therefore not logical to assume that the time period for the re-examination, under Article 5(2) of [Regulation No 1560/2003], of the question of which Member State is responsible for examining the asylum application could last longer than the period provided for the decision on the asylum application itself, which must still follow the decision on the responsibility for the examination of the application.' I consider, in accordance with my comments in point 75 of this Opinion, that the time limits laid down in Directive 2013/32 and, in particular in Article 31(3) thereof, are clearly distinct from those laid down by the Dublin III Regulation and, therefore, from those laid down by Regulation No 1560/2003.

48 In accordance with the principle of sincere cooperation, set forth in Article 4(3) TEU, the Member States must inter alia facilitate the achievement of the European Union's tasks.

49 According to the United Kingdom Government, 'it is not possible to define what amounts to a "reasonable time", since that concept is, by definition, highly fact-sensitive' (see paragraph 22 of its observations).

50 In Case C-47/17 the German authorities *did not reply to the re-examination request from the State Secretary of 14 April 2016*. It should be noted that in Case C-48/17 the Italian authorities accepted responsibility for examining the application for international protection by the person concerned on 26 January 2016 following a re-examination request from the State Secretary dated 1 December 2015 and a reminder letter dated 18 January 2016, that is to say, *less than two months* after that request was made.

51 The Commission has pointed out, by way of guidance, that the facts and factors which could potentially be relevant for this assessment are 'in particular … the scope of the investigation and of the necessary steps for examining the application, and any excessive workload for the competent authorities'. The Netherlands Government asserts that 'the following circumstances, among others, may constitute relevant factors in answering the question whether the period is reasonable: [1] the authorities concerned of the requesting Member State or of the requested Member State had to conduct considerable research into the person in question; [2] the authorities concerned of the requesting Member State and of the requested Member State had to hold numerous discussions, for example to resolve a difference of views; [3] the authorities concerned of the requested Member State experienced a greater workload, for example a huge influx of asylum seekers'.

request. On the other hand, as will be clear from my answer to the fifth and sixth questions, failure to reply to a re-examination request within a reasonable period of time means that the requesting Member State must assume responsibility for examining the application for international protection. [52]

95. It should be stated, however, that Article 5(2) of Regulation No 1560/2003 does not attach any legal consequence for the requested Member State to non-compliance with the time limit of two weeks or, moreover, of a reasonable period of time.

96. In the light of the foregoing, the answer to the third and fourth questions should be that the requested Member State must endeavour to reply to a re-examination request within a period of two weeks and in any event within a reasonable period of time. It is for the referring court to determine in each specific case, after assessing all the relevant circumstances, whether the period of time taken by the requested Member State was reasonable.

E. The fifth and sixth questions

1. Arguments

97. By its fifth and sixth questions, the referring court asks about the consequences of failure by the requested Member State to reply to the re-examination request and, in particular, whether the requesting Member State or the requested Member State is then responsible for examining an application for international protection.

98. The applicant in the main proceedings in Case C-47/17 asserts that, if the requested Member State does not reply within a period of two weeks [53] or does not reply at all, the requesting Member State becomes definitively responsible for processing the asylum application. He states that, 'since the consequences of the belated adoption of a decision on an initial take back request are *expressly* laid down in Article 25(2) of [the Dublin III Regulation], that provision cannot apply *implicitly* to the re-examination procedure. Consequently, it must be … concluded that, as the transfer of responsibility to the Member State is extremely radical, only an express rule can provide for such transfer. In the absence of a specific provision under which, in the context of a re-examination request, failure to reply would result in responsibility for the requested Member State, the requesting Member State remains responsible.' In addition, he states that 'there is a fundamental difference between the two procedures as, in the case of a re-examination procedure, there is already an explicit refusal to take back, thereby establishing the responsibility of the requesting Member State. Only a positive reply to a re-examination request (within a reasonable period of time) can nevertheless result in responsibility for the requested Member State.'

99. In his replies to the Court's written questions, the applicant in the main proceedings in Case C-48/17 [54] maintains that, in the case of a negative reply by the requested Member State to a take charge or take back request, it is the requesting Member State that is responsible for examining the application for international protection. He asserts that the fact that the requested Member State subsequently changes its view and would henceforth be willing to take charge of or take back the person concerned can no longer alter its responsibility for examining the application for international protection. [55] According to the applicant in the main proceedings in Case C-48/17, the Member State responsible for examining an application for international protection is determined, as the case may be, no later than two and a half months, three and a half months, four months or five months after

52 See point 113 of this Opinion.

53 Or within a reasonable period of time.

54 I note that the applicant in the main proceedings in Case C-48/17 confirmed at the hearing on 16 January 2018 that in his appeal in the main proceedings he is requesting that his application be examined by the Netherlands authorities and not by the Italian authorities.

55 See, by analogy, paragraph 59 of the judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587).

the application for protection has been lodged. He submits that, under Article 31(3) of Directive 2013/32, the examination procedure must be concluded within six months. Furthermore, he maintains that the re-examination procedure cannot apply after the periods laid down in Articles 22(1) and (6) and 25(1) of the Dublin III Regulation have expired.

100. The applicant in the main proceedings in Case C-48/17 submits that the additional procedure of re-examination, established by Article 5(2) of Regulation No 1560/2003, was not adopted on the basis of Article 21(3), Article 23(3), Article 23(4) or Article 24(5) of the Dublin III Regulation, cited as a legal basis in the preamble to Regulation No 1560/2003. 'Since the Dublin III Regulation does not confer on the Commission the power to adopt a re-examination procedure, Article 5(2) of Regulation [No 1560/2003] is invalid because it is contrary to Articles 290 and 291 TFEU.' He also submits that that provision is invalid for the further reason that the re-examination procedure which it lays down runs counter to the objective set out in recital 5 of the Dublin III Regulation [56] and to the need for effective protection of the right of asylum and the right of any person to have his or her affairs handled impartially, fairly and within a reasonable time. Finally, he submits that the conciliation procedure provided for in Article 37 of the Dublin III Regulation cannot apply in order to settle disagreements in the specific case of an individual applicant for international protection.

101. According to the Netherlands Government, 'the requested Member State is not designated as the Member State responsible if it does not give a timely reply to the re-examination request'. 'It is apparent from the fact that such a clear consequence is not mentioned in Article 5(2) of [Regulation No 1560/2003] that the requested Member State does not become responsible for processing the application for international protection if the time limit for replying is exceeded.' 'Similarly, the requesting Member State does not directly become the Member State responsible when the requested Member State does not reply within the time limit mentioned in Article 5(2) of [Regulation No 1560/2003]. Neither [Regulation No 1560/2003] nor [the Dublin III Regulation] provides that the requesting Member State is responsible if the time limit for replying to a re-examination request is exceeded.'

102. The Netherlands Government takes the view that the system established by the Dublin III Regulation entails 'that responsibility of the requesting Member State does not necessarily arise from the time limit mentioned in Article 5(2) of [Regulation No 1560/2003] being exceeded, as the requesting Member State has other options available if the re-examination request does not give rise to acceptance by the requested Member State. … the requesting Member State may conclude, for example in the light of newly obtained information, that another Member State is responsible … That was the situation in Case C-48/17, where the Netherlands authorities made a take back request to Italy on the basis of information which they received from the Swiss authorities in reply to a take back request. Similarly, new information indicating that another Member State is responsible may still become apparent in the course of the re-examination procedure. … The requesting Member State will first have to establish that, on the basis of the criteria mentioned in [the Dublin III Regulation], no Member State responsible can be designated or that transfer to the first Member State with which the application was lodged is impossible. It is only then that the determining Member State becomes the Member State responsible (third subparagraph of Article 3(2) of [the Dublin III Regulation]).'

103. The United Kingdom Government considers that 'a response to a re-examination request, on the other hand, takes place after the issue of responsibility for determining an application for international protection has already been settled. By definition, the requested Member State will already have rejected the request to take back [or] to take charge, with the consequence that the requesting

56 According to recital 5 of the Dublin III Regulation, the method for determining the Member State responsible 'should be based on objective, fair criteria'.

Member State is responsible. The Dublin III system has thus achieved its objective of determining where responsibility lies. The re-examination regime in Article 5(2) of [Regulation No 1560/2003] provides an opportunity for the requesting Member State to contest the decision of the requested Member State, but, critically, against the background of responsibility already having been determined.'

104. According to the Hungarian Government, 'if a Member State does not reply to a request to re-examine a take back request, it is on the basis of the reply given explicitly or implicitly to the initial take back request that it is possible to determine the Member State responsible for examining the application for international protection. If the requested Member State does not reply to the take back request within one month or two weeks, under Article 25 of [the Dublin III Regulation] its failure to act implies acceptance of that request and itself entails the obligation for the requested Member State to take back the person concerned. It is self-evident, on the other hand, that a negative reply does not result in the requested Member State becoming responsible.'

105. The Commission maintains, in accordance with its reply to the second question, that 'an unreasonably long time taken by the requested Member State to reply to a re-examination request cannot give rise to a transfer of responsibility'. It asserts that, 'in circumstances like those in the main proceedings in Case C-47/17, no legal consequence for the requested Member State is attached to the fact that that Member State did not reply to the re-examination request within a period of two weeks or within a reasonable period of time because that requested Member State had already refused the take back request within the time limit laid down in Article 25(1) of [the Dublin III Regulation] and no further automatic transfer of responsibility to the requested Member State occurs by reason of the time which elapsed. In circumstances like those in the disputes in the main proceedings, there is also no transfer of responsibility to the requesting Member State on the basis of [the Dublin III Regulation] or Regulation No 1560/2003: in Case C-48/17, responsibility had already been determined on the basis of tacit acceptance of a take charge request, whilst in circumstances like those in Case C-47/17 the requesting Member State was entitled to consider a Eurodac hit to be reliable evidence that the requested Member State was responsible as the Member State of the first application for asylum.

106. According to the Commission, 'contrary to what the referring court seems to think, the Netherlands authorities were not required to declare themselves immediately responsible on the expiry of the indicative period of two weeks which the requested Member State is allowed to reply to a re-examination request. The Netherlands did not in any way adopt unreasonable behaviour by waiting several months for the German authorities to resolve the problem … which the re-examination requests posed them. Eventually, the Netherlands declared itself competent on 14 December 2016, which can be justified on the basis of Article 3(1) or Article 17 of the Dublin III Regulation'.

107. In its replies to the Court's written questions, the German Government takes the view that 'the negative reply by the requested Member State to a take charge or take back request within the time limits laid down in Article 22(1) and (6) and Article 25(1) of the Dublin III Regulation respectively results in principle in the responsibility of the requesting Member State for examining the application for international protection. That responsibility arises on receipt by the requesting Member State of the rejection of the request'. It adds that, if 'the requested Member State does not reply within the time limit of two weeks provided for in Article 5(2) of Regulation [No 1560/2003] … that does not result in … a transfer of responsibility to the requested Member State. The requesting State remains responsible. If it is no longer possible to make a new take charge or take back request to the requested Member State where there are new circumstances …, the date of the rejection of the re-examination or the expiry without reply of the period for replying provided for in Article 5(2) of [Regulation No 1560/2003] provides the basis for the conclusion of the re-examination procedure and triggers the period for processing provided for in Article 31(3) of [Directive 2013/32].'

2. Analysis

108. I consider that, since Article 22(1) and (6) and Article 25(1) of the Dublin III Regulation do not define the legal effects of a negative reply by the requested Member State to a take charge or take back request, the requesting Member State does not automatically become responsible, at that time, for examining an application for international protection. [57]

109. Provided that the mandatory time limits laid down in Articles 21 and 23 of the Dublin III Regulation are complied with, the requesting Member State may still submit a new take charge or take back request to a Member State different from the first requested Member State, which could possibly result in that Member State having responsibility for examining the application for international protection.

110. Furthermore, where the requesting Member State considers that the negative reply is based on a misappraisal, or where it has additional evidence to put forward, [58] it may, within three weeks following receipt of that reply, request a re-examination of its take charge or take back request, pursuant to Article 5(2) of Regulation No 1560/2003.

3. Explicit acceptance by the Member State of responsibility for examining an application for international protection

111. I also consider that, *provided that the criteria establishing the Member State responsible set out in the Dublin III Regulation, in particular in Chapter III, are complied with*, the requested Member State pursuant to Article 5(2) of Regulation No 1560/2003 is responsible for examining an application for international protection if it accepts that responsibility *explicitly* within a reasonable period of time [59] in the light of the specific circumstances of the case. [60]

112. The question therefore arises of what is a reasonable period of time for replying to a re-examination request. As I have already stated in points 94 to 96 of this Opinion, it is impossible in my view to determine in advance and in the abstract what is a reasonable period of time. However, in order that legal certainty can be best ensured, it is appropriate to give some guidance [61] to the national court on the subject.

113. As the requested Member State has already given a negative reply to a take back or take charge request and the reply to the re-examination request must be given within an indicative time limit of two weeks, I consider that, in the event of failure to reply to a re-examination request which concerns the same person for more than one month, a period which could be extended to two months in exceptional circumstances, the requesting Member State must assume responsibility for examining the application for international protection. On the other hand, if the requested Member State explicitly accepts that responsibility within a reasonable period of time, it becomes responsible for examining an application for international protection.

57 See points 62 and 63 of this Opinion.

58 It should be noted that under Article 5(1) of Regulation No 1560/2003 a negative reply must state full reasons.

59 It should be noted that the time limit of two weeks is only an indicative time limit. In addition, in my view, a timely reply is equivalent to a reply within a reasonable period of time.

60 It is then that the requested Member State becomes responsible for examining the application for international protection. Furthermore, it is from that explicit acceptance by the requested Member State that, in accordance with Article 29 of the Dublin III Regulation, the six-month period for carrying out the transfer of the person concerned starts to run.

61 Which could not under any circumstances be construed as mandatory maximum limits.

114. I would point out in this regard that in Case C-48/17 the Italian authorities accepted responsibility on 26 January 2016 for examining the application for international protection lodged by the person concerned, following a re-examination request from the State Secretary dated 1 December 2015 and a reminder letter dated 18 January 2016, that is to say, within a period of less than two months after that request was made.

115. Even though it is for the referring court to determine whether, in the light of the specific circumstances of the case, the State Secretary acted with the necessary expeditiousness, it seems to me in any event that, where the requested Member State explicitly accepts responsibility for examining the application for international protection, as in this case, the requesting Member State must notify the person concerned of this as quickly as possible.

116. The Netherlands authorities are said to have informed the lawyer of the applicant in the main proceedings in Case C-48/17 on 31 March 2016 of their intention not to examine his application for international protection and to transfer it to Italy, that is to say, more than two months after the Italian authorities accepted responsibility for examining the application for international protection on 26 January 2016.

117. It would seem, subject to verification by the referring court, that the Netherlands authorities did not act with the necessary expeditiousness in this regard. It is for the referring court, if appropriate, to apply the penalties laid down in national law.

4. Failure by the requested Member State to reply to a re-examination request

118. As Article 5(2) of Regulation No 1560/2003 does not attach any legal consequence to failure by the requested Member State to reply to a re-examination request within a reasonable period of time, such failure to reply is not equivalent to acceptance by that Member State of responsibility for examining an application for international protection.

119. In my view, if the requested Member State does not reply [62] to a re-examination request within a reasonable period of time or if it refuses to accept responsibility for examining the application for international protection, [63] the requesting Member State is responsible [64] for the examination and must inform the person concerned of this as quickly as possible, as he would otherwise be in a kind of legal vacuum [65] where neither the requesting Member State nor the requested Member State was responsible for examining his application for international protection. Such a situation would be wholly unacceptable in the context of the 'Dublin III system', which is characterised by the need to ensure legal certainty in the determination of the Member State responsible for processing an application for international protection and, in doing so, lays down a condition of rapid processing.

62 I consider that, although a reply may invoke general circumstances such as a sizeable influx of applicants for international protection, it must in any event relate specifically to the person concerned.

63 This situation is not at issue in the cases in the main proceedings.

64 By force of circumstance.

65 Or, at the very least, 'legal limbo'.

120. It should be noted that in Case C-47/17 eight months elapsed between the re-examination request sent by the State Secretary to the German authorities on 14 April 2016 and 14 December 2016, the date on which the Kingdom of the Netherlands finally declared that it was responsible for examining the application for international protection,[66] as the German authorities had not replied to the re-examination request.[67]

121. I consider, subject to verification by the referring court, that this period of time is disproportionate and cannot be justified even where Member States are faced with a sizeable influx of applicants for international protection, and this is subject to a financial penalty as provided for in national legislation.

122. In the light of the foregoing, the fifth and sixth questions referred for a preliminary ruling should be answered as follows:

– since Article 22(1) and (6) and Article 25(1) of the Dublin III Regulation do not define the legal effects of a negative reply by the requested Member State to a take charge or take back request, the requesting Member State does not automatically become responsible, at that time, for examining an application for international protection;

– provided that the mandatory time limits laid down in Articles 21 and 23 of the Dublin III Regulation are complied with, the requesting Member State may still submit a new take charge or take back request to a Member State different from the first requested Member State, which could possibly result in that Member State having responsibility for examining the application for international protection;

– following a negative reply to a take charge or take back request within the time limits laid down in Article 22(1) and (6) and Article 25(1) of the Dublin III Regulation, if the requested Member State to which a re-examination request is made pursuant to Article 5(2) of Regulation No 1560/2003 explicitly accepts within a reasonable period of time responsibility for examining the application for international protection, it will be responsible for the examination and must inform the person concerned of this as quickly as possible;

– on the other hand, if the requested Member State does not reply to the re-examination request within a reasonable period of time or if it refuses to accept responsibility for examining the application for international protection, the requesting Member State will be responsible for the examination and must inform the person concerned accordingly as quickly as possible.

66 It should be noted that the applicant in the main proceedings in that case went on a hunger and thirst strike and brought an action before the referring court on account of the undue delay in the determination of the Member State responsible for examining his application for international protection.

67 In the specific case of the applicant in the main proceedings in Case C-47/17, it seems that no reminder was sent to the German authorities. Furthermore, it transpires that, despite contacts between the Netherlands and German authorities on fingerprinting for the Eurodac system, the conciliation procedure provided for in Article 37 of the Dublin III Regulation was not initiated. According to the Commission, that procedure is envisaged for cases of persistent disagreement between Member States on a matter related to the application of the Dublin III Regulation. It notes that the procedure *has not yet ever been used*.

VI. Conclusion

123. In the light of all the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the rechtbank Den Haag, zittingsplaats Haarlem (District Court, The Hague, sitting in Haarlem, the Netherlands), as follows:

– although the requested Member State must endeavour to reply within a period of two weeks to a re-examination request provided for in Article 5(2) of Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, it has no legal obligation to reply within that period. In addition, Article 5(2) of Regulation No 1560/2003 does not attach any legal consequence to failure to reply to a re-examination request within that period;

– the time limit of a maximum of one month provided for in Article 25(1) of 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 is not applicable in the context of the re-examination procedure laid down in Article 5(2) of Regulation No 1560/2003;

– the requested Member State must endeavour to reply to a re-examination request pursuant to Article 5(2) of Regulation No 1560/2003 within a period of two weeks and in any event within a reasonable period of time. It is for the referring court to determine in each specific case, after assessing all the relevant circumstances, whether the period of time taken by the requested Member State was reasonable;

– since Article 22(1) and (6) and Article 25(1) of Regulation No 604/2013 do not define the legal effects of a negative reply by the requested Member State to a take charge or take back request, the requesting Member State does not automatically become responsible, at that time, for examining an application for international protection. Provided that the mandatory time limits laid down in Articles 21 and 23 of Regulation No 604/2013 are complied with, the requesting Member State may still submit a new take charge or take back request to a Member State different from the first requested Member State, which will possibly result in that Member State having responsibility for examining the application for international protection. Following a negative reply to a take charge or take back request within the time limits laid down in Article 22(1) and (6) and Article 25(1) of Regulation No 604/2013, if the requested Member State to which a re-examination request is made pursuant to Article 5(2) of Regulation No 1560/2003 explicitly accepts within a reasonable period of time responsibility for examining the application for international protection, it will be responsible for the examination and must inform the person concerned of this as quickly as possible. On the other hand, if the requested Member State does not reply to the re-examination request within a reasonable period of time or if it refuses to accept responsibility for examining the application for international protection, the requesting Member State will be responsible for the examination and must inform the person concerned accordingly as quickly as possible.