



COMPROMISE AMENDMENTS

[1- 14]

[on the amended proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU]
[[COM(2020)611- 2016/0224(COD)]]

Rapporteur: [Fabienne Keller]

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COMPROMISE 1 - [Article 2 Scope, Article 4 Definitions, Article 26 Tasks of the responsible authorities when an application is made and Article 27 Registering applications for international protection]

AMs covered: [AM 196 (S&D), partially AM 207 (GREENS),]

AMs falling: [AM 197 (The Left), AM 198 (The Left), AM 200 (The Left), AM 201 (S&D)), AM 202 (GREENS), AM 203 (The Left), AM 204 (GREENS), AM 205 (S&D), AM 206 (The Left), AM 207 (GREENS)]

Article 2

Scope

1. This Regulation applies to all applications for international protection made in the territory of the Member States, including at the external border, in the territorial sea or in the transit zones of the Member States, and to the withdrawal of international protection.
2. This Regulation does not apply to applications for international protection and to requests for diplomatic or territorial asylum submitted to representations of Member States.

(10) — In Article 4 paragraph 1 the following point is added

(i) ~~‘family member’~~

(10a) ***In Article 4, paragraph 2 the following point is added:***

(k) ***‘working day’ means any day of the year from Monday to Friday, except for public holidays.***

(10b) ***In Article 4, paragraph 2 the following point is added:***

(l) ***‘family members’ means family members as defined in Article 2(3) of Directive XXX/XXX/EU [Reception Conditions Directive].***

(11) In Article 26, the following paragraph is added:

‘3. For third-country nationals subject to the screening referred to in Article 3(1) of Regulation (EU) XXX/XXX [Screening Regulation], paragraphs 1 and 2 shall apply only after the screening has ended.’

(12) In Article 27, the following paragraphs are added :

‘5. For third-country nationals subject to the screening referred to in Article 3(1) of Regulation (EU) No XXX/XXX [Screening Regulation], paragraphs 1 to 4 shall apply only after the screening has ended.

6. Where biometric data could not be taken during the screening in accordance with Regulation (EU) No XXX/XXX [Eurodac Regulation] or where the applicant was not subject to a screening, the competent authorities shall take the biometric data at the

latest upon the registration of the application for international protection and transmit them together with the data referred to in Article 12 (c) to (p) of Regulation (EU) No XXX/XXX [Eurodac Regulation] to the Central System and to the Common Identity Repository respectively in accordance with that Regulation.’

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COMPROMISE 2 - [Article 35a Rejection of an application and issuance of a return decision]

AMs covered: [AM 26 (Rapporteur), AM 209 (The Left), AM 210 (Greens), AM 212 (S&D)]

AMs falling: AM 208 (S&D), AM 211 (ECR).

Article 35a.

Rejection of an application and issuance of a return decision

Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States shall issue a return decision that respects Directive XXX/XXX/EU [Return Directive], **provided that the applicant does not fulfil the conditions to apply for a residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other grounds under the applicable national legal framework and that her or his return would not lead to risks of violations of the principle of non-refoulement and other fundamental rights under the Charter of Fundamental Rights and other EU and international obligations.** ~~The return decision shall be issued as part of the decision rejecting the application for international protection or, in a separate act.~~ **In the case of an accelerated procedure or a border procedure, where the return decision is issued as a separate act, it shall be issued at the same time and together with the decision rejecting the application for international protection or without undue delay thereafter.**

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COMPROMISE 3 - [Article 40 Accelerated examination procedure]

AMs covered: [AMs 27 and 28 partly (Rapporteur), AM 228 partly (Rapporteur), AM 215, (S&D) partly, AM 216, (S&D) partly, AM 218, (S&D) partly, AM 219, (ECR) partly, AM 227, (ECR) partly,]

AMs falling: [AM 29 (Rapporteur), AM 213 (The Left), AM 214 (GREENS), AM 221, (S&D)], AM 222 (GREENS), AM 223 (The Left), AM 217, (S&D), AM 220, (NI), AM 225, (S&D), AM 226, (NI),]

(14) Article 40 is amended as follows:

(a) in paragraph 1 the following point is added:

‘(i) the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of **final** decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs. **Should the EUAA provide a guidance note on a country of origin in accordance with Article 10 of Regulation (EU) No XXX/XXX (EU Asylum Agency) showing that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data, Member States shall use this information as reference for the application of this sub-paragraph;**’

(b) in paragraph 5, the following point is added:

‘(c) the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, ~~20%~~ 10% or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of ~~20%~~ 10% or lower cannot be considered as representative for their protection needs. **Should the EUAA provide a guidance note on a country of origin in accordance with Article 10 of Regulation (EU) No XXX/XXX (EU Asylum Agency) showing that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data, Member States shall use this information as reference for the application of this sub-paragraph;**’

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COMPROMISE 4 - [Article 41 Border procedure for the examination of applications for international protection]

AMs covered: [AM 31 (Rapporteur), AM 236 (Greens), AM 238 (ECR), AM 239 (EPP), AM 240 (S&D), AM 33 (Rapporteur), AM 230 (The Left), AM 232 (Greens) and partly AM 292 (Greens), AM 294 (The Left), AM 328 (The Left) AM 41 (Rapporteur), AM 277 (NI), AM 278 (S&D), 279 (The Left), AM 34 (Rapporteur), AM 297 (The Left), AM 301 (EPP), AM 302 (Greens), AM 304 (EPP) AM 38 (Rapporteur), AM 42 (Rapporteur), AM 336 (S&D and its justification, AL337 (The Left), AM 338 (Greens), AM 43 (Rapporteur), AM 265 (Greens), AM 343 (S&D), AM 44 (Rapporteur), AM 371 (The Left), AM 372 (Oetjen), AM 373 (Zoido), AM 375 (ECR), AM 376 (S&D), AM 377 (Greens), AM 379 (Greens), AM 45 (Rapporteur), AM 385 (Zoido), AM 389 (S&D)]

AMs partly covered: AM 285 (The Left), 286 (EPP), AM 287 (Greens), AM288 (Chinnici), AM 289 (NI), AM 290 (S&D), AM 291 (Mandl, AM 322 (The Left), AM 324 (Greens), AM 325 (S&D), AM 330 (Greens), AM 292 (Greens), AM 294 (The Left) AM 328 (The Left) AM 41 (Rapporteur), **AM 54, para 1 (Rapporteur) - para 13,**

AMs falling

(15) Article 41 is replaced by the following:

Article 41

Border procedure for the examination of applications for international protection

1. Following the screening procedure carried out in accordance with Regulation (EU) No XXX/XXX [Screening Regulation], **where applicable** and provided that the applicant has not yet been authorised to enter Member States' territory, a Member State may examine an application in a border procedure where that application has been made by a third-country national or stateless person who does not fulfil the conditions for entry in the territory of a Member State as set out in Article 6 of Regulation (EU) 2016/399. The border procedure may take place:
 - (a) following an application made at an external border crossing point or in a transit zone;
 - (b) following **the** apprehension ~~in~~ **of that third-country national or stateless person by the competent authorities in a Member State territory in direct** connection with an ~~unauthorised~~ **irregular** crossing of the external border;
 - (c) following disembarkation in the territory of a Member State after a search and rescue operation;
 - (d) following relocation in accordance with Article [X] of Regulation (EU) No XXX/XXX ~~[Ex-Dublin~~ Regulation **on Asylum and Migration Management**].
2. Where a border procedure is applied, decisions may be taken on the following:
 - (a) the inadmissibility of an application in accordance with Article 36;

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(b) the merits of an application in an accelerated examination procedure in the cases referred to in Article 40(1) *including where the applicant may be considered, for serious reasons, a threat to internal security, and in full compliance with paragraph 11 of this Article.*

Commented [IDG1]: agreed at shadows meeting on 24.3

3. Member State shall examine an application in a border procedure in the cases referred to in paragraph 1 where the circumstances referred to in Article 40(1), point (e), (f) or (i), apply.

3a. *Member States shall not apply or shall cease to apply the border procedure at any stage of the procedure where:*

- (a) *the determining authority considers that the grounds for rejecting an application as inadmissible or for applying the accelerated examination procedure are not applicable or no longer applicable;*
- (b) *the applicant is an unaccompanied minor;*
- (ba) *the applicant is a minor below the age of 12 or a family member of such a minor or an unmarried minor sibling of such a minor;*
- (c) *the applicant has been identified as a vulnerable person or with special procedural or reception needs and the necessary support cannot be provided in the locations referred to in paragraph 14;*
- (d) *there are medical reasons for not applying the border procedure, including mental health reasons;*
- (e) *the guarantees and conditions for detention as provided for in Articles 8 to 11 of Directive XXX/XXX/EU [Reception Conditions Directive] are not met or no longer met and the border procedure cannot be applied to the applicant concerned without detention;*

In such cases, the competent authority shall authorise the applicant to enter the territory of the Member State and apply the appropriate asylum procedure.

For the purpose of applying point (ba), Member States shall not carry out a medical examination. Where the result of an age assessment is not conclusive, or includes an age-range below 12, Member States shall assume that the minor is below 12.

3b. *Member States shall regularly monitor the application of paragraph 3a. Member States may request support from Union agencies for that purpose.*

The Commission shall regularly assess the application of this paragraph, with the support of the European Union Agency for Asylum, and shall report the conclusions of its assessment to the European Parliament and to the Council on a yearly basis.

4. A Member State may decide *shall* not to apply paragraph 3 I to nationals or stateless persons who are habitual residents of third countries for which that Member State has submitted a notification to the Commission in accordance with Article 25a(3) of Regulation (EC) No 810/2009.

Commented [IDG2]: RAP team proposal agreed at technical level

Where, following the examination carried out in accordance with Article 25a(4) of Regulation (EC) No 810/2009, the Commission considers that the third country is cooperating sufficiently, the Member State *may shall* again apply the provisions of paragraph 3 I.

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Where the Commission considers that the third country concerned is not cooperating sufficiently, the Member State ~~may~~ **shall** continue not to apply paragraph 3 1:

(a) until an implementing act previously adopted by the Council in accordance with Article 25a(5) of Regulation (EC) No 810/2009 is repealed or amended;

(b) where the Commission does not consider that action is needed in accordance with Article 25a of Regulation (EC) No 810/2009, until the Commission reports in its assessment carried out in accordance with paragraph 2 of that Article that there are substantive changes in the cooperation of the third country concerned.

5. ~~The border procedure may only be applied to unaccompanied minors and to minors below the age of 12 and their family members in the cases referred to in Article 40(5) (b).~~

6. Applicants subject to the border procedure shall not be authorised to enter the territory of the Member State, without prejudice to paragraphs 3a 9 and 11.

6a. *Any restriction of an applicant's freedom of movement or any application of detention as part of the border procedure shall be in accordance with Directive XXX/XXX/EU [Reception Conditions Directive recast]. Minors shall, as a rule, not be detained in accordance with Article 11, paragraph 2 of that directive.*

Within ... [six months after the date of entry into force of this Regulation], the European Union Agency for Asylum shall, in accordance with Article 13(2) of Regulation (EU) No XXX/XXX (EU Asylum Agency), develop guidelines on different practices as regards alternatives to detention that could be used in the context of a border procedure.

Within ... [18 months after the entry into force of this Regulation], the Commission shall evaluate the application of this paragraph.

7. When applying the border procedure, Member States ~~shall~~ **may** carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) No XXX/XXX [Regulation on Asylum and Migration Management], without prejudice to the deadlines established in paragraph 11.

8. Where the conditions for applying the border procedure are met in the Member State from which the applicant is relocated, ~~a border procedure may be applied by the~~ **and in the** Member State to which the applicant is relocated in accordance with Article [x]57 of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], ~~a border procedure may be applied by the latter~~, including in the cases referred to in paragraph 1, point (d).

8a. *Where the conditions for applying the border procedure are met in the Member State from which the applicant is transferred and in the Member State to which the applicant is transferred in accordance with Article 35 of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], a border procedure may be applied by the latter.*

9. ~~Member States shall not apply or shall cease to apply the border procedure at any stage of the procedure where:~~

- ~~(a) the determining authority considers that the grounds for rejecting an application as inadmissible or for applying the accelerated examination procedure are not applicable or no longer applicable;~~
- ~~(b) the necessary support cannot be provided to applicants with special procedural needs in the locations referred to in paragraph 14;~~
- ~~(c) there are medical reasons for not applying the border procedure;~~
- ~~(d) detention is used in individual cases and the guarantees and conditions for detention as provided for in Articles 8 to 11 of Directive XXX/XXX/EU [Reception Conditions Directive] are not met or no longer met and the border procedure cannot be applied to the applicant concerned without detention.~~

~~In such cases, the competent authority shall authorise the applicant to enter the territory of the Member State.~~

10. By way of derogation from Article 28 of this Regulation, applications subject to a border procedure shall be lodged no later than five **working** days from registration for the first time or, following a relocation in accordance with Article [x] of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], five **working** days from when the applicant arrives in the Member State responsible following a transfer pursuant to Article 56(1), point (e), of that Regulation **provided that he or she is given an effective opportunity to do so within these time-limits.**

11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall encompass the decision referred to in paragraph 2 ~~and 3~~ and any decision on an appeal if applicable and shall be completed within 12 weeks from when the application is registered. **Following, including where the border procedure is applied in another Member State following a relocation in accordance with paragraph 8 or a transfer in accordance with paragraph 8a. If, following that period, the first instance decision and the decision on appeal, if applicable, have not been taken,** the applicant shall be authorised to enter the Member State's territory ~~except when Article 41a(1) is applicable.~~

By way of derogation from the time limits set in Articles 34, 40(2) and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within 12 weeks from when the application is registered.

12. By way of derogation from paragraph 11 of this Article, the applicant shall not be authorised to enter the Member State's territory where:

- (a) the applicant's right to remain **on the territory of a Member State** has been revoked in accordance with Article 9(3), point (a);
- (b) the applicant has no right to remain **on the territory of a Member State** in accordance with Article 54 and has not requested to be allowed to remain for the purposes of an appeal procedure within the applicable time-limit;
- (c) the applicant has no right to remain **on the territory of a Member State** in accordance with Article 54 and a court or tribunal has decided that the applicant is not to be allowed to remain pending the outcome of an appeal procedure.

In such cases, where the applicant has been subject to a return decision issued in accordance with the Directive XXX/XXX/EU [Return Directive] or a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, Article 41a ~~shall~~ **may** apply.

13. During the examination of applications subject to a border procedure, the applicants shall be **accommodated in accordance with Directive XXX/XXX/EU [Reception Conditions Directive recast]. The competent national authorities may require applicants to stay at locations, designated at their discretion, for completing the border procedure on the Member States' territory. A border procedure may take place** ~~kept~~ at or in proximity to the external border or transit zones **on the Member State's territory, provided that the conditions under this paragraph are fully respected and applicants' special needs are properly safeguarded.** Each Member State shall notify to the Commission, [two months after the date of the application of this Regulation] at the latest, the locations where the border procedure will be carried out, at the external borders, in the proximity to the external border or transit zones, including when applying paragraph 3 and ensure that the capacity of those locations is sufficient to process the applications covered by that paragraph. Any changes in the identification of the locations at which the border procedure is applied **on the basis of a decision from competent national authorities**, shall be notified to the Commission **as early as possible and at least two months** ~~two weeks~~ in advance of the changes taking effect.
14. In situations where, **on the basis of an assessment by the Commission or a competent national authority of the Member State concerned, it is found that** the capacity of ~~the locations~~ **a location as notified by Member States that Member State** pursuant to paragraph 4 ~~13~~ **13** is temporarily insufficient to process the applicants covered by paragraph 3, ~~Member States that Member State may~~ **shall** designate other locations within ~~their~~ **its** territory of the Member State and, upon notification to the Commission, **shall** accommodate applicants ~~there, on a temporary basis and for the shortest time necessary,~~ **under the conditions provided for in Directive XXX/XXX/EU [Reception Conditions Directive recast].**

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COMPROMISE 5 - [Article 41a Border procedure for carrying out return]

AMs covered: [AM 400 (S&D) AM 49 (Rapporteur), AM 414 (EPP), AM 415 (Zoido, Vozemberg, Fourlas), AM 417 (ECR), AM 418 (S&D) AM 46 (Rapporteur), AM 404 (S&D), AM 405 (ECR), AM 406 (EPP) AM 433 (S&D)]

AMs falling: AM 395 THE LEFT, AM 396 (GREENS), AM 397 THE LEFT, AM 398 (GREENS), AM 401 THE LEFT, AM 402 (GREENS), AM 403 (EPP), AM 407 (NI), AM 408 (GREENS), AM 409 THE LEFT, AM 410 (S&D), AM 412 (GREENS), AM 413 THE LEFT, AM 416 (NI), AM 419 (EPP), AM 420 (GREENS), AM 421 THE LEFT, AM 424 THE LEFT, AM 425 (GREENS), AM 428 (GREENS), AM 429 THE LEFT, AM 431 (S&D), partly, AM 434 (GREENS), AM 435 (S&D), AM 436 THE LEFT.

(16) The following new Article 41a is inserted:

Article 41a

Border procedure for carrying out return

- ~~Third-country nationals and stateless persons whose application is rejected~~ **Following the rejection of the application of a third-country national** in the context of the procedure referred to in Article 41 ~~shall not be authorised to enter the territory of the Member State,~~ **Member States may carry out the return of the third-country national in a border procedure.**

Where a Member State carries out a third country national's return in a border procedure, the third-country national shall not be authorised to enter the territory of that Member State, without prejudice to Article 6(5) of the Regulation (EU) 2016/39.
- Persons referred to in paragraph 1 shall be ~~kept~~ **accommodated** for a period not exceeding 12 weeks in locations **designated at the discretion of the Member States, and which may be situated** at or in proximity to the external border or transit zones **in the territory of the Union;** ~~where a Member State cannot accommodate them in those locations, it can resort to the use of other locations within its territory~~ **The conditions in those locations shall meet standards equivalent to those of the material reception conditions and health care provided to applicants in accordance with Article 16 and 17 of Directive XXX/XXX/EU [Reception Conditions Directive recast].** The 12-week period shall start from when the applicant, ~~third-country national or stateless person~~ no longer has a right to remain ~~and/or~~ is not allowed to remain.
- For the purposes of this Article, Article 3, Article 4(1), Articles 5 to 7, Article 8(1) to (5), Article 9(2) to (4), Articles 10 to 13, Article 15, Article 17~~(1)~~, Article 18(2) to (4) and Articles 19 to 21 of Directive XXX/XXX/EU [recast Return Directive] shall apply.
- Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 **shall** ~~may~~ be granted a period for voluntary departure **of not exceeding 15-25 days.**

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5. Persons referred to in paragraph 1 who have been detained during the procedure referred to in Article 41 ~~and~~ who no longer have a right to remain and are not allowed to remain may continue to be detained for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process.
6. Persons referred to in paragraph 1 who no longer have a right to remain and are not allowed to remain, and who were not detained during the procedure referred to in Article 41, may be detained if there is a risk of absconding within the meaning of Directive XXX/XXX/EU [Return Directive], if they avoid or hamper the preparation of return or the removal process or they pose a risk to ~~public policy~~, public security or national security.
7. Detention shall be maintained for as short a period as possible, **and only** as long as **a reasonable prospect of removal exits and** arrangements are in progress and executed with due diligence. The period of detention shall not exceed the period referred to in paragraph 2 and shall be included in the maximum periods of detention set in Article 15 (5) and (6) of Directive XXX/XXX/EU [Return Directive].
8. Member States that, following the rejection of an application in the context of the procedure referred to in Article 41, issue a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, **shall not apply Article 2(2), point (a) of and that have decided not to apply Directive XXX/XXX/EU [Return Directive] in such cases pursuant to Article 2(2), point (a), of that Directive, shall ensure that the treatment and level of protection of the third country nationals and stateless persons subject to a refusal of entry are in accordance with Article 4(4) of Directive XXX/XXX/EU [Return Directive] and are equivalent to the ones set out in paragraphs 2, 4 and 7 of this Article.**

COMPROMISE 6 - [Article 41b Personnel in the border procedure]

AMs covered: [AM 52 (Rapporteur), AM 381 (Greens), AM 439 (EPP)]

AMs falling: [AM 53 (Rapporteur)]

(16a (new)) The following new Article 41b is inserted:

Article 41b

Personnel in the border procedure

1. ***In accordance with Article 5 of this Regulation, Member States shall provide the determining authority with sufficient personnel who have the appropriate knowledge and have received the necessary training, including on fundamental rights, to carry out its tasks in the context of the border procedure.***
2. ***By ... [six months after the date of entry into force of this Regulation] the European Union Agency for Asylum shall ~~to~~ issue guidelines, in cooperation with national authorities and other Union bodies, offices and agencies, to assist Member States with the planning and allocation of the appropriate level of personnel, for the purpose of paragraph 1, in accordance with article 13 of Regulation (UE) 2021/2303. Those guidelines shall specify the requirements for personnel in order to be able to comply with procedural and reception requirements, in terms of number, type and qualifications.***
3. ***Where the European Union Agency for Asylum considers that the availability and capacity of personnel is insufficient on the basis of Article 14(3)(b) of Regulation (EU) 2021/2303, Member States may request the assistance of EU in accordance with Article 57a.***

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COMPROMISE 7 - [Article 43 Exception from the right to remain in subsequent applications]

AMs covered: [partially covered: AM 442 (S&D), AM 443 (EPP), AM 444 (NI/EPP)]

AMs falling: [AM 440 (GREENS), AM 441 (THE LEFT)]

(17) Article 43 is amended as follows:

‘(a) Point (a) is ~~deleted~~ **replaced by:**

~~The following point (c) is added in Article 43:~~

(ea) a first subsequent application has been lodged within one year of the decision of the determining authority on the first application merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant’s imminent removal from the Member State, pending the finalisation of the decision declaring that application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented in accordance with Article 42(4)’

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COMPROMISE 8 - [Article 53 The right to an effective remedy]

AMs covered: [AM 445 (Greens), AM 446 (The Left), AM 458 (The Left), AM 459 (Greens), AM 474 (The Left) AM 450 (S&D) AM 456 (Renew) AM 55 (Rapporteur), AM 457 (EPP), AM 460 (S&D) AM 461 (Greens), AM 462 (S&D), AM 463 (The Left), AM 464 (Greens), AM 467 (S&D), AM 469 (EPP) AM 470 (Greens), AM 471 (The Left), AM 56 (Rapporteur), AMs 478, 479, 484 (S&D), AM 480, 487 (EPP), 488 (ECR), AM 490 (S&D), AM 393 (The Left), AM 491 (Greens), AM 492 (The Left) AM 57 (Rapporteur), AM 493 (S&D), AM 494 (The Left), AM 495 (Greens), AM 496 (EPP) AM 475 (S&D) AM 476 (Greens), AM 477 (The Left)]

AMs falling: [AM 447 (S&D), AM 448 (S&D), AM 449 (S&D), AM 451 (The Left), AM 453 (The Left), AM 454 (The Left), AM 455 (Greens), AM 472 (EPP), AM 473 (The Left), AM 481, AM 482 (NI), AM 483 (Greens), AM 485 (NI), AM 486 (The Left), AM 489 (Greens)]

(18) Articles 53 and 54 are replaced by the following:

Article 53

The right to an effective remedy

1. Applicants shall have the right to an effective remedy before a court or tribunal against ***in accordance with the basic principles and guarantees provided for in Chapter II against the following:***
 - (a) a decision rejecting an application as inadmissible;
 - (b) a decision rejecting an application as ***unfounded or manifestly*** unfounded in relation to both refugee and subsidiary protection status;
 - (c) a decision rejecting an application as implicitly withdrawn;
 - (d) a decision withdrawing international protection;
 - (e) a return decision.

(ea) a decision determining the applicant's age.

In order to fulfil the time-limits provided for in this regulation, return decisions shall may be appealed before the same court or tribunal and within the same judicial proceedings and the same time-limits as decisions referred to in points (a), (b), (c) and (d). Applicants shall be duly informed in a timely manner of their right to appeal.
2. Persons recognised as eligible for subsidiary protection shall have the right to an effective remedy against a decision considering their application unfounded in relation to refugee status. ~~Where subsidiary protection status granted by a Member State offers the same rights and benefits as refugee status under Union and national law, the appeal against that decision in that Member State may be considered as inadmissible where provided for in national law.~~

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3. An effective remedy within the meaning of paragraph 1 shall provide for a full and *ex nunc* examination of both facts and points of law, at least before a court or tribunal of first instance, including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX/XXX [Qualification Regulation].

Without prejudice to the applicant's right to an oral hearing as a general principle, the court or tribunal may consider that the procedure referred to in the first subparagraph be done through written submissions in the context of the border procedure.

4. *For the purpose of a hearing*, applicants shall be provided with interpretation ~~for the purpose of a hearing~~ *in a language they understand by qualified personnel* before the competent court or tribunal ~~where such a hearing takes place and~~ where appropriate communication cannot otherwise be ensured.

5. Where the court or tribunal considers it necessary, it shall ensure the translation of relevant documents that have not already been translated in accordance with Article 33(4). Alternatively, translations of those relevant documents may be provided by other entities and paid for from public funds in accordance with national law.

- ~~6. If the documents are not submitted in time for the court or tribunal to ensure their translation, the court or tribunal may refuse to take those documents into account if they are not accompanied by a translation provided by the applicant.~~

Commented [IDG3]: [Recital replacing para 6 is Recital 64a \(new\)](#)

7. Member States shall lay down the following time-limits in their national law for applicants to lodge appeals against the decisions referred to in paragraph 1.

- (a) at least ~~one week~~ **7 working days** in the case of a decision rejecting an application as inadmissible, as implicitly *or explicitly* withdrawn *or manifestly unfounded* or as unfounded if at the time of the decision any of the circumstances listed in Article 40(1) or (5) apply;
- (b) **at least 15 working days** ~~between a minimum of two weeks and a maximum of two months~~ in all other cases.

Member States shall extend the time limits laid down in this paragraph if the specific circumstances of the application make it necessary.

8. The time-limits referred to in paragraph 7 shall start to run from the date when the decision of the determining authority is notified to *effectively received by* the applicant or his or her representative or legal adviser. *If the applicant has requested free legal assistance and representation, the time-limits shall only start to run from the date on which a legal adviser is appointed or, in case of a negative decision, from the date on which that negative decision becomes final.* The procedure for notification shall be laid down in national law.

9. Member States ~~may shall~~ provide for only one level of appeal in relation to a decision taken in the context of the border procedure.

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COMPROMISE 9 - [Article 54 Suspensive effect of appeal]

AMs covered: [AM 497 (The Left), AM 498 (Greens), AM 499 & AM 503 (S&D), AM 500 & AM 502 (Devesa, Aguilar), AM 504 (The Left), AM 505 (Greens), AM 511 (EPP), AM 513 (S&D)], AM 510 (S&D), partially, AM 516 (S&D)],

AMs falling: AM 501 (EPP), AM 506 (The Left), AM 507 (Greens), AM 508 (S&D), AM 509 (S&D), AM 514 (S&D)], AM 515 (EPP), AM 504 (The Left), AM 514 (S&D)], AM 518 (The Left), AM 519 (S&D)], AM 520 (S&D)], AM 521 (Greens), AM 522 (The Left), AM 523 (Greens), AM 524 (S&D)], AM 524 (S&D)], AM 527 (S&D), AM 529 (S&D), AM 530 (S&D) AM 531 (Greens), AM 532 (S&D)], AM 533 (The Left), AM 534 (S&D) AM 535 (The Left), AM 536 (Greens), AM 537 (S&D)], AM 538 (S&D)], AM 539 (S&D)].

Article 54

Suspensive effect of appeal

1. The effects of a return decision shall be automatically suspended for as long as an applicant has a right to remain or is allowed to remain in accordance with this Article.
2. Applicants shall have the right to remain on the territory of the Member States until the time-limit within which **applicants can** ~~to~~ exercise their right to an effective remedy before a court or tribunal of first instance has expired and, where such a right has been exercised within the time-limit, pending the outcome of the remedy.
3. ~~The~~**Without prejudice to the principle of non-refoulement, Member States may provide that an** applicant shall not have ~~the~~ right to remain pursuant to paragraph 2 where the competent authority has taken one of the following decisions:
 - (a) a decision, **including a decision in a border procedure**, which rejects an application as unfounded or manifestly unfounded if at the time of the decision any of the circumstances listed in Article 40(1), **points (a), (b), (c), (d), (e), (f), and (5), point (b)** apply ~~[including safe country of origin]~~ **unless Article 47(4a) applies, or in the cases subject to the border procedure;**
 - (b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) ~~[first country of asylum] or (c) [subsequent applications without new elements];~~
 - (c) a decision which rejects an application as **explicitly** ~~implicitly~~ withdrawn;
 - (d) a decision which rejects a subsequent application as unfounded or manifestly unfounded;
 - ~~(e) a decision to withdraw international protection in accordance with Article 14(1), points (b), (d) and (e), and Article 20(1), point (b), of Regulation No XXX/XXX (Qualification Regulation).~~

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4. In the cases referred to in paragraph 3, a court or tribunal shall have the power to decide, following an examination of both facts and points of law, whether or not the applicant shall be allowed to remain on the territory of the Member States pending the outcome of the remedy upon the applicant's request. The competent court or tribunal **shall** ~~may~~ under national law have the power to decide on this matter *ex officio*.
5. For the purpose of paragraph 4, the following conditions shall apply:
 - (a) **where the decision has been taken in a border procedure**, the applicant shall have a time-limit of at least 5 **working** days from the date when the decision is notified to him or her to request to be allowed to remain on the territory pending the outcome of the remedy;
 - (b) the applicant shall be provided with interpretation in the event of a hearing before the competent court or tribunal, where appropriate communication cannot otherwise be ensured;
 - (c) the applicant shall be provided, ~~upon request~~, with free legal assistance and representation in accordance with Article 15(4) and (5);
 - (d) the applicant shall have a right to remain:
 - (i) until the time-limit for requesting a court or tribunal to be allowed to remain has expired;
 - (ii) where the applicant has requested to be allowed to remain within the set time-limit, pending the decision of the court or tribunal on whether or not the applicant shall be allowed remain on the territory.
 - (e) **the applicant shall be duly informed in a timely manner of her or his rights under this paragraph.**
6. In cases of subsequent applications, by way of derogation from paragraph 5 6, point (d) of this Article, Member States may provide in national law that the applicant shall not have a right to remain, without prejudice to the respect of the principle of *non-refoulement*, if the appeal has been made merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State, in cases where it is immediately clear to the court that no new elements have been presented in accordance with Article 42(4).
7. An applicant who lodges a further appeal against a first or subsequent appeal decision shall not have a right to remain on the territory of the Member State, without prejudice to the possibility for a court or tribunal to allow the applicant to remain upon the applicant's request or acting *ex officio*.

COMPROMISE 10 - [Article 57a Role of EU Agencies]

AMs covered: [AM 61 (Rapporteur), AM 199 (EPP), AM 414 (EPP), AM 541 (Greens)]

Ams falling:

(19 (new)) The following new Article 57a is inserted:

Article 57a

Role of EU agencies

1. *The EU agencies acting in the field of asylum and migration management shall, within their respective mandates, provide support to the Member States and the Commission with a view to ensuring the proper implementation and functioning of this Regulation, in particular the provisions related to the accelerated examination procedure under Article 40, the border procedure for the examination of applications for international protection under Article 41 and the border procedure for carrying out return under Article 41a.*
2. *The European Union Agency for Asylum shall, in accordance with Article 16(1)(d) of Regulation (EU) 2021/2303, propose on its own initiative operational and technical assistance to a Member State related to the implementation of this Regulation. The European Border and Coast Guard Agency shall, in accordance with Article 48, of Regulation (EU) 2019/1896, propose on its own initiative operational and technical assistance to a Member State related to the implementation of this Regulation. The European Union Agency for Fundamental Rights shall, in accordance with Article 4 of Regulation (EU) 168/2007, propose on its own initiative operational and technical assistance to a Member State related to the implementation of this Regulation.*

Where a Member State does not agree with a proposal within the meaning of Article 16(1)(d) of Regulation (EU) 2021/2303 or of Article 48 of Regulation (EU) 2019/1896, it shall explain its reasons for that rejection in a timely manner.
3. *For the purpose of this Article, the European Union Agency for Asylum, the European Border and Coast Guard Agency and the European Union Agency for Fundamental Rights shall each lay down a list of tasks in their remit for the implementation of this Regulation, in accordance with their respective mandate. They shall communicate that list to the Commission and to the Member States within one month from [date of entry into force of this Regulation].*

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COMPROMISE 11 - [Article 57c Monitoring of respect for fundamental rights in the border procedure]

AMs covered: [AM 63 (Rapporteur), AM 540 (S&D), AM 541 (Greens), AM 542 (The Left), AM 199 (EPP)]

Ams falling:

(20 (new)) The following new Article 57c is inserted:

Article 57c

Monitoring of respect for fundamental rights in the border procedure

- 1. Member States shall adopt relevant provisions to investigate all allegations of non-respect for fundamental rights during the border procedure for the examination of applications for international protection under Article 41 and the border procedure for carrying out return under Article 41a.**

They shall adopt provisions under national law to penalise a failure to respect fundamental rights. The penalties provided for shall be effective, proportionate and dissuasive.

- 2. Each Member State shall establish an independent monitoring mechanism or designate an existing independent mechanism, if it meets the criteria set out in this Regulation.**

The mechanism shall monitor compliance with Union and international law, including the Charter of Fundamental Rights, during the border procedure, including in relation to

- a) the access to the asylum procedure;**
- b) the procedural safeguards applicable to the person concerned;**
- c) the compliance of personnels and actors involved in the border procedure with Union and international law;**
- d) the principle of non-refoulement;**
- e) the best interest of the child;**
- f) the right to health care;**
- g) reception conditions;**
- h) the relevant rules on detention of the person concerned, in particular rules concerning the grounds for and the duration of detention;**

It shall ensure that allegations of non-respect for fundamental rights in all relevant activities for all third-country nationals referred to in Article 3(1) and 3(2) are properly investigated and dealt with effectively and without undue delay, or where

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necessary trigger such investigations. It shall monitor the progress of these investigations.

3. *Member States shall put in place adequate safeguards to guarantee the independence of the mechanism, in line with criteria recognised under relevant international human rights law and standards.*

Member States shall involve national human rights institutions, national ombudspersons and international organisations in the management, operation, and participation of the mechanism. They may also involve relevant non-governmental organisations. Insofar as one or more of those institutions or organisations are not directly involved in the mechanism, the bodies responsible for the monitoring mechanism shall establish and maintain close links with them. The bodies responsible for the mechanism shall establish and maintain close links with the national data protection authorities and the European Data Protection Supervisor.

4. *Member States shall provide bodies responsible for the mechanism with access to all relevant locations, including reception and detention facilities, individuals and documents, insofar as such access is necessary to allow the bodies responsible for the mechanism to fulfil the obligations set out in this Article. Where information gathered on an individual case suggests that a criminal offence has been committed, that information shall be handed over to the national prosecuting authorities/prosecution service.*

6. *The FRA shall issue general guidance for Member States on the establishment of a monitoring mechanism and its independent functioning. Furthermore, Member States may request the FRA to support them in developing their national monitoring mechanism, including the safeguards for independence of such mechanisms, as well as the monitoring methodology and appropriate training schemes.*

7. *The mechanism referred in this Article shall be complementary to the mechanism referred to in Article 7 of Regulation. (EU) XXX/XXX [Screening Regulation].*

It shall be without prejudice to the monitoring mechanism for the purpose of monitoring the operational and technical application of the CEAS as set out in Article 14 of Regulation (EU) xxxx/xxxx [EU Asylum Agency Regulation] and to the role of the fundamental rights monitors in monitoring respect for fundamental rights in all activities of the European Border and Coast Guard Agency as set out in Article 80 of Regulation (EU) 2019/1896 [European Border and Coast Guard Regulation].

COMPROMISE 12 - [Article 59a Monitoring]

AMs covered: [AM 62 (Rapporteur) AM 381, AM 383 (Greens), AM 391 (The Left)]

Ams falling:

(21 (new)) The following new Article 59a is inserted:

Article 59a (ex-Article 57b)

Monitoring

- 1. The Commission shall regularly monitor the application of this Regulation. For this purpose, it shall be assisted by the European Union Agency for Asylum, in accordance with Article 14 of Regulation (EU) 2021/2303.**
- 1a. The monitoring shall cover, in particular, the following aspects:**
 - (a) the access that all competent actors, including for non-governmental organisations, have to facilities used for the purposes of a border procedure;**
 - (aa) the personnel in accordance to article 41b and the coordination between actors in accordance to article 41c.**
 - (b) reception conditions in accordance with Article 41a(2) and requirements specific to the border procedure;**
 - (c) the respect for procedural rights, such as access to information, legal assistance and representation and interpretation or the right to an effective remedy;**
- 1.b Member States shall regularly report to the Commission and to the European Union Agency for Asylum in relation to the implementation and application of Sections III and IV.**
- 2. The European Union Agency for Asylum shall indicate to a Member State where, on the basis of operational and technical monitoring pursuant to Article 14 of Regulation (EU) 2021/2303, it considers that the capacity of a location it has notified pursuant to Article 41(14) is temporarily insufficient for the purposes of processing applicants.**

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COMPROMISE 13 - [Article 60 Evaluation]

AMs covered: [AM 62 (Rapporteur) AM 381, AM 383 (Greens), AM 391 (The Left)]

Ams falling:

(22 (new)) Article 60 is amended as follows:

Article 60

~~Monitoring and~~ *Evaluation*

1. By [two years from entry into force of this Regulation] and every five years thereafter, the Commission shall report to the European Parliament and the Council on the application of this Regulation in the Member States and shall, where appropriate, propose any amendments.

Member States shall, at the request of the Commission, send it the necessary information for drawing up its report not later than nine months before that time-limit expires

- 2a. *(new) As part of its report, the Commission shall report on the methodology used to assess the situation in third countries included in the EU common list of safe third countries of origin, or the potential inclusion of such countries on, or their suspension from, the list. It shall also report on the implementation of procedural safeguards for those seeking international protection originating from a country on the EU common list of safe countries of origin*

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COMPROMISE 14 - Recitals

AMs covered: AM 68 (The Left), AM 69 (Greens), AM 67 (Left), AM 70 (S&D), AM 3 (Rapporteur), AM 72 (EPP), AM 73 (Greens), AM 74 (S&D), AM 76 (The Left), AM 4 (S&D), AM 81 (Vozemberg, Alvarez, Fourlas), AM 83 (Pagazaurtundua), AM 84 (S&D), AM 153 (Oetjen), AM 88 (Greens), AM 89 (S&D), AM 91 (Vautmans, in 't Veld, Oetjen), AM 6&8 (Rapporteur), AM 95 partly (Left), AM 96 (Oetjen), AM 97 partly (Greens), AM 99 (S&D), AM 100 (EPP), AM 104 (EPP), AM 112 (Zoido, Vozemberg, Fourlas), AM 103 (Ferrara), AM 105 (S&D), AM 106 partly (Greens), AM 107 partly (Left), AM 4 (Rapporteur), AM 81 (Vozemberg, Alvarez, Fourlas), AM 83 (Pagazaurtundua), AM 84 (S&D), AM 85 (EPP), AM 153 (Oetjen, in 't Veld, Vautmans, Simecka), AM 10 (Rapporteur), AM 113 (Greens), AM 114&150 (Oetjen, in 't Veld, Vautmans, Simecka), AM 116 (S&D), AM 117 (EPP), AM 118 (Left), AM 119 (ECR), AM 150 (Oetjen, in 't Veld, Vautmans, Simecka), AM 163 (Greens), AM 111 (Greens), AM 12 (Rapporteur), AM 125 (S&D), AM 126 (Greens), AM 127 (Left), AM 128 (Zoido, Vozemberg, Fourlas), AM 13 (Rapporteur), AM 130 (Greens), AM 131 (The Left), AM 132 (S&D), AM 137 (Morano), AM 281 (Left), AM 14 (Rapporteur), AM 138 (Left), AM 139 (Greens), AM 140 (S&D), AM 142 (Greens), AM 15 (Rapporteur), AM 144 (S&D), AM 145 (Greens), AM 16-17 (Rapporteur), AM 148 (S&D), AM 19-20 (Rapporteur), AM 18, 21&22 (Rapporteur), AM 156 (S&D), AM 157 (EPP), AM 159 partly (Left), AM 173 (S&D), AM 177 partly (Greens), AM 178 partly (S&D), AM 179 partly (EPP), AM 184 (EPP), AM 185 partly (S&D), AM 190 (EPP), AM 191 (S&D), AM 25 (Rapporteur), AM 193 (S&D), AM 194 (EPP), AM 195 (Zoido, Vozemberg, Fourlas)

Ams falling: AM 71 (Left), AM 77 (Ferrara), AM 78 (Left), AM 79 (Greens), AM 80 (Hidveghi, Vincze), AM 82 (Morano), AM 85 (EPP), AM 86 (Wisniewska, Jaki), AM 98 (Hidveghi, Vincze), AM 101 (Morano), AM 102 (Hidveghi, Vincze), AM 109 (Morano), AM 110 (Wisniewska, Jaki), AM 115 (Hidveghi, Vincze), AM 120 (Wisniewska, Jaki), AM 121 (Morano), AM 122 (EPP), AM 123 (Hidveghi, Vincze), AM 124 (Ferrara), AM 129 (ECR), AM 132-134 (Wisniewska, Jaki), AM 135 (EPP), AM 136 (ECR), AM 141 (EPP), AM 143 (Left), AM 146 (Greens), AM 147 (Left), AM 149 (Morano), AM 155 (Marquardt), AM 158 (Hidveghi, Vincze), AM 160 (Left), AM 161 (Hidveghi, Vincze), AM 162 (Greens), AM 165 (Left), AM 166 (Greens), AM 167 (Hidveghi, Vincze), AM 168 (EPP), AM 169 (S&D), AM 170 (Left), AM 171 (Morano), AM 172 (Greens), AM 174 (Hidveghi, Vincze), AM 175 (Left), AM 176 (Morano), AM 180 (Hidveghi, Vincze), AM 181 (Left), AM 182 (S&D), AM 183 (Greens), AM 186 (Left), AM 187 (Greens), AM 188 (Left), AM 189 (Greens)

Recital 14

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Covers: AM 68 (The Left), AM 69 (Greens)

Fall:

(14) It is in the interests of both Member States and applicants to ensure a correct recognition of international protection needs already at the stage of the administrative procedure by providing good quality information and legal support which leads to more efficient and better quality decision-making. For that purpose, access to legal assistance and representation should be an integral part of the common procedure for international protection **at all stages of the procedure**. In order to ensure the effective protection of the applicant's rights, particularly the right of defence and the principle of fairness, and to ensure the economy of the procedure, applicants should, upon their request and subject to conditions set out in this Regulation, be provided with free legal assistance and representation during the administrative procedure, **including the accelerated procedure and the border procedure, as well ~~including~~ during personal interviews**, and in the appeal procedure. **Applicants should have the right to an effective remedy before a court or tribunal against a decision not to grant free legal assistance and Member States should ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered**. The free legal assistance and representation should be provided **as soon as an application for international protection has been registered and** by persons competent to provide them under national law.

Commented [IDG4]: agreed at technical level

Recital 20a

Covers: AM 67 (Left)

Fall:

(20a) In applying this Regulation, Member States must respect their international obligations towards stateless persons, including under the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954.

Commented [IDG5]: agreed at technical level

Recital 31

Covers: AM 70 (S&D)

Fall:

(31) In order to guarantee the rights of the applicant, a decision concerning his or her application should be given in writing. Where the decision does not grant international protection, the applicant should be given reasons in fact and in law, information on the consequences of the decision and the modalities for challenging it. **Without prejudice to the applicant's right to remain and to the principle of non-refoulement, such a decision may include, or may be issued together with, a return decision issued in accordance with Directive XXX/XXX/EU [Return Directive Recast].**

Commented [IDG6]: agreed at technical level

Recital 31a

Covers: AM 3 (Rapporteur), AM 72 (EPP), AM 73 (Greens), AM 74 (S&D), AM 76 (The Left)

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Fall: AM 71 (Left)

(31a) In order to increase the efficiency of **the accelerated and the border** procedures and to reduce the risk of absconding and the likelihood of unauthorised movements, there **Member States** should **strive to reduce** ~~be no~~ procedural gaps between the issuance of a negative decision on an application for international protection and of a return decision. ~~A return decision should immediately be issued to applicants whose applications are rejected.~~ Without prejudice to the right to an effective remedy, **where** the return decision ~~should either be part of the negative decision on an application for international protection or, if it is issued in a separate act to a decision rejecting the application for international protection, the former decision should be~~ issued at the same time and together with the negative decision **without undue delay thereafter, in order to fulfil the time-limits provided for in this regulation. The competent authorities shall take the necessary measures to ensure that applicants are available to receive the decisions. This should in no way restrict Member States' discretion as regards the use of Article 6(5) of Regulation (EU) 2016/399^{1a} or their discretion to issue residence permits or other authorisations under national law granting a right to stay on the territory including for compassionate or humanitarian grounds.**

Commented [IDG7]: agreed technical meeting 24.3.23

^{1a} Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

Recital 39a

Covers: AM 4 (Rapporteur), AM 81 (Vozemberg, Alvarez, Furlas), AM 83 (Pagazartundua), AM 84 (S&D), AM 153 (Oetjen)

Fall: AM 77 (Ferrara), AM 78 (Left), AM 79 (Greens), AM 80 (Hidveghi, Vincze), AM 82 (Morano), AM 85 (EPP), AM 86 (Wisniewska, Jaki)

(39a) In the interest of swift and fair procedures for all applicants, whilst also ensuring that the stay of applicants who ~~do~~ **may** not qualify for international protection in the Union is not unduly prolonged, including those who are nationals of third countries exempt from the requirement to be in a possession of a visa pursuant to Regulation (EU) No 2018/1806, Member States should **only be able to** accelerate the examination of applications of applicants who are nationals or, in the case of stateless persons, formerly habitual residents of a third country for which the share of decisions granting international protection is **on a yearly Union-wide average** lower than 20% of the total number of decisions for that third country. **Member States should only be able to accelerate the examination of applications of applicants who are unaccompanied minors and who are nationals or, in the case of stateless persons, formerly habitual residents of a third country for which the share of decisions granting international protection is on a yearly Union-wide average lower than 10% of the total number of decisions for that third country. The examination procedure should not be accelerated** where a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data and taking into account the guidance note pursuant to Article ~~10-11~~ of Regulation (EU) ~~XX/XX~~ **2021/2303** on the European Asylum Agency ~~or where the~~. **An applicant who** belongs to a specific category of persons for whom the low recognition rate cannot be considered as representative of their protection needs due to a specific persecution ground, ~~examination of the application should also be exempted from the~~ **not be accelerated examination procedure, including where such**

Commented [IDG8]: agreed at technical meeting 24.3.23

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a procedure has already started. Cases where a third country may be considered as a safe country of origin or a safe third country for the applicant within the meaning of this Regulation should remain applicable as a separate ground for respectively the accelerated examination procedure or the inadmissibility procedure.

Recital 40

Covers:, AM 89 (S&D), AM 91 (Vautmans, in 't Veld, Oetjen)

Fall: AM 88 (Greens)

(40) Many applications for international protection are made at the external border or in a transit zone of a Member State, ~~often~~ **including** by persons apprehended in connection with ~~unauthorised~~ **irregular** crossings of the external border or disembarked following a search and rescue operation. In order to conduct identification, security and health screening at the external border and direct the third country nationals and stateless persons concerned to the relevant procedures, a screening is necessary. There should be seamless and efficient links between all stages of the relevant procedures for all irregular arrivals. After the screening **at the latest**, third-country nationals and stateless persons should be channelled to the appropriate asylum or return procedure, or **refused entry, or granted entry in accordance with Article 6(5) of the Schengen Borders Code**. A pre-entry phase consisting of screening and border procedures for asylum and return should therefore be established.

Commented [IDG9]: agreed technical meeting 24.3.21

Recital 40a

Covers: AM 6&8 (Rapporteur), AM 95 partly (Left), AM 96 (Oetjen), AM 97 partly (Greens), AM 99 (S&D), AM 100 (EPP), AM 104 (EPP), AM 112 (Zoido, Vozemberg, Fourlas)

Fall: AM 98 (Hidveghi, Vincze), AM 101 (Morano)

(40a) The purpose of the border procedure for asylum and return should be to quickly assess at the external borders whether **such** applications **made during or at the end of the screening procedure** are **inadmissible or** unfounded **or inadmissible, after the determination of the Member State responsible for an application to international protection in accordance with Regulation (EU) No XXX/XXX [Regulation on Asylum and Migration Management] in the border procedure. If unfounded or inadmissible, Member States should be able to use a border procedure to allow for a swift and to swiftly return of those with no right to stay and who have been issued a return decision in compliance with the principle of non-refoulement, while ensuring that those with well-founded claims are channelled into the regular procedure and provided quick access to international protection.** Member States should therefore be able to require applicants for international protection to stay **at the locations, designated at their discretion, for the completion of the procedure, including at or in proximity to** the external border or in a transit zone in order to assess the admissibility of applications, **provided that they are in compliance with Directive XXX/XXX/EU [Reception Conditions Directive]**. In well-defined circumstances, Member States should be able to provide for the examination of the merits of an application and, in the event of rejection of the application, for the return of the third-country nationals and stateless persons concerned **in a border procedure at the external borders.**

Commented [IDG10]: changes agreed technical meeting 24.3.21

Commented [IDG11]: new changes

Commented [IDG12]: GREENS will provide for comments on 1st sentence.

Recital 40b

Covers: AM 103 (Ferrara), AM 105 (S&D), AM 106 partly (Greens), AM 107 partly (Left)

Fall: AM 102 (Hidveghi, Vincze), AM 109 (Morano), AM 110 (Wisniewska, Jaki)

(40b) *Where an application **should** be subject to an accelerated procedure, a Member State should **be able to** assess applications in a border procedure, **except where an exemption applies. Member States should consider prioritising the border procedure** where the applicant is **may be considered, for serious reasons** a danger to national **threat to internal** security or public order, where the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity or nationality that could have had a negative impact on the decision and where it is likely that the application is unfounded because the applicant is of a nationality for whom decisions granting international protection is lower than 20% of the total number of decisions for that third country. In other cases, such as when the applicant is from a safe country of origin or a safe third country, the use of the border procedure should be optional for the Member States.*

Commented [IDG13]: changes agreed at the shadows meeting 24.3.22

Recital 40ba

Covers: AM 4 (Rapporteur), AM 81 (Vozemberg, Alvarez, Furlas), AM 83 (Pagazaurtundua), AM 84 (S&D), AM 85 (EPP), AM 153 (Oetjen, in 't Veld, Vautmans, Simecka)

Fall:

*Member States should not apply **a border procedure** in particular **in** situations where the applicant is an unaccompanied minor or a minor below the age of 12, is a vulnerable person or has special procedural or reception needs and the necessary support cannot be provided, if there are medical reasons for not applying the border procedure or if conditions of detention are not met as provided for in the Directive XXX/XXX/EU [Reception Conditions Directive] and should cease to apply a border procedure when the grounds or conditions for applying it cease to exist. Age assessment procedures should apply the least intrusive methods and processes. **It is important that Member States take into account the EUAA Practical Guide on Age Assessment, and should in any case not comprehend a medical assessment. Where the result of an age assessment is not conclusive, or includes an age-range below 12, Member States should assume that the minor is below 12. Competent authorities should conduct appropriate and regular vulnerability checks throughout the border procedure***

Commented [IDG14]: agreed technical meeting 24.3.22. new changes

Recital 40bb

Covers: AM 111 (Greens)

Fall:

Commented [IDG15]: agreed at technical level

(40bb) When determining whether there is a direct connection to an irregular border crossing for the purpose of applying a border procedure, it is important that Member States take into account the guidance found in the Return Handbook.

Recital 40c

Covers: AM 10 (Rapporteur), AM 113 (Greens), AM 114&150 (Oetjen, in ' t Veld, Vautmans, Simecka), AM 116 (S&D), AM 117 (EPP), AM 118 (Left), AM 119 (ECR), AM 150 (Oetjen, in ' t Veld, Vautmans, Simecka), AM 163 (Greens)

Fall: AM 115 (Hidveghi, Vincze)

(40c) When applying the border procedure for the examination of an application for international protection, Member States should ensure ~~that the necessary arrangements are made to accommodate the applicants in accordance~~ **compliance** with Directive XXX/XXX/EU [Reception Conditions Directive] **as regards accommodation for applicants, including applicants with special needs or vulnerabilities, and that applicants remain available to the authorities.** Member States may process the applications at a different location at the external border than that where the asylum application is made by transferring applicants to a specific location at or in the proximity of the external border of that Member States where appropriate facilities exist. **Minors and families should be considered in need of special procedural and reception guarantees and be placed in adequate accommodations. Asylum personnels, legal representatives, non-governmental organisations, Union and international institutions, or socio-medical personnels should always be allowed to access facilities used for the border procedure.**

Recital 40ca

Member States should retain discretion in deciding at which specific locations such facilities should be set up. However, Member States should seek to limit the need for transferring applicants for this purpose, and therefore aim at setting up such facilities with sufficient capacity at border crossing points, or sections of the external border, where the majority of the number of applications for international protection are made, also taking into account the length of the external border and the number of border crossing points or transit zones. **Where Member States decide that such facilities are situated at or in proximity of the external border or transit zones, provided that they guarantee appropriate reception conditions, access for personnel and essential services. Member States** They should notify the Commission of the specific locations at the external border, transit zones or proximity of the external border where the border procedures will be carried out. In cases where the border procedure is applied and the capacity of the locations at or in proximity of the external border as notified by a Member State is temporarily exceeded, **the capacity of personnel is insufficient or the reception conditions are not met**, Member States may process those applications at another location within its territory, for the shortest time possible.

Recital 40d

Commented [IDG16]: agreed technical meeting 24.3.21

Commented [IDG17]: agreed technical meeting 24.3.21

Commented [IDG18]: agreed technical meeting 24.3.21
changes applied

Covers: AM 12 (Rapporteur), AM 125 (S&D), AM 126 (Greens), AM 127 (Left), AM 128 (Zoido, Vozemberg, Furlas)

Fall: AM 120 (Wisniewska, Jaki), AM 121 (Morano), AM 122 (EPP), AM 123 (Hidveghi, Vincze), AM 124 (Ferrara), AM 129 (ECR)

(40d) ~~In case where the use of the border procedure is an obligation, Member States should by way of exception not be required to apply it~~ **not apply the border procedure** for the examination of applications for international protection from nationals of a third country that does not cooperate sufficiently on readmission, since a swift return of the persons concerned, following rejection of their applications, would be unlikely in that case. The determination of whether a third country is cooperating sufficiently on readmission should be based on the procedures set out in Article 25a of Regulation (EC) No 810/2009.

Recital 40e

Covers: AM 13 (Rapporteur), AM 130 (Greens), AM 131 (The Left), AM 132 (S&D), AM 137 (Morano), AM 281 (Left)

Fall: AM 132-134 (Wisniewska, Jaki), AM 135 (EPP), AM 136 (ECR)

(40e) The duration of the border procedure for examination of applications for international protection should be as short as possible while at the same time guaranteeing a complete and fair examination of the claims. It should in any event not exceed 12 weeks. This deadline should be understood as a stand-alone deadline **for the determination of the Member State responsible for an application of international protection in accordance with Regulation (EU) No XXX/XXX [Regulation on Asylum and Migration Management] and** for the asylum border procedure, encompassing both the decision on the examination of the application as well as the decision of the first level of appeal, if applicable. Within this period, **and without prejudice to the independence of the judiciary**, Member States are entitled to set the deadline in national law both for the administrative and for the appeal stage, but should set them in a way so as to ~~ensure that~~ **enable** the examination procedure is **to be** concluded and that subsequently, if relevant, ~~the a~~ **a** decision on the first level of appeal is **to be** issued within this maximum 12 weeks. After that period, if the Member State nevertheless failed to take the relevant decisions, the applicant should ~~in principle~~ be authorised to enter the territory of the Member State **and be channelled to the appropriate procedure. In the case of a decision rejecting the request for international protection in the border procedure, E** entry into the territory should ~~however~~ not be authorised where the applicant has no right to remain, where he or she has not requested to be allowed to remain for the purpose of an appeal procedure, or where a court or tribunal has decided that he or she should not be allowed to remain pending the outcome of an appeal procedure. In such cases, to ensure continuity between the asylum procedure and the return procedure, the return procedure should also be carried out in the context of a border procedure for a period not exceeding 12 weeks. This period should be counted starting from the moment in which the applicant, third-country national or stateless person no longer has a right to remain or is no longer allowed to remain. **As soon as a border procedure is terminated, where the applicant is authorised to enter the territory, that decision Member States should never apply again a border procedure to that applicant.**

Commented [IDG19]: agreed technical meeting 24.3.21
changes applied

Recital 40f

Covers: AM 14 (Rapporteur), AM 138 (Left), AM 139 (Greens), AM 140 (S&D), AM 142 (Greens)

Fall: 141 (EPP)

(40f) ~~While the border procedure for the examination of an application for international protection can be applied without recourse to detention, Member States should nevertheless be able to apply the grounds for detention during the border procedure in accordance with the provisions of the [Reception Conditions] Directive (EU) XXX/XXX in order to decide on the right of the applicant to enter the territory. Administrative detention during the examination of an application for international protection should remain a measure of last resort. If detention is used during such procedure, the provisions on detention of the [Reception Conditions] Directive (EU) XXX/XXX should apply, including the guarantees for detained applicants and the fact that an individual assessment of each case is necessary, judicial control and conditions of detention. A decision to detain an applicant during a border procedure should always be based on an individual assessment of each case and determined to be necessary, reasonable and proportionate to a legitimate purpose and that it is not possible to effectively apply less coercive measures. Such decisions should be subject to judicial oversight. The necessity to maintain an applicant in detention should be reviewed regularly.~~

Commented [IDG20]: [agreed technical meeting 24.3.23](#)

Recital 40fa

Covers: AM 1 (Rapporteur); AM 15 (Rapporteur);

Fall:

(40fa) With a view to avoiding detention where less stringent measures might be applicable, Member States should apply restrictions of freedom of movement or alternatives to detention as provided in the [Reception Conditions Directive] (EU) XXX/XXX. Such alternatives should be available both in law and fact at national level. Member States should prioritise non-custodial community-based placements for minors and their families or for applicants with vulnerabilities or special procedural or reception needs.

Commented [IDG21]: [agreed technical meeting 24.3.23](#)

Recital 40g

Covers: AM 144 (S&D), AM 145 (Greens)

Fall: AM 143 (Left)

(40g) When an application is rejected in the context of the border procedure, **the Member State in question may issue** the applicant, ~~third country national or stateless person concerned~~ should be immediately subject to a return decision **provided that it respects Article 5 of Directive XXX/XXX/EU [Return Directive Recast] and due consideration has been given in the individual case to the application of Article 8, paragraphs 2 to 5 of that Directive.** ~~or, The Member State may also~~ where the conditions of Article 14 of Regulation (EU) No 2016/399

Commented [IDG22]: [agreed technical meeting 24.3.23](#)

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of the European Parliament and of the Council are met, *issue* to a refusal of entry *without prejudice to Article 6(5) of that Regulation*. ~~To guarantee the equal treatment of all third-country nationals whose application has been rejected in the context of the border procedure, where a Member State has decided not to apply the provisions of Directive XXX/XXX/EU [Return Directive] by virtue of Article 2(2), point (a), of that Directive and does not issue a return decision to the third-country national concerned, the treatment and level of protection of the applicant, third-country national or stateless person concerned should be in accordance with Article 4(4) of Directive XXX/XXX/EU [Return Directive] and be equivalent to those applicable to persons subject to a return decision.~~

Recital 40h

Covers: AM 16-17 (Rapporteur), AM 148 (S&D)

Fall: AM 146 (Greens), AM 147 (Left), AM 149 (Morano)

(40h) When applying the border procedure for carrying out return, ~~ertain~~ **the** provisions of the [recast Return Directive] should apply as these regulate elements of the return procedure that are not determined by this Regulation, notably those on definitions, more favourable provisions, non-refoulement, best interests of the child, family life and state of health, risk of absconding, obligation to cooperate, period for voluntary departure, return decision, removal, postponement of removal, return and removal of unaccompanied minors, entry bans, safeguards pending return, detention, conditions of detention, detention of minors and families and emergency situations. ~~To reduce the risk of unauthorised entry and movement of illegally staying third-country nationals subject to the border procedure for carrying out return, a A~~ period for voluntary departure ~~of not exceeding 15~~ 25 days ~~may~~ **should** be granted to ~~the~~ **the** third-country nationals **concerned**, without prejudice for the possibility to voluntarily comply with the obligation to return at any moment.

Commented [IDG23]: [agreed technical meeting 24.3.23](#)
changes applied

Recital 40ha

Covers: AM 19-20 (Rapporteur)

Fall:

(40ha) The border procedure should be carried out in full compliance with the Charter of Fundamental Rights of the European Union and Union law. The proper functioning of the border procedure inherently depends on the availability of adequate and qualified personnels at all stages of the procedure. In order to ensure that border procedures respect all individual procedural rights and are in compliance with reception conditions, the Member States should allocate qualified and well-trained personnels at the relevant locations. Member States may seek, where necessary, support from Union agencies, international organisations and non-governmental organisations. The European Union Agency for Asylum may also assist the competent authorities in planning the allocation of qualified personnels

Commented [IDG24]: [agreed technical meeting 24.3.23](#)

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Recital 40hb

Covers: AM 18, 21&22 (Rapporteur)

Fall:

(40hb) Within their respective mandates, Union agencies should be able to provide support to the Member States and the Commission, at their request, with a view to ensuring the proper implementation and functioning of this Regulation, including its provisions related to the accelerated and border procedures. EU agencies may propose specific support to a Member State. In such case, that Member State should take due account of the proposal made by an EU agency and should explain its reasons in case it refuses it in a timely manner.

Recital 40i

Covers: AM 156 (S&D), AM 157 (EPP), AM 159 partly (Left)

Fall: AM 155 (Marquardt), AM 158 (Hidveghi, Vincze)

*(40i) Where an applicant, ~~third-country national or stateless person~~ who was detained during the border procedure for the examination of **her or his** application for international protection no longer has a right to remain and has not been allowed to remain, Member States should be able to continue the detention for the purpose of preventing entry into the territory and carrying out the return procedure, respecting the guarantees and conditions for detention laid down in Directive XXX/XXX/EU [Return Directive **Recast**]. An applicant **whose application was not successful**, ~~third-country national or stateless person~~ who was not detained during the border procedure for the examination of an application for international protection, and who no longer has a right to remain and has not been allowed to remain, could also be detained if there is a risk of absconding, if he or she avoids or hampers return, or if he or she poses a risk to ~~public policy~~ public policy, public security or national security, **and provided that less coercive measures cannot be applied effectively**. Detention should be for as short a period as possible, ~~and~~ should not exceed the maximum duration of the border procedure for carrying out return, **and should not exceed the maximum period of detention set by Article 15 of Directive XXX/XXX/EU [Return Directive Recast]**. When the ~~illegally~~ **irregularly** staying third-country national does not return*

Commented [IDG25]: agreed technical meeting 24.3.24
changes applied

Commented [IDG26]: agreed technical meeting 24.3.24

or is not removed within that period and the border procedure for carrying out return ceases to apply, the provisions of the [Return Directive **Recast**] should **continue to** apply. ~~The maximum period of detention set by Article 15 of that Directive should include the period of detention applied during the border procedure for carrying out return.~~

Recital 40j - *Original text from the Commission's proposal.*

Commented [IDG27]: agreed technical meeting 24.3.23

Covers:

Fall: AM 160 (Left), AM 161 (Hidveghi, Vincze), AM 162 (Greens)

(40j) It should be possible for a Member State to which an applicant is relocated **or transferred** in accordance with Regulation (EU) No XXX/XXX [Asylum and Migration Management Regulation] to examine the application in a border procedure provided that the applicant has not yet been authorised to enter the territory of the Member States and the conditions for the application of such a procedure by the Member State from which **and to which** the applicant was relocated **or transferred** are met.

Recital 44a

Commented [IDG28]: agreed technical meeting 24.3.23

Covers:

Fall: AM 165 (Left), AM 166 (Greens), AM 167 (Hidveghi, Vincze), AM 168 (EPP), AM 169 (S&D)

(44a) An applicant who lodges a subsequent application at the last minute merely in order to delay or frustrate his or her removal should not be authorised to remain pending the finalisation of the decision declaring the application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented and there is no risk of refoulement and provided that the application is made within one year of the decision by the determining authority on the first application. The determining authority shall issue a decision under national law confirming that these criteria are fulfilled in order for the applicant not to be authorised to remain.

Recital 64a (new)

Commented [IDG29]: Already inserted in compromises on the articles; replaces deletion of para 6, art 41, agreed technical meeting 24.3.23 changes agreed at technical meeting 24.3.23

Covers:

Fall:

*In the context of this Regulation, it is essential that Member States lay down rules on time-limit for the submission of documents and their translation in such a way to guarantee that the court or tribunal take into consideration **as much as possible** documents and information provided by the applicant, in accordance with article 47 of the Charter of Fundamental Rights of the EU.*

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Recital 65

Covers: AM 173 (S&D)

Fall: AM 170 (Left), AM 171 (Morano), AM 172 (Greens), AM 174 (Hidveghi, Vincze)

(65) For an applicant to be able to exercise his or her right to an effective remedy against a decision rejecting an application for international protection **and where a return decision has also been issued to the applicant**, all effects of ~~the~~ **that** return decision should be automatically suspended for as long as the applicant has the right to remain or has been allowed to remain on the territory of a Member State. To improve the effectiveness of procedures at the external border, while ensuring the respect of the right to an effective remedy, appeals against decisions taken in the context of the border procedure ~~should~~ **may** take place only before a single level of jurisdiction of a court or tribunal.

Commented [IDG30]: revised version of recitals from here and highlighted in pink

Recital 66

Covers: AM 177 partly (Greens), AM 178 partly (S&D), AM 179 partly (EPP)

Fall: AM 175 (Left), AM 176 (Morano), AM 180 (Hidveghi, Vincze)

(66) Applicants should, ~~in principle~~, have the right to remain on the territory of a Member State until the time-limit for lodging an appeal before a court or tribunal of first instance expires, and, where such a right is exercised within the set time-limit, pending the outcome of the appeal. ~~It is~~ **Only** in the limited cases set out in this Regulation, **where applications are likely to be unfounded**, **Member States may provide in national law** that the applicant should not have an automatic right to remain for the purpose of the appeal.

Recital 66a

Covers: AM 184 (EPP)

Fall: AM 181 (Left), AM 182 (S&D), AM 183 (Greens)

(66a) In cases where the applicant has no automatic right to remain for the purpose of the appeal, a court or tribunal should still be able to allow the applicant to remain on the territory of the Member State pending the outcome of the appeal, upon the applicant's request or acting of its own motion. In such cases, applicants should have a right to remain until the time-limit for requesting a court or tribunal to be allowed to remain has expired and, where the applicant has presented such a request within the set time-limit, pending the decision of the competent court or tribunal. In order to discourage abusive or last minute subsequent applications, Member States should be able to provide in national law that applicants should have no right to remain during that period in the case of rejected subsequent applications, with a view to preventing further unfounded subsequent applications. In the context of the procedure for determining whether or not the applicant should be allowed to remain pending the appeal, the applicant's rights, **including** of defence, should be adequately guaranteed by providing him or her with the necessary interpretation and legal assistance. Furthermore, the competent court or tribunal should be able to examine the decision refusing to grant international protection in terms of facts and points of law.

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Recital 66b

Covers: AM 185 partly (S&D)

Fall: AM 186 (Left), AM 187 (Greens)

(66b) ~~In order to ensure effective returns,~~ applicants should not have a right to remain on the Member State's territory at the stage of a second or further level of appeal before a court or tribunal against a negative decision on the application for international protection, without prejudice to the possibility for a court or tribunal to allow the applicant to remain. Furthermore, Member States should **may provide in national law that not grant** applicants **should not have** the possibility to lodge a further appeal against a first appeal decision in respect of a decision taken in a border procedure.

Recital 66c

Covers: 190 (EPP), AM 191 (S&D),

Fall: AM 188 (Left), AM 189 (Greens)

(66c) To ensure the consistency of the legal review carried out by a court or tribunal on a decision rejecting an application for international protection and ~~the accompanying~~ **any related** return decision, and with a view to accelerating the examination of the case and reducing the burden on the competent judicial authorities, **it should be possible that** such decisions ~~should be~~ **are** subject to common proceedings before the same court or tribunal, **in order to facilitate the fulfilment of time-limits provided for in this regulation.**

Recital 66d

(66d) In order to ensure fairness and objectivity in the management of applications and effectiveness in the common procedure for international protection, time-limits should be set for the administrative procedure.

Commented [IDG31]: This Recital from the COM P was left out by mistake in the compromises on Recitals shared by Cedric,

Recital 66da

Covers: AM 25 (Rapporteur), AM 193 (S&D), AM 194 (EPP), AM 195 (Zoido, Vozemberg, Fourlas)

Fall:

(66da) The Commission should regularly monitor and evaluate whether this Regulation is being properly applied and implemented. To this end, the Commission should be assisted by the European Union Agency for Asylum, in accordance with its prerogatives under Article 14 of Regulation (EU) 2021/2303. To ensure compliance with EU and international law, including the Charter of Fundamental Rights, each Member State should also establish or designate a monitoring mechanism for the border procedure and put in place adequate safeguards for the independence of that mechanism, in particular by involving national

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human rights institutions, national ombudspersons, international organisations or relevant non-governmental organisations in the management and operation of the mechanism. The monitoring mechanism should cover in particular the respect for fundamental rights in relation to the asylum and return procedures, as well as the respect for the applicable rules regarding detention and compliance with the principle of non-refoulement as referred to in Article 3(b) of Regulation (EU) 2016/399. The Fundamental Rights Agency (FRA) should establish general guidance as to the establishment and the independent functioning of such monitoring mechanism. Member States should furthermore be allowed to request the support of the FRA for developing their national monitoring mechanism. Member States should also be allowed to seek advice from the FRA with regard to establishing the methodology for this monitoring mechanism and with regard to appropriate training measures. The independent monitoring mechanism should be in addition and without prejudice to the monitoring of fundamental rights provided by the European Border and Coast Guard Agency's fundamental rights monitors provided for in Regulation (EU) 2019/1896, the monitoring mechanism for the purpose of monitoring the operational and technical application of the Common European Asylum System (CEAS) as set out in Article 14 of Regulation (EU) xxxx/xxxx [EU Asylum Agency Regulation] and without prejudice to monitoring of fundamental rights carried out by existing national or international monitoring bodies. The Member States should investigate allegations of the breach of fundamental rights during the asylum and return procedures, including by ensuring that complaints are dealt with promptly, expeditiously and capable of leading to the identification and sanction of those responsible in an appropriate manner.

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