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From: Presidency

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To: JHA Counsellors (Asylum)

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Subject: 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

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In view of the JHA Counsellors meeting on 27 April 2023, delegations will find in Annex a new compromise text of the Asylum Procedure Regulation, regarding the articles on the border procedure (**Article 4(x), Articles 41-41i and Article 60**) and the articles on the safe country concept (**Articles 43a-50**).

New changes since the last version of the text as set out in 7895/23 appear in **bold underlined and grey shaded** and newly deleted text is in **~~bold underlined and strikethrough~~**.

2016/0224 (COD)

**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<sup>1</sup>**

**THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,**

**Having regard to the Treaty on the Functioning of the European Union, and in particular  
Article 78(2)(d) and 79(2)(c) thereof,**

**Having regard to the proposal from the European Commission,**

**After transmission of the draft legislative act to the national parliaments, Acting in  
accordance with the ordinary legislative procedure,**

**HAVE ADOPTED THIS REGULATION:**

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<sup>1</sup> **Recitals have been removed from this version of the document.**

# CHAPTER I

## GENERAL PROVISIONS

### *Article 1*

#### **Subject matter**

This Regulation establishes a common procedure for granting and withdrawing international protection referred to in Regulation (EU) No XXX/XXX [(Qualification Regulation)].

### *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.

### *Article 3*

#### **Extension of the scope of application**

[...]

## Article 4

### Definitions

For the purposes of this Regulation, the following definitions [...] apply:

- (a) [...];
- (b) [...];
- (c) [...];
- (d) **'international protection' means refugee status and subsidiary protection status as defined in points (e) and (f);**
- (e) **'refugee status' means the recognition by a Member State of a third-country national or a stateless person as a refugee in accordance with Regulation (EU) No XXX/XXX [(Qualification Regulation)];**
- (f) **'subsidiary protection status' means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection in accordance with Regulation (EU) No XXX/XXX [(Qualification Regulation)];**
- (g) [...];
- (h) [...].
- (i) [...]:<sup>2</sup>

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<sup>2</sup> The definition of "family members", as it stands now, was moved to Article 41b.

- ([...]**i**) 'application for international protection' or 'application' means a request **for protection [...]** made [...]**to a Member State** by a third-country national or a stateless person [...], who can be understood [...] **to seek[...]** refugee status or subsidiary protection status;
- ([...]**j**) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been [...] **taken**;
- ([...]**k**) 'applicant in need of special procedural guarantees' means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Regulation is limited due to individual circumstances;
- ([...]**l**) 'final decision' means a decision on whether or not a third-country national or stateless person is granted refugee status or subsidiary protection status by virtue of Regulation (EU) No XXX/XXX [(Qualification Regulation)], including a decision rejecting the application as inadmissible or a decision rejecting **or an act declaring** an application [...] **as implicitly withdrawn, [...] [...] which is no longer subject to a remedy within the framework of Chapter V of this Regulation or has become definitive according to national law, irrespective of whether the applicant has the right to remain in accordance with this Regulation**;
- (m) 'examination of an application for international protection' means examination of the admissibility or the merits of an application for international protection in accordance with this Regulation and Regulation (EU) No XXX/XXX [(Qualification Regulation)];**
- ([...]**n**) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining **and taking decisions on** applications for international protection [...] **at the administrative stage of the procedure**;

([...]**o**) [...];

([...]**p**) 'withdrawal of international protection' means the decision by a determining authority **or a competent court or tribunal** to revoke or end, **including by refusing [...]** to renew, **the international protection in accordance with Regulation (EU) No XXX/XXX [(Qualification Regulation)] [...]**;

([...]**r**) [...];

([...]**s**) [...];

([...]**t**) 'Member State responsible' means the Member State responsible for the examination of an application in accordance with **the criteria laid down in Regulation (EU) No XXX/XXX [(AMMR Regulation)] [...]**;

(**u**) **'minor' means a third-country national or a stateless person below the age of 18 years;**

(**v**) **'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;**

(**w**) **'biometric data' means fingerprint data and facial image data in accordance with Article 3(p) of Regulation (EU) No XXX/XXX [(Eurodac Regulation)];**

(**x**) **'adequate capacity' means the capacity required at any given moment to carry out the asylum and return border procedures.<sup>3</sup>**

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<sup>3</sup> **The Presidency intends to introduce the following recital 40a: "In order to carry out the asylum and return border procedures, Member States should take the necessary measures to establish an adequate capacity, in terms of reception and human resources, necessary required to examine at any given moment an identified number of applications."**

*Article 5*

**[...] Competent authorities**

1. [...] Member States shall designate a determining authority **to carry out its tasks as provided for in this Regulation and in Regulation (EU) No XXX/XXX [(Qualification Regulation)], in particular [...]:**
  - (a) [...] examining applications for international protection;
  - (b) taking decisions on applications for international protection;
  - (c) taking decisions on [...] **the withdrawal of [...] international protection [...].**
2. [...]
3. [...] Member States may entrust the determining authority or other relevant **national authorities such as the police, immigration authorities, border guards, authorities responsible for detention facilities or reception facilities with the task of registering applications for international protection in accordance with Article 27.**
  - (a) [...]
  - (b) [...]
  - (c) [...]
  - (d) [...]

[...]

- 3aa. Member States may under national law[...] limit the relevant national authorities entrusted with the task of receiving applications for international protection made in accordance with Article 25. These authorities shall include as a minimum [...] [the police, border guards and authorities responsible for detention facilities] [...].**
- [3a. Member States may provide that an authority other than the determining authority shall be responsible for [the procedure for determining the Member State responsible in accordance with Regulation (EU) XXX/XXX (AMMR Regulation) and for] granting or refusing permission to enter in the framework of the procedure provided for in Article 41, subject to the conditions as set out in that Article.]**
- 3b. Member States may entrust other relevant authorities with the tasks under this Regulation with the exception of tasks entrusted solely to the determining authority under this Regulation.**
4. [...]
- (a) [...]
- (b) [...]
- 4a. Member States shall provide the authorities applying this Regulation with appropriate means, including necessary competent personnel, to carry out their tasks.**
5. Member States shall ensure that the personnel of **authorities applying this Regulation** [...], have the appropriate knowledge and **where necessary** are provided with [...] training and [...] **guidance** to fulfil their obligations [...].



*Article 5a*

**Cooperation**

1. **The authorities of the Member State where an application is made may, upon the request of that Member State, be assisted with registering applications by the authorities of another Member State in which they are entrusted with that same task [...].**
2. **The determining authority of the Member State where an application is made or of the Member State responsible may, upon the request of that Member State, be assisted by personnel of the determining authority of another Member State in the performance of its tasks as provided for in this Regulation and in Regulation (EU) No XXX/XXX [(Qualification Regulation)], including with regard to the personal interview. [...].**

**In addition, where there is a disproportionate number of third-country nationals or stateless persons that make an application within the same period of time, making it difficult in practice for the determining authority to conduct timely personal interviews of each applicant, the determining authority of the Member State where the application is made and lodged or of the Member State responsible may be assisted by the personnel of other authorities of that Member State.**

*Article 5b [former Article 18]*

*The role of the United Nations High Commissioner for Refugees*

**Member States shall allow the United Nations High Commissioner for Refugees:**

- (a) **to have access to applicants, including those in reception centres, in detention, at the border and in transit zones;**

- (b) **to have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, subject to the consent of the applicant;**
- (c) **to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for international protection at any stage of the procedure.**

*Article 6*

**Confidentiality principle**

1. **The authorities applying this Regulation shall [...] be bound by the principle of confidentiality as defined in national law in relation to any personal information they acquired in the performance of their duties. This is without prejudice to the exchange of information between other authorities of the Member States.**
2. Throughout the procedure for international protection and after a final decision on the application has been taken, the authorities shall not:
  - (a) disclose information regarding the individual application for international protection or the fact that an application has been made, to the alleged actors of persecution or serious harm;
  - (b) obtain any information from the alleged actors of persecution or serious harm in a manner that would result in such actors being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant or his or her dependants, or the liberty and security of his or her family [...] still living in the country of origin.

## CHAPTER II

### BASIC PRINCIPLES AND GUARANTEES

#### SECTION I

#### RIGHTS AND OBLIGATIONS OF APPLICANTS

##### *Article 7*

##### **Obligations of applicants**

1. The applicant shall make **and lodge** his or her application in the Member State [...] provided for in [Article 9(1) and (2) of Regulation (EU) No XXX/XXX (AMMR Regulation)].
2. The applicant shall **fully** cooperate with the [...] **competent** authorities [...] **in matters covered by this Regulation, in particular, by:**
  - (a) providing **his or her name, date of birth, sex, nationality and information about family members and other personal details relevant for the procedure for international protection [...];**
  - (aa) **providing his or her identity or travel document, and if not available, providing a reasonable explanation for not being in possession of such documents;**
  - (ab) **providing his or her place of residence or address, and where available, a telephone number and email where he or she may be reached, including any changes thereto;**
  - (b) providing [...] **biometric data** as referred to in Regulation (EU) No XXX/XXX [(Eurodac Regulation)];

- (c) lodging his or her application in accordance with Article 28 [...];
- (d) [...] **providing as soon as possible all the elements available to him or her which substantiate the application for international protection as referred to in [Article 4(2) of Regulation EU XXX/XXX (Qualification Regulation)] and any other information or documents relevant [...] for the procedures in accordance with this Regulation;**

(da) **attending the personal interview;**

[(db) **remaining on the territory of the Member State where he or she is required to be present, [in accordance with Article 9(4) of Regulation (EU) No XXX/XXX (AMMR Regulation)]].**

3. [...]

4. [...] The applicant shall accept any communication at the most recent place of residence or address [...] **as indicated by himself or herself to the competent authorities. Member States shall establish in national law and practice the method of communication and the moment that the communication is considered as received by the applicant [...].**

5. [...]

6. [...].

7. **Without prejudice to any search carried out for security reasons, [...] where it is necessary for the [...] processing of an application, the applicant may be required by the [...] competent authorities to be searched or have his or her items searched in accordance with national law. [...] Any search of the applicant's person [...] shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity.**

## Article 8

### General guarantees for applicants

1. [...]
2. The determining authority **or, where applicable, other competent authorities or organisations tasked by Member States for that purpose**, shall inform **the** applicant [...], [...] of the following:
  - (a) the **right** to lodge an [...] application;
  - (b) the **time-limits and stages of the procedure** [...];
  - (c) **his or her** [...] rights and obligations during the procedure [...] **and the consequences for not complying with those obligations, in particular as regards the explicit or implicit withdrawal of an application** [...];
  - (d) [...] **the procedure for submitting elements to substantiate his or her application for international protection**;
  - (e) [...]
  - (f) [...]
  - (g) [...]
  - (h) [...].

The information referred to in [...] **this paragraph shall be given [...] at the latest upon registration of the application, in a language which the applicant understands or is reasonably supposed to understand. That information shall be given by means of the leaflet referred to in paragraph 6a, provided physically or electronically, or [...]if [...] necessary orally.**

**The applicant shall confirm that he or she has received the information. Such confirmation shall be documented in the applicant's file. If the applicant refuses to confirm that he or she has received the information, a note of that fact shall be entered in his or her file.**

3. **[...]During the administrative procedure, applicants shall be provided with the services of an interpreter to assist with lodging their application, where applicable, and for the personal interview [...]** whenever appropriate communication cannot otherwise be ensured [...]. Those[...] interpretation services shall be paid for from public funds.
4. The [...] **competent authorities** shall provide applicants with the opportunity to communicate with **the** United Nations High Commissioner for Refugees or with any other organisation providing legal advice or other counselling to applicants in accordance with national law.
5. **Without prejudice to Article 16(2), [...]**the determining authority shall ensure that, applicants and, where applicable, their **representatives [...]** or legal advisers or **other counsellors admitted or permitted as such under national law ("legal advisers")** [...] have access to the information referred to in Article 33(2)( [...]**b) and (ca)** required for the examination of applications and to the information provided by the experts referred to in Article 33(3), where the determining authority [...] **takes** that information into consideration for the purpose of taking a decision on their application.
6. [...]
- 6a. **The Commission shall specify, by means of implementing acts, the content of the information to be provided to applicants, drawn up in the form of a common leaflet. The common leaflet shall be established in such a manner so as to enable Member States to complete it with additional information specific to the Member State concerned. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).**

## *Article 9*

### **Right to remain [...] during the administrative procedure [...]**

1. **[[...]The applicant shall have the right to remain [...] on the territory of the Member State where he or she is required to be present [in accordance with Article 9(4) of Regulation (EU) No XXX/XXX [AMMR Regulation]] [...] until [...] a decision on the application is taken in [...] the administrative procedure [...]].**
2. The right to remain shall not constitute an entitlement to a residence permit [...].
3. [...]Member States may **provide in national law for an exception from [...]** the applicant's right to remain on their territory during **the** administrative procedure where:
  - (a) [...] [the conditions laid down in Article 43 **are fulfilled**];
  - (b) [...]
  - (ba) **a person is or will be extradited, surrendered or transferred to another Member State, a third country, the international criminal court or another international court or tribunal for the purpose of, or resulting from judicial proceedings or for the execution of a sentence;**
  - (bb) **a person is a danger to public order or national security, without prejudice to [Article 12 and 18 of the Regulation (EU) No XXX/XXX (Qualification Regulation)].**
- 3a. **Member States shall provide in national law for an exception from the applicant's right to remain on their territory during the administrative procedure where the person is subject to a transfer[...] to another Member State pursuant to obligations in accordance with a European arrest warrant.**

4. A Member State may extradite, **surrender or transfer** an applicant to a third country pursuant to paragraph [...] 3 [...] [...] **(ba)** only where the [...] **competent authority considers** [...] that a [...] decision will not result in direct or indirect *refoulement* in breach of the international and Union obligations of that Member State.

[...]



## CHAPTER II

### BASIC PRINCIPLES AND GUARANTEES

#### SECTION II

##### PERSONAL INTERVIEWS

###### *Article 10*

###### **Admissibility interview**

1. **[Without prejudice to Article 42(3)], [...]before a decision is taken by the determining authority on the inadmissibility of an application [...] in accordance with Article 36, the applicant shall be given the opportunity of an admissibility interview [...].**
  2. In the admissibility interview, the applicant shall be given an opportunity to [...] **submit all elements explaining [...]** why the inadmissibility grounds provided for in Article 36 would not be applicable to [...] **him or her.**
- [2a. The admissibility interview may be conducted at the same time as the interview conducted to facilitate the determination of the Member State responsible for examining an application for international protection as referred to in Article 12 of Regulation (EU) No XXX/XXX (AMMR Regulation).]**
- 2b. Where the admissibility interview is conducted in the Member State responsible, that interview may be conducted at the same time as the substantive interview.**

## *Article 11*

### **Substantive interview**

1. Before a decision is taken by the determining authority on [...] **whether the applicant qualifies as a refugee or is eligible for subsidiary protection**, the applicant shall be given the opportunity of a substantive interview on his or her application.
2. In the substantive interview, the applicant shall be given an [...] opportunity to present the elements needed to substantiate his or her application in accordance with Regulation (EU) No XXX/XXX [(Qualification Regulation)], and he or she shall provide [...] the elements **referred to in [Article 4(2) of Regulation (EU) No XXX/XXX (Qualification Regulation)]** [...] as completely as possible. The applicant shall be given the opportunity to provide an explanation regarding elements which may be missing or any inconsistencies or contradictions in [...] **his or her** statements.
3. [...]

## *Article 12*

### **Requirements for personal interviews**

1. [...] **The determining authority may require the applicant to present the elements needed to substantiate his or her application and answer general questions regarding the reasons for submitting the application in writing prior to the personal interview.**
  - 1a. **Where an application for international protection is lodged in accordance with Article 30a the applicant may be given the opportunity for a personal interview provided that paragraph (5)(b) is not applicable.**
2. [...]

3. [...] **Without prejudice to Article 5a(2)**, personal interviews shall be conducted by the personnel of the determining authority, [...].
4. [...]. **A person who conducts the personal interview shall not wear a military or law enforcement uniform.**
5. The [...] **admissibility interview or the substantive interview, as applicable**, may be omitted [...] **where:**
  - (a) **the determining authority** is able to take a positive decision **on the basis of the evidence available** with regard to the refugee status **or the subsidiary protection status provided that it offers the same rights and benefits as refugee status under Union and national law** [...];
  - (aa) **the determining authority** [...] **considers that** the application is **not inadmissible** on the basis of evidence available; [...]
  - (b) [...] the applicant is unfit, [...], or unable to be interviewed owing to enduring circumstances beyond his or her control; [...]

**[(ba) in case of a subsequent application, the preliminary examination referred to in Article 42(3) is carried out on the basis of a written statement.]**

**[(c) the determining authority considers the application inadmissible pursuant to article 36(1aa)(b) or (c).]**

The absence of a personal interview pursuant to point (b) shall not adversely affect the decision of the determining authority. **In the absence of such an interview, [...] the determining authority** shall give the applicant an [...] opportunity to submit further information **in writing**. When in doubt as to the condition of the applicant, the determining authority shall **if necessary** consult a medical professional to establish whether [...] the applicant is **temporarily** unfit or unable to be interviewed [...] or **whether his or her situation is of an** enduring nature.

- 5a. Applicants shall be present at the personal interview and shall be required to respond in person to the questions asked. By way of derogation, the determining authority may hold the personal interview by video conference provided that the necessary arrangements for the appropriate facilities and interpretation are ensured by the competent authorities.
- 5b. An applicant shall be allowed to be assisted by a legal adviser in the personal interview, including when it is held by video conference. The absence of the legal adviser shall not prevent the determining authority from conducting the interview. Where a legal adviser participates in the personal interview, he or she shall be given the opportunity to make comments, within the framework set by the person who conducts the interview at least at the end of the personal interview. A legal adviser may also ask questions if permitted by national law.
6. The person conducting the interview shall be competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, age, sex [...], sexual orientation, gender identity and **special procedural needs** [...]. Personnel interviewing applicants shall also have acquired general knowledge of [...] **factors** which could adversely affect the applicant's ability to be interviewed, such as indications that the person may have been tortured in the past.
7. The personnel interviewing applicants, including experts deployed by the European Union Agency for Asylum, shall have received [...] training in advance which shall include [...] **relevant** elements **from those** listed in Article 8(4[...]) of Regulation (EU) No 2021/2303 (EU Asylum Agency Regulation) [...].
8. [...] **Interpretation shall be provided for the personal interview where this is necessary** [...] to ensure appropriate communication between the applicant and the person conducting the interview [...]. The communication shall take place in [...] a language which [...] **the applicant** understands and in which he or she is able to communicate clearly.

- 8a. Where requested by the applicant **and where possible**, the determining authority shall ensure that the interviewers and interpreters are of the [...] sex **that** [...] the applicant **prefers**, [...] **unless it has reasons to [...] consider** that such a request **does** [...] not relate [...] to difficulties on the part of the applicant to present the grounds of his or her application [...].
- 8b. **The personal interview shall be conducted under conditions which ensure appropriate privacy and confidentiality. Where the determining authority considers it necessary, it may authorise the presence of other persons at the personal interview subject to the consent of the applicant.**
9. The absence of a personal interview, **where it is omitted pursuant to paragraph 5 or where the applicant otherwise does not attend or refuses to respond to the questions asked without reasonable justification**, shall not prevent the determining authority from taking a decision on [...] **the** application for international protection.

### *Article 13*

#### **Report and recording of personal interviews**

1. The determining authority or any other authority or experts assisting it [...] **with** conducting the personal interview shall make a thorough and factual report containing all substantive elements **of the personal interview, or a transcript of the interview** or a transcript **of the recording** of [...] **such an interview to be included in the applicant's file.**
2. The personal interview [...] **may** be recorded using audio or audio-visual means of recording. The applicant shall be informed in advance of such recording. **Where a recording is made, the determining authority shall ensure that the recording and any of the written outcomes listed in paragraph 1 is included in the applicant's file.**

3. The applicant shall be given the opportunity to make comments or provide clarification orally or in writing with regard to any incorrect translations or misunderstandings appearing in the report **or the transcript of the interview [...]**, at the end of the personal interview or within a specified time limit before the determining authority takes a decision. To that end, the applicant shall be informed of the entire content of the report **or the transcript of the interview [...]**, with the assistance of an interpreter, where necessary. [...]
4. **The applicant shall be requested to confirm that the content of the report or the transcript of the interview correctly reflects the personal interview.** Where [...] **he or she** refuses to confirm that the content of the report [...] **or the transcript of the interview** correctly reflects the personal interview, the reasons for his or her refusal shall be entered in [...] **his or her** file. That refusal shall not prevent the determining authority from taking a decision on the application.
- 4a. **The applicant does not have to be requested to make comments or to provide clarifications on the report or the transcript of the interview, nor to confirm that the content of the report or the transcript of the interview correctly reflects the interview where:**
  - (a) **the personal interview is recorded and according to national law the recording or a transcript thereof may be admitted as evidence in the appeal procedure,**  
**or**
  - (b) **it is clear to the determining authority that the applicant will be granted refugee status or subsidiary protection status provided that it offers the same rights and benefits as refugee status under Union and national law.**

5. **Without prejudice to Article 16(1), [...] applicants or [...], where applicable, their legal advisers [...] shall have access to the [...] respective written outcomes in accordance with paragraph 1 or the recording before the determining authority takes a decision. [...] Access to the recording shall be nevertheless provided in the appeal procedure.**
6. **Where the application is examined in accordance with the procedure foreseen in Articles 36 or 40, the determining authority may grant access to applicants and, where applicable, their legal advisers to the respective written outcome according to paragraph 1 at the same time as the decision is made.**
7. [...]

### SECTION III

## [...]INFORMATION ON LEGAL AND PROCEDURAL ASPECTS, LEGAL ASSISTANCE AND REPRESENTATION

### *Article 14*

#### **Right to legal assistance and representation**

1. **An [...] applicant[...] shall have the right, at his or her own costs, to consult, be assisted or represented by a legal adviser [...] on matters relating to [...] his or her application[...] [...].**
2. **Without prejudice to paragraph 1 [...], an applicant may request and is entitled to receive free information on legal and procedural aspects [...] in the administrative procedure and free legal assistance and representation in the appeal procedure subject to the exceptions set out in Articles 15 (3) and 15a(2), respectively [...].**
- 2a. **Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law.**

### *Article 15*

#### **Free information on legal and procedural aspects [...]**

1. [...]
2. **[...]In the administrative procedure, Member States shall, upon the request of the applicant and following the lodging of the application, ensure that he or she is provided with [...] free information on legal and procedural aspects [...]in the light of the applicant's particular circumstances [...], which shall, at least, include:**



- (a) **explanations of the procedure that needs to be followed [...];**
  - (b) **where an application is rejected with regard to refugee status or subsidiary protection status, the reasons for such decision and information on how to challenge it [...] in accordance [...] with Article 35 (2) and (2a). [...]**
  - (c) [...]
3. The provision of free **information on legal and procedural aspects [...]** in the administrative procedure may be excluded by **Member States [...]**:
- (a) [...]
  - (b) [...]
  - (c) [...]
  - (d) **where the applicant is assisted or represented by a legal adviser;**
  - (e) **[...] where [...] the determining authority considers that the applicant will be granted refugee status or subsidiary protection status provided that it offers the same rights and benefits as refugee status under Union and national law;**
- 3a. **Where Member States provide for [...]legal assistance and representation in the administrative procedure in accordance with national law, this Article [...] may not be applied by Member States.**

## *Article 15a*

### **Free legal assistance and representation in the appeal procedure**

[...]1.[...]In the appeal procedure, **Member States shall, upon the request of the applicant, ensure that he or she is provided with [...] free legal assistance and representation which shall [...] include the preparation of the [...] procedural documents required under national law, the preparation of the appeal and, in the event of a hearing, participation in [...] that hearing before a court or tribunal [...].**

[...]2.The provision of free legal assistance and representation in the appeal procedure may be excluded **by the Member States** where:

- (a) **the applicant, who shall disclose his or her financial situation, [...] is considered to have sufficient resources to afford legal assistance and representation at his or her own costs;**
- (b) [...]it is considered [...] **that the appeal [...] has no sufficient prospect of success or is [...] abusive;**
- (c) the appeal or review is at a second level of appeal or higher as provided for under national law, including re-hearings or reviews of appeal.
- (d) **the applicant is already assisted or represented by a legal adviser.**

3. [...].

*Article 16*

**[...]Access of the legal adviser**

1. A legal adviser [...], who assists or represents an applicant under the terms of national law, shall be granted access to the information in the applicant's file upon the basis of which a decision is or shall be [...] taken.
  
2. **By way of exception from paragraph 1, [...]access to the information or to the sources in the applicant's file may be denied in accordance with national law** where the disclosure of information or sources would jeopardise national security, the security of the organisations or persons providing the information or the security of the persons to whom the information relates [...]. **In such cases, access to such information or sources shall be made available to the relevant courts or tribunals in the appeal procedure in accordance with national law. Access to the information or to the sources in the applicants file may also be denied in accordance with the national law [...], where the disclosure will harm the investigative interests relating to the examination of applications for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised or where the information or sources are classified under national law. In such cases, access to information will be subject to the national law. [...]**  
  
**Member States shall ensure that the necessary measures are in place for [...] the applicant's right of defence [...] to be respected. [...]**
  
3. The legal adviser [...] who assists or represents an applicant shall have access to closed areas, such as detention facilities and transit zones, [...] in accordance with Directive XXX/XXX/EU [(Reception Conditions Directive)].
  
4. [...]

5. [...]

6. [...]

### *Article 17*

#### **Conditions for [...] free information on legal and procedural aspects and free legal assistance and representation**

- 1. Free information on legal and procedural aspects in the administrative procedure may be provided by the relevant competent authorities of the Member State or by non- governmental organisations entrusted by the Member State with the task of providing such information.**
- 1. Free legal assistance and representation **referred to in Article 14(2a) and Article 15a** shall be provided by legal advisers [...] permitted under national law to assist or represent the applicants [...].
- 2. Member States shall lay down specific procedural rules concerning the modalities for filing and processing requests for the provision of **free information on legal and procedural aspects and of free legal assistance and representation** in relation to applications for international protection or they shall apply the existing rules for domestic claims of a similar nature, provided that those rules do not render access to **free information on legal and procedural aspects and** to free legal assistance and representation impossible or excessively difficult.
- 2a. Member States shall lay down specific rules concerning the exclusion of the provision of free information on legal and procedural aspects and of free legal assistance and representation in accordance with Article 15(3) and Article 15a(2), respectively.**

3. Member States may also impose monetary limits or time limits on the provision of **free information on legal and procedural aspects and of free legal assistance and representation**, provided that such limits do not arbitrarily restrict access **to free information on legal and procedural aspects and** to free legal assistance and representation. As regards fees and other costs, the treatment of applicants shall not be less favourable than the treatment generally given to their nationals in matters pertaining to legal assistance.
4. Member States may request total or partial reimbursement of any costs made if and when the applicant's financial situation considerably improves or where the decision to make such costs was taken on the basis of false information supplied by the applicant. **For that purpose, applicants shall immediately inform the competent authorities of any significant change in their financial situation.**

*Article 18*

**The role of the United Nations High Commissioner for Refugees**

1. [...]
  - (a) [...]
  - (b) [...]
  - (c) [...]
2. [...]

## CHAPTER II BASIC PRINCIPLES AND GUARANTEES

### SECTION IV

#### SPECIAL GUARANTEES

*Article [...] 19 [former Article 20]*

[...] **Assessment of special procedural needs**

- 1. **The competent authorities shall assess whether an applicant is in need of special procedural guarantees. That assessment may be integrated into existing national procedures, ~~and~~ need not take the form of an administrative procedure, and, if required by national law, may be made subject to the applicant's consent, including making the result of the assessment available to the determining authority.**
  
1. **The assessment referred to in paragraph -1 shall be initiated as early as possible after an application is made by [...] identifying whether an applicant presents first indications that he or she may require [...] special procedural [...] guarantees [...]. The identification shall be based on visible signs, the applicant's statements or behaviour, or any relevant documents. In the case of minors, statements of the parents, adult responsible or representative of the applicant shall also be taken into account.**

The competent authorities, ~~with the consent of the applicant,~~ shall include information on any such first indications in the applicant's file and they shall make this information available to the determining authority.

2. [...]

3. [...]

The assessment referred to in paragraph -1 shall be continued [...] after the application is lodged, including where those needs become apparent at a later stage of the procedure, taking into account any information in the applicant's file as referred to in paragraph 1. The assessment shall be reviewed in case of any relevant changes in the applicant's circumstances.

3a. The [...]competent authority may, [...]refer the applicant, subject to his or her prior consent that shall include also transmission of the results, to the appropriate medical practitioner or psychologist or to another professional for advice on the applicant's need for special procedural guarantees. The result may be taken into account by the determining authority when deciding on the type of special procedural guarantees which may be provided to the applicant.

Where applicable, this assessment may be integrated with the medical assessments referred to in Article 23 and Article 24.

4. [...]

4a. The relevant personnel of the competent authorities assessing the need for special procedural guarantees shall receive [...]training [...]to enable them to recognise that an applicant may need special procedural guarantees and address those needs when identified [...].

### Applicants in need of special procedural guarantees

1. [...]
2. Where applicants have been identified as [...] **being** in need of special procedural guarantees, they shall be provided with **the necessary** [...] support **allowing** them to benefit from the rights and comply with the obligations under this Regulation [...].
3. [Where **the determining authority, including on the basis of the assessment of another relevant national authority, considers that** [...] **the necessary** support cannot be provided within the framework of the accelerated examination procedure referred to in Article 40 or the border procedure referred to in Article 41 [...] the determining authority shall not apply or shall cease to apply those procedures to the applicant.]
4. [...]

### Article 21

#### Guarantees for minors

1. The best interests of the child shall be a primary consideration for **the competent authorities** [...] when applying this Regulation.
2. **Where the determining authority considers it is in the best interests of the child and necessary for the examination of the application for international protection, it shall organise a personal interview for a minor taking into account in particular the age and maturity of that minor. The determining authority may also organise such an interview at the request of the minor, the adult responsible or the representative of the minor. [...]**
- 2a. [...] **The personal interview of a minor** shall be conducted by a person who has the [...] **appropriate** knowledge of the rights and special needs of minors. [...] **It shall be conducted in a child-sensitive [...] manner that takes into consideration the age, maturity and best interests of the child.**



- 2aa. Where a minor is accompanied, the personal interview shall be conducted in the presence of an adult responsible. Member States may, where necessary, and when it is in the best interest of the child, conduct the personal interview with this minor also in the presence of a person with necessary skills and expertise. On justified grounds and only if it is in the best interests of the child, the determining authority may interview the minor without the presence of an adult responsible, provided that it ensures that the minor is assisted during the interview by a person with necessary skills and expertise in order to safeguard his or her best interests.**
- 3. The relevant personnel of the determining authority [...] shall receive appropriate training [...] on the rights and special needs of minors.**

*Article 22*

**Special guarantees for unaccompanied minors**

- 1. The competent authorities shall ensure that unaccompanied minors are represented and assisted in such a way so as to enable them to benefit from the rights and comply with the obligations under this Regulation, [Regulation (EU) No XXXX/XXXX [AMMR Regulation]] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].**
- 1. [...]Where an application is made by a person who claims to be a minor, or in relation to whom there are objective grounds to believe that he or she is a minor, and who is unaccompanied, the competent authorities shall [...] designate:**
- {(a) as soon as possible a [...] person with the necessary skills and expertise to provisionally assist the minor in order to safeguard his or her best interest and general well-being which enables the minor to benefit from the rights under this [...]Regulation until a representative has been designated [...];}**

- (b) a representative as soon as possible but not later than [fifteen working days] from when the application is made, or as soon as possible, but not later than [fifteen working days] after receiving the age assessment outcome establishing that the applicant is a minor, where applicable. [...]

The representative and the person referred to in point (a) may be the same as that provided for in [Article 23 of Directive (EU) No XXXX /XXXX Reception Conditions Directive]. He or she shall take into account the minor's own views about his or her needs in accordance with the age and maturity of the minor.

[...]

Where the competent authority has concluded that an applicant [...] who claims to be a minor [...] is without any doubt [...] above the age of eighteen years, it need not designate a representative in accordance with this paragraph.

The duties of the representative or the person referred to in paragraph 1(a) shall cease where the competent authorities, following the age assessment referred to in Article 24 (1), consider that the applicant is not a minor or where the applicant is no longer an unaccompanied minor.

**1aa. In case of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations, the time limit for designating a representative may be extended by ten working days.**

**1a.** Where an organisation is [...] **designated under paragraph 1(a)** or as a representative, it shall designate a **natural** person [...] for carrying out these [...] **tasks in respect of the unaccompanied minor.**

[...]

- 1c.** The [...] competent authority[...] shall **immediately**:
- (a)** inform the unaccompanied minor [...], **in a child-friendly manner and in a language he or she can reasonably be expected to understand, of the designation of the person referred to in paragraph 1 (a) and of his or her representative and about how to lodge a complaint against the representative in confidence and safety.**
  - (b)** **inform the determining authority and the competent authority for registering the application, where applicable, that a representative has been designated for the unaccompanied minor; and**
  - (c)** **inform the person referred to in paragraph 1 (a) and the representative of the relevant facts, procedural steps and time-limits pertaining to the application of the unaccompanied minor.**
- 1d.** **The person referred to in paragraph 1 (a) shall meet with the unaccompanied minor and carry out the following tasks, unless performed by the legal adviser:**
- (a)** **provide him or her with relevant information in relation to the procedures provided for in this Regulation;**
  - (b)** **where applicable, assist him or her in relation to the age assessment procedure referred to in Article 24;**
  - (c)** **where applicable, provide him or her with the relevant information and assist him or her in relation to the procedures provided for in [Regulation (EU) No XXXX/XXXX [AMMR Regulation]] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].**
- 1da.** **As long as a representative has not been designated, Member States may authorise the person referred to in paragraph 1 (a) [...]to assist the minor with the registration and lodging of the application or lodge the application on behalf of the applicant in accordance with Article 32.**

- 1e. The representative shall meet the unaccompanied minor and shall carry out the following tasks, unless performed by the legal adviser:**
- (a) where applicable, provide him or her with relevant information in relation to the procedures provided for in this Regulation;**
  - (b) where applicable, assist with the age assessment procedure referred to in Article 24;**
  - (ba) where applicable, assist with the registration of the application;**
  - (c) where applicable, assist with the lodging of the application or lodge the application on his or her behalf in accordance with Article 32;**
  - (d) where applicable, assist with and be present for the personal interview and inform about possible consequences of the personal interview and about how to prepare for that interview;**
  - (e) where applicable, provide him or her with the relevant information and assist him or her in relation to the procedures provided for in [Regulation (EU) No XXXX/XXXX [AMMR Regulation]] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].**

**In the personal interview, the representative shall have an opportunity to ask questions or make comments within the framework set by the person conducting the interview.**

**The absence of the representative shall not prevent the determining authority from conducting the interview if the unaccompanied minor has legal capacity according to the national law of the Member State concerned or the legal adviser is present and the best interest of the child is considered.**

2. [...]
3. [...]
4. The [...] **representative** shall perform his or her [...] **tasks** in accordance with the principle of the best interests of the child. A **representative** shall have the necessary [...] **knowledge of the rights and special needs of minors**, and shall not have a verified record of child- related crimes [...] **and offences, or crimes and offences that lead to serious doubts about their ability to assume a role of responsibility with regard to minors.**
- 4a. The [...] **representative** shall be changed **where necessary, in particular** [...] when the [...] **competent** authorities consider that he or she has not adequately performed his or her tasks [...]. Organisations or [...] **natural persons** whose interests conflict [...] with those of the unaccompanied minor shall not be [...] **designated** as [...] **representative.**
5. The [...] **competent** authorities shall [...] place a [...] **representative** in charge of a [...] **proportionate and limited** number of unaccompanied minors at the same time [...] **to ensure that he or she is able** to perform his or her tasks effectively.
- 5a. Member States shall [...] **ensure that there are administrative or judicial authorities or other** entities [...] responsible [...] **for supervising and ~~securing~~ ensuring** [...] that [...] **the person designated under paragraph 1(a) and the representative properly** perform [...] **their tasks** [...]. Those **administrative or judicial authorities or other** entities [...] shall review complaints lodged by unaccompanied minors against [...] **his or her representative.**
6. [...]

## SECTION V

### MEDICAL EXAMINATION[...] AND AGE ASSESSMENT

#### *Article 23*

##### **Medical examination**

1. Where the determining authority deems it relevant for the [...] **examination** of an application for international protection in accordance with Regulation (EU) No XXX/XXX [(Qualification Regulation)], [...] **it may**, subject to the applicant's consent, [...] **request** a medical examination of the applicant concerning signs and symptoms that might indicate past persecution or serious harm **and be informed of results thereof**.
2. **In the case of a minor, the medical examination shall only be carried out where the parents, the adult responsible, the representative or the person referred to in Article 22 (1) (a) and, where provided for by national law, the applicant, consent. [...]**That medical examination[...] shall be **free of charge** [...].
3. When no medical examination is carried out in accordance with paragraph 1, the determining authority shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs and symptoms that might indicate past persecution or serious harm.
4. The results of the medical examination **referred in paragraph 1** shall be submitted to the determining authority as soon as possible and shall be assessed by the determining authority along with the other elements of the application.
- 4a. **The medical examination referred to in paragraph 1 shall be [...]**the least invasive possible and be performed only by medical professionals, and in a way that respects the individual's dignity.

5. An applicant's refusal to undergo a medical examination **or his or her decision to undergo a medical examination on his or her own initiative, when such an examination does not take place within a suitable time-frame**, shall not prevent the determining authority from taking a decision on the application for international protection.

*Article 24*

**[...]Age assessment of [...] minors**

1. **In case of doubt concerning the applicant's age, the competent authorities shall assess whether the applicant is a minor, on the basis of statements by the applicant or other relevant indications, including non-medical.**

[...] Medical examinations [...] **shall ~~may also~~ be used for the age assessment as a measure of last resort [...] where, following statements by the applicant, the parents, adult responsible, [...] representative or person referred to in Article 22 (1) (a), or other relevant indications, there are still doubts as to whether or not the applicant is a minor [...].**

Where the [...] **outcome of the age assessment referred to in this paragraph is not sufficiently** conclusive, [...] **the competent authorities** shall assume that the applicant is a minor.

2. [...]
3. [...] **The** medical examination shall be [...] **the least invasive possible and be performed [...] in a way that** respects [...] the individual's dignity[...]. **That examination** shall be carried out by [...] medical professionals allowing for the most reliable result possible.

4. Where medical examinations are used to [...], **assess the age of an applicant**, the [...] **competent authority shall ensure that [...] applicants, and their parents, adult responsible, their representatives and or the person referred to in Article 22(1)(a)** are informed, prior to the examination of their application for international protection, and in a language that they understand or are reasonably [...] **supposed** to understand, of the possibility that their age be [...] assessed by medical examination. This shall include information on the method of examination and possible consequences which the result of the medical examination may have for the examination of the application, as well as on the possibility and consequences of a refusal on their part [...] to undergo the medical examination.
- 4a. **A medical examination to assess the age of an applicant shall only be carried out where [...]the parents, the adult responsible, the representative or the [...] person referred to in Article 22(1)(a) and, where provided for by national law, the applicant, consent after having received the information provided for in paragraph 4.**
5. The refusal by [...] **the applicant, the parents, the adult responsible, [...]** **representative or person referred to in Article 22(1)(a)[...]** of a medical examination **to be carried out for the assessment of the applicant's age [...]** shall not prevent the determining authority from taking a decision on the application for international protection. **Such refusal may only be considered as a rebuttable presumption that the applicant is not a minor.**
6. [...] **The competent authorities may [...] take into account [...]** age assessments [...] **made by competent authorities in** other Member States on the basis of a medical examination carried out in accordance with this Article and based on methods which are recognised under its national law. **The competent authorities may also take into account the fact that an applicant has previously declared to be an adult in another Member State and has accordingly been registered as such in that Member State.**



# CHAPTER III

## ADMINISTRATIVE PROCEDURE

### SECTION I

#### ACCESS TO THE PROCEDURE

##### *Article 25*

##### **Making an application for international protection**

1. An application for international protection shall be **considered as** made when a third-country national or stateless person, **including an unaccompanied minor**, expresses **in person to a competent authority as referred to in Article 5(3aa) a [...] need to receive [...] international protection from a Member State [...]**.

[...]

- 1a. **The authorities responsible for the reception facilities in accordance with the Directive XXX/XXX/EU [(Reception Conditions Directive)] shall, where necessary, be informed that an application has been made. [For third-country nationals subject to the screening referred to in Article 3(1) of Regulation (EU) XXX/XXX [Screening Regulation], [...] Member States may choose to apply this provision only after the screening has ended.]**

2. [...]

*Article 26*

**Tasks of the responsible authorities when an application is made**

1. [...]
  - (a) [...]
  - (b) [...]
  - (c) [...]
  - (d) [...]
2. [...]

*Article 27*

**Registering applications for international protection**

1. The authorities [...] **responsible for registering applications or experts assisting them with that task** shall register an application promptly, and not later than [...] **seven days** from when it is made. [...] **For that purpose they shall register, at least,** the following information **[which may come from the screening form referred to in Article 13 of the Regulation (EU) No XXX/XXX (Screening Regulation)]:**
  - (a) [the name, date **and place** of birth, [...] **sex, nationality or statelessness, family members as defined in Article 2(g) of Regulation No (EU) XXX/XXX (AMMR Regulation), and in the case of minors, siblings or relatives as defined in Article 2(h) of Regulation No (EU) XXX/XXX (AMMR Regulation) present in a Member State, where applicable, [...] as well as other personal details of the applicant relevant for the procedure for international protection and for the determination of the Member State responsible;**]

(b) **where available to the applicant, the type, [...]number and period of validity of any identity or travel document of the applicant and the country that issued that document, as well as other documents of the applicant which the competent authority deems relevant for his or her identification and for the procedure for international protection and for the determination of the Member State responsible;**

(ba) **the date of the application, place where the application was made and the authority to which the application was made;**

(bb) **the applicant's location or the applicant's place of residence or address and where available a telephone number and an e-mail address where he or she may be reached.**

[1a. **The competent authorities shall take biometric data referred to in Regulation (EU) No XXX/XXX (Eurodac Regulation) upon the making or upon the registration of an application for international protection, as applicable, and transmit those data in accordance with that Regulation.]**

[...]

1b. **Where an application is made to an authority entrusted with the task of receiving applications for international protection which is not responsible for registering applications, that authority shall, if necessary, promptly and at the latest within [...]three working days from when the application was made inform the authority responsible for registering applications, and the application shall be registered by the responsible authority as soon as possible and at the latest within [...] seven days from when the information is received by the authority responsible for registering applications.**

2. [...]
3. Where [...] **there is** a disproportionate number of third-country nationals or stateless persons **that make an application within the same period of time, making** it difficult in practice to register applications within **the deadlines provided for in paragraphs 1 and 1b**, [...] **the application shall be registered at the latest within [...] twenty-one days.**
4. [...] **[Member States may regulate exceptions from paragraphs 1 (a), (b), (bb) and 1a in cases of subsequent applications, provided that the information referred to in these paragraphs is already available to the competent authority.]**
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. [...]

#### *Article 28*

#### **Lodging of an application for international protection**

1. The applicant shall lodge the application **with the competent authority of the Member State where the application is made as soon as possible and no later than [twenty-one [...] days] from [...] when the application is registered**, provided that he or she is given an effective opportunity to do so [...] **in accordance with this Article. By way of exception, in the cases referred to in Article 32, the application shall be lodged no later than twenty-one days from when the representative is designated. Where the application is not lodged with the determining authority, the competent authority shall promptly inform the determining authority that an application has been lodged.**

- [1a. Following a transfer in accordance with Article 26(1)(a) of AMMR Regulation, the applicant shall lodge the application with the competent authorities of the Member State responsible as soon as possible and no later than twenty-one days from when the applicant identifies himself or herself to the competent authorities of the Member State responsible[...].]
- 1b. The application shall be lodged in person at a designated time or date and place which shall be communicated to the applicant by the competent authorities.

Member States may provide in national law that an application is deemed to be lodged in person when the competent authority verifies that the applicant is physically present on the territory of the Member State at the time of registration or lodging of an application.

~~Alternatively and exceptionally,~~ Member States may provide in national law for the possibility for the applicant to lodge an application by means of a form, including where he or she is unable to appear in person owing to enduring serious circumstances beyond his or her control, such as imprisonment or long-term hospitalisation. The application shall be considered to have been lodged provided that the applicant submits the form [within the time-limit set out in paragraph 1] and provided that the competent authority concludes that the conditions under this paragraph have been met. In such cases, the time-limit for the examination of the application shall start to run from the date on which the competent authority receives the form.

2. [...]
3. For the purposes of the first paragraph of paragraph 1b, [...]where there is a disproportionate number of third-country nationals or stateless persons that [...] **make an application** for international protection **within the same period of time**, making it difficult in practice to [...] **give the applicant an appointment** [within [...] **that time-limit**] [...] the applicant [...] **shall be given an appointment** to lodge his or her application **at a date** not later than [...] **two months** from [...] when the application is registered.

4. When lodging an application, applicants are required to submit **as soon as possible** all the elements **and documents at their disposal** referred to in Article 4(2[...]) of Regulation (EU) No XXX/XXX [(Qualification Regulation)] needed for substantiating their application. [...] **After** the lodging of their application, **in particular [...]****at their personal interview**, applicants shall be [...] **allowed** to submit any additional elements relevant for its examination **by a deadline set by the Member State or, if such deadline is not set,** until a decision under the administrative procedure is taken [...].

[...]

5. [...]

6. [...]

**[6aa. An applicant shall not be allowed to lodge an application, where he or she refuses to comply with the obligation to provide biometric data in accordance with Regulation (EU) No XXX/XXX (Eurodac Regulation), provided that the administrative measures set out in Article 2(3) of Regulation (EU) No XXX/XXX (Eurodac Regulation) have been exhausted. The procedure under Article 39 shall apply.]**

**6a. Member States may organise the access to the procedure in such a way that making, registering or lodging take place at the same time. [...]**

#### *Article 29*

#### **Documents for the applicant**

1. The **competent** authorities of the Member State where an application for international protection is made shall, upon registration, provide the applicant with a document [...] **indicating** that an application has been made **and registered which shall be valid until the document referred to in paragraph 2 is issued [...]**.

**1a. The document referred to in paragraph 1 does not have to be provided if it is already possible to issue the document referred to in paragraph 2.**

- 1b. The document referred to in paragraph 1 shall be withdrawn when the document referred to in paragraph 2 is issued.**
2. The **competent** authorities of the Member State where the application is lodged **in accordance with Article 28 (1) and (1a)** shall, [...] **as soon as possible after the lodging of the application, [...] issue a document which shall include at least the following details, to be updated as necessary [...]:**
- (a) **the name, date and place of birth, sex, nationality or statelessness, [...] facial image of the applicant[...] and signature [...];**
  - (b) [...] the issuing authority, date and place of issue and period of validity of the document;
  - (c) [...] the status of the individual as an applicant;
  - (d) stating that the applicant has the right to remain on the territory of that Member State and indicating whether the applicant is free to move within all or part of the territory of that Member State;
  - (e) stating that the document is not a [...] travel document **and that the applicant is not allowed to travel without authorisation to other Member States [...].**
  - (f) [...]
- 2a. It shall not be necessary to issue the documents referred to in this Article when and for as long as the applicant is in detention, imprisonment [or subject to the procedure referred to in Article 41-41d].**
- 2b. In the case of accompanied minors, the documents referred to in this Article issued to one of the parents or adult responsible may also cover the minor, if appropriate.**
- 2c. The documents referred to in this Article [...]need not be proof of identity but shall be considered as being sufficient means for applicants to identify themselves in relation to national authorities for the duration of the procedure for international protection.**

3. [...]
4. The document referred to in paragraph 2 shall be valid for [...] **up to [...] twelve months [or until the applicant is transferred to another Member State in accordance with Regulation (EU) XXX/XXX [AMMR Regulation]]. Where the document is issued by the Member State responsible the validity [...] shall be renewed [...] so as to cover[...] the period during which the applicant has a right to remain on [...] its territory [...]. The period of validity [...] of the document does not constitute a right to remain [...] in accordance with this Regulation.**
5. [...]

### *Article 30*

#### **Access to the procedure in detention facilities and at border crossing points**

1. [...]
  - (a) [...]
  - (b) [...]
  - (c) [...]
3. **Where an applicant makes an application in detention facilities, in prison or at border crossing points, including transit zones, at external borders, [...]the [...] competent authorities shall make [...] arrangements for interpretation services [...] to the extent necessary** to facilitate access to the procedure for international protection.
4. Organisations and persons **permitted under national law to provide[...]** advice and counselling shall have [...] access to [...] **applicants** held in detention facilities or present at border crossing points, including transit zones, at external borders. **Such access may be subject to a prior agreement with the competent authorities.**



**In addition**, Member States may impose limits to such access [...], by virtue of national law, **where** they are necessary for the security, public order or administrative management of a border crossing point, **including transit zones**, or of a detention facility, provided that access is not severely restricted or rendered impossible.

#### *Article 30a*

##### **Applications on behalf of an adult requiring assistance to exercise legal capacity**

- 1. In the case of an adult requiring assistance to exercise legal capacity in accordance with national law ('dependent adult'), an adult responsible for him or her whether by law or by practice of the Member State concerned ('adult responsible') may make and lodge an application on the behalf of the dependent adult.**
- 2. The dependent adult shall be present for the lodging of the application, [...] except where there are justified reasons for which he or she cannot be present or, where such possibility is provided for in national law, the application is lodged by means of a form.**

[...]

#### *Article 31*

##### **Applications on behalf of an [...] accompanied minor**

[...]

- 1. [...] An accompanied minor shall have the right to lodge an application in his or her own name if he or she has the legal capacity according to the national law of the Member State concerned. Where the accompanied minor does not have the legal capacity according to the national law of the Member State concerned, ~~the parents,~~ a parent or another adult responsible for the minor, whether by law or by practice of the Member State concerned, shall lodge the application on his or her behalf.**

2. [...] In the case of an accompanied minor, who does not have legal capacity according to the national law of the Member State concerned and who is present at the moment of making or lodging of the application for international protection by the parent on the territory of the same Member State in relation to the application for international protection, in particular if such minor does not have any other legal means of staying, the making and lodging of an application by a parent or another adult responsible for him or her shall be considered to be the making and lodging of an application for international protection on behalf of the minor. Member States may decide to apply this paragraph also in case of an accompanied minor who is born or who is present during the administrative procedure.
3. [...] Where the parent or adult responsible for the accompanied minor lodges the application on behalf of the minor, the minor shall be present for the lodging of the application, except where there are justified reasons for which the minor cannot be present or, where such possibility is provided for in national law, the application on behalf of the minor is lodged by means of a form.
4. [...]
5. [...]
6. [...]
7. [...]
8. [...]
9. [...]
10. [...]

*Article 32*

**Applications of unaccompanied minors**

1. An unaccompanied minor shall **have the right to** lodge an application in his or her own name if he or she has the legal capacity [...] according to the national law of the Member State concerned[...]. **Where the unaccompanied minor does not have the legal capacity according to the national law of the Member State concerned [...] a [...] representative or a [...]person as referred to in Article 22(1)(a) shall lodge [...] the application** on his or her behalf.

[...]

2. In the case of an unaccompanied minor, **who does not have legal capacity according to the national law of the Member State concerned the application shall be lodged [...] within the time limit set out in Article 28(1) taking into account the best interests of the child [...].**

[...]

- 2a. **Where the representative of an unaccompanied minor or a [...]person as referred to in Article 22(1)(a) lodges the application on behalf of the minor, the minor shall be present for the lodging of the application, except where there are justified reasons for which the minor cannot be present or, where such possibility is provided for in national law, the application is lodged by means of a form.**

3. [...] [...]

## SECTION II

### EXAMINATION PROCEDURE

#### *Article 33*

#### **Examination of applications**

1. [...] **The determining authority** shall examine **and take decisions on** applications for international protection in accordance with the basic principles and guarantees set out in Chapter II.
2. [...] The determining authority shall examine applications objectively, impartially and on an individual basis. For the purpose of examining [...] **an application, [...] the determining authority** shall take the following into account:
  - (a) the relevant statements and documentation presented by the applicant [...] **in accordance with [Article 4(1) and (2) of Regulation No. XXX/XXX Qualification Regulation];**
  - (b) [...] relevant, [...] **precise** and up-to-date information relating to the situation prevailing in the country of origin of the applicant at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied, [...], obtained from relevant **and available national, Union and international sources, and where available [...]** the common analysis **on the situation in specific [...]** countries[...] of origin [...] **and the guidance notes** referred to in Article 11 of Regulation (EU) 2021/2303 [...] EU Asylum Agency Regulation [...];
  - (ca) **where applying the concepts of first country of asylum or safe third country, relevant, precise and up-to-date information relating to the situation prevailing in the third country being considered as a first country of asylum or a safe third country at the time of taking a decision on the application;**

- (d) the individual position and personal circumstances of the applicant [...] such as background, **sex** [...], age, sexual orientation and gender identity so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
  - (e) whether the activities that the applicant was engaged in since leaving the country of origin were carried out by the applicant for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country **as referred to in [Article 5 of Regulation No XXX/XXX Qualification Regulation]**;
  - (f) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship;
  - (fa) **whether the internal protection alternative as referred to in [Article 8 of Regulation No XXX/XXX Qualification Regulation] applies.**
3. The personnel examining applications and taking decisions shall have sufficient knowledge of **and shall have received adequate training in** the relevant standards applicable in the field of asylum and refugee law. **Such training may be provided with the assistance of the European Union Agency for Asylum or based on the training developed by that Agency, as appropriate.** They shall have the possibility to seek advice, **where available and to the extent** [...] necessary, from experts on particular issues, such as medical, cultural, religious and child-related or gender issues. [...] They may submit queries to the European Union Agency for Asylum in accordance with Article 10(2)(b) of Regulation (EU) 2021/2303 [...] (EU Asylum Agency Regulation).

4. [...]The determining authority shall, ~~including through oral translation provided by an interpreter~~, assess and choose, or indicate which of the documents or parts of the documents presented by the applicant must be translated; oral translation provided by an interpreter may be used for this assessment. The translation of those documents or parts thereof, ~~including through an interpreter~~, shall be ensured by the competent authorities, or as part of the free legal assistance and representation where this is provided; ~~including through oral translation provided by an interpreter may also be used~~. Alternatively, the translation of those relevant documents or parts thereof may be provided by other entities and paid for from public funds in accordance with national law.

The applicant may, at his or her own cost, ensure the translation of other documents ~~which are not identified by the determining authority as being relevant~~. In case of subsequent applications, the applicant may [...]be made responsible for the translation of documents.

5. [...] The determining authority may prioritise the examination of an application for international protection [...] in particular, where:
- (a) the application is likely to be well-founded;
  - (b) the applicant has special reception needs within the meaning of [Article 20 of Directive XXX/XXX/EU (Reception Conditions Directive)], or is in need of special procedural guarantees, in particular where he or she is an unaccompanied minor;
  - (c) there are reasonable grounds to consider the applicant as a danger to the national security or public order of the Member State;
  - (d) the application is a subsequent application-;
  - (e) the applicant has been subject to a decision in accordance with [Article 19(1)(2)(e)] [recast Reception Conditions Directive<sup>4</sup>] and/or has been involved in causing public nuisance or engaged in criminal behaviour.

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<sup>4</sup> ~~15204/17-INIT~~. 17152/22 REV 1

**Duration of the examination procedure**

1. [The examination to determine **whether an application is inadmissible [...]** in accordance with Article 36([...] **(1a)(a),(b) and (f) and (1aa)(a) and [(c)]**) shall be **concluded as soon as possible and not later than [...]** two months from the lodging of an application.

**In the case referred to in Article 36[...] (1a)(g), the determining authority shall conclude the examination within [...]ten [...]working days.**

[...]

**The application shall not be deemed to be admissible where no decision on inadmissibility is taken within the time-limits set out in this paragraph and in paragraph 1b.]**

- 1a. **The determining authority shall conclude the accelerated examination procedure as soon as possible and not later than [three months] from the lodging of the application.**
- 1b. **The determining authority may extend the time-limits provided for in the first paragraph of paragraph 1 and in paragraph 1a by not more than [...] two months where:**
  - (a) **a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it difficult in practice to conclude the admissibility procedure or the accelerated examination procedure within the set time-limits;**
  - (b) **complex issues of fact or law are involved;**
  - (c) **the delay can be attributed solely to the applicant.**

2. The determining authority shall ensure that an examination [...] on the merits, **which is not subject to an accelerated examination procedure**, is concluded as soon as possible and not later than six months from the lodging of the application[...].
3. **Without prejudice to paragraph 5a**, the determining authority may extend that time-limit [...] **by not more than [...] [...] nine months**, where:
  - (a) a disproportionate number of third-country nationals or stateless persons **make an application [...] for international protection within the same period of time**, making it difficult in practice to conclude the procedure within the six-month time limit;
  - (b) complex issues of fact or law are involved;
  - (c) **the delay can be attributed solely to the applicant.**
4. [Where an application is subject to the procedure laid down in Regulation (EU) No XXX/XXX (AMMR Regulation), **and the applicant is already in the Member State responsible in accordance with Regulation (EU) No XXX/XXX (AMMR Regulation)**, the time-limits referred to in paragraphs 1a and 2, **and where applicable in paragraph 1**, shall start to run from the moment **the Member State responsible is determined. If the applicant is not in the Member State responsible, the time limit shall start to run from when the application is lodged in accordance with 28(1a).**]  
[...]  
[...]



5. **Without prejudice to paragraph 5a**, the determining authority may postpone concluding the examination procedure where it cannot reasonably be expected to decide within the time-limits laid down in paragraphs **1a and 2** [...] due to an uncertain situation in the country of origin which is expected to be temporary. In such cases, the determining authority shall:
- (a) conduct reviews of the situation in that country of origin at least every [...] **six months**;
  - (aa) where available, take into account reviews of the situation in that country of origin carried out by the European Union Agency for Asylum;**
  - (b) inform the applicants concerned within a reasonable time of the reasons for the postponement.

The Member State shall inform the Commission and the European Union Agency for Asylum within a reasonable time of the postponement of procedures [...].

- 5a.** [...] [...] **Where the examination procedure is postponed in accordance with paragraph 5**, the determining authority shall conclude the examination procedure within [...] **21** [...] months from the lodging of an application.
6. [...] **Member States shall lay down time limits for the conclusion of examination procedure in case the Court annuls the decision of the determining authority and refers the case back. These time limits shall be shorter than the time limits provided in this Article.**

## SECTION III

### DECISIONS ON APPLICATIONS

#### *Article 35*

#### **Decisions [...] on applications**

1. A decision on an application for international protection shall be given in writing and it shall be notified to the applicant **in accordance with national law** without undue delay [...]. **Member States may provide that where a representative or legal adviser is representing the applicant, the [...] competent authority shall notify the decision to the representative or legal adviser instead of the applicant.**
  
2. Where an application is rejected as inadmissible, as unfounded **or manifestly unfounded** with regard to refugee status or subsidiary protection status, [...] as [...] **implicitly withdrawn or in the case referred to article 38 (1b)**, the reasons in fact and in law shall be stated in the decision **or in the act for the cases referred to in Article 38.**
  
- 2a. **The applicant shall be informed of the result of the decision and [...] of how to challenge a decision [...] rejecting an application as inadmissible, as unfounded or manifestly unfounded with regard to refugee status or subsidiary protection status, or as implicitly withdrawn, and it may be a part of the decision on an application for international protection. [...] That information shall be provided in a language that he or she understands or is reasonably supposed to understand when he or she is not assisted by a legal adviser[...]. Where the applicant is assisted by a legal adviser the information may be provided solely to that legal adviser without being translated in a language which the applicant understands or is reasonably supposed to understand.**

3. [...] **In case of accompanied minors or dependent adults [...]** and whenever the application is based on the same grounds **as the application of the adult responsible**, the determining authority may, **following an individual assessment for each applicant**, take a single decision, covering all applicants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise his or her interests, in particular in cases involving gender, sexual orientation, gender identity or age-based persecution. In such cases, a separate decision shall be issued **and notified in accordance with paragraph 1 [...]**.

### *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 where required by Directive XXX/XXX/EU [Recast Return Directive] unless a return decision or another decision imposing the obligation to return has already been issued prior to the making ~~lodging~~ of an application for international protection. The return decision shall be issued as part of the decision rejecting the application for international protection or, in a separate act. Where the return decision is issued as a separate act, it shall either be issued and notified together with the decision rejecting the application for international protection or without undue delay thereafter.**

*Article 36*

**Decision on the inadmissibility of the application**

1. [...]
- 1a. **The determining authority may be authorised under national law to reject [...] the application as inadmissible where any of the following grounds applies:**
  - (a) a country which is not a Member State is considered to be a first country of asylum for the applicant pursuant to Article 44, unless it is clear **beforehand** that the applicant will not be admitted or readmitted to that country;
  - (b) a country which is not a Member State is considered to be a safe third country for the applicant pursuant to Article 45, unless it is clear **beforehand** that the applicant will not be admitted or readmitted to that country;
  - (c) [...]
  - (d) [...]
  - (f) **an international criminal court or tribunal has provided safe relocation for the applicant to a Member State or third country, or is unequivocally undertaking actions to that extent, unless new relevant circumstances have arisen which have not been taken into account by the court or tribunal or where there was no legal possibility to raise circumstances relevant to internationally recognized human rights standards before that international criminal court or tribunal;**

- (g) the applicant, who is issued with a return decision in accordance with Article [...]8 of Directive 2008/115/EC, makes an application only after seven working days from the date on which the applicant receives the return decision and provided that he or she had been informed of the consequences of not making an application within that time-limit and that no new relevant elements have arisen since the end of that period.**

**1aa. The determining authority shall reject an application as inadmissible where any of the following grounds applies:**

- (a) a subsequent application where no new relevant elements as referred to in Article 42 (2) and (3a) relating to the examination of whether the applicant qualifies as a beneficiary of international protection in accordance with Regulation (EU) No XXX/XXX [(Qualification Regulation)] or relating to the inadmissibility ground previously applied, have arisen or have been presented by the applicant;**

**[...] (b) the applicant was born after a Member State other than the Member State examining his or her application has granted his or her parents international protection;**

**[(c) a Member State other than the Member State examining the application has granted the applicant international protection.]**

2. [...]

3. [...]

4. [...]

5. [...]

Article 37

**Decision on the merits of an application**

**-1. An application shall not be examined on the merits where:**

- [(a) another Member State is responsible in accordance with Regulation (EU) No XXX/XXX (AMMR Regulation)]; ~~or~~**
- (b) an application is rejected as inadmissible in accordance with Article 36(1a) ~~and (1aa);~~ or**
- (c) an application is ~~rejected as explicitly or implicitly withdrawn;~~ this is without prejudice to Article 38(2), and Article 39(5b).**

1. When examining an application on the merits, the determining authority shall **determine** [...] whether the applicant qualifies as a refugee and, if not, it shall determine whether the applicant is eligible for subsidiary protection in accordance with Regulation (EU) No XXX/XXX [(Qualification Regulation)].
2. The determining authority shall reject an application as unfounded where it has established that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX [(Qualification Regulation)].
3. The determining authority [...] **may be authorised under national law to declare an unfounded application to be manifestly unfounded, if at the time of the conclusion of examination, any of the circumstances [...] referred to in Article 40(1) and (5) [...] apply [...].**

*Article 38*

**Explicit withdrawal of applications**

1. An applicant may, of his or her own motion [...], withdraw his or her application. **The application shall be withdrawn in writing by the applicant in person or delivered by his or her legal adviser in accordance with national law. [...]**
  - 1a. **The competent authorities shall make sure that the applicant has been informed in accordance with Article 8(2)(c) of the consequences of that withdrawal in a language he or she understands or is reasonably supposed to understand.**
  - 1b. **The competent authorities shall adopt a decision or an act, [...] declaring that the application has been explicitly withdrawn, which shall be final and shall not be subject to an appeal as referred to in Chapter V of this Regulation.**
2. [...]Where at the stage that the application is explicitly withdrawn the determining authority already found that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX [(Qualification Regulation)], [...] it may take a decision to reject the application [...] as unfounded [...] or as manifestly unfounded.

*Article 39*

**Implicit withdrawal of applications**

1. The [...] competent authority shall ~~reject~~ **adopt a decision or an act rejecting or declaring** an application as [...] **implicitly withdrawn**

where:

- (a) [...];
- (b) [...];

(ca) the applicant refuses to cooperate by not providing his or her name, date of birth, nationality, biometric data or by not complying with any of the obligations set out in Article 7(2)(aa);

(c) [...] the application is, without due cause, not lodged in accordance with Article[...] 28 [...];

[...]

(cb) the applicant refuses to provide his or her address unless housing is provided by competent authorities;

[...]

[...]

(d) the applicant has, **without due justified cause**, not [...] attended a personal interview although he or she was required to do so pursuant to Article[...] 12 or **without justified cause refused to respond to questions during the interview to the extent that the outcome of the interview is not sufficient to take a decision on the merits of the application;**

(e) [...]

(f) [...]

(h) the applicant does not remain available to the competent administrative or judicial authorities, such as by leaving for an unknown destination or leaving the territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the applicant's control [...];

(i) [the applicant has lodged the application in a Member State other than provided in article 9(1) and (2) of Regulation (EU) No XXX/XXX (AMMR Regulation) [...] and does not remain present in that State pending the determination of the Member State responsible or the implementation of the transfer procedure, if applicable].



2. [...] [...]The competent authority may suspend the procedure to give the applicant the possibility for justification or rectification before rejecting or declaring the application as implicitly withdrawn.
3. [...]
4. [...]
5. [...]
- 5a. [...]
- 5b. [...]An application may be rejected as unfounded or as manifestly unfounded where the determining authority has, at the stage that the application is implicitly withdrawn, already found that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX [(Qualification Regulation)].

## SECTION IV

### SPECIAL PROCEDURES

#### *Article 40*

#### **Accelerated examination procedure**

1. **Without prejudice to Article 20(3), [...]**the determining authority shall, in accordance with the basic principles and guarantees provided for in Chapter II, accelerate the examination on the merits of an application for international protection, in the cases where:
  - (a) the applicant, in [...] **lodging** his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection in accordance with Regulation (EU) No XXX/XXX [(Qualification Regulation)];
  - (b) the applicant has made clearly [...], inconsistent [...] **or** contradictory, clearly false or obviously improbable representations, **or representations** which contradict [...] **relevant and available** country of origin information, thus making his or her claim clearly unconvincing [...] **as** to whether he or she qualifies as a beneficiary of international protection by virtue of Regulation (EU) No XXX/XXX [(Qualification Regulation)];
  - (c) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information **or documents, particularly with respect to his or her identity or nationality or he or she has destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality or if the circumstances clearly give reason to believe that this is the case [...]**;

- (d) the applicant [...] **makes** an application merely to delay or frustrate the enforcement of [...] **a decision [...] for** his or her removal from the territory of a Member State;
- (e) a third country may be considered as a safe country of origin for the applicant within the meaning of this Regulation;
- (f) [...] **there are reasonable grounds to consider the applicant** as a danger to the national security or public order of the Member States, **or the applicant had been forcibly expelled for serious reasons of national security or public order under national law**;
- (g) [...]
- (h) the application is a subsequent application **which is not inadmissible [...]**;
- (ha) **the applicant entered the territory of a Member States unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented himself or herself to the competent authorities or not made an application for international protection as soon as ~~reasonably~~ possible, given the circumstances of his or her entry**;
- (hb) **the applicant entered the territory of a Member State lawfully, and without good reason has not made an application for international protection as soon as ~~reasonably~~ possible, given the grounds of his or her application; this is without prejudice to the need of international protection arising *sur place***;
- (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 decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower, unless the determining authority assesses that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or that 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;

2. [...] [...]  
  
    [...]  
  
    [...]
3. [...]
4. Where the determining authority considers that the examination of the application involves issues of fact or law that are complex to be examined under an accelerated examination procedure, it may continue the examination on the merits in accordance with Articles 34(2) and 37. [...]
5. The accelerated examination procedure may be applied to unaccompanied minors only where:
  - (a) the applicant comes from a third country **that may be** considered to be a safe country of origin in accordance [...] **within the meaning of this Regulation;**
  - (b) **there are reasonable grounds to consider** the applicant [...] as a danger to the national security or public order of the Member State, or the applicant had[...] been forcibly expelled for serious reasons of [...] **national** security or public order under national law[...];
  - (ba) **the application is a subsequent application which is not inadmissible;**
  - (baa) **the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents, particularly with respect to his or her identity or nationality or he or she has destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality or if the circumstances clearly give reason to believe that this is the case [...]; or**

- (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% or lower, unless the determining authority assesses a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or that 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;**
- (d) [...]

**Point (baa) shall only be applied where there are serious grounds for considering that the applicant is attempting to conceal relevant elements [...]after he or she has been given an effective opportunity to provide substantiated justifications [...].**

## Article 41

### Conditions for the asylum border procedure

[...]

1. Following the screening ~~procedure~~ carried out in accordance with Regulation (EU) No XXX/XXX [Screening Regulation], ~~provided that any of the circumstances listed in~~ **in order to apply** Article 36 or Article 40(1)(a)–(h) and (i) and (5)(b) ~~apply~~ and provided that the applicant has not yet been authorised to enter Member States' territory, a Member State may, in accordance with the basic principles and guarantees of Chapter II, 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 apprehension in connection with an unauthorised 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 [57(9)] of Regulation (EU) No XXX/XXX [...] **Regulation on Asylum and Migration Management**].
2. Applicants subject to the border procedure shall not be authorised to enter the territory of a Member State, without prejudice to [...]**Articles 41c(2) and 41e(2)**. Member States shall take all appropriate measures in accordance with Directive XXX/XXX/EU [**Recast Reception Conditions Directive**] to prevent unauthorised entry into their territory.

3. **By way of derogation from [...]Article 41c(2), the applicant shall not be authorised to enter the Member State’s territory where:**
- (a) the applicant’s right to remain has been revoked in accordance with Article 9(3), points (a) or(bb);**
  - (b) the applicant has no right to remain 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 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 41g shall apply.**

*Article 41a:*

*Decisions in the framework of the asylum border procedure*

1. [...] Where a border procedure is applied, decisions may be taken on the following:
- (a) the inadmissibility of an application in accordance with Article 36;**
  - (b) the merits of an application [...] if any of the circumstances listed in Article 40(1)(a)-(h) and (i) and (5)(b) apply.**

2. When applying the border procedure, a Member State may prioritise the examination of applications of certain third country nationals or, in the case of stateless persons, of former habitual residents of third countries, for which there is a high probability of the enforcement of a return decision or a refusal of entry from that Member State to their country of origin, or, in the case of stateless persons, of former habitual residence, to a safe third country or a first country of asylum, within the meaning of this Regulation.

*Article 41b*

*Mandatory application of the asylum border procedure*

[...] 1.A Member State shall examine an application in a border procedure in the cases referred to in [...] Article 41(1) where the circumstances referred to in Article 40(1), point (c), (f) or (i), apply.

- 1a. Where the conditions in Article 40(1)(f) apply, the applications of all members of that family shall be examined in the border procedure.
- 1b. For the purpose of paragraph 1a, in order to maintain family unity, “members of that applicant’s family” shall be understood as meaning, insofar as the family already existed before the applicant arrived on the territory of the Member States, the following members of the applicant’s family who are present on the territory of the same Member State in relation to the application for international protection:
- (i) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,
  - (ii) the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,



- (iii) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,
- (iv) where the applicant is a minor and unmarried, the sibling or siblings of the applicant, provided they are unmarried and minors.

For the purpose of points (ii), (iii) and (iv), on the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage could not be contracted in accordance with the relevant national law in the Member State concerned, in particular having regard to the legal age of marriage.

- 2. [...]
- 3. [...]
- 4. [...]

#### *Article 41ba*

##### *The adequate capacity at Union level*

- 1. The adequate capacity at Union level for examining applications in the border procedure for carrying out the border procedure at Union level shall be considered to be of XXX.<sup>5</sup>
- 2. ~~In the [Recommendation] referred to in Article 7c of Regulation (EU) XXX/XXX [AMMR] the Commission may identify a higher number for the adequate capacity at Union level than that provided in paragraph 1 depending on the needs arising from the specific challenges in the area of migration for the relevant year.~~

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<sup>5</sup> The PRES proposes to move paragraph 2 in the previous version of Art. 41ba to the AMMR by adding in Art. 7c a new paragraph 5: “Depending on the needs arising from the special challenges in the area of migration for the upcoming year, the Recommendation may identify a higher or, in exceptional situations a lower, number for the adequate capacity at Union level for carrying out the border procedure as provided in Article 41ba paragraph 1 of Regulation (EU) XXX/XXX [APR]. The PRES proposes to move paragraph 3 in the previous version of the article to Art. 7b AMMR.

3. ~~When identifying the adequate capacity at Union level as provided in paragraph 2, the Commission shall take into account relevant qualitative and quantitative criteria, including, for the relevant year, the number of arrivals of third country nationals or stateless persons former residents of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide Eurostat data, 20% or lower, the reception and processing capacity of Member States, the preparedness measures and the average return rates.~~

### *Article 41bb*

#### *The adequate capacity of a Member State*

1. The Commission shall, by means of an implementing act, set a number that is considered to correspond to the adequate capacity of each Member State for **examining applications in the carrying out the** border procedures.
2. The number referred to in paragraph 1 shall be calculated by multiplying the number set out in Article 41ba by the number of irregular crossings of the external border and arrivals following search and rescue operations in the Member State concerned during the previous three years and dividing the result thereby obtained by the number of irregular crossings of the external border and arrivals following search and rescue operations in the EU during the same period.
3. The implementing act referred to in paragraph 1 shall be adopted by the Commission for the first time within **two** 2 months following the entry into force of this Regulation and then by the same month every three years thereafter.
4. **Nothing in this Article shall be interpreted as requiring a Member State to take action that would undermine the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.**

Article 41be

Measures applicable in case the adequate capacity is reached or about to be reached

1. Where a Member State notifies the Commission in accordance with Article 41bd(1), by way of derogation from Article 41b(1), that Member State is not required to examine in a border procedure applications made by applicants referred to in Article 40(1)(i) who are of a nationality or, in the case of stateless persons, former habitual residents of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, higher than 5%.

This paragraph may be applied by a Member State from the day following the date of the notification in accordance with Article 41bd(2) for a maximum period of 6 months within the same calendar year.

2. Where a Member State notifies the Commission in accordance with Article 41bd(2) and, in the case of a Member State that is not identified in Article 7a of [the AMMR] as being under migratory pressure, where authorised to do so by the implementing act referred to in Article 41bd(3), by way of derogation from Article 41b(1), that Member State is not required to examine in a border procedure applications made by applicants referred to in Article 40(1)(i) at a moment when the number of applicants that are subject to the border procedure in that Member State is equal to the number referred to in Article 41bb or higher.

2a. Paragraph 2 may be applied by a Member State:

(i) from the day following the date of the notification in accordance with Article 41bd(2) until the date of the adoption by the Commission of an implementing act in accordance with Article 41bd(3), where the Member State is not identified in Article 7a of [the AMMR] as being under migratory pressure;

~~(ii) for a maximum period of 6 months within the same calendar year starting from the date set out in the Commission implementing act referred to in Article 41bd(3), where the Commission authorises a Member State that is not identified in Article 7a of [the AMMR] as being under migratory pressure to apply paragraph 2; or~~

~~(iii) for a maximum period of 6 months within the same calendar year starting from the date of the notification in accordance with Article 41bd(2), where the Member State concerned is identified in the Article 7a AMMR as being under migratory pressure.~~

~~The period of six months referred to in this paragraph shall be without prejudice to Article 41bd(4).~~

#### Article 41bc

Measure applicable in case the adequate capacity of a Member State is about to be reached

1. When the number of applicants that are subject to the border procedure in a Member State is equal to 75% of the number set out in respect of the Member State concerned in the Commission implementing act referred to in Article 41bb or higher the Member State may notify the Commission.
2. Where a Member State notifies the Commission in accordance with paragraph 1, by way of derogation from Article 41b(1), that Member State is not required to examine in a border procedure applications made by applicants referred to in Article 40(1)(i) who are of a nationality or, in the case of stateless persons, former habitual residents of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, higher than five percent.
3. Paragraph 2 may be applied by a Member State from the day following the date of the notification in accordance with paragraph 1 for a maximum period of six months within the same calendar year.

Article 41bd

Notification by a Member State in case the annual adequate capacity is reached or about to be reached

- 1.— A Member State may notify the Commission that, at the time of the notification, the number of applicants that are subject to the border procedure in that Member State is equal to 75% of the number set out in respect of the Member State concerned in the Commission implementing act referred to in Article 41bb or higher.
- 2.— A Member State may notify the Commission that, at the time of the notification, the number of applicants that are subject to the border procedure in that Member State is equal to the number set out in respect of the Member State concerned in the Commission implementing act referred to in Article 41bb or higher.
- 3.— Following reception of a notification in accordance with paragraph 2 by a Member State which is not identified in the Article 7a AMMR as being under migratory pressure, the Commission shall promptly examine the information provided by the Member State concerned and decide, by means of an implementing act, whether or not that Member State is authorised to apply the exceptional measures referred to in the notification.  
For the purpose of deciding whether such authorisation is to be given, the Commission shall take account of the elements foreseen in Article 7b AMMR.
- 4.— At the expiry of the 6 month period referred to in points (ii) or (iii) of Article 41bc(2a), the Member State concerned may notify the Commission that the number of applicants that are subject to the border procedure in that Member State at the time of such notification is equal to the number set out in the Commission implementing act referred to in Article 41bb or higher. In such case, where the Member State is not identified as being under migratory pressure pursuant to Article 7a AMMR, the procedure in paragraph 3 shall apply.

~~5. The notifications referred to in paragraphs 1, 2 and 4 shall contain the following information:~~

- ~~(a) number of applicants that are subject to the border procedure in the Member State concerned at the time of the notification;~~
- ~~(b) the exceptional measure(s), referred to in Article 41bc, that the Member State concerned intends to apply or to continue applying;~~
- ~~(c) a substantiated reasoning in support, describing how resorting to the exceptional measures concerned could help in addressing the situation, and where applicable, other measures that the Member State concerned has adopted or envisages adopting at national level to alleviate the situation, including those referred to in Article 6a of the AMMR.~~

~~6. Member States may notify the Commission in accordance with paragraphs 1, 2 or 4 as part of the notification referred to in Article 44 and 45 [of the AMMR], where applicable.~~

~~7. Where a Member State notifies the Commission in accordance with paragraphs 1, 2 or 4, the Member State concerned shall inform other Member States accordingly.~~

~~8. A Member State applying one or more of the exceptional measures set out in Article 41bc shall inform the Commission on a monthly basis about the number of applicants that are subject to the border procedure in that Member State at that time.~~

#### Article 41bd

##### Measure applicable in case the adequate capacity of a Member State is reached

1. When the number of applicants that are subject to the border procedure in a Member State is equal to the number set out in respect of that Member State in the Commission implementing act referred to in Article 41bb or higher, the Member State may notify the Commission.

**2. Following reception of a notification in accordance with paragraph 1 by a Member State which is not identified pursuant to Article 7a AMMR as being under migratory pressure, the Commission shall promptly examine the information provided by the Member State concerned and decide, by means of an implementing act, whether or not that Member State is authorised to apply the measure referred to in paragraph 3.**

**For the purpose of deciding whether such authorisation is to be given, the Commission shall take account of the elements foreseen in Article 7b AMMR where applicable.**

**3. Where a Member State notifies the Commission in accordance with paragraph 1 and, in the case of a Member State that is not identified in Article 7a of [the AMMR] as being under migratory pressure, where authorised to do so by the implementing act referred to in paragraph 2, by way of derogation from Article 41b(1), that Member State is not, required to examine in a border procedure applications made by applicants referred to in Article 40(1)(i) at a moment when the number of applicants that are subject to the border procedure in that Member State is equal to the number referred to in Article 41bb or higher.**

**4. The measure in paragraph 3 may be applied by a Member State:**

**(i) from the day following the date of the notification in accordance with paragraph 1 until the date of the adoption by the Commission of an implementing act in accordance with paragraph 2, where the Member State is not identified pursuant to Article 7a of [the AMMR] as being under migratory pressure;**

**(ii) for a maximum period of six months within the same calendar year starting from the date set out in the Commission implementing act referred to in paragraph 2, where the Commission authorises a Member State that is not identified pursuant to Article 7a of [the AMMR] as being under migratory pressure to apply paragraph 3; or**

**(iii) for a maximum period of six months within the same calendar year starting from the day following the date of the notification in accordance with paragraph 1, where the Member State concerned is identified pursuant to Article 7a AMMR as being under migratory pressure.**

**5. At the expiry of the six month period referred to in points (ii) or (iii) of paragraph 4, the Member State concerned may notify the Commission that the number of applicants that are subject to the border procedure in that Member State at the time of such notification is equal to the number set out in the Commission implementing act referred to in Article 41bb or higher. In such case, where the Member State is not identified as being under migratory pressure pursuant to Article 7a AMMR, the procedure in paragraph 2 shall apply.**

#### **Article 41be**

#### **Notification by a Member State in case the adequate capacity is reached or about to be reached**

**1. The notifications referred to in Articles 41bc and 41bd shall contain the following information:**

- (d) number of applicants that are subject to the border procedure in the Member State concerned at the time of the notification;**
- (e) the measure, referred to in Articles 41bc and 41bd, that the Member State concerned intends to apply or to continue applying;**
- (f) a substantiated reasoning in support, describing how resorting to the measure concerned could help in addressing the situation, and where applicable, other measures that the Member State concerned has adopted or envisages adopting at national level to alleviate the situation, including those referred to in Article 6a of the AMMR.**



- 2. Member States may notify the Commission in accordance with Article 41bc and 41bd as part of the notification referred to in Article 44c and 44d [of the AMMR], where applicable.**
- 3. Where a Member State notifies the Commission in accordance with Articles 41bc or 41bd, the Member State concerned shall inform other Member States accordingly.**
- 4. A Member State applying one of the measures set out in Articles 41bc or 41bd shall inform the Commission on a monthly basis about the number of applicants that are subject to the border procedure in that Member State at that time.**

#### *Article 41c*

##### *Deadlines*

1. By way of derogation from Article 28 of this Regulation, applications subject to a border procedure shall be lodged no later than five days from registration for the first time or, following a relocation in accordance with Article [57(9)] of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], five days from when the applicant arrives in the Member State [...] of relocation following a transfer pursuant to Article [...] 57(9), of that Regulation. Failure to comply with the deadline of **five 5** days shall not affect the continued application of the border procedure.
- [...] 2. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. The duration of the border procedure shall be of 12 weeks from when the application is registered until the applicant no longer has a right to remain and is not allowed to remain. Following that period, the applicant shall be authorised to enter the Member State's territory except when Article [...] 41g is applicable.

**Member States shall lay down provisions on the duration of the examination procedure by way of derogation from Article 34, of the examination by a court or tribunal of a request to remain lodged in accordance with Article 54(4) and (5) and, if applicable, of the appeal procedure which ensure that all these various procedural steps are finalised within 12 weeks from when the application is registered.**

**The 12-week period may be extended to 16 weeks if the procedure cannot be concluded within that time due to actions of the applicant in order to delay or frustrate the conclusion of the procedure, or where additional time is needed by the determining authority or the court or tribunal of first instance to ensure an adequate and complete examination or an effective remedy.**

[...]

#### *Article 41d*

##### *Determination of Member State responsible and relocation*

[...] 1.[...] **Where the conditions for the border procedure apply, Member States may decide to 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] at the locations where the border procedure will be carried out, without prejudice to the deadlines established in [...]Article 41c(2).**

[...] 2. **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 Member State to which the applicant is relocated in accordance with Article [...] 57(9) of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], including in the cases referred to in [...]Article 41(1)(d).**

*Article 41e*

*Exceptions to the asylum border procedure*

[...]1. The border procedure shall be applied to unaccompanied minors only in the cases referred to in Article 40(5)(b), ~~and to minors below the age of 12 and their family members only in the cases referred to in Article 40(1)(f).~~<sup>6</sup>

[...]2. 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 reception conditions and guarantees, including the specific reception needs of minors, as provided for in Directive XXX/XXX/EU [Recast Reception Conditions Directive], cannot be met in the locations referred to in Article 41f;
- (c) the necessary support cannot be provided to applicants with special procedural needs in the locations referred to in [...]Article 41f;
- (d) the determining authority considers that there are compelling medical reasons for not applying the border procedure;
- (e) [...]the conditions and guarantees for detention as provided for in Articles 8 to 11 of Directive XXX/XXX/EU [Recast 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.**

<sup>6</sup> A recital, clarifying that in case the applicant is subject to age assessment procedure according to Art. 24, he/she shall be exempt from the asylum border procedure, only after age assessment procedure has ended.

*Article 41f*

*Locations for carrying out the asylum border procedure*

[...]1. During the examination of applications subject to a border procedure, Member States shall require, pursuant to Article 7 of Directive XXX/XXX/EU [Recast Reception Conditions Directive] and without prejudice to Article 8 thereof, the applicants [...] to reside at or in proximity to the external border or transit zones, fully taking into account the specific geographical circumstances of the Member States. 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 [...] Article 41b and ensure that the capacity of those locations is sufficient to process the applications covered by that Article. Any changes in the identification of the locations at which the border procedure is applied, shall be notified to the Commission within two months of the changes having taken place.

[...]2. In situations where the capacity of the locations notified by Member States pursuant to paragraph [...] 1 is temporarily insufficient to process examine the applicants applications covered by [...] Article 41b, and for any other practical reason which renders impossible the reception in a specified location, Member States may designate other locations within the territory of the Member State and upon notification to the Commission accommodate applicants there, on a temporary basis and for the shortest time necessary.

2a. The requirement to reside at a particular place in accordance with paragraphs 1 and 2 shall not be regarded as authorisation to enter into and stay on the territory of a Member State.

3. **Where an applicant subject to the border procedure needs to be transferred to the determining authority or to a competent court or tribunal of first instance for the purposes of such a procedure, or transferred for the purposes of receiving medical treatment, such travel shall not in itself constitute an entry into the territory of a Member State.**

[...]

*Article [...] 41g*

**Border procedure for carrying out return**

1. **Third-country nationals and stateless persons whose application is rejected in the context of the procedure referred to in Articles 41-41f shall not be authorised to enter the territory of the Member State.**
2. **Member States shall require the persons referred to in paragraph 1 [...]to reside for a period not exceeding 12 weeks in locations at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it may resort to the use of other locations within its territory. The 12-week period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain. The requirement to reside at a particular place in accordance with this paragraph shall not be regarded as authorisation to enter into and stay on the territory of a Member State.**
3. **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.**

- 3a. When the return decision cannot be enforced within the maximum period referred to in paragraph 2, Member States shall continue return procedures in accordance with Directive XXX/XXX/EU [Recast Return Directive].
4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure. The period for voluntary departure shall be granted only upon request and shall not exceed 15 days without the right to enter the territory of the Member State. For the purpose of this provision, the person shall surrender any valid travel document in his possession to the competent authorities for as long as necessary to prevent absconding.

#### *Article 41h*

#### *Detention*

[...]1. Persons referred to in [...] Article 41g(1) who have been detained during the procedure referred to in Articles 41-41f 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.

[...]2. Persons referred to in [...] Article 41g(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 Articles 41-41f, 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. Detention may only be imposed as a measure of last resort when it proves necessary on the basis of an individual assessment of each case and if other less coercive measures cannot be applied effectively.

[...]3. Detention shall be maintained for as short a period as possible, as long as removal arrangements are in progress and executed with due diligence. The period of detention shall not exceed the period referred to in [...]Article 41g(2) and shall be included in the maximum periods of detention set in Article [...] 18 (5) and (6) of Directive XXX/XXX/EU [Recast Return Directive] where a consecutive detention is issued immediately following the detention under this Article.

#### *Article 41i*

#### *Refusal of entry*

[...] 1. Member States that, following the rejection of an application in the context of the procedure referred to in Articles 41-41f, issue a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, 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 treatment and level of protection set out in Articles 41g(2) and 41h(3).

#### *Article 42*

#### *Subsequent applications*

- 1. An application made where a final decision on a previous application by the same applicant has not yet been taken shall be considered as a further representation and not as a new application.

That further representation shall be examined in the Member State responsible in the framework of the ongoing examination in the administrative procedure or in the framework of any ongoing appeal procedure in so far as the competent court or tribunal may take into account the elements underlying the further representation.

1. [...]Any further application made **by the same applicant** in a[...] Member State **after a final decision has been taken on a previous application by the same applicant** shall be considered [...] **as a subsequent application and shall be examined** by the Member State responsible.
2. A subsequent application shall be subject to a preliminary examination in which the determining authority shall establish whether [...] new elements [...] have arisen or have been presented by the applicant **and** which:
  - (a) significantly increase the likelihood of the applicant **to qualify**[...] as a beneficiary of international protection by virtue of Regulation (EU) No XXX/XXX [(Qualification Regulation)]; or
  - (b) [...] relate to **an inadmissibility ground previously applied, where** [...] the previous application was rejected as inadmissible.
3. The preliminary examination shall be carried out on the basis of written submissions [...] **or** a personal interview in accordance with the basic principles and guarantees provided for in Chapter II. **In particular, [...]**the personal interview may be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to [...] new elements **as referred to in paragraph 2 [...]**.
- 3a. **The elements presented by the applicant shall be considered as being new only where the applicant was unable, through no fault on his or her own part, to present those elements in the context of the earlier application. Any elements which could have been presented earlier by the applicant need not be taken into account unless the previous application was rejected as implicitly withdrawn in accordance with Article 39 without an examination on the merits.**



4. [...]Where[...] new elements **as referred to in paragraph 2** [...] have been presented by the applicant **or have arisen, the application shall be further examined on its merits, unless the application may be considered as inadmissible on the basis of another ground provided for in Article 36(1a).**

(b) [...]

5. Where **no new elements as referred to in paragraph 2 have been presented by the applicant or have arisen, the application shall be rejected** as inadmissible pursuant to Article 36 (1aa)(a) [...].

### *Article 43*

#### **Exception from the right to remain in subsequent applications**

Without prejudice to the principle of *non-refoulement*, Member States may provide an exception from the right to remain on their territory and derogate from Article 54[...] **(5)(d), [...]** as from when:

**(-a) a first subsequent application has been lodged, merely in order to delay or frustrate the enforcement of a decision which would result in the applicant's imminent removal from that Member State and is not further examined pursuant to Article 42(5);**

(a) [...]

(b) a second or further subsequent application is made in any Member State following a final decision rejecting a previous subsequent application as inadmissible **or** unfounded or manifestly unfounded.

(c) [...]

## SECTION V

### SAFE COUNTRY CONCEPTS

#### *Article 43a*

##### **The notion of effective protection**

- 1. A third country that has ratified and respects the Geneva Convention within the limits of the derogations or limitations made by that third country, as permitted under the Convention, shall be considered as ensuring effective protection. In case of geographical limitations made by the third country, the existence of protection for persons who fall outside of the scope of the Convention shall be assessed in accordance with the criteria set out in paragraph 2.**
  
- 2. In cases other than that referred to in paragraph 1, that third country shall be considered as ensuring effective protection where the following criteria are met as a minimum:**
  - (a) being allowed to remain on the territory of the third country;**
  
  - (b) access to means of subsistence sufficient to maintain an adequate standard of living with regard to the overall situation of the hosting third country;**
  
  - (c) access to emergency healthcare and essential treatment of illnesses; and**
  
  - (d) access to elementary education.**

**The concept of first country of asylum**

1. A third country **may only** [...] be considered to be a first country of asylum for an [...] applicant **where in that country** [...]:
  - (a) [...] **the applicant's life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;**
  - (b) [...] **the applicant faces no real risk of serious harm as defined in [Article 16 of Regulation (EU) No XXX/XXX (Qualification Regulation)];**
  - (ba) **the applicant is protected against refoulement and against removal, in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law;**
  - (bb) **the applicant enjoyed effective protection as defined in Article 43a before travelling to the Union and he or she can still avail himself or herself of that protection.**
  
2. [...]
  - (a) [...]
  - (b) [...]
  - (c) [...]
  - (d) [...]
  - (e) [...]
  - (f) [...]
  - (g) [...]

- 2a. ~~[...]An individual assessment of the particular circumstances of the applicant shall be carried out taking into account elements submitted by the applicant explaining why the concept of first country of asylum would not be applicable to him or her.~~  
**The concept of first country of asylum may only be applied provided that the applicant cannot demonstrate the existence of elements justifying why the concept of safe country of origin is not applicable to him or her, in the framework of an individual assessment.**
3. [...]
4. [...]<sup>1</sup>
5. [...]
- (a) [...]
- (b) [...]
- 5a. **A third country may only be considered to be a first country of asylum for an unaccompanied minor where there are clear indications that the applicant will be admitted or readmitted by the third country and it is not contrary to his or her best interest.**
6. **Where the third country in question does not [...] readmit the applicant to its territory or does not reply within a time limit set by the competent authority, the applicant shall [...] have access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and Section I of Chapter III.**
7. [...]
- 8.

**The concept of safe third country**

1. A third country **may only** [...] be designated as a safe third country [...] **where in that country**:
  - (a) **non-nationals'** life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
  - (b) **non-nationals face** [...] no **real** risk of serious harm as defined in [Article 16 of Regulation (EU) No XXX/XXX (**Qualification Regulation**)];
  - (c) **non-nationals are protected against** [...] refoulement [...] **and against** [...] removal, in violation of the right to **protection** [...] from torture and cruel, inhuman or degrading treatment **or punishment** as laid down in international law [...];
  - (e) the possibility exists **to request and, if conditions are fulfilled, receive effective protection as defined in Article 43a** [...].
- 1a. **The designation of a third country as a safe third country ~~both at Union and at~~ national level may be made with exceptions for specific parts of its territory or clearly identifiable categories of persons.**

**1b.** [...] **The assessment of** whether a third country [...] is a safe third country in accordance with this Regulation **shall be based on** [...] a range of **relevant and available** sources of information, including [...] from Member States, the European Union Agency for Asylum, the European External Action Service, the United Nations High Commissioner for Refugees [...] and other relevant **international** organisations.

2. The concept of safe third country **may** [...] be applied:

[...] where a third country has been designated as safe third country **at Union or national level** in accordance with Articles 46 or 50 or

[...]

(b) [...]

[...] in relation to a specific applicant **where the country has not been designated as safe third country at Union or national level, provided that the conditions set out in paragraph 1 are met with regard to that applicant.**

**2b.** The concept of safe third country may only be applied provided that:

(a) ~~an [...] individual assessment of the particular circumstances of the applicant has [...] been carried out taking into account elements submitted by the applicant justifying why the concept of safe third country would not be applicable to him or her~~ **the applicant cannot demonstrate the existence of elements justifying why the concept of safe third country is not applicable to him or her, in the framework of an individual assessment;**

(b) **in case of unaccompanied minors, where there are clear indications that the applicant will be admitted or readmitted by the third country and it is not contrary to his or her best interest.**

**Member States may under national law provide for rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country.**

3. [...] Where the EU and a third country have jointly come to ~~a statement, arrangement or an~~ agreement that migrants admitted under this ~~statement, arrangement or~~ agreement will be protected in accordance with the relevant international standards and in full respect of the principle of *non-refoulement*, the conditions of this Article regarding safe third country status may be **presumed considered fulfilled in the absence of evidence to the contrary and without prejudice to paragraph 2b.**

(a) [...]

(b) [...]

4. [...]

5. [...]

6. [...]

(a) [...]

(b) [...]

7. Where the third country in question does not admit or readmit the applicant to its territory ~~or does not reply within a time limit set by the competent authority~~, the **applicant [...]** shall **have [...]** access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and Section I of Chapter III.

## Article 46

### Designation of safe third countries at Union level

1. Third countries **listed in [Annex 1a] to this Regulation** are [...] designated as safe third countries at Union level, in accordance with the conditions laid down in Article 45(1).
2. The Commission shall [...] review the situation in third countries that are **on the EU common list of [...]** safe third countries [...] with the assistance of the European Union Agency for Asylum and based on the other sources of information referred to in [...] Article 45(1b).
- 2a. **The European Union Agency for Asylum shall, at the request of the Commission, provide it with information and analysis on specific third countries which could be considered for inclusion in the EU common list of safe third countries. The Commission shall promptly consider any request from a Member State[...] to assess whether a third country could be designated as a safe third country at Union level.**
3. The Commission shall be empowered to adopt delegated acts to suspend the designation of a third country as a safe third country at Union level subject to the conditions as set out in Article 49.

## Article 47

### The concept of safe country of origin

1. A third country [...] may **only** be designated as a safe country of origin in accordance with this Regulation where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally no persecution as defined in [Article 9 of Regulation (EU) No XXX/XXX (Qualification Regulation)] [...] **and no real risk of serious harm as defined in [Article 16 of Regulation (EU) No XXX/XXX (Qualification Regulation)].**



- 1a. **The designation of a third country as a safe country of origin ~~both at Union and at national level~~ may be made with exceptions for specific parts of its territory or clearly identifiable categories of persons.**
2. [...] **The assessment of** whether a third country [...] is a safe country of origin in accordance with this Regulation **shall be based on** [...] a range of **relevant and available** sources of information, including [...] information from Member States, the European Union Agency for Asylum, the European External Action Service, the United Nations High Commissioner for Refugees, [...] **and** other relevant **international** organisations, and shall take into account **where available** the common analysis of the country of origin information referred to in Article 10 **11** of Regulation (EU) No ~~XXX/XXX~~ **2021/2303** (EU Asylum Agency).
3. In making this assessment, account shall be taken, *inter alia*, of the extent to which protection is provided against persecution or [...] **serious harm** by:
- (a) the relevant laws and regulations of the country and the manner in which they are applied;
  - (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant for Civil and Political Rights or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;
  - (c) [...]
  - (d) the provision for a system of effective remedies against violations of those rights and freedoms.

4. **The concept of [...] a safe country of origin [...] may [...] only be applied provided that [...]:**

(a) **[...] the applicant** has the nationality of that country or he or she is a stateless person and was formerly habitually resident in that country;

[...]

(aa) **the applicant does not belong to a category of persons for which an exception was made when designating the third country as a safe country of origin at national level;**

(b) ~~**an individual assessment of the particular circumstances of the applicant has been carried out taking into account elements submitted by the applicant justifying why the concept of safe country of origin would not be applicable to him or her [...]**~~ **the applicant cannot demonstrate the existence of elements justifying why the concept of safe country of origin is not applicable to him or her, in the framework of an individual assessment.**

[...]

#### *Article 48*

#### **Designation of safe countries of origin at Union level**

1. Third countries listed in [Annex 1] to this Regulation are designated as safe countries of origin at Union level, in accordance with the conditions laid down in Article 47.
2. The Commission shall [...] review the situation in third countries that are on the EU common list of safe countries of origin, with the assistance of the **European** Union Agency for Asylum and based on the other sources of information referred to in Article 47[...] (2).

3. [...] **The European Union Agency for Asylum shall, at the request of the Commission,** [...] provide it with information **and analysis** on specific third countries which could be considered for inclusion in the common EU list of safe countries of origin. **The Commission shall promptly consider any request from a Member State[...] to assess whether a third country could be included in the common EU list of safe countries of origin.**
4. The Commission shall be empowered to adopt delegated acts to suspend the presence of a third country from the EU common list of safe countries of origin subject to the conditions as set out in Article 49.

*Article 49*

**Suspension and removal [...] of a third country [...] from the EU common lists of safe third country or of safe country of origin**

1. In case of [...] **significant** changes in the situation of a third country [...] which is on the EU common lists **of safe third country or** of safe countries of origin, the Commission shall conduct a substantiated assessment of the fulfilment by that country of the conditions set in Article 45 or Article 47 and, if the Commission considers that those conditions are no longer met, it shall adopt a delegated act suspending [...] the presence of a third country from the EU common lists **of safe third countries or** of safe countries of origin for a period of six months.
2. The Commission shall continuously review the situation in that third country taking into account *inter alia* information provided by the Member States **and the European Agency for Asylum** regarding subsequent changes in the situation of that country.

3. Where the Commission has adopted a delegated act in accordance with paragraph 1 [...] suspending the presence of a third country from the EU common lists **of safe third countries or** of safe countries of origin, it shall within three months after the date of adoption of that delegated act submit a proposal, in accordance with the ordinary legislative procedure, for amending this Regulation to remove that third country [...] from the EU common lists **of safe third countries or** of safe countries of origin.
  4. Where such a proposal is not submitted by the Commission within three months from the adoption of the delegated act as referred to in paragraph 1 [...], the delegated act [...] suspending the presence of the third country from the EU common lists **of safe third countries or** of safe countries of origin shall cease to have effect. Where such a proposal is submitted by the Commission within three months, the Commission shall be empowered, on the basis of a substantiated[...] assessment, to extend the validity of that delegated act for a period of six months, with a possibility to renew this extension once.
- 4a. Without prejudice to paragraph 4, where the proposal submitted by the Commission to amend this Regulation to remove the third country from the EU common lists of safe third countries or of safe countries of origin is not adopted within fifteen months from when the proposal was submitted by the Commission, the suspension of the presence of a third country from the EU common lists of safe third countries or of safe countries of origin shall cease to have effect.**

#### *Article 50*

#### **Designation of third countries as safe third countries or safe country of origin at national level**

1. [...] Member States may retain or introduce legislation that allows for the national designation of safe third countries or safe countries of origin other than those [...] which are on the EU common lists in [Annex 1 **and 1a**] for the purposes of examining applications for international protection.

2. Where [...] the presence of a third country has been suspended from the EU common lists in [Annex 1 **or 1a**] to this Regulation pursuant to Article 49(1), Member States shall not designate that country as a safe third country or a safe [...] country of origin at national level [...].
3. Where a third country [...] has been removed from the EU common lists in [Annex[...] I **or 1a**] to the Regulation in accordance with the ordinary legislative procedure, a Member State may notify the Commission that it considers that, following changes in the situation of that country, it again fulfils the conditions set out in Article 45(1) and Article 47.

The notification shall include a substantiated assessment of the fulfilment by that country of the conditions set out in Article 45(1) and Article 47 including an explanation of the specific changes in the situation of the third country, which make the country fulfil those conditions again.

**Following the notification, the Commission shall request the European Union Agency for Asylum to provide it with information and analysis on the situation in the third country.**

The notifying Member State may only designate that third country as a safe third country or as a safe country of origin at national level provided that the Commission does not object to that designation.

**The Commission's right of objection shall be limited to a period of two years after the date of removal of that third country from the EU common lists of safe countries of origin or of safe third countries. Any objection by the Commission shall be issued within a period of three months after the date of notification by the Member State and after due review of the situation in that third country, having regard to the conditions set out in Articles 45(1) and 47 of this Regulation. After the period of two years, the Member State shall consult the Commission on the designation of that third country as a safe third country or as a safe country of origin at the national level.**

**Where it considers that those conditions are fulfilled, the Commission may propose an amendment to this Regulation in order to add that third country to the EU common lists of safe countries of origin or of safe third countries.**

4. Member States shall notify the Commission and the European Union Agency for Asylum of the third countries that are designated as safe third countries or safe countries of origin at national level **upon the date of application of this Regulation and** immediately after [...] **each designation or changes to the designations.** Member States shall inform the Commission and the Agency once a year of the other safe third countries to which the concept is applied [...] in relation to specific applicants **as referred to in Article 45(2)(b).**

## CHAPTER IV

### PROCEDURES FOR THE WITHDRAWAL OF INTERNATIONAL PROTECTION

#### *Article 51*

##### **Withdrawal of international protection**

The determining authority shall start the examination to withdraw international protection from a **third-country national or stateless** [...] person [...] when new elements or findings arise indicating that there are reasons to reconsider [...] **whether he or she qualifies for international protection. Such an examination may also be initiated under other circumstances.**

#### *Article 52*

##### **Procedural rules for withdrawal of international protection**

1. Where the [...] **determining authority or, if provided for by national law, a competent court or tribunal** [...] starts the examination to withdraw international protection from a third-country national or a stateless person, [...] the person concerned shall enjoy the following guarantees [...]:
  - (a) he or she shall be informed in writing that [...] his or her qualification as a beneficiary of international protection **is being reconsidered** and the reasons for such [...] reconsideration; and
  - (aa) **he or she shall be informed of the obligation to cooperate fully with the determining authority and other competent authorities, in particular that he or she shall be required to make a written statement or appear for a personal interview or a hearing and answer questions;**

**(aaa) he or she shall be informed of the consequences of not cooperating with the determining authority and other competent authorities and that failure to submit the written statement or to attend the personal interview or the hearing without due justification shall not prevent the determining authority or the competent court or tribunal from taking a decision to withdraw international protection; and**

**(b) he or she shall be given the opportunity to submit [...] reasons as to why his or her international protection should not be withdrawn by means of a written statement within reasonable time from the date on which he or she receives the information referred to in point (a) [...] or in a personal interview or hearing at a date set by the determining authority or if provided for by national law, the competent court or tribunal [...].**

2. For the purposes of paragraph 1, **the determining authority or the competent court or tribunal [...]:**

**(a) [...] shall obtain relevant, precise and up-to-date information from relevant and available national, Union and international [...] sources, [...] and where [...] available, take into account the common analysis on the situation in a specific country of origin and the guidance notes referred to in Article ~~10~~ 11 of Regulation No ~~XXX/XXX~~ 2021/2303 [...] Regulation on the European Union Agency for Asylum] [...]; and**



- (b) [...] **shall not obtain[...] information** from the actors of persecution or serious harm in a manner that would result in such actors being directly informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration, or jeopardise the physical integrity of the person or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.
3. The decision [...] to withdraw international protection shall be given in writing. The reasons in fact and in law shall be stated in the decision and information on the manner in which to challenge the decision shall be given in writing.
4. Where the determining authority has taken the decision to withdraw international protection, the provisions of Article [...]5b, [...]and Articles 15a to [...] 17 shall apply *mutatis mutandis*.
- 4a. **Where the third country national or stateless person does not cooperate, where applicable, by not submitting a written statement or by not attending the personal interview or the hearing or by not answering questions without due justification, the absence of the written statement or the personal interview or hearing shall not prevent the determining authority or the competent court or tribunal from taking a decision to withdraw international protection [...]. Such refusal to cooperate may only be considered as a rebuttable presumption that the third country national or stateless person [...]no longer wishes to benefit from [...] [...]international protection.**

5. [...] **The procedure set out in this Article shall not apply [...]** where the **third country national or stateless person [...]**:
- (a) [...] **explicitly [...]** renounces[...]; ~~in writing~~, his or her recognition as **beneficiary of international protection [...]**;
  - (b) [...] has become a national of [...] a Member State [...]; **or**
  - (c) **has subsequently been granted international protection in another Member State.**

**Member States shall conclude ~~these~~ the cases covered by this paragraph in accordance with their national law. This conclusion need not take the form of a decision, but shall be recorded at least in the applicant's file together with the indication of the legal ground for this conclusion.**

## CHAPTER V

### APPEAL PROCEDURE

#### *Article 53*

#### The right to an effective remedy

[...]

1. Applicants and persons subject to withdrawal of international protection shall have the right to an effective remedy before a court or tribunal in accordance with the basic principles and guarantees provided for in Chapter II that relate to appeal 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 or an act declaring an application as implicitly withdrawn;
  - (d) a decision withdrawing international protection;
  - (e) a return decision issued in accordance with Article 35a of this Regulation.

~~The return decision shall be appealed jointly with the related decisions referred to in points (a), (b), (c) and (d), either before the same court of tribunal within the same judicial proceedings and the same time limits, or if appealed in separate judicial proceedings the appeal shall be lodged within time limits that do not exceed the time limits referred to in paragraph 7.~~

Where a return decision is taken as a part of the related decision as referred to in points (a), (b), (c) or (d), it shall be appealed jointly with these decisions, before the same court of tribunal within the same judicial proceedings and the same time limits. Where a return decision is issued as a separate act pursuant to article 35a, it may be appealed in a separate judicial proceedings. The time limits for those judicial proceedings shall not exceed the time limits referred to in paragraph 7.

2. Without prejudice to paragraph 1, 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.
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].

4. **Applicants, persons subject to withdrawal of international protection and persons recognised as eligible for subsidiary protection shall be provided with interpretation for the purpose of a hearing 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. Other than in the cases covered by the border procedure referred to in Articles 41-41f, Member States may require an applicant, a person subject to withdrawal of international protection and a person recognised as eligible for subsidiary protection to provide translations of the documents he/she intends to submit in support of the remedies pursuant to this Article.**
6. **If the documents are not submitted in due time as determined by the court or tribunal, where the translation is to be provided by the applicant, or in time for the court or tribunal to ensure their translation where the translation is ensured by the court or tribunal, the court or tribunal may refuse to take those documents into account [...].**
7. **Member States shall lay down the following time-limits in their national law for applicants, persons subject to withdrawal of international protection and persons recognised as eligible for subsidiary protection to lodge appeals against the decisions referred to in paragraph 1:**
  - (a) **between a minimum of five days and a maximum of 10 days [...]in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn, [...]as unfounded or as manifestly unfounded if at the time of the decision any of the circumstances listed in Article 40(1) or (5) apply;**

(b) between a minimum of two weeks and a maximum of one month [...]in all other cases.

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 the applicant, the person subject to withdrawal of international protection, the person recognised as eligible for subsidiary protection or his or her representative or legal adviser in accordance with Article 35(1) of this Regulation. The procedure for notification shall be laid down in national law.

9. [...]

#### *Article 54*

##### **Suspensive effect of appeal**

1. The effects of a return decision shall be automatically suspended for as long as an applicant or a person subject to withdrawal of international protection has a right to remain or is allowed to remain in accordance with this Article.
2. Applicants and persons subject to withdrawal of international protection shall have the right to remain on the territory of the Member States until the time-limit within which 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 applicant and the person subject to withdrawal of international protection 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 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) and (5) apply [including safe country of origin] or in the cases subject to the border procedure;
  - (b) a decision which rejects an application as inadmissible pursuant to Article 36(1a)(a) [...] (f), (g) or (1aa)(a);
  - (c) a decision which rejects an application as 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)].
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 or the person subject to withdrawal of international protection shall be allowed to remain on the territory of the Member States pending the outcome of the remedy upon the request of the applicant's request or of the person subject to withdrawal of international protection. The competent court or tribunal 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 where relevant in the light of any *ex officio* decisions:
- (a) the applicant or the person subject to withdrawal of international protection shall have a time-limit of at least 5 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 or the person subject to withdrawal of international protection 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 or the person subject to withdrawal of international protection shall be provided, upon request, with free legal assistance and representation in accordance with Article 15a[...];
  - (d) the applicant or the person subject to withdrawal of international protection shall not be removed from the territory of the Member State responsible [...]:
    - (i) until the time-limit for requesting a court or tribunal to be allowed to remain has expired;
    - (ii) where the applicant or the person subject to withdrawal of international protection 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 or the person subject to withdrawal of international protection shall be allowed to remain on the territory.



6. **In cases of subsequent applications, by way of derogation from paragraph [...] 5, 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.**
  
7. **An applicant or a person subject to withdrawal of international protection 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 or the person subject to withdrawal of international protection to remain upon the request of the applicant's request or of the person subject to withdrawal of international protection or acting ex officio in cases where the principle of *non-refoulement* is invoked.**

*Article 55*

**Duration of the first level of appeal**

1. **Member States shall lay down in their national law time limits for the court or tribunal to examine the decision of the determining authority and return decision in accordance with Article 53(1). [...]**
  - (a) [...]
  - (b) [...]
  - (c) [...]
  
2. [...]

## CHAPTER VI

### FINAL PROVISIONS

#### *Article 56*

#### **Challenge by public authorities**

This Regulation does not affect the possibility for public authorities to challenge the administrative or judicial decisions as provided for in national legislation.

#### *Article 57*

#### **Cooperation**

1. Each Member State shall appoint a national contact point and send its address to the Commission. The Commission shall send that information to the other Member States.
2. Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the responsible authorities.
3. When resorting to the measures referred to in Article 27(3), Article 28(3) and Article 34(1b) and (3), Member States shall inform the Commission and the European Union Agency for Asylum as soon as the reasons for applying those exceptional measures have ceased to exist and at least on an annual basis. That information shall, where possible, include data on the percentage of the applications for which derogations were applied to the total number of applications processed during that period.

## *Article 57a*

### **Data storage**

[...]

[...]

[...]

**Member States shall store the data referred to in Articles 13, 27 and 28 for as long as necessary in their national system, in compliance with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), including the principle of purpose and storage limitation.**

## *Article 57b*

### **Calculation of time limits**

**Unless otherwise provided, aAny period of time prescribed in this Regulation shall be calculated as follows:**

- (a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;**

- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
- (c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned; if a time limit ends on a Saturday, Sunday or official holiday, the next working day shall be counted as last day of the time limit.

*Article 58*

**Committee Procedure**

1. The Commission shall be assisted by the committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.<sup>7</sup>
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. [...]

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<sup>7</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

*Article 59*

**Delegated acts**

1. The power to adopt delegated acts **referred to in articles 46 and 48** is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in paragraph 1 shall be conferred on the Commission for a period of five years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
- 3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.<sup>8</sup>**
4. As soon as it adopts such a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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<sup>8</sup> OJ L 123, 12.5.2016, p. 1–14

5. Such a delegated act and its extensions shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [...] **two months** from notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. **That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.**<sup>9</sup>

*Article 60*

**Monitoring and evaluation**

By [two years from [...]the date of application 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.

**Within three years from the date of entry into force of this Regulation, and every three years thereafter, the Commission shall assess whether the number set out in Article 41ba(1) continues to be adequate in view of the overall migratory situation in the Union and shall, where appropriate, propose any targeted amendments.**

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<sup>9</sup> OJ L 123, 12.5.2016, p. 1–14

## Article 61

### Repeal

Directive 2013/32/EU is repealed **with effect from the date referred to in Article 62(2), without prejudice to Article 62(3).**

References to the repealed Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex 2.

## Article 62

### Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall start to apply from [...]**two years** from its entry into force].
3. **This Regulation shall apply to the procedure for granting international protection in relation to applications lodged [...] as from the date of application of this Regulation. Applications for international protection [...] lodged before that date shall be governed by Directive 2013/32/EU. This Regulation shall apply to the procedure for withdrawing international protection where the examination to withdraw international protection started as from the date of application of this Regulation. Where the examination to withdraw international protection started before the date of application of this Regulation the procedure for withdrawing international protection shall be governed by Directive 2013/32/EU.**

4. [Each Member State shall notify to the Commission the locations referred to in Article 41(12) as soon as the necessary arrangements have been made to accommodate applicants in these locations during the border procedure and no later than [12] months after the date this Regulation applies. Upon notification from all Member States, the Commission shall inform without delay the Council and the European Parliament. Article 41(2) applies as of [two] months of the transmission of that information to the Council and the European Parliament. The Commission shall publish the date of application of Article 41(2) in the Official Journal of the European Union. In any event, Article 41(2) shall apply no later than [14] months after the date this Regulation applies. Any changes to a Member State's list of locations shall be notified promptly to the Commission.]

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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