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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 - Presidency compromise text

Following the policy debate in COREPER on 3 May on the essential building blocks of AMMR and APR, the Presidency is presenting in the Annex to this document a revised compromise text specifically on the border procedures in the APR. Thus, the compromise text relates strictly to the articles on the border procedures, namely **Article 4(x)**, **Articles 41-41i** and **Article 60**. In addition, **Article 40** was added to the Annex for clarity purposes as it is referred to by other provisions. However, the Presidency does not intend to discuss the latter provision at the next COREPER meeting.

New changes since the last version of the text as set out in 8464/23 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/EU¹**

(...)

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);**

¹ **Recitals have been removed from this version of the document.**

- (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) [...]:²
- ([...]**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;

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

- ([...]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.³**

³ **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 required measures to establish an adequate capacity, in terms of reception and human resources, required to examine at any given moment an identified number of applications and to enforce return decisions.”**

(...)

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~~, 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 carried out in accordance with Regulation (EU) No XXX/XXX [Screening Regulation], in order to apply Article 36 or if any of the circumstances listed in Article 40(1)(a)–(h) and (i) and (5)(b) applies 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 a transfer pursuant to 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) last sentence of the first subparagraph, 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) has been revoked;
 - (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

[...] 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) applies apply.

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 return 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 any of the circumstances referred to in Article 40(1), point (c), (f) or (i), applies 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

The adequate capacity at Union level for carrying out the border procedures shall be considered to be of XXX.⁴

Article 41bb

The adequate capacity of a Member State⁵

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 carrying out the border procedures.

⁴ 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

⁵ The Presidency intends to introduce the following recital: “The extent of the obligation of the Member State to set up the adequate capacity should take appropriate account of Member States’ concerns regarding national security and public order.”

It shall also set the maximum number of applications a Member State is required to examine in the border procedure per year. That maximum number shall be X times the number obtained through the use of the formula in Article 41bb(2). Where a Member State has examined this maximum number of applications, that Member State shall continue to examine in the border procedure applications of 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 return from that Member State to their country of origin or, in the case of the stateless persons, of former habitual residence, to a safe third country or a first country of asylum, within the meaning of this Regulation, or to whom the circumstances listed in Article 40(1)(f) and (5)(b) apply.

2. The number referred to in the first subparagraph of paragraph 1 shall be calculated by multiplying the number set out in Article 41ba by the sum number of irregular crossings of the external border, arrivals following search and rescue operations and refusals of entry at the external border in the Member State concerned during the previous three years and dividing the result thereby obtained by the sum number of irregular crossings of the external border and, arrivals following search and rescue operations and refusals of entry at the external border in the Union as a whole EU during the same period according to the latest available Frontex and Eurostat data.
3. The implementing act referred to in paragraph 1 shall be adopted by the Commission for the first time within two months following the entry into force of this Regulation and then by the same month every three years thereafter. Following the adoption by the Commission of the implementing act, each Member State shall ensure that they have the adequate capacity set out in that act in place.
- ~~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

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 41bcd

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 or exceeds the number set out in respect of that Member State in the Commission implementing act referred to in the first subparagraph of paragraph 1 of Article 41bb or higher, that the Member State may notify the Commission of the fact.

~~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.~~

~~32. 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 the first subparagraph of paragraph 1 of Article 41bb or higher.~~

~~3. The measure in paragraph 2 shall be applied on an inflow-outflow basis and the Member State concerned shall be required to continue examining in a border procedure applications made by applicants referred to in Article 40(1)(i) as soon as the number of applicants that are subject to the border procedure in that Member State at any given moment is lower than the number referred to in the first subparagraph of paragraph 1 of Article 41bb.~~

4. The measure in paragraph ~~23~~ 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 remainder of 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 41b~~de~~

*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:
 - (a) number of applicants that are subject to the border procedure in the Member State concerned at the time of the notification;
 - (b) the measure, referred to in Articles 41bc ~~and 41bd~~, that the Member State concerned intends to apply or to continue applying;
 - (c) 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.

The Commission shall monitor the application of the measure in Article 41bc and to that effect review the information provided by Member States.

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 transfer pursuant to~~ 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. ~~Without prejudice to the last subparagraph of this paragraph, t~~The **maximum** 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 or if the Member State to which the person is transferred pursuant to Article [57(9)] of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management] is applying the border procedure.

[...]

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~~ **transferred**, a border procedure may be applied by the Member State to which the applicant is transferred 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).

[...]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 necessary support cannot be provided to applicants with special reception needs, including minors, in accordance with Chapter IV of the reception conditions and guarantees, including the specific reception needs of minors, as provided for in Directive XXX/XXX/EU [Recast Reception Conditions Directive], ~~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. Minors shall, as a rule, not be detained.**

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

Article 41f

Locations for carrying out the asylum border procedure⁶

[...]1. During the examination of applications subject to a border procedure, Member States shall **as a general rule** 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~~ **examine** 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.

⁶ **The Presidency intends to add a recital clarifying that where such locations are used to examine applications which are not subject to the border procedure, applications not subject to the border procedure should not be calculated towards the adequate capacity of the Member State to be reached as referred to in Article 41bb.”**

[...]2. In situations where the capacity of the locations notified by Member States pursuant to paragraph [...] 1 is temporarily insufficient to examine the 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 their 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.**

5. 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 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 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.
