

## Establishing a return border procedure

In 2020, the European Commission presented a revised proposal for an asylum procedure regulation, which seeks to establish a harmonised common EU procedure. During interinstitutional negotiations, a separate act was agreed for the return border procedure. During the April I plenary session, the European Parliament is due to vote its first-reading position on the December 2023 political agreement reached by the co-legislators.

### Background

As one of five key acts of the [Common European Asylum System](#), the current [Asylum Procedure Directive](#) sets out common minimum procedures for Member States for granting and withdrawing international protection in line with the [Qualification Directive](#). In 2016, the Commission put forward a legislative [proposal](#) to replace the Asylum Procedure Directive with a directly applicable regulation that would help harmonise the procedures further, ensuring the same steps, timeframes and safeguards across the EU.

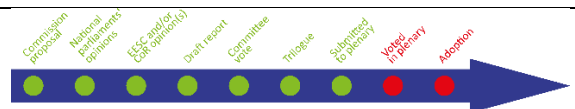
### European Commission proposal

In 2020, as part of the [new pact on migration and asylum](#), the Commission presented a [revised proposal](#) for a common asylum procedure regulation. The new text keeps the 2016 proposal's overall objectives while also addressing much-disputed issues such as the border procedure and returns. In the revised proposal, the Commission clarifies the scope for the use of the border procedure, specifying that it would only apply to applicants who have not yet been authorised to enter the territory of a Member State and do not meet the entry criteria set out in the [Schengen Borders Code](#). Those who do not qualify for protection would be promptly returned in order to close current procedural loopholes and to address the issue of low [return rates](#). The Commission emphasises the need for 'seamless and efficient links between all stages of the relevant procedures' for all migrants arriving irregularly. After a newly introduced procedure of [screening](#) at the external borders, third-country nationals and stateless persons would be channelled to either the asylum or return procedure, or refused entry. If an irregularly staying third-country national does not return, or is not removed, within the maximum duration of the return border procedure (12 weeks), the provisions of the [Return Directive](#) should apply to carry out the return.

### European Parliament position

During trilogue talks, the negotiators instructed the Parliament's and Council's legal services to assess risks of illegality deriving from variable geometry. As a solution, a new self-standing regulation establishing a return border procedure, based on [Article 79\(2\)\(c\)](#) of the Treaty on the Functioning of the EU, was created by splitting the proposed asylum procedure, and crisis and force majeure regulations. The provisional agreement of 20 December 2023 sets out a more generalised use of the [border procedure](#) immediately after pre-entry screening, lasting up to 12 weeks – or 20 weeks in times of crisis – in line with the proposal for a [crisis and force majeure regulation](#). The latter also extends the use of the border procedure: in situations of mass arrivals, the threshold for the border procedure would apply to applicants with up to 50 % recognition rate, whereas in [instrumentalisation](#) situations, when a third country instigates irregular migratory flows into the EU, the border procedure would be applied to all arrivals. A [compromise](#) text agreed in trilogue was endorsed in the Council on 8 February 2024 and approved in the LIBE committee on 14 February 2024.

First-reading report: [2016/0224B\(COD\)](#); Committee responsible: LIBE; Rapporteur: Fabienne Keller (Renew, France).



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Author: Anita Orav, Members' Research Service  
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[eprs@ep.europa.eu](mailto:eprs@ep.europa.eu) (contact) <http://www.eprs.ep.parl.union.eu> (intranet) <http://www.europarl.europa.eu/thinktank> (internet) <http://epthinktank.eu> (blog)