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REPORT

on the implementation of Article 43 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (2020/2047(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Erik Marquardt

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EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

This report focuses on the implementation of border procedures by Member States. Article 43 of Directive 2013/32/EU on common procedures for granting and withdrawing international protection (Asylum Procedures Directive - APD) establishes border procedures as a possibility Member States can use as part of the functioning of the Common European Asylum System. When an asylum application is made at the border or in a transit zone, Member States can under certain conditions examine the application at these locations.

Purpose of the report

The key purpose of the report is to allow Parliament to take evidence-based, informed decisions in the upcoming negotiations on the Migration and Asylum Pact, where border procedures play a crucial role. Border procedures play a key role in the Pact proposal. However, the Commission has never made an effort to evaluate how they are implemented, to find out whether their objectives are achieved, and to determine what conclusions to draw for new legislation.

Implementation reports form a key part of the Commission's better regulation agenda, which seeks to design and evaluate EU policies so that they achieve their objectives in the most efficient and effective way. Yet, the Commission has so far not published an implementation report of the APD, thereby violating its reporting obligations under Article 50 of the APD. Moreover, in 2016, when the Commission proposed a reform of the APD, transforming it into a regulation, an impact assessment was lacking. The same holds true for the recently published Amendment Proposal (COM(2020) 611 final).

This report intends neither to substitute the overdue fully-fledged implementation report of the APD by the Commission, nor to assess the impacts of the new Commission proposals. Instead, it aims at providing some insights into how Member States implement border procedures under the APD, which challenges and implementation gaps exist. This should allow Parliament to take informed and evidence-based decisions in the upcoming negotiations on the Amendment APR Proposal.

The report is based on the EPRS Implementation Assessment of November 2020, which provides a comparative analysis of the application of Article 43 APD as well as a legal assessment of the transposition and application of this article by Member States. The initial draft report is based on preliminary findings of this Assessment. The Rapporteur might table amendments to the draft report in order to adapt the report to the final implementation assessment.

Border procedures are ill-defined

The EPRS Implementation Assessment shows that border procedures are an ill-defined concept in EU asylum law. This raises serious concerns in their application, particularly regarding fundamental rights and procedural safeguards.

Border procedures constitute an exception to the legally defined rule under the APD that asylum applicants have a right to remain on the territory of a Member State, including at the border or in a transit zone. APD therefore strictly limits border procedures to an exhaustive

number of cases. The EU legislator furthermore intended a narrow interpretation by highlighting that, as long as an applicant can show good cause, the lack of documents on entry or the use of forged documents should not per se entail an automatic recourse to border or accelerated procedures (recital 21 APD). However, in practice APD leaves Member States too much room for an “à la carte” use of border procedures, often well beyond the limits set by the APD.

Some Member States examine the admissibility of asylum applications in border procedures, while some also examine their substance. Some Member States examine Dublin cases in border procedures, whereas others do not. Some Member States grant international protection in a border procedure, while others grant entry to applicants when they recognise that an asylum applicant may qualify for international protection. Moreover, several Member States apply border procedures in a much more expansive way than prescribed by APD, some even channel all applications for asylum at the border into a border procedure. Furthermore, some Member States apply border procedures without qualifying them as such in national law.

Detention as a rule in border procedures

Border procedures are frequently based on the legal fiction of non-entry, thus presuming that the border procedure takes place prior to, or in the context of, a decision on the right of an applicant to enter the territory of a Member State. This has serious consequences for asylum seekers. In all cases analysed in the EPRS Implementation Assessment, asylum applicants in border procedures are de facto detained.

Detention and the deprivation of liberty has a severe impact on the fundamental rights of a person. EU law and international human rights law therefore set high thresholds for the detention of asylum seekers. Article 26 APD prohibits the detention of applicants for the sole reason that he or she is an applicant. An exhaustive list of grounds for detention as well as safeguards for detainees are contained in Directive 2013/33/EU (Reception Conditions Directive).

Yet, in border procedures those thresholds and safeguards are frequently ignored. As a rule, Member States de facto detain asylum seekers, often without a necessity test or without providing alternatives to detention. In many cases, asylum seekers do not have access to the safeguards applicable to asylum seekers who are detained in in-country procedures. Several Member States de facto detain asylum seekers, based on the fiction of non-entry, without acknowledging it as deprivation of liberty. As a consequence, asylum seekers detained in such a border procedure do not even have access to basic procedural guarantees, such as a judicial review of their detention. This is all the more worrying as detention conditions at the borders are often inadequate. In case of large numbers of arrivals, such as on the Greek islands, border procedures amount to inhumane conditions.

In case asylum seekers are de facto detained at the borders, detention should always be prescribed by law, and the same procedural safeguards should be applied as for asylum seekers detained in in-country procedures. In any case, Asylum seekers should not be detained by default.

Refusal of entry

Persons must be given the opportunity to make an asylum claim at the border. If there are

indications that a person at the external borders may wish to apply for international protection, Member States have to inform the person of the possibility to do so and make arrangements for interpretation in order to facilitate access to the asylum procedure.

However, there are numerous reports about persons being refused entry or pushed back in the context of border procedures, without their protection needs being assessed, nor without their asylum claims registered. This amounts to a serious violation of EU and international law. To prevent such illegal practices and ensure that Member States comply with EU and international law at the external borders, independent monitoring mechanisms should be established. In line with the Fundamental Rights Agency (FRA)'s Guidance on Border Controls, Member States should be obliged to grant monitoring bodies access to border facilities to ensure the effective protection of fundamental rights, and the systematic reporting of violations. Member States should also ensure the effective investigation and sanctioning of all allegations.

Vulnerability assessment

It is worrisome that Member States do not have adequate mechanisms in place to identify persons with special needs in order to exempt them from the border procedure. The EPRS Implementation Assessment shows that proper and effective vulnerability identification mechanisms are lacking in all countries examined, and that several Member States lack any mechanism at all. Persons with invisible vulnerabilities, such as victims of torture or sexual abuse, are hardly ever identified in a border procedure. The lack of adequate identification mechanisms renders special procedural safeguards and adequate support often meaningless in practice. This is particularly troubling for children and raises questions as regards compliance with the best interest of the child as enshrined in Article 24(2) of the EU Charter of Fundamental Rights. Therefore, children and their families should generally be exempted from border procedures.

Procedural safeguards and the fairness of border procedures

The EPRS Implementation Assessment reports significant problems with procedural safeguards in all Member States examined. Applicants must be informed of their rights and of the asylum procedure, and they must be provided *effective access* to organisations and persons providing advice. In practice, though, this is often lacking. Many Member States provide in law for the right to free legal assistance in the first instance of border procedures, even though they are not obliged to do so. However, short time limits and (de facto) detention often prevent effective access to legal assistance. Asylum applicants are not able to contact a lawyer because of a lack of communication tools, lawyers are given insufficient time to prepare the appeal or for a hearing with their client, or there is complete lack of qualified lawyers. NGOs often cannot fill the gap due to their reduced or complete lack of access to facilities at the borders. Interpretation is often not available, of poor quality, or difficult when done by phone. Moreover, applicants are often not systematically informed about the asylum procedure and their rights.

The very nature of border procedures makes it difficult to provide full procedural guarantees in practice. Their effectiveness is undermined by the combination of (de facto) detention and shorter time limits in border procedures. Member States typically set very short deadlines of just a few days also for the appeal procedure, which is infringing the right to an effective

remedy, given the limited access to assistance and to the outside world. It is all the more worrying that the APD does not guarantee a suspensive effect of an appeal.

Concerning the fast-track border procedure on the Greek islands, the FRA, the UN High Commissioner for Refugees, and the UN Special Rapporteur on the human rights of migrants all have raised serious concerns regarding due procedural guarantees and fundamental rights challenges that appear almost insurmountable.

Border procedures are characterised by the inevitable dilemma of not enough time for a fair procedure and the shortest time possible in case applicants are detained. They are therefore not contributing to the objectives of the APD. Therefore, Member States should generally refrain from applying border procedures and should in no case be obliged to apply border procedures. In border procedures, Member States either cannot ensure a fair procedure, or they violate the fundamental rights of applicants by detaining them for long periods of time.

In case border procedures are nevertheless applied, they should be strictly limited to cases which are less complex, for instance cases where the applicant has been granted international protection in another (Member) state or only raises issues that are not relevant to the examination of an asylum procedure.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of Article 43 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (2020/2047(INI))

The European Parliament,

- having regard to the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations (UN) in 1948, and the International Covenant on Civil and Political Rights,
- having regard to the UN Convention on the Rights of the Child,
- having regard to the European Convention on Human Rights (ECHR),
- having regard to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, and in particular the right to non-refoulement,
- having regard to the Charter of Fundamental Rights of the European Union and in particular Articles 1, 3, 4, 6, 7, 18, 19, 20 and 47 thereof,
- having regard to the Global Compact for Safe, Orderly and Regular Migration adopted by the UN General Assembly on 19 December 2018,
- having regard to Article 78 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection¹ (Asylum Procedures Directive – APD),
- having regard to the relevant case law of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR),
- having regard to Directive 2013/33/EU of the European Parliament and the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (RCD)²,
- having regard to the provisional agreement between Parliament and the Council of 14 June 2018 on the recast RCD,
- having regard to Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of

¹ OJ L 180, 29.6.2013, p. 60.

² OJ L 180, 29.6.2013, p. 96.

persons across borders (Schengen Borders Code)³,

- having regard to Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin III)⁴,
- having regard to the Commission communication of 16 April 2020 entitled ‘COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement’ (C(2020)2516),
- having regard to the European Implementation Assessment of the European Parliamentary Research Service (EPRS) of November 2020 on Asylum procedures at the border⁵,
- having regard to the study of the European Asylum Support Office (EASO) of September 2020 entitled ‘Border Procedures for Asylum Applications in EU+ Countries’, and the EASO publication of September 2019 entitled ‘Guidance on asylum procedure: operational standards and indicators’,
- having regard to the Fundamental Rights Report 2020 of the European Union Agency for Fundamental Rights (FRA),
- having regard to FRA Opinion 3/2019 of 4 March 2019 entitled ‘Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the ‘hotspots’ set up in Greece and Italy’,
- having regard to the FRA report of 8 December 2020 entitled ‘Migration: Fundamental Rights Challenges at Land Borders’,
- having regard to the Office of the UN High Commissioner for Human Rights’ Recommended Principles and Guidelines on Human Rights at International Borders,
- having regard to the 2016 Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission,
- having regard to its resolution of 30 May 2018 on the interpretation and implementation of the Interinstitutional Agreement on Better Law-Making⁶,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs of 22 May 2018 on the proposal for a regulation of the European Parliament and

³ OJ L 77, 23.3.2016, p. 1.

⁴ OJ L 180, 29.6.2013, p. 31.

⁵ W. van Ballegooij, K. Eisele, ‘Asylum procedures at the border, European Implementation Assessment’, European Parliamentary Research Service, 2020.

⁶ OJ C 76, 9.3.2020, p. 86.

of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU,

- having regard to Rule 54 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0005/2021),
- A. whereas this resolution aims to provide the co-legislators with evidence-based information on the current application of border procedures by assessing how Member States implement Article 43 of the APD and the related provisions; whereas this resolution does not intend to substitute either the overdue fully-fledged implementation report of the APD by the Commission, or the legislative negotiations on the new amended APR Proposal;
- B. whereas disaggregated and comparable data relating to the implementation of Article 43 of the APD is often not collected or publicly available; whereas the financial costs of border procedures are not available; whereas significant human costs for individuals can arise from the deprivation of liberty, particularly if border detention facilities are inadequate or if procedural safeguards are not applied or inadequately applied;
- C. whereas the APD neither provides a clear definition of border procedures nor specifies their objectives; whereas Article 43(1) of the APD allows Member States to choose to use border procedures; whereas 14 Member States have a border procedure and, among them, three of the Member States covered by the EPRS European Implementation Assessment have been using grounds that go beyond the APD; whereas Member States can provide for admissibility and/or substantive examination procedures at the border or in a transit zone in well-defined circumstances; whereas the majority of Member States also assess the applicability of a Dublin procedure at the border or in transit zones; whereas border procedures represent only a small percentage of the total caseload of determining authorities, with the exception of Greece where more than 50 % of the applications are processed in a fast-track procedure established following the EU-Turkey statement;
- D. whereas Article 43 of the APD does not explicitly specify at which borders Member States can use border procedures; whereas the EPRS European Implementation Assessment finds that the term ‘border’ in the above-mentioned article should be understood as meaning the EU’s external borders; whereas two Member States also apply border procedures at internal borders, and detain applicants in police facilities;
- E. whereas some Member States detain asylum applicants in border procedures without a legal basis in national law; whereas in addition to insufficient safeguards for applicants, this can also result in the denial of the right of Members of Parliament to visit;
- F. whereas detention in border procedures is subject to the same rules as the detention of applicants elsewhere on the territory of a Member State; whereas the RCD stipulates that applicants may only be detained as a last resort after all non-custodial alternative measures to detention have been duly examined, and that detention must be based on

the principles of necessity and proportionality; whereas, where detention is ordered by administrative authorities, Member States must provide for a speedy judicial review of the lawfulness of detention to be conducted ex officio and/or at the request of the applicant; whereas for minors, Member States must, under the current legal framework, also make every effort to release them from detention and place them in accommodation suitable for minors;

- G. whereas despite the significant increase of alleged fundamental rights violations at the EU's external borders, there is no obligation for Member States to establish an independent monitoring mechanism ensuring the protection of fundamental rights at external borders;
- H. whereas clear information and adequate assistance should be provided to third-country nationals or stateless persons in border procedures, including legal assistance and interpretation arrangements, in particular on the possibility to lodge an application for international protection;
- I. whereas the EPRS European Implementation Assessment found that procedural guarantees provided for in the APD, in particular the right to information, legal assistance and interpretation, are not or only restrictively applied in practice by the Member States examined in the assessment;
- J. whereas the EPRS European Implementation Assessment reveals several cases of non-compliance with the APD; whereas the Commission has launched infringement proceedings against only two Member States;

General observations

1. Notes that the Commission has conducted stakeholder consultations as well as exchanges with Parliament and the Member States in preparation of the New Pact on Asylum and Migration; highlights however that, despite its legal reporting obligation and the requirements stemming from the Interinstitutional Agreement on Better Law Making, the Commission has never presented an implementation report on the APD, and that in 2016 and 2020 it presented proposals for an Asylum Procedures Regulation without providing for any impact assessment; expects the Commission to present this report, which has been overdue since 2017;
2. Reiterates the importance of an evidence-based approach to guide coherent policy-making;
3. Notes that monitoring and statistical data are essential for ensuring compliance with EU law; calls on Member States to collect statistics on: (i) the number of applications considered in border procedures and the category of applicants concerned; (ii) the types of grounds applied for using the border procedure and their frequency; (iii) the outcomes of border procedures, both at first instance and appeal, and (iv) the number and categories of persons not channelled into the border procedure;

Scope

4. Highlights that border procedures currently constitute exceptions to the legally defined rule that asylum applicants have a right to enter the territory of a Member State; notes

that many applications for international protection are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant; notes that in those cases Member States may provide for border procedures only in the cases exhaustively set out in the Articles 31(8) and 33 of the APD and in accordance with the basic principles and guarantees of Chapter II of the APD; notes that the transposition and application of border procedures under the APD varies between Member States, resulting in a lack of uniformity across the EU; takes note that most Member States apply border procedures only in a small number of cases, and that several Member States generally refrain from using border procedures; highlights, however, that three out of the seven Member States examined in the EPRS European Implementation Assessment apply border procedures beyond the grounds provided for in Article 43 of the APD, and calls on them to refrain from doing so; calls, furthermore, on Member States to refrain from applying border procedures at internal borders;

5. Notes that all persons seeking international protection have an interest in their requests being dealt with as quickly and efficiently as possible, provided that all applications are subject to an individual assessment and that the procedural safeguards and rights granted to applicants under Union law apply and can be exercised effectively;

The legal fiction of non-entry and detention

6. Recalls that border procedures entail the examination of an asylum application at the border or in a transit zone before a decision on entry to the territory of a Member State; reiterates that the refusal of entry under the Schengen Borders Code must be without prejudice to the application of special provisions concerning the right of asylum and to international protection; notes that, therefore, Member States have an obligation to assess whether an asylum applicant is in need of protection;
7. Notes, further, that under Article 9(1) of the APD applicants must be allowed to remain in the territory of the Member States, including at the border or in the transit zones where the application for international protection has been made;
8. Points out that the fact that an applicant has not legally entered the territory of the Member State while actually remaining on that territory is a legal fiction; highlights that this legal fiction impacts solely on the right to entry and stay, but does not mean that the applicant is not under the jurisdiction of the Member State concerned;
9. Highlights that applicants subject to border procedures are likely to be placed in detention during the examination of their asylum application; points out, further, that all Member States examined in the European Implementation Assessment by the EPRS detain asylum applicants in the framework of border procedures;
10. Reiterates that as stipulated in the RCD Member States must not hold a person in detention for the sole reason that he or she is an applicant, and that applicants may be detained only under very clearly defined exceptional circumstances; recalls its joint provisional agreement with the Council on the recast RCD that specifies that Member States shall not detain an applicant on the basis of her or his nationality; stresses that the RCD stipulates that detention must remain a measure of last resort, last only for as short a period as possible, and only for as long as the grounds set out in Article 8(3) of the RCD are applicable, and that persons detained must be given an opportunity to appeal

against their deprivation of liberty; reiterates that the right to liberty as laid down in Article 6 of the EU Charter of Fundamental Rights and Article 5 of the ECHR also applies at the EU's borders; regrets that hardly any alternatives to detention have been developed and applied in border procedures, and encourages Member States to take the necessary measures to ensure that alternatives to detention are available;

11. Is concerned that some Member States detain asylum applicants in border procedures without a relevant legal basis for detention under border procedures in national law, as this can result in insufficient safeguards; stresses that if Member States choose to resort to detention, they should provide a legal basis for it in national law;
12. Recalls that in Joined Cases C-924/19 PPU and C-925/19 PPU, the CJEU ruled that even if an applicant can leave a transit zone in the direction of a third country, this situation can qualify as detention;
13. Is deeply concerned about reports of severe human rights violations and deplorable detention conditions in transit zones or detention centres in border areas; calls on the Member States to ensure dignified reception conditions in border facilities in line with the standards of the RCD; recalls in this regard that applicants who are in detention should be treated with full respect for their human dignity;
14. Recalls that the best interests of the child should be a primary consideration for Member States when applying the APD, in accordance with the EU Charter of Fundamental Rights and the 1989 United Nations Convention on the Rights of the Child; notes that the UN Committee on the Rights of the Child has clarified that children should never be detained for immigration reasons; reiterates its position on APR that minors should never be detained as part of border procedures, and that the border procedure may only be applied to minors where there is an alternative available to their detention; calls on Member States currently applying the border procedure to minors to put in place alternatives to detention in accordance with the best interests of the child; calls on Member States to only apply border procedures where such non-custodial alternatives are in place;

Refusal of entry and monitoring

15. Highlights the recent findings by the FRA, in particular that the number of alleged incidents of fundamental rights violations reported at external borders have increased significantly in recent years; notes that this includes many cases of persons being refused entry without their asylum claims being registered, including in the context of border procedures; reiterates that Member States are obliged to prevent unauthorised border crossings, and recalls that this obligation is without prejudice to the rights of persons requesting international protection; concurs with the FRA that the regularity and seriousness of these alleged incidents constitute a serious fundamental rights concern; reiterates that automatic refusal of entry, refoulement and collective expulsions are prohibited under EU and international law; highlights furthermore that, under Article 8 of the APD, Member States have a duty to inform persons on the possibility to apply for asylum if there are indications of protection needs, and that persons subject to a refusal of entry must be ensured access to an effective remedy in accordance with EU law and the ECHR; deplors all cases where Member States fail to respect their obligations in this regard, and calls on them to fully comply with those obligations; calls

on the Commission to effectively ensure Member States' compliance with these obligations, including by suspending EU payments in cases of serious deficiencies;

16. Considers it important to establish an independent monitoring mechanism, and calls on the Member States to grant monitoring bodies unimpeded access to border facilities to ensure the effective protection of fundamental rights and the systematic reporting of violations, in line with the FRA's recommendations in its report on Fundamental Rights Issues at Land Borders; believes that independent monitoring should also verify the quality of the decision-making process and its outcome, as well as detention conditions and compliance with procedural safeguards; considers that independent and competent national human rights institutions and NGOs, EU agencies such as the FRA, as well as international organisations such as UNHCR should be part of the monitoring bodies;

Unaccompanied minors and vulnerable applicants in need of special procedural guarantees in the border procedure

17. Notes that Article 24 of the APD specifies that Member States shall assess within a reasonable period of time after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees, and that they must not apply the border procedure if such guarantees cannot be provided within its framework;
18. Stresses that while Member States have established mechanisms to identify applicants in need of special procedural guarantees, these are often not effective in detecting such needs and, when needs are identified, often assess only visible needs; notes that effective and swift identification of applicants in need of special procedural guarantees remains a challenge; highlights that vulnerable persons are entitled to have their needs of special procedural guarantees assessed, and, if border procedures are applied to them, to have adequate support provided under EU law; calls on Member States to ensure that all applicants in need of special procedural guarantees are effectively identified and granted full access to these special guarantees and support, as stipulated in the RCD; stresses that where adequate support cannot be provided within the framework of the border procedure, or where the determining authority considers that the applicant is in need of specific procedural guarantees paying particular attention to victims of torture, rape or other serious forms of psychological, physical, sexual violence or gender-based violence, the determining authority must not apply, or must cease to apply, these procedures to the applicant;
19. Recalls that Article 25(6)(b) of the APD prescribes a limited set of circumstances allowing Member States to process unaccompanied minors' applications in a border procedure; highlights that the Member States examined have not put in place adequate age assessment methods; calls on Member States to ensure compliance with the best interests of the child, as well as to protect children, including victims of trafficking; highlights that the APD provides Member States with the option to exempt unaccompanied minors from the border procedure, and to process their applications accordingly under the regular asylum procedure; calls on Member States to exempt unaccompanied minors from border procedures;

Procedural safeguards

20. Notes that border procedures are fast-track procedures and recalls that, under Article 43 of the APD, applicants in border procedures enjoy the same rights and guarantees as applicants in normal procedures;
21. Highlights that significant problems regarding access to and the quality of legal assistance were reported in all the Member States examined; stresses that legal assistance is key to ensuring fair asylum procedures; recommends that free legal assistance should already be guaranteed at first instance, as soon as the asylum application is registered; calls on Member States to also provide effective access to legal assistance in practice, and to ensure the availability of sufficient and qualified legal advisers;
22. Notes that the APD provides Member States with the option to allow NGOs access to the border procedure to provide assistance to applicants; regrets that, within the framework of border procedures, many Member States do not regulate such access for specialised non-governmental organisations at border facilities, crossing points and transit zones, which can play a key role in securing the applicant's legal and procedural rights, and improve the quality of first instance decisions;
23. Stresses that border procedures are characterised by a combination of short procedural time limits and detention; considers efficient procedural time limits necessary in order to minimise the temporary deprivation of freedom of movement if people are detained; recalls that Member States can introduce shorter, but reasonable, time limits, without prejudice to an adequate and complete examination being carried out and to the applicant's effective access to basic guarantees and principles provided for in the APD; notes that the time limit for a decision in a border procedure varies among Member States from two days to 28 days, and for lodging an appeal from two days to seven days; points out that short time limits can be challenging for thorough preparation of the interview or an appeal and hence for a fair application of the procedure, certainly if the procedural safeguards enshrined in the APD are not effectively applied;
24. Reiterates the obligations of Member States on providing applicants access to assistance, representation and procedural information, as stipulated under the APD; stresses the need for applicants to have timely access to adequate and comprehensible information about border procedures and their rights and obligations; points out that interpretation should be provided in person and at all stages of the border procedure; recalls that personal interviews are a corollary of the Member States' obligation to give applicants an effective opportunity to present the grounds for their applications and key elements for the examination procedure, and must be conducted by adequately trained personnel; stresses that applicants should be provided with a sufficient amount of time to prepare the interview; notes with concern that the Member States examined in the EPRS European Implementation Assessment do not fulfil their obligations under the APD related to procedural safeguards in the context of border procedures, and stresses that the difficulties of applicants in accessing procedural safeguards can have serious repercussions on their rights guaranteed in the EU Charter of Fundamental Rights; calls on Member States to implement and apply the safeguards enshrined in the APD in full;
25. Acknowledges that the APD leaves to the Member States' discretion whether appeals have an automatic suspensive effect; recalls, however, that the CJEU has recognised that an appeal against a return decision, whose enforcement may expose the third

country national concerned to a serious risk of refoulement, must have a suspensive effect;

Border procedures and large numbers of arrivals

26. Notes that in accordance with Article 43(3) of the APD, in the event of arrivals involving a large number of third country nationals or stateless persons lodging applications for international protection at the border or in a transit zone, those procedures may also be applied where and for as long as these third-country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone;
27. Recalls that the safeguards laid down in Chapter II of the APD also apply in the case of large numbers of arrivals; considers sufficient staff and resources essential in this respect; notes with concern that in these cases, the correct application of border procedures can be challenging, may create a risk of fundamental rights violations, and raise efficiency concerns;
28. Shares the concerns expressed by the FRA, the UN High Commissioner for Refugees and the UN Special Rapporteur on the human rights of migrants about respect for procedural guarantees and fundamental rights in fast-track border procedures that have been used on the Greek hotspots; regrets the serious fundamental rights gaps existing in those European hotspots identified by the FRA;
29. Notes that EU agencies can support Member States in the event of arrivals involving a large number of asylum seekers at border entry points to ensure a fast and fair procedure for all applicants; notes in particular that EASO can give operational support at various steps of the asylum procedure, and that Frontex can help with screening, identification and fingerprinting; notes that so far EASO has provided assistance only in Greece in the framework of the so-called fast-track border procedure for islands; points out, furthermore, that improvements have been made, but that serious deficiencies still persist, such as an average length of several months for border procedures; hopes that the planned EU Asylum Agency will contribute to addressing these deficiencies;

Application of border procedures

30. Recalls that the application of border procedures remains at the discretion of Member States; reiterates that if Member States apply border procedures, they should provide for conditions which ensure a fair and adequate procedure as well as swift clarity on its outcome to applicants for international protection; notes that particularly in more complex cases, the effectiveness of procedural guarantees, such as the right to legal assistance, can be undermined; stresses that efficient procedures and procedural safeguards need to go hand in hand; highlights that where a decision cannot be taken within four weeks at the latest, the application is to be processed in accordance with the other provisions of the APD; calls on Member States to fully comply in law and in practice with the procedural safeguards stipulated in the APD;
31. Calls on Member States to continuously exchange best practices on the correct application of the current border procedures and also share them with the Commission;
32. Calls on Member States to critically assess whether their current operational capacity is

sufficient to ensure the fulfilment of their obligations in border procedures; calls on Member States to enhance operational cooperation and assistance where necessary;

33. Calls on the Commission to effectively monitor the implementation of Article 43 and the related provisions of the APD and to take action in the event of non-compliance, including by launching infringement proceedings where appropriate;

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◦ ◦

34. Instructs its President to forward this resolution to the Council and the Commission.

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	12.1.2021
Result of final vote	+: 50 -: 11 0: 3
Members present for the final vote	Magdalena Adamowicz, Malik Azmani, Katarina Barley, Pietro Bartolo, Nicolas Bay, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Patrick Breyer, Saskia Bricmont, Joachim Stanisław Brudziński, Jorge Buxadé Villalba, Damien Carême, Caterina Chinnici, Clare Daly, Marcel de Graaff, Lena Düpont, Cornelia Ernst, Laura Ferrara, Nicolaus Fest, Jean-Paul Garraud, Maria Grapini, Sylvie Guillaume, Andrzej Halicki, Balázs Hidvéghi, Evin Incir, Sophia in 't Veld, Livia Járóka, Marina Kaljurand, Assita Kanko, Fabienne Keller, Peter Kofod, Łukasz Kohut, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Lukas Mandl, Nuno Melo, Roberta Metsola, Nadine Morano, Javier Moreno Sánchez, Maite Pagazaurtundúa, Nicola Procaccini, Emil Radev, Paulo Rangel, Terry Reintke, Ralf Seekatz, Michal Šimečka, Birgit Sippel, Martin Sonneborn, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Tomas Tobé, Dragoş Tudorache, Bettina Vollath, Jadwiga Wiśniewska, Elena Yoncheva, Javier Zarzalejos
Substitutes present for the final vote	Nathalie Loiseau, Sira Rego, Miguel Urbán Crespo, Hilde Vautmans, Petar Vitanov

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

50	+
EPP	Magdalena ADAMOWICZ, Vladimír BILČÍK, Vasile BLAGA, Ioan-Rareş BOGDAN, Lena DÜPONT, Andrzej HALICKI, Jeroen LENAERS, Lukas MANDL, Nuno MELO, Roberta METSOLA, Emil RADEV, Paulo RANGEL, Ralf SEEKATZ, Tomas TOBÉ, Javier ZARZALEJOS
S&D	Katarina BARLEY, Pietro BARTOLO, Caterina CHINNICI, Maria GRAPINI, Sylvie GUILLAUME, Evin INCIR, Marina KALJURAND, Łukasz KOHUT, Juan Fernando LÓPEZ AGUILAR, Javier MORENO SÁNCHEZ, Birgit SIPPEL, Petar VITANOV, Bettina VOLLATH, Elena YONCHEVA
RENEW	Malik AZMANI, Sophia IN 'T VELD, Fabienne KELLER, Nathalie LOISEAU, Maite PAGAZAURTUNDÚA, Michal ŠIMEČKA, Ramona STRUGARIU, Dragoş TUDORACHE, Hilde VAUTMANS
GREENS/EFA	Patrick BREYER, Saskia BRICMONT, Damien CARÊME, Alice KUHNKE, Terry REINTKE, Tineke STRIK
THE LEFT	Clare DALY, Cornelia ERNST, Sira REGO, Miguel URBÁN CRESPO
NI	Laura FERRARA, Martin SONNEBORN

11	-
EPP	Balázs HIDVÉGGHI, Livia JÁRÓKA, Nadine MORANO
ID	Nicolas BAY, Nicolaus FEST, Jean-Paul GARRAUD, Marcel de GRAAFF, Peter KOFOD, Annalisa TARDINO
ECR	Jorge BUXADÉ VILLALBA, Nicola PROCACCINI

3	0
ECR	Joachim Stanisław BRUDZIŃSKI, Assita KANKO, Jadwiga WIŚNIEWSKA

Key to symbols:

+ : in favour

- : against

0 : abstention