



2016/0224(COD)

13.10.2021

AMENDMENTS

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Draft report

Fabienne Keller

(PE697.689v01-00)

on the 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

Amended proposal for a regulation

(COM(2020)0611 – C9-xxxx/xxxx – 2016/0224(COD))

Amendment 1
Fabienne Keller

Proposal for a regulation
Recital 17

Text proposed by the Commission

(17) Applicants who are identified as being in need of *special* procedural guarantees should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection. Where it is not possible to provide adequate support in the framework of an accelerated examination procedure or a border procedure, an applicant in need of special procedural guarantees should be exempted from those procedures. ***The need for special procedural guarantees of a nature that could prevent the application of accelerated or border procedures should also mean that the applicant is provided with additional guarantees in cases where his or her appeal does not have automatic suspensive effect, with a view to making the remedy effective in his or her particular circumstances.***

Amendment

(17) Applicants who are identified as being in need of *specific* procedural guarantees should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection. Where it is not possible to provide adequate support in the framework of an accelerated examination procedure or a border procedure, an applicant in need of *specific* procedural guarantees should be exempted from those procedures. ***The responsible authorities should provide for alternatives to detention in border procedures, in particular for unaccompanied minors and applicants with specific vulnerabilities.***

Or. en

Amendment 2
Fabienne Keller

Proposal for a regulation
Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) In order to provide Member States located at the external border of the Union with solidarity and to guarantee a

level playing field in the Union, facilities used for the purpose of the border procedure should be entirely funded under Regulation (EU) 2021/1147 of the European Parliament and of the Council^{1a}. That should include the construction, running and renovation of current and future facilities, in the conditions provided in Directive XXX/XXX/EU [Reception Conditions Directive recast].

^{1a} Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021, p. 1).

Or. en

Amendment 3
Fabienne Keller

Proposal for a regulation
Recital 31a

Text proposed by the Commission

(31a) In order to increase the efficiency of procedures and to reduce the risk of absconding and the likelihood of unauthorised movements, there should be no procedural gaps between the issuance of a negative decision on an application for international protection and of a return decision. A return decision should immediately be issued to applicants whose applications are rejected. Without prejudice to the right to an effective remedy, the return decision should either be part of the negative decision on an application for international protection or, if it is a separate act, be issued at the same time and together with the negative decision.

Amendment

(31a) In order to increase the efficiency of procedures and to reduce the risk of absconding and the likelihood of unauthorised movements, there should be no procedural gaps between the issuance of a negative decision on an application for international protection and of a return decision. A return decision should immediately be issued to applicants whose applications are rejected. ***Where more than one authority is involved in the issuance of negative decisions on applications for international protection and of return decisions, those authorities should coordinate with one another in order to ensure that negative decisions and return decisions are issued at the same time.*** Without prejudice to the right to an

effective remedy, the return decision should either be part of the negative decision on an application for international protection or, if it is a separate act, be issued at the same time and together with the negative decision.

Or. en

Amendment 4
Fabienne Keller

Proposal for a regulation
Recital 39a

Text proposed by the Commission

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

Amendment

(39a) In the interest of swift and fair procedures for all applicants, whilst also ensuring that the stay of applicants who do not qualify for international protection in the Union is not unduly prolonged, including those who are nationals of third countries exempt from the requirement to be in a possession of a visa pursuant to Regulation (EU) No 2018/1806, Member States should accelerate the examination of applications of applicants who are nationals or, in the case of stateless persons, formerly habitual residents of a third country for which the share of decisions granting international protection is lower than 20% of the total number of decisions for that third country. ***A 20% threshold should apply in all circumstances, including in times of crisis or force majeure. By way of exception, the examination procedure should not be accelerated when the Commission determines by means of an implementing act that*** a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data ***on the basis of*** the guidance note pursuant to Article 11 of Regulation XX/XX on the European Asylum Agency. ***An*** applicant ***who*** belongs to a specific category of

considered as a safe country of origin or a safe third country for the applicant within the meaning of this Regulation should remain applicable as a separate ground for respectively the accelerated examination procedure or the inadmissible procedure.

persons for whom the low recognition rate cannot be considered as representative of their protection needs due to a specific persecution ground, should ***also be exempt from the accelerated examination procedure, including after it has begun, where the competent authorities find that the grounds for such a procedure do not apply. Competent authorities should conduct appropriate vulnerability checks throughout the border procedure.*** Cases where a third country may be considered as a safe country of origin or a safe third country for the applicant within the meaning of this Regulation should remain applicable as a separate ground for respectively the accelerated examination procedure or the inadmissible procedure.

Or. en

Amendment 5 **Fabienne Keller**

Proposal for a regulation **Recital 40**

Text proposed by the Commission

(40) Many applications for international protection are made at the external border or in a transit zone of a Member State, often by persons apprehended in connection with unauthorised crossings of the external border or disembarked following a search and rescue operation. In order to conduct identification, security and health screening at the external border and direct the third-country nationals and stateless persons concerned to the relevant procedures, a screening is necessary. There should be seamless and efficient links between all stages of the relevant procedures for all irregular arrivals. ***After the screening***, third-country nationals and stateless persons should be channelled to the appropriate asylum or return procedure,

Amendment

(40) Many applications for international protection are made at the external border or in a transit zone of a Member State, often by persons apprehended in connection with unauthorised crossings of the external border or disembarked following a search and rescue operation. In order to conduct identification, security and health screening at the external border and direct the third-country nationals and stateless persons concerned to the relevant procedures, a screening is necessary. There should be seamless and efficient links between all stages of the relevant procedures for all irregular arrivals. Third-country nationals and stateless persons should, ***where applicable after screening***, be channelled to the appropriate asylum or

or refused entry. A pre-entry phase consisting of screening and border procedures for asylum and return should therefore be established.

return procedure, or refused entry. A pre-entry phase consisting of screening and border procedures for asylum and return should therefore be established.

Or. en

Amendment 6
Fabienne Keller

Proposal for a regulation
Recital 40a

Text proposed by the Commission

(40a) The purpose of the border procedure for asylum and return should be to quickly assess **at the external borders** whether applications are unfounded or inadmissible and to swiftly return those with no right to stay, while ensuring that those with well-founded claims are channelled into the regular procedure and provided quick access to international protection. Member States should therefore be able to require applicants for international protection to stay at the external border or in a transit zone in order to assess the admissibility of applications. In well-defined circumstances, Member States should be able to provide for the examination of the merits of an application and, in the event of rejection of the application, for the return of the third-country nationals and stateless persons concerned **at the external** borders.

Amendment

(40a) 'The purpose of the border procedure for asylum and return should be to quickly assess whether applications are unfounded or inadmissible and to swiftly return those with no right to stay, while ensuring that those with well-founded claims are channelled into the regular procedure and provided quick access to international protection. Member States should therefore be able to require applicants for international protection to stay at the **locations, designated at their discretion, for the completion of the border procedure, such as** at the external border or in a transit zone in order to assess the admissibility of applications. In well-defined circumstances, Member States should be able to provide for the examination of the merits of an application and, in the event of rejection of the application, for the return of the third-country nationals and stateless persons concerned **in a border procedure**.

Or. en

Amendment 7
Fabienne Keller

Proposal for a regulation
Recital 40b

Text proposed by the Commission

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

Amendment

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Or. en

Amendment 8
Fabienne Keller

Proposal for a regulation
Recital 40b a (new)

Text proposed by the Commission

Amendment

(40ba) Prior to the examination of the merits of an application for international protection, the Member State in which the application has been registered should determine the Member State responsible under Regulation (EU) No XXX/XXX [Regulation on Asylum and Migration Management]. To comply with the deadlines set for the border procedure

during that determination process, the time limits for sending a take charge request to the Member State responsible, and for its reply, should be shortened in comparison to the general rules set out in Regulation (EU) No XXX/XXX Regulation on Asylum and Migration Management].

Or. en

Amendment 9
Fabienne Keller

Proposal for a regulation
Recital 40b b (new)

Text proposed by the Commission

Amendment

(40bb) While applicants whose applications are assessed in a border procedure might not be entitled to legally enter the territory of the Member State concerned, those applicants should always be granted the right to remain on the territory of a Member State during the examination of their applications for international protection in the border procedure.

Or. en

Amendment 10
Fabienne Keller

Proposal for a regulation
Recital 40c

Text proposed by the Commission

Amendment

(40c) When applying the border procedure for the examination of an application for international protection, Member States should ensure that the necessary arrangements are made to

(40c) When applying the border procedure for the examination of an application for international protection, Member States should ensure that the necessary arrangements are made to

accommodate the applicants *at or close to the external border or transit zones*, in accordance with Directive XXX/XXX/EU [Reception Conditions Directive]. *Member States may process the applications at a different location at the external border than that where the asylum application is made by transferring applicants to a specific location at or in the proximity of the external border of that Member States where appropriate facilities exist.* Member States should retain discretion in deciding at which specific locations *at the external borders* such facilities should be set up. *However, Member States should seek to limit the need for transferring applicants for this purpose, and therefore aim at setting up such facilities with sufficient capacity at border crossing points, or sections of the external border, where the majority of the number of applications for international protection are made, also taking into account the length of the external border and the number of border crossing points or transit zones.* They should notify the Commission of the specific locations *at the external border, transit zones or proximity of the external border* where the border procedures will be carried out. In cases where the border procedure is applied and the capacity of the locations *at or in proximity of the external border* as notified by a Member State is temporarily exceeded, Member States may process those applications at another location within its territory, for the shortest time possible.

accommodate the applicants in accordance with Directive XXX/XXX/EU [Reception Conditions Directive]. *Asylum staff, legal representatives, non-governmental organisations, Union and international institutions, or socio-medical staff should always be allowed to access border procedure facilities.* Member States should retain discretion in deciding at which specific locations such facilities should be set up, *but should ensure that the requirements for border procedures continue to apply. Such facilities may be situated at or close to the external border or transit zones, provided that they guarantee appropriate reception conditions, access for staff and essential services.* Member States should notify the Commission of the specific locations where the border procedures will be carried out. *Where the border procedure is applied and the capacity of the locations as notified by a Member State is temporarily exceeded, the capacity of staff is insufficient or the reception conditions are not met,* Member States may process those applications at another location within its territory, for the shortest time possible.

Or. en

Amendment 11
Fabienne Keller

Proposal for a regulation
Recital 40c a (new)

(40ca) The effective return of irregular migrants within the 12 weeks time-limit is an important component of a well functioning border procedure. To that end, Member States should improve and strengthen the cooperation with third-countries as regards return, readmission and reintegration, and should rely on the mechanism under Article 7 of the Asylum and Migration Management Regulation [Regulation XXX/XXX/EU], with a view to including all relevant Union policies and tools and to improving the coordination of the different actions in various policy areas other than migration policy that the Union and the Member States can take for that purpose .

Or. en

Amendment 12
Fabienne Keller

Proposal for a regulation
Recital 40d

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

(40d) ***Where*** the use of the border procedure is an obligation, Member States should by way of exception, not be required to ***subject*** nationals of a third country that does not cooperate sufficiently on readmission ***to the border procedure for carrying out return***, since ***it would be unlikely in that case that*** the persons concerned ***could be swiftly returned*** following ***the*** rejection of their applications ***during the border procedure for the examination of applications for international protection..*** The determination of whether a third country is cooperating sufficiently on readmission should be based on the procedures set out

in Article 25a of Regulation (EC) No 810/2009. *Where the border procedure for carrying out return is exceptionally not applied in those circumstances, the return procedure established by the Return Directive should apply and the third-country national concerned should be authorised to enter the territory of the Member State concerned.*

Or. en

Amendment 13
Fabienne Keller

Proposal for a regulation
Recital 40e

Text proposed by the Commission

(40e) The duration of the border procedure for examination of applications for international protection should be as short as possible while at the same time guaranteeing a complete and fair examination of the claims. It should in any event not exceed 12 weeks. This deadline should be understood as a stand-alone deadline for the asylum border procedure, encompassing both the decision on the examination of the application as well as the decision of the **first level of** appeal, if applicable. Within this period, Member States are entitled to set the deadline in national law both for the administrative and for the appeal stage, but should set them in a way so as to ensure that the examination procedure is concluded and that subsequently, if relevant, the decision on the **first level of** appeal is issued within this maximum 12 week. After that period, if the Member State nevertheless failed to take the relevant decisions, the applicant should **in principle** be authorised to enter the territory of the Member State. Entry into the territory should however not be authorised where the applicant has no right

Amendment

(40e) The duration of the border procedure for examination of applications for international protection should be as short as possible while at the same time guaranteeing a complete and fair examination of the claims. It should in any event not exceed 12 weeks. This deadline should be understood as a stand-alone deadline for the asylum border procedure, encompassing both the decision on the examination of the application as well as the decision of the appeal, if applicable. Within this period, Member States are entitled to set the deadline in national law both for the administrative and for the appeal stage, but should set them in a way so as to ensure that the examination procedure is concluded and that subsequently, if relevant, the decision on the appeal is issued within this maximum 12 week. After that period, if the Member State nevertheless failed to take the relevant decisions, the applicant should be authorised to enter the territory of the Member State. Entry into the territory should however not be authorised where the applicant has no right to remain, where

to remain, where he or she has not requested to be allowed to remain for the purpose of an appeal procedure, or where a court or tribunal has decided that he or she should not be allowed to remain pending the outcome of an appeal procedure. In such cases, to ensure continuity between the asylum procedure and the return procedure, the return procedure should also be carried out in the context of a border procedure for a period not exceeding 12 weeks. This period should be counted starting from the moment in which the applicant, third-country national or stateless person no longer has a right to remain or is no longer allowed to remain.

he or she has not requested to be allowed to remain for the purpose of an appeal procedure, or where a court or tribunal has decided that he or she should not be allowed to remain pending the outcome of an appeal procedure. In such cases, to ensure continuity between the asylum procedure and the return procedure, the return procedure should also be carried out in the context of a border procedure for a period not exceeding 12 weeks. This period should be counted starting from the moment in which the applicant, third-country national or stateless person no longer has a right to remain or is no longer allowed to remain. ***To complete the border procedure within the set deadlines, the competent authorities and all actors involved in the border procedure should seek to enhance the engagement and cooperation of third-country nationals at all stages of the procedure.***

Or. en

Amendment 14 **Fabienne Keller**

Proposal for a regulation **Recital 40f**

Text proposed by the Commission

(40f) While the border procedure for the examination of an application for international protection can be applied without recourse to detention, Member States should nevertheless be able to apply the grounds for detention during the border procedure in accordance with the provisions of the [Reception Conditions] Directive (EU) XXX/XXX ***in order to decide on*** the right of the applicant to enter the territory. ***If detention is used during such procedure, the provisions on detention of the [Reception Conditions] Directive (EU) XXX/XXX should apply,***

Amendment

(40f) While the border procedure for the examination of an application for international protection can be applied without recourse to detention, Member States should nevertheless be able to apply the grounds for detention during the border procedure in accordance with the provisions of the [Reception Conditions] Directive (EU) XXX/XXX, ***including*** the right of the applicant to enter the territory ***and*** reception conditions ***and*** guarantees for detained applicants. ***A decision to detain an applicant during a border procedure should never be automatic.***

including the guarantees for detained applicants ***and*** the fact that an individual assessment of each case ***is*** necessary, judicial control ***and conditions of detention***.

Such decisions should always be based on an individual assessment of each case that shows that detention is necessary and proportionate and that it is not possible to effectively apply less coercive measures. Such decisions should be subject to judicial oversight.

Or. en

Amendment 15
Fabienne Keller

Proposal for a regulation
Recital 40f a (new)

Text proposed by the Commission

Amendment

(40fa) With a view to avoiding the deprivation of liberty where less stringent measures might be applicable, Member States should be able to restrict applicants' freedom of movement as provided in the [Reception Conditions] Directive (EU) XXX/XXX, or should have recourse to other alternatives to detention. Such alternatives should be available both in law and fact at national level and may be provided, in particular, for applicants with special reception needs, in particular for minors, families or other vulnerable persons. The Commission should identify best practice, and should support Member States in the implementation of alternatives to detention in the context of the border procedure. The Commission should consult stakeholders with expertise in that field, such as Union bodies, offices and agencies, the European Migration Network, the Steering Committee for Human Rights of the Council of Europe, the United Nations High Commissioner for Refugees, the International Organisation for Migration or non-government organisations.

Or. en

Amendment 16
Fabienne Keller

Proposal for a regulation
Recital 40h

Text proposed by the Commission

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

Amendment

(40h) When applying the border procedure for carrying out return, certain provisions of the [recast Return Directive] should apply as these regulate elements of the return procedure that are not determined by this Regulation, notably those on definitions, more favourable provisions, non-refoulement, best interests of the child, family life and state of health, risk of absconding, obligation to cooperate, period for voluntary departure, return decision, removal, postponement of removal, return and removal of unaccompanied minors, entry bans, safeguards pending return, detention, conditions of detention, detention of minors and families and emergency situations.

Or. en

Amendment 17
Fabienne Keller

Proposal for a regulation
Recital 40h a (new)

Text proposed by the Commission

Amendment

(40ha) Where the conditions under Union law are met, the recourse to voluntary return should be supported in the border procedure to encourage the use of an approach centered around cooperation between third-country nationals and competent authorities. Third country nationals should be duly informed as to the conditions and benefits of voluntary return as early as possible, including at the beginning of the pre-entry phase. To reduce the risk of unauthorised entry and movement of illegally staying third-country nationals subject to the border procedure for carrying out return, a period for voluntary departure not exceeding 20 days may be granted to illegally staying third-country nationals, without prejudice to the possibility to voluntarily comply with the obligation to return at any moment. On the basis of the communication of the Commission of 27 April 2021 entitled ‘EU strategy on voluntary return and reintegration’, Member States should develop programmes for voluntary return and reintegration in the border procedure. Those programmes place a strong emphasis on cooperation with countries of origin with a view to developing sustainable reintegration policies and programmes for third-countries nationals which take into account the economic and social impacts on home communities, and ensure the involvement and cooperation of all stakeholders.

Or. en

Amendment 18

Fabienne Keller

Proposal for a regulation
Recital 40h b (new)

Text proposed by the Commission

Amendment

(40hb) With a view to ensuring that a fair and efficient border procedure for carrying out return is implemented at all times, Member States should be able to request the support of the European Border and Coast Guard Agency. The European Border and Coast Guard Agency should provide, within its mandate, quick and qualitative assistance to complete a wide range of tasks at all stages of the border procedure. For example, the European Border and Coast Guard should be able to complement the resources of the competent authorities by providing returns experts, supporting the coordination of forced and voluntary returns, organising joint return operations, facilitating the exchange of information between Member States on returnees, supporting the identification of third-country nationals and the acquisition of travel documents and monitoring return operations at all stages.

Or. en

Amendment 19

Fabienne Keller

Proposal for a regulation
Recital 40k (new)

Text proposed by the Commission

Amendment

(40k) The border procedure should be carried out in full compliance with the Charter of Fundamental Rights of the European Union (the ‘Charter’) and

Union law. The proper functioning of the border procedure inherently depends on the availability of adequate and qualified staff at all stages of the procedure. In order to ensure that border procedures are fair and efficient and that reception conditions are appropriate, the competent authorities should, in all circumstances, allocate qualified and well-trained staff according to needs at the relevant locations. Member States should seek, where necessary, support from Union bodies, offices and agencies, international organisations and non-governmental organisations. The Commission should also assist the competent authorities in planning the allocation of qualified staff, with a view to ensuring a level playing field in all Member States.

Or. en

Amendment 20
Fabienne Keller

Proposal for a regulation
Recital 40I (new)

Text proposed by the Commission

Amendment

(40I) Given the variety of authorities and stakeholders involved in the border procedure, it is essential that Member States cooperate in a continuous and efficient manner with one another, for example by issuing negative asylum decisions and return decisions together and at the same time. In the implementation of the border procedure, competent authorities should therefore set up a clear and strong cooperation structure in the border procedure, including in terms of sharing competences and responsibilities or the exchange of information. Union bodies, offices and agencies should analyse and share best practice in order to assist

Member States with that objective.

Or. en

Amendment 21
Fabienne Keller

Proposal for a regulation
Recital 40m (new)

Text proposed by the Commission

Amendment

(40m) Union bodies, offices and agencies should strongly support Member States and the Commission with a view to ensuring the proper implementation and functioning of this Regulation, in particular its provisions related to the accelerated examination procedure, the border procedure for the examination of applications for international protection and the border procedure for carrying out return. In particular, the European Union Agency for Asylum, the European Border and Coast Guard Agency and the European Union Agency for Fundamental Rights should play a central role in the application of this Regulation, and should, to that end, exploit the entire potential and scope of their competence. Such activities could include providing analysis and expertise, supplying operational support to competent authorities or conducting monitoring and evaluation missions.

Or. en

Amendment 22
Fabienne Keller

Proposal for a regulation
Recital 40n (new)

Text proposed by the Commission

Amendment

(40n) Given the variation of migration flows arriving at the various entry points at the external borders of the Union, Union bodies, offices and agencies should be able to provide rapid and tailored support to competent authorities at the request of a Member State.

Or. en

Amendment 23
Fabienne Keller

Proposal for a regulation
Recital 40o (new)

Text proposed by the Commission

Amendment

(40o) Union bodies, offices and agencies should respond to a Member State's request for rapid and tailored support or should be able to propose support on their own initiative to a specific Member State where deemed necessary. Where a Union body, office or agency deems it necessary to propose support to a specific Member State, that Member State should take due account of that proposal and should be able to accept, amend or reject it.

Or. en

Amendment 24
Fabienne Keller
Proposal for a regulation
Recital 66c

Text proposed by the Commission

Amendment

(66c) To ensure the consistency of the legal review carried out by a court or tribunal on a decision rejecting an application for international protection and

(66c) To ensure the consistency of the legal review carried out by a court or tribunal on a decision rejecting an application for international protection and

the accompanying return decision, and with a view to accelerating the examination of the case and reducing the burden on the competent judicial authorities, such decisions **should** be subject to common proceedings before the same court or tribunal.

the accompanying return decision, and with a view to accelerating the examination of the case and reducing the burden on the competent judicial authorities, **it should be possible to** subject such decisions to common proceedings before the same court or tribunal, **where this is possible under the national legal system concerned.**

Or. en

Amendment 25
Fabienne Keller

Proposal for a regulation
Recital 66e (new)

Text proposed by the Commission

Amendment

(66e) The Commission should regularly monitor and evaluate whether this Regulation is being properly applied and implemented. In particular, the Commission should set up an independent monitoring mechanism to check and investigate any allegation of non-respect of fundamental rights in relation to the border procedure. That monitoring mechanism should cover procedural and fundamental rights, reception conditions and the application of detention and alternatives to detention.

Or. en

Amendment 26
Fabienne Keller

Proposal for a regulation
Article 35a – paragraph 1

Text proposed by the Commission

Amendment

Where an application is rejected as inadmissible, unfounded or manifestly

Where an application is rejected as inadmissible, unfounded or manifestly

unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States shall issue a return decision that respects Directive XXX/XXX/EU [Return Directive]. 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 be issued at the same time and together with the decision rejecting the application for international protection.

unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States shall issue a return decision that respects Directive XXX/XXX/EU [Return Directive], ***in particular the best interests of the child, the family life and state of health of the third-country national concerned, and the principle of non-refoulement***. 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 be issued at the same time and together with the decision rejecting the application for international protection.

Or. en

Amendment 27
Fabienne Keller

Proposal for a regulation
Article 40 – paragraph 1 – point i

Text proposed by the Commission

(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 a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data **or** the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;

Amendment

(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:

(i) on the basis of guidance notes developed by the European Union Agency for Asylum in accordance with Article 11

of Regulation (EU) No XXX/XXX (EU Asylum Agency), the Commission determines, by means of an implementing act, that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data, or

(ii) the relevant competent authority determines 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.

Without prejudice to point (i) of the first subparagraph, a 20 % threshold shall apply in all circumstances, including in a situation of crisis or force majeure as set out in Regulation XXX/XXX [Crisis and force majeure];

Or. en

Amendment 28
Fabienne Keller

Proposal for a regulation
Article 40 – paragraph 5 – point c

Text proposed by the Commission

(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 a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data *or* the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;

Amendment

(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

(i) on the basis of guidance notes developed by the European Union Agency for Asylum in accordance with Article 11 of Regulation (EU) No XXX/XXX (EU Asylum Agency), the Commission determines, by means of an implementing act, that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data; or

(ii) the relevant competent authority determines 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.

Without prejudice to point (c) of the first subparagraph, the 20% threshold shall apply in all circumstances, including in a situation of crisis or force majeure as set out in Regulation XXX/XXX [Crisis and force majeure];

Or. en

Amendment 29
Fabienne Keller

Proposal for a regulation
Article 40 – paragraph 6 (new)

Text proposed by the Commission

Amendment

6. Competent authorities, with the support of all actors involved in the border procedure, shall seek to enhance the cooperation of third-country nationals at all stages of the border procedure.

Or. en

Amendment 30
Fabienne Keller

Proposal for a regulation

Article 41 – paragraph 1 – introductory part

Text proposed by the Commission

1. Following the screening procedure carried out in accordance with Regulation (EU) No XXX/XXX [Screening Regulation], and provided that the applicant has not yet been authorised to enter Member States' territory, a Member State may examine an application in a border procedure where that application has been made by a third-country national or stateless person who does not fulfil the conditions for entry in the territory of a Member State as set out in Article 6 of Regulation (EU) 2016/399. The border procedure may take place:

Amendment

1. Following the screening procedure carried out in accordance with Regulation (EU) No XXX/XXX [Screening Regulation], **where applicable**, and provided that the applicant has not yet been authorised to enter Member States' territory, a Member State may examine an application in a border procedure where that application has been made by a third-country national or stateless person who does not fulfil the conditions for entry in the territory of a Member State as set out in Article 6 of Regulation (EU) 2016/399. The border procedure may take place:

Or. en

Amendment 31 Fabienne Keller

Proposal for a regulation Article 41 – paragraph 1 – point b

Text proposed by the Commission

(b) following apprehension ***in connection with an unauthorised crossing*** of the external border;

Amendment

(b) following ***the*** apprehension ***of that third-country national or stateless person by the competent authorities in a Member State after he or she crossed*** the external border ***without authorisation***;

Or. en

Amendment 32 Fabienne Keller

Proposal for a regulation Article 41 – paragraph 4

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

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

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

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

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

Or. en

**Amendment 33
Fabienne Keller**

**Proposal for a regulation
Article 41 – paragraph 5**

Text proposed by the Commission

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

Amendment

5. The border procedure may only be applied to unaccompanied minors and to minors below the age of 12 and their family members in the cases referred to in Article 40(5) (b). ***The best interests of the child and the safeguards provided for in Directive XXX/XXX/EU [Reception Conditions Directive recast], in particular Articles 11, 12, 13, 14, 20, 21, 22 and 23, shall be a primary consideration for the competent authorities in the application of this paragraph.***

Or. en

Amendment 34
Fabienne Keller

Proposal for a regulation
Article 41 – paragraph 6

Text proposed by the Commission

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

Amendment

6. Applicants subject to the border procedure shall not be authorised to enter the territory of the Member State, without prejudice to paragraphs 9 and 11. ***In accordance with Directive XXX/XXX/EU [Reception Conditions Directive recast], a Member State shall not decide to hold an applicant in detention until it has individually assessed that applicant's case and effectively considered alternatives to detention or less coercive measures.***

Or. en

Amendment 35
Fabienne Keller

Proposal for a regulation
Article 41 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. *Member States shall take proportionate measures to ensure that applicants in the border procedure remain in the locations designated in accordance with Article 41(13) and (14).*

Or. en

Amendment 36
Fabienne Keller

Proposal for a regulation
Article 41 – paragraph 6 b (new)

Text proposed by the Commission

Amendment

6b. *In accordance with Article 8(2) of Directive XXX/XXX/EU [Reception Conditions Directive recast] and Directive XXX/XXX/EU [Return Directive recast], Member States may hold an applicant in detention as part of the border procedure provided that it proves necessary following an individual assessment of that applicant's case and that other less coercive alternative measures cannot be applied effectively. The decision to hold an applicant in detention shall be made by a judge, and the detention period shall be proportionate and terminated as soon as the grounds for it no longer apply.*

In accordance with Article 7 of Directive XXX/XXX/EU [Reception Conditions Directive recast], Member States may restrict applicants' freedom of movement in order to process applications in the border procedure.

Member States shall use the alternatives to detention laid down in their national law in accordance with Article 8(4) of Directive XXX/XXX/EU [Reception Conditions Directive recast] that are effectively available where the grounds

for detention apply, in particular for specific groups such as minors or families.

Or. en

Amendment 37
Fabienne Keller

Proposal for a regulation
Article 41 – paragraph 6 c (new)

Text proposed by the Commission

Amendment

6c. By ... [six months after the date of entry into force of this Regulation], the Commission shall request the European Union Agency for Asylum, in accordance with Article 13(2) of Regulation (EU) No XXX/XXX (EU Asylum Agency), to develop guidelines on different practices as regards alternatives to detention that could be used in the context of a border procedure.

The guidelines referred to in the first subparagraph shall specify the conditions for applying alternatives to detention, and shall aim to address the situation and needs of different categories of applicants, such as women, minors, unaccompanied minors or families. Those guidelines shall seek to enhance trust-building with applicants and ensure they engage and comply with the border procedure.

Or. en

Amendment 38
Fabienne Keller

Proposal for a regulation
Article 41 – paragraph 6 d (new)

Text proposed by the Commission

Amendment

6d. *By ... [18 months after the entry into force of this Regulation], the Commission shall evaluate the application of paragraph 6c.*

Or. en

Amendment 39
Fabienne Keller

Proposal for a regulation
Article 41 – paragraph 7

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 40
Fabienne Keller

Proposal for a regulation
Article 41 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. *By way of exception to Article 29(1) and (2) and Article 30(1), (2) and (7) of Regulation (EU) No XXX/XXX [Regulation on Asylum and Migration Management], where a Member State in which an application for international*

protection has been registered in the context of the pre-entry phase considers that another Member State is responsible for examining that application, it shall without delay and in any event within three weeks of the date on which the application was registered, request that other Member State to take charge of the applicant. The requested Member State shall carry out the necessary checks, and shall decide on the request to take charge of an applicant within one week of receipt of the request.

Or. en

Amendment 41
Fabienne Keller

Proposal for a regulation
Article 41 – paragraph 9 –subparagraph 2

Text proposed by the Commission

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

Amendment

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

Member States shall regularly monitor the application of the first subparagraph. Member States may request support from Union bodies, offices and agencies for that purpose.

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

Or. en

Amendment 42
Fabienne Keller

Proposal for a regulation
Article 41 – paragraph 10

Text proposed by the Commission

10. 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 [x] of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], five days from when the applicant arrives in the Member State responsible following a transfer pursuant to Article 56(1), point (e), of that Regulation.

Amendment

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

Or. en

Amendment 43
Fabienne Keller

Proposal for a regulation
Article 41 – paragraph 11

Text proposed by the Commission

11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall encompass the decision referred to in paragraph 2 and 3 and any decision on an appeal if applicable and shall be completed within 12 weeks from when the application is registered. Following that period, the applicant shall be authorised to enter the Member State's territory except when Article 41a(1) is applicable. . By way of derogation from the time limits set in Articles 34, 40(2) and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure

Amendment

11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. ***Individual procedural rights as provided in this Regulation, such as access to information, legal assistance and representation and interpretation, shall be effectively guaranteed during the entire border procedure. Member States shall ensure that staff are allocated appropriately and that there is efficient coordination between the different actors and authorities in the border procedure, in accordance with Articles 41b and 41c.*** It shall encompass the decision referred to in paragraph 2 and 3 and any decision on

which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within 12 weeks from when the application is registered.

an appeal if applicable and shall be completed within 12 weeks from when the application is registered. Following that period, the applicant shall be authorised to enter the Member State's territory except when Article 41a(1) is applicable. By way of derogation from the time limits set in Articles 34, 40(2) and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within 12 weeks from when the application is registered.

Or. en

Amendment 44
Fabienne Keller

Proposal for a regulation
Article 41 – paragraph 13

Text proposed by the Commission

13. During the examination of applications subject to a border procedure, the applicants shall be kept at or in proximity to the external border or transit zones. Each Member State shall notify to the Commission, [two months after the date of the application of this Regulation] at the latest, the locations where the border procedure will be carried out, **at the external borders, in the proximity to the external border or transit zones**, including when applying paragraph 3 and ensure that the capacity of those locations is sufficient to process the applications covered by that paragraph. Any changes in the identification of the locations at which the border procedure is applied, shall be notified to the Commission **two months** in advance of the changes taking effect.

Amendment

13. During the examination of applications subject to a border procedure, **the competent national authorities may require applicants to stay at locations, designated at their discretion, for completing the border procedure on the Member States' territory, in full compliance with Directive XXX/XXX/EU [Reception Conditions Directive recast]. A border procedure may take place at or in proximity to the external border or transit zones on the Member State's territory, provided that the conditions under this paragraph are fully respected and applicants' special needs are properly safeguarded.** Each Member State shall notify to the Commission, [two months after the date of the application of this Regulation] at the latest, the locations where the border procedure will be carried

out including when applying paragraph 3 and ensure that the capacity of those locations is sufficient to process the applications covered by that paragraph. Any changes in the identification of the locations at which the border procedure is applied ***on the basis of a decision from competent national authorities***, shall be notified to the Commission ***as early as possible and at least two weeks*** in advance of the changes taking effect.

Or. en

Amendment 45
Fabienne Keller

Proposal for a regulation
Article 41 – paragraph 14

Text proposed by the Commission

14. In situations where the capacity of the locations notified by Member States pursuant to paragraph 14 is temporarily insufficient to process the applicants covered by paragraph 3, 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***.

Amendment

14. In situations where, ***on the basis of an assessment by the Commission or a competent national authority of the Member State concerned, it is found that*** the capacity of ***a*** location ***as*** notified by ***that Member State*** pursuant to paragraph 13 ***is*** temporarily insufficient to process the applicants covered by paragraph 3, ***that Member State shall*** designate other locations within ***its*** territory and, upon notification to the Commission, shall accommodate applicants, ***under the conditions provided for in Directive XXX/XXX/EU [Reception Conditions Directive recast]***.

Or. en

Amendment 46
Fabienne Keller

Proposal for a regulation
Article 41a – paragraph 2

Text proposed by the Commission

2. Persons referred to in paragraph 1 shall be kept 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 can 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.

Amendment

2. Persons referred to in paragraph 1 shall be kept for a period not exceeding 12 weeks in locations ***designated at the discretion of the Member States, and may be situated*** at or in proximity to the external border or transit zones ***in the territory of the Union. The locations referred to in this paragraph shall fully comply with the requirements under Directive XXX/XXX/EU [Reception Conditions Directive recast].*** The 12-week period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain.

Or. en

Amendment 47
Fabienne Keller

Proposal for a regulation
Article 41a – paragraph 3

Text proposed by the Commission

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.

Amendment

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 14(3)***, 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 ***for the purposes of this Article.***

Or. en

Amendment 48
Fabienne Keller

Proposal for a regulation
Article 41a – paragraph 3 a (new)

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

Where, following the examination carried out in accordance with Article 25a(4) of Regulation (EC) No 810/2009, the Commission considers that the third country is cooperating sufficiently, the Member State shall again apply the border procedure for carrying out return.

Where the Commission considers that the third country concerned is not cooperating sufficiently, the Member State may continue not to apply the border procedure for carrying out return;

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

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

Or. en

Amendment 49
Fabienne Keller

Proposal for a regulation
Article 41a – paragraph 4

Text proposed by the Commission

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 not exceeding **15 days**.

Amendment

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 not exceeding **20 days and shall cooperate with competent authorities**

The competent national authorities or staff competent for the border procedure shall inform persons as referred to in paragraph 1 who are eligible for voluntary return in accordance with this Article of their rights and obligations as regards voluntary return from the first day of the border procedure. They shall be efficiently assisted, where applicable, by qualified staff at all stages.

Member States shall establish programmes providing for enhanced voluntary return assistance and counselling in the border procedure. Such assistance may include support for reintegration in the third country of return.

Programmes as referred to in the third subparagraph may include logistical, financial and other material or in-kind assistance.

The Commission may provide guidelines on common standards for voluntary return in the border procedure.

Or. en

Amendment 50
Fabienne Keller

Proposal for a regulation
Article 41a – paragraph 5

Text proposed by the Commission

5. Persons referred to in paragraph 1

Amendment

5. Persons referred to in paragraph 1

who have been detained during the procedure referred to in Article 41 and who no longer have a right to remain and are not allowed to remain may continue to be detained for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process.

who have been detained during the procedure referred to in Article 41 and who no longer have a right to remain and are not allowed to remain may continue to be detained for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process, ***provided that the grounds for detention under Directive XXX/XXX/EU [Return Directive recast] still apply.***

Or. en

Amendment 51
Fabienne Keller

Proposal for a regulation
Article 41a – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. In the framework of this Article, the European Border and Coast Guard Agency may, within its mandate, support national authorities with return and readmission operations by, inter alia, providing return experts, supporting the coordination of forced and voluntary returns, organising joint return operations, facilitating the exchange of information on returnees between Member States, supporting the identification of third-country nationals and the acquisition of travel documents and monitoring return operations at all stages.

Or. en

Amendment 52
Fabienne Keller
Proposal for a regulation
Article 41 b (new)

Article 41b

Staff in the border procedure

- 1. Member States shall ensure that their staff who engage in the border procedure have been provided with an appropriate level and training in all circumstances. Member States shall ensure that applicants have effective access to non-governmental organisations in facilities used for the purposes of a border procedure.***
- 2. By ... [six months after the date of entry into force of this Regulation], the Commission shall request the European Union Agency for Asylum to issue guidelines, in cooperation with national authorities and other Union bodies, offices and agencies, to assist Member States with the planning and allocation of the appropriate level of staff, in accordance with paragraph 1. The guidelines shall specify the average requirements for staff in order to be able to comply with procedural and reception requirements, in terms of number, type and qualifications.***
- 3. Where requested by a Member State, Union bodies, offices and agencies shall provide it with rapid and tailored support in the border procedure as specified in Article 57a, in particular where that Member State experiences a significant increase of applications.***

Or. en

Amendment 53
Fabienne Keller

Proposal for a regulation
Article 41 c (new)

Text proposed by the Commission

Amendment

Article 41c

Coordination between actors in the border procedure

1. Member States shall ensure that all actors and authorities involved in the various stages of the border procedure, in particular national authorities, the Commission, Union bodies, offices and agencies, international organisations, non-governmental organisations, legal representatives and lawyers, coordinate efficiently and share information with one another.

2. National authorities responsible for the border procedure shall establish a governance strategy, adopt appropriate processes, and develop tools to support the sharing of information on applicants between competent actors involved in the procedures.

3. The Commission and Union bodies, offices and agencies may identify best practice and provide guidance for the Member States in respect of this Article.

Or. en

Amendment 54
Fabienne Keller

Proposal for a regulation
Article 41 d (new)

Text proposed by the Commission

Amendment

Article 41d

Reception conditions in the border procedure

1. Member States shall provide applicants in the border procedure with appropriate material reception conditions

and an adequate standard of living as provided for under their national law in accordance with Directive XXX/XXX/EU [Reception Conditions Directive recast]. Particular attention shall be paid to applicants with special reception needs, as provided for in Article 20 of that Directive.

2. Facilities used for the purposes of a border procedure shall be entirely funded from the Union budget. This shall include the construction, running and renovation of current and future facilities.

Or. en

Amendment 55
Fabienne Keller

Proposal for a regulation
Article 53 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Return decisions *shall* be appealed before the same court or tribunal and within the same judicial proceedings and the same time-limits as decisions referred to in points (a), (b), (c) and (d).

Amendment

Return decisions *may* be appealed before the same court or tribunal and within the same judicial proceedings and the same time-limits as decisions referred to in points (a), (b), (c) and (d). *Applicants shall be duly informed in a timely manner of their right to appeal.*

Or. en

Amendment 56
Fabienne Keller
Proposal for a regulation
Article 53 – paragraph 6

Text proposed by the Commission

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

Amendment

6. *The court or tribunal shall take into consideration all documents and information provided by the applicant.* If the documents are not submitted in *a reasonable* time for the court or tribunal to ensure their translation, the court or tribunal may refuse to take those documents into account if they are not

accompanied by a translation provided by the applicant, ***unless the applicant provides for a reasonable justification for any delay in the submission of those documents.***

Or. en

Amendment 57
Fabienne Keller

Proposal for a regulation
Article 53 – paragraph 9

Text proposed by the Commission

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

Amendment

9. Member States shall provide for, ***at least***, one level of appeal in relation to a decision taken in the context of the border procedure. ***Where a Member State provides for more than one level of appeal, it shall ensure that the border procedure is concluded within the 12-week time limit referred to in Article 41(11).***

Or. en

Amendment 58
Fabienne Keller

Proposal for a regulation
Article 54 – paragraph 5 – point a

Text proposed by the Commission

(a) the applicant 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;

Amendment

(a) the applicant shall have a time-limit of at least 5 ***working*** days from the date when the decision is notified to him or her to request to be allowed to remain on the territory pending the outcome of the remedy;

Amendment 59
Fabienne Keller

Proposal for a regulation
Article 54 – paragraph 5 – point e (new)

Text proposed by the Commission

Amendment

(e) the applicant shall be duly informed in a timely manner of his or her rights under this paragraph.

Amendment 60
Fabienne Keller

Proposal for a regulation
Article 54 – paragraph 6

Text proposed by the Commission

Amendment

6. In cases of subsequent applications, by way of derogation from paragraph 6, point (d) of this Article, Member States may provide in national law that the applicant shall not have a right to remain, ***without prejudice to the respect of the principle of non-refoulement***, if the appeal has been made merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State, in cases where it is immediately clear to the court that no new elements have been presented in accordance with Article 42(4).

6. ***In full respect of the principle of non-refoulement***, 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, if the appeal has been made merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State, in cases where it is immediately clear to the court that no new elements have been presented in accordance with Article 42(4).

Amendment 61
Fabienne Keller

Proposal for a regulation
Article 57 a (new)

Text proposed by the Commission

Amendment

Article 57a

Role of Union bodies, offices and agencies

1. The Union bodies, offices and agencies acting in the field of asylum and migration management shall, within their respective mandates, provide strong support to the Member States and the Commission with a view to ensuring the proper implementation and functioning of this Regulation, in particular the provisions related to the accelerated examination procedure under Article 40, the border procedure for the examination of applications for international protection under Article 41 and the border procedure for carrying out return under Article 41a.

For the purposes of the first subparagraph, the Union bodies, offices agencies referred to therein may provide national authorities with analysis, expertise and operational support, and may conduct monitoring and evaluation missions. The European Union Agency for Asylum, the European Border and Coast Guard Agency and the European Union Agency for Fundamental Rights shall play a central role in the application of this Regulation.

2. Where requested by a Member State, a Union body, office or agency may provide it with support. The Commission or a Union body, office or agency may, on its own initiative, propose to provide a specific Member State with support. Where the Commission or a Union body, office or agency proposes support to a Member State, that Member State shall take due account of the proposal. The Member State concerned may accept, amend or reject that proposal. The

Member State shall provide the Commission in a timely manner with a reasoned decision concerning the acceptance, amendment or rejection of that proposal.

3. In coordination with national authorities, Union bodies, offices and agencies may carry out the following tasks:

(a) provide operational support at all stages of the asylum and return procedures by deploying staff on the ground in order to:

(i) provide information in timely manner to applicants on their procedural and fundamental rights;

(ii) conduct vulnerability and eligibility assessments to determine the applicable procedure;

(iii) conduct interviews and provide interpretation services;

(iv) examine asylum applications and prepare first instance decisions;

(v) support national authorities with regard to return activities;

(vi) support and advise national authorities in the organisation and management of the border procedure, in particular with respect to reception conditions and processes, vulnerability assessments, and fundamental rights monitoring;

(b) support training activities for staff operating at various stages of the border procedures;

(c) produce expert-based analysis and share reliable information at Union level, in particular in the field of country of origin analysis;

(d) carry out regular monitoring and evaluation tasks, in particular as regards to provisions on reception, procedural rights or detention;

(e) on the basis of monitoring and evaluating activities, developing recommendations to improve and adapt the border procedure.

4. International organisations, such as the United Nations High Commissioner for Refugees or Interational Organisation for Migration, may, within their mandate and in coordination with the Member States, support the Member States in the border procedure.

Or. en

Amendment 62
Fabienne Keller

Proposal for a regulation
Article 57 b (new)

Text proposed by the Commission

Amendment

Article 57b

Monitoring the application of the border procedure

1. The Commission shall regularly monitor the application of the border procedure, including, in particular, the following aspects:

(a) the access that all competent actors have to facilities used for the purposes of a border procedure;

(b) reception conditions and specific requirements for the border procedure;

(c) the respect for procedural rights, such as access to information, legal assistance and representation and interpretation or the right to an effective remedy;

(d) quality of decision-making in the border procedure;

2. The Commission shall alert a Member State where the capacity of a location it has notified pursuant to Article 41(14) is temporarily insufficient for the

purposes of processing applicants.

Or. en

Amendment 63
Fabienne Keller

Proposal for a regulation
Article 57 c (new)

Text proposed by the Commission

Amendment

Article 57c

*Monitoring of fundamental rights in the
border procedure*

- 1. Allegations of breaches of fundamental rights in relation to border procedure for the examination of applications for international protection under Article 41 and the border procedure for carrying out return under Article 41a shall be properly investigated as part of the independent monitoring mechanism referred to in paragraph 2 of this Article.*
- 2. The Commission shall set up an independent monitoring mechanism, in cooperation with the Member States and Union bodies, offices and agencies which have monitoring competences, in particular the European Union Agency for Fundamental Rights, the European Union Agency for Asylum and the European Border and Coast Guard Agency. That mechanism shall aim to:*
 - (a) ensure that all actors involved in the border procedure comply with Union and international law during the border procedure;*
 - (b) ensure compliance, where applicable, with European rules on the detention of persons, in particular rules concerning the grounds for and the duration of detention;*
 - (c) ensure that allegations of breaches*

of fundamental rights in relation to the asylum and return border procedures, including in relation to access to the asylum procedure and the principle of non-refoulement, are dealt with effectively and without undue delay.

The Commission shall put in place adequate safeguards to guarantee the independence of the monitoring mechanism referred to in the first subparagraph.

The European Union Agency for Fundamental Rights shall provide the Commission with general guidance on the setting up of the monitoring mechanism referred to in the first subparagraph, including as regards the independent functioning of the mechanism, the monitoring methodology it uses and appropriate training schemes.

The Commission may invite relevant national, international and non-governmental organisations and bodies to participate in the monitoring carried out as part of the monitoring mechanism referred to in the first subparagraph.

3. Where monitoring carried out as part of the monitoring mechanism referred to in paragraph 2 determines that there have been breaches of fundamental rights, the Commission shall adopt appropriate and proportionate penalties.

Or. en