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AMENDMENTS

34 - 112

Draft report

Patryk Jaki

(PE752.890v01-00)

Addressing situations of instrumentalisation in the field of migration and asylum

Proposal for a regulation

(COM(2021)0890 – C9-0474/2021 – 2021/0427(COD))

Amendment 34
Pietro Bartolo, Birgit Sippel, Sylvie Guillaume

Proposal for a regulation

—

Proposal for rejection

The European Parliament rejects the Commission proposal for a regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and asylum;

Or. en

Amendment 35
Tineke Strik, Pietro Bartolo, Róza Thun und Hohenstein, Anne-Sophie Pelletier

Proposal for a regulation

—

Proposal for rejection

The European Parliament rejects the Commission proposal for a regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and asylum;

Or. en

Amendment 36
Pietro Bartolo

Proposal for a regulation
Citation 1

Text proposed by the Commission

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

Amendment

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

Justification

No changes to the Reception Conditions Directive should be provided for in this Regulation. The possible exception to a Member State's obligation to provide material reception conditions under RCD is linked to the presence of an applicant in a Member State other than the Member State responsible in accordance with the Asylum and Migration Management Regulation. This exception is not applicable to applicants in a Member State in a situation of instrumentalisation. Applicants who have been instrumentalised should not be punished in this way.

Amendment 37

Annika Bruna, Jean-Paul Garraud

Proposal for a regulation**Recital 1***Text proposed by the Commission*

(1) A situation of instrumentalisation of migrants may arise where a third country instigates irregular migratory flows into the Union by actively encouraging or facilitating the movement of third country nationals to the external borders, onto or from within its territory and then onwards to those external borders, where such actions ***are indicative of an intention*** of a third country ***to*** destabilise the Union or a Member State, ***where the nature of such actions is liable to put*** at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security.

Amendment

(1) A situation of instrumentalisation of migrants may arise where a third country ***or a non-state organisation, such as a non-governmental organisation (NGO), possibly on the pretext of conducting a humanitarian aid operation,*** instigates irregular migratory flows into the Union by actively encouraging or facilitating the movement of third country nationals to the external borders, onto or from within its territory and then onwards to those external borders, where such actions of a third country ***or non-state organisation*** destabilise the Union or a Member State, ***for example by putting*** at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security.

Amendment 38

Lena Düpont

Proposal for a regulation
Recital 1

Text proposed by the Commission

(1) A situation of instrumentalisation of migrants may arise where a third country instigates irregular migratory flows into the Union by actively encouraging or facilitating the movement of third country nationals to the external borders, onto or from within its territory and then onwards to those external borders, where such actions are indicative of an intention of a third country to destabilise the Union or a Member State, where the nature of such actions is liable to put at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security.

Amendment

(1) A situation of instrumentalisation of migrants may arise where a third country **or non-State actor** instigates irregular migratory flows into the Union by actively encouraging or facilitating the movement of third country nationals to the external borders, onto or from within its territory and then onwards to those external borders, where such actions are indicative of an intention of a third country to destabilise the Union or a Member State, where the nature of such actions is liable to put at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security.

Or. en

Amendment 39
Pietro Bartolo

Proposal for a regulation
Recital 1

Text proposed by the Commission

(1) A situation of instrumentalisation of migrants may arise where a third country ***instigates irregular migratory flows into the Union by*** actively ***encouraging or*** facilitating the movement of third country nationals to the external borders, onto or from within its territory and then onwards to those external borders, ***where such actions are indicative of an intention of a third country*** to destabilise the Union or a Member State, where the nature of such actions ***is liable to*** put at risk essential State functions, including its territorial integrity, the maintenance of law and order ***or*** the safeguard of its national

Amendment

(1) A situation of instrumentalisation of migrants may arise where a third country actively facilitating the movement of ***a comparatively large number of*** third country nationals ***in absolute terms and relative to the asylum capacity of the Member State in question*** to the external borders, onto or from within its territory and then onwards to those external borders, ***with the aim*** to destabilise the Union or a Member State, where the ***Member State affected can demonstrate that the*** nature of such actions put at risk essential State functions, including its territorial integrity, the maintenance of law and order ***and*** the

security.

safeguard of its national security.

Or. en

Amendment 40
Patricia Chagnon, Annika Bruna

Proposal for a regulation
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Any body or organisation which takes part in organising or supporting countries that instrumentalise migration flows shall immediately be ineligible for any EU funding.

Or. fr

Amendment 41
Pietro Bartolo

Proposal for a regulation
Recital 2

Text proposed by the Commission

Amendment

(2) This Regulation follows the ***invitation*** of the European Council ***to the Commission in its conclusions*** of 22 October 2021 ***to propose any necessary changes to the Union's legal framework and concrete measures to ensure an immediate and appropriate response to the hybrid threat in line with Union law and international obligations.*** Furthermore, it contributes to ***establishing a comprehensive and permanent framework to equip the Member States concerned with the necessary tools to respond effectively and swiftly to an instrumentalisation situation*** in full respect of fundamental rights and international obligations.

(2) This regulation follows the ***conclusions*** of the European Council of 22 October 2021 ***where it condemns all hybrid attacks at the EU's borders and opposes any attempt by third countries to instrumentalise migrants for political purposes.*** Furthermore, it contributes to ***ensure a proper temporary adaptation of the relevant rules on the asylum and migration in the case of instrumental use of migrants by a hostile third countries,*** in full respect of fundamental rights and international obligations, ***including refugee protection, human rights obligation and the prohibition of refoulement.***

Amendment 42

Pietro Bartolo

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) One of those tools in this Regulation is the introduction of an emergency ***migration and asylum management procedure*** providing the possibility for Member States to have recourse to legal tools to face future situations of ***instrumentalisation*** of migrants.

Amendment

(3) One of those tools in this Regulation is the introduction of an emergency ***response in limited and well-defined circumstances*** providing the possibility for Member States to have recourse to legal tools to face future situations of ***instrumental use*** of migrants ***by a hostile third country***.

Or. en

Amendment 43

Patricia Chagnon, Annika Bruna

Proposal for a regulation

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) One of the tools is the immediate suspension of all financial contributions from the European Union for countries instrumentalising migration flows and/or refusing the return of their citizens who have attempted to illegally cross one of the external borders of a Member State of the European Union.

Or. fr

Amendment 44

Annika Bruna

Proposal for a regulation

Recital 4

Text proposed by the Commission

Amendment

(4) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular Articles 1, 4, 7, 24, 18 and 19(2) and (2) thereof as well as the Geneva Convention of 28 July of 1951. In order to reflect, in particular, the primary consideration that must be given to the best interests of the child, the need to respect family life, and to ensure the protection of the health of the persons concerned, this Regulation provides for specific rules and safeguards applying in respect of unaccompanied minors and minors and their family members, and of applicants whose state of health requires a specific and adequate support. The rules and guarantees set out in Regulation (EU) XXX/XXX¹⁹ [Asylum Procedure Regulation] should continue to apply in respect of persons subject to the asylum emergency management procedure, except where this Regulation provides otherwise. The rules set out in Directive XXX/XXX [Reception Conditions Directive recast]²⁰, including those concerning the detention of applicants for international protection, should continue to apply, from the moment an application for international protection is made, except where this Regulation provides otherwise.

deleted

¹⁹ OJ C , , p. .

²⁰ OJ C , , p. .

Or. fr

Amendment 45
Pietro Bartolo

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) This Regulation **respects** the fundamental rights and **observes** the principles recognised by the Charter of Fundamental Rights of the European Union, in particular Articles 1, 4, 7, 24, 18 and 19(2) and (2) thereof as well as the Geneva Convention of 28 July of 1951. In order to reflect, in particular, the primary consideration that must be given to the best interests of the child, the need to respect family life, and to ensure the protection of the health of the persons concerned, this Regulation **provides for specific rules and safeguards applying** in respect of unaccompanied minors and minors and their family members, and of applicants whose state of health requires a specific and adequate support. The rules and guarantees set out in Regulation (EU) XXX/XXX¹⁹ [Asylum Procedure Regulation] should continue to apply in respect of persons subject to the **asylum emergency management procedure, except where** this Regulation **provides otherwise**. The rules set out in Directive XXX/XXX [Reception Conditions Directive recast]²⁰, including those concerning the detention of applicants for international protection, should continue to apply, from the moment an application for international protection is made, **except where this Regulation provides otherwise**.

¹⁹ OJ C , , p. .

²⁰ OJ C , , p. .

Amendment

(4) ***In the implementation of*** this Regulation. ***Member States are obliged to respect*** the fundamental rights and ***to observe*** the principles recognised by the Charter of Fundamental Rights of the European Union, in particular Articles 1, 4, 7, 24, 18 and 19(2) and (2) thereof as well as the Geneva Convention of 28 July of 1951. In order to reflect, in particular, the primary consideration that must be given to the best interests of the child, the need to respect family life, and to ensure the protection of the health of the persons concerned, ***Member States should not be entitled to apply specific derogations laid down in*** this Regulation in respect of unaccompanied minors and minors and their family members, and of applicants whose state of health requires a specific and adequate support. The rules and guarantees set out in Regulation (EU) XXX/XXX/***1*** [Asylum Procedure Regulation] should continue to apply in respect of persons subject to the ***derogations laid down in*** this Regulation. ***Equally***, the rules set out in Directive XXX/XXX [Reception Conditions Directive recast]/***2***, including those concerning the detention of applicants for international protection, should continue to apply, from the moment an application for international protection is made.

Or. en

Amendment 46 Pietro Bartolo

Proposal for a regulation Recital 5

(5) To assist the Member State facing **an** instrumentalisation **situation with the orderly management of the flows**, under the **emergency** asylum **management procedure**, it should be possible for the Member State concerned to decide in relation to third-country nationals or stateless persons that have been apprehended or found in the proximity of the external border with the third country instrumentalising migrants after an unauthorised crossing or who have presented themselves at border crossing points, to register applications for international protection **only** at specific registration points designated for this purpose situated in the proximity of the border, and provide an effective possibility for lodging an application for international protection **only** at the specific points that have been designated for such purposes and which should be easily accessible. An effective and genuine access to the international protection procedure must be ensured in accordance with Article 18 of the Charter of Fundamental Rights of the European Union and the Geneva Convention of 28 July of 1951. To this end, the Member State concerned should ensure that sufficient registration points, which may include border crossing points, are designated and open for such purpose. Applicants should be duly informed about the locations where their application will be registered and can be lodged.

(5) To assist the Member State facing **a situation of** instrumentalisation under the **temporary adaptation of the relevant rules on the asylum and migration**, it should be possible for the Member State concerned to decide in relation to third-country nationals or stateless persons that have been apprehended or found in the proximity of the external border with the third country instrumentalising migrants after an unauthorised crossing or who have presented themselves at border crossing points, to register applications for international protection at specific registration points designated for this purpose situated in the proximity of the border, and provide an effective possibility for lodging an application for international protection at the specific points that have been designated for such purposes. **Member State should provide applicants with all the relevant information regarding the application of this Regulation in a language that they understand**, and which should be easily accessible. An effective and genuine access to the international protection procedure must be ensured in accordance with Article 18 of the Charter of Fundamental Rights of the European Union and the Geneva Convention of 28 July of 1951. To this end, the Member State concerned should ensure that sufficient **and easily accessible** registration points, which may include border crossing points, are designated and open for such purpose, **taking into account the vulnerabilities of persons who are themselves victims of the instrumentalisation**. Applicants should be duly informed about the locations where their application will be registered and can be lodged **and should be given all the relevant information regarding the application of this Regulation in a language that they can understand or are reasonably supposed to understand. The principle of non-refoulement continues to**

apply and an application for international protection may not be rejected for the sole reason that the applicant entered the territory of the Member State outside of an authorised border crossing point.

Or. en

Amendment 47

Patricia Chagnon, Annika Bruna

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) To assist the Member State facing an instrumentalisation situation with the orderly management of the flows, under the emergency asylum management procedure, it should be possible for the Member State concerned to decide in relation to third-country nationals or stateless persons that have been apprehended or found in the proximity of the external border with the third country instrumentalising migrants after an unauthorised crossing or who have presented themselves at border crossing points, *to register applications for international protection only at specific registration points designated for this purpose situated in the proximity of the border, and provide an effective possibility for lodging an application for international protection only at the specific points that have been designated for such purposes and which should be easily accessible.* An effective and genuine access to the international protection procedure must be ensured in accordance with Article 18 of the Charter of Fundamental Rights of the European Union and the Geneva Convention of 28 July of 1951. *To this end, the Member State concerned should ensure that sufficient registration points, which may include border crossing points, are designated and*

Amendment

(5) To assist the Member State facing an instrumentalisation situation with the orderly management of the flows, under the emergency asylum management procedure, it should be possible for the Member State concerned to decide in relation to third-country nationals or stateless persons that have been apprehended or found in the proximity of the external border with the third country instrumentalising migrants after an unauthorised crossing or who have presented themselves at border crossing points *to immediately return third-country nationals to the country of origin and/or the country that instrumentalised migration flows.* An effective and genuine access to the international protection procedure must be ensured in accordance with Article 18 of the Charter of Fundamental Rights of the European Union and the Geneva Convention of 28 July of 1951.

open for such purpose. Applicants should be duly informed about the locations where their application will be registered and can be lodged.

Or. fr

Amendment 48
Charlie Weimers

Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) To assist the Member State facing an instrumentalisation situation with the orderly management of the flows, under the emergency asylum management procedure, it should be possible for the Member State concerned to decide in relation to third-country nationals or stateless persons that have been apprehended or found in the proximity of the external border with the third country instrumentalising migrants after an unauthorised crossing or who have presented themselves at border crossing points, to register applications for international protection only at specific registration points designated for this purpose situated in the proximity of the border, and provide an effective possibility for lodging an application for international protection only at the specific points that have been designated for such purposes and which should be easily accessible. An effective and genuine access to the international protection procedure must be ensured in accordance with Article 18 of the Charter of Fundamental Rights of the European Union and the Geneva Convention of 28 July of 1951. To this end, the Member State concerned should ensure that sufficient registration points, which may include border crossing points, are designated and open for such purpose. Applicants should be duly informed about

Amendment

(5) To assist the Member State facing an instrumentalisation situation with the orderly management of the flows, under the emergency asylum management procedure, it should be possible for the Member State concerned to decide in relation to third-country nationals or stateless persons that have been apprehended or found in the proximity of the external border with the third country instrumentalising migrants after an unauthorised crossing or who have presented themselves at border crossing points, to register applications for international protection only at specific registration points designated for this purpose situated in the proximity of the border, and provide an effective possibility for lodging an application for international protection only at the specific points that have been designated for such purposes and which should be easily accessible. An effective and genuine access to the international protection procedure must be ensured in accordance with Article 18 of the Charter of Fundamental Rights of the European Union and the Geneva Convention of 28 July of 1951. To this end, the Member State concerned should ensure that sufficient registration points, which may include border crossing points, are designated and open for such purpose. Applicants should be duly informed about

the locations where their application will be registered and can be lodged.

the locations where their application will be registered and can be lodged. ***However, if the Member State concerned deems that in order to protect national security as well as effectively end or deter instrumentalisation, it may close all border crossing points and refuse to accept applications for international protection made in proximity of the border in accordance with the provisions of national law.***

Or. en

Amendment 49
Pietro Bartolo

Proposal for a regulation
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5 a) Member States should ensure that a sufficient number of registration points, including border crossing points, are designated, open and accessible for making, registering and lodging an application for international protection and that applicants are able to safely and legally reach them. Member States should ensure that the border guards and other competent authorities have the appropriate knowledge on international protection and have received the necessary training.

Or. en

Amendment 50
Patricia Chagnon, Annika Bruna

Proposal for a regulation
Recital 6

Text proposed by the Commission

Amendment

(6) In a situation of instrumentalisation of migrants, it is essential to prevent *the entry of those who do not fulfil entry conditions, while ensuring the protection of fundamental rights. In order to ensure that the Member State facing such a situation has the necessary flexibility and avoid that a hostile third country targets specific nationalities or specific categories of third-country nationals or stateless persons, it should be possible under the emergency migration and asylum management procedure set out in this Regulation for the Member State concerned to take a decision in the framework of the border procedure, as set out in Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] on admissibility and the merits of all applications for international protection by third-country nationals or stateless persons apprehended or found in the proximity of the border with the third country after an unauthorised crossing or who presented themselves at border crossing points. The principles and guarantees set out in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] have to be respected.*

(6) In a situation of instrumentalisation of migrants, it is essential to prevent *them from crossing* the border.

Or. fr

Amendment 51 Pietro Bartolo

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) In a situation of instrumentalisation of migrants, it is essential to *prevent the entry of those who do not fulfil entry conditions*, while ensuring the protection of fundamental rights. In order to ensure that the Member State facing such a situation has the necessary flexibility and avoid that a hostile third country targets

Amendment

(6) In a situation of instrumentalisation of migrants, it is essential to *protect vulnerable persons*, while ensuring the protection of fundamental rights *and to provide support to other Member States in the form of solidarity contributions*. In order to ensure that the Member State facing such a situation has the necessary

specific nationalities or specific categories of third-country nationals or stateless persons, it should be possible under the ***emergency migration and asylum management*** procedure set out in this Regulation for the Member State concerned to take a decision in the framework of the border procedure, as set out in Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] on admissibility and the merits ***of all applications for*** international protection by ***third-country nationals or stateless persons apprehended or found in the proximity of the border with the third country after an unauthorised crossing or who presented themselves at border crossing points***. The principles and guarantees set out in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] have to be respected.

flexibility and avoid that a hostile third country targets specific nationalities or specific categories of third-country nationals or stateless persons, it should be possible under the ***temporary procedure in response to the instrumental use of migrants by a hostile third country as*** set out in this Regulation for the Member State concerned to take a decision in the framework of the border procedure, as set out in Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] on admissibility and the merits ***an application where the applicant is of a nationality, or, in the case of stateless persons, is a former habitual resident 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— 30% or lower, taking into account the rapidly evolving protection needs that may take place in the country of origin as reflected in the quarterly updates of Eurostat data.*** The principles and guarantees set out in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] have to be respected.

Or. en

Amendment 52 Annika Bruna

Proposal for a regulation Recital 7

Text proposed by the Commission

(7) Where the emergency asylum management procedure is applied, the best interests of the child and the safeguards for applicants with medical conditions should be a primary consideration for the competent authorities. For this reason, the Member State facing a situation of instrumentalisation should exclude from

Amendment

(7) Where the emergency asylum management procedure is applied, the best interests of the child and the safeguards for applicants with ***serious*** medical conditions should be a primary consideration for the competent authorities. For this reason, the Member State facing a situation of instrumentalisation should exclude from

the emergency asylum management procedure cases where there are medical reasons for not applying the border procedure in line with Article 41(9)(c) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]. This should also be the case if the health problems become apparent during the examination of the application. ***The Member State concerned should also prioritise the examination of applications from persons whose claims are likely to be well-founded or from minors and their family members, as well as from unaccompanied minors. If during the screening under Regulation (EU) XXX/XXX [Screening Regulation]²¹ or the examination of the application it becomes apparent that an applicant is in need of special procedural guarantees and adequate support cannot be provided in the context of the procedure at the border, in accordance with Article 41(9)(b) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], the Member State concerned should not apply, or cease to apply, the emergency asylum management procedure at the border.***

²¹ OJ C , , p. .

the emergency asylum management procedure cases where there are ***serious and proven*** medical reasons for not applying the border procedure in line with Article 41(9)(c) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]. This should also be the case if the health problems become apparent during the examination of the application.

Or. fr

Amendment 53 Pietro Bartolo

Proposal for a regulation Recital 7

Text proposed by the Commission

(7) Where the ***emergency asylum management*** procedure is applied, the best interests of the child and the safeguards for applicants with medical conditions should be a primary consideration for the competent authorities. For this reason, the Member State facing a situation of

Amendment

(7) Where the ***temporary*** procedure ***in response to the instrumental use of migrants*** is applied, the best interests of the child and the safeguards for applicants with medical conditions ***and persons with special reception needs as set out in Directive XXX/XXX [Reception***

instrumentalisation should exclude from the ***emergency asylum management*** procedure ***cases*** where there are medical reasons for not applying the border procedure ***in line with Article 41(9)(c) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]***. This should also be the case if the health problems become apparent during the examination of the application. ***The Member State concerned should also prioritise the examination of applications from persons whose claims are likely to be well-founded or from minors and their family members, as well as from unaccompanied minors.*** If during the screening under Regulation (EU) XXX/XXX [Screening Regulation]²¹ or the examination of the application it becomes apparent that an applicant is in need of special procedural guarantees and adequate support cannot be provided in the context of the procedure at the border, in accordance with Article 41(9)(b) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], the Member State concerned should not apply, or cease to apply, the emergency asylum management procedure at the border.

Conditions Directive recast] should be a primary consideration for the competent authorities. For this reason, the Member State facing a situation of instrumentalisation should exclude from the ***border procedure derogation unaccompanied minors, minors and their family members, applicants with special reception needs as set out in the Reception Conditions Directive and those with special procedural needs as set out in the Asylum Procedure Regulation,*** and where there are medical reasons for not applying the border procedure. This should also be the case if the health problems become apparent during the examination of the application. If during the screening under Regulation (EU) XXX/XXX [Screening Regulation] or the examination of the application it becomes apparent that an applicant is in need of special procedural guarantees and adequate support cannot be provided in the context of the procedure at the border, in accordance with Article 41(9)(b) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], the Member State concerned should not apply, or cease to apply, the emergency asylum management procedure at the border.

²¹ OJ C , , p. .

Or. en

Amendment 54 Annika Bruna

Proposal for a regulation Recital 8

Text proposed by the Commission

(8) In accordance with Article 8(3)(d) of Directive XXX/XXX [Reception Conditions Directive recast], an applicant may be detained in order to decide, in the context of a procedure, on the applicant's

Amendment

(8) In accordance with Article 8(3)(d) of Directive XXX/XXX [Reception Conditions Directive recast], an applicant may be detained in order to decide, in the context of a procedure, on the applicant's

right to enter the territory. Article 8(2) of that Directive also provides that Member States may detain an applicant only, if other less coercive alternative measures – like restrictions to freedom of movement under its Article 7 – cannot be applied effectively. *The rules and safeguards regarding detention set out in Directive XXX/XXX [Reception Conditions Directive recast], in particular those concerning unaccompanied minors, minors and their families should be respected. Alternatives to detention, such as restrictions in the freedom of movement in accordance with Article 7 of Directive XXX/XXX [Reception Conditions Directive recast], may be as effective as detention in a situation of instrumentalisation of migrants and should therefore be considered by the authorities, particularly for minors. In any case, if detention is applied and the guarantees and conditions for detention are not met or cannot be met at the border, the emergency asylum management procedure should not apply or should cease to apply, as foreseen in Article 41(9)(d) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].*

right to enter the territory. Article 8(2) of that Directive also provides that Member States may detain an applicant only, if other less coercive alternative measures – like restrictions to freedom of movement under its Article 7 – cannot be applied effectively.

Or. fr

Amendment 55

Pietro Bartolo

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) In accordance with Article 8(3)(d) of Directive XXX/XXX [Reception Conditions Directive recast], an applicant may be detained in order to decide, in the context of a procedure, on the applicant's right to enter the territory. Article 8(2) of that Directive also provides that Member

Amendment

(8) In accordance with Article 8(3)(d) of Directive XXX/XXX [Reception Conditions Directive recast], an applicant may be detained in order to decide, in the context of a procedure, on the applicant's right to enter the territory. Article 8(2) of that Directive also provides that Member

States may detain an applicant only, if other less coercive alternative measures – like restrictions to freedom of movement under its Article 7 – cannot be applied effectively. The rules and safeguards regarding detention set out in Directive XXX/XXX [Reception Conditions Directive recast], in particular those concerning unaccompanied minors, minors and their families should be respected. Alternatives to detention, such as restrictions in the freedom of movement in accordance with Article 7 of Directive XXX/XXX [Reception Conditions Directive recast], may be as effective as detention in a situation of instrumentalisation of migrants and should therefore be considered by the authorities, particularly for minors. In any case, if detention is applied and the guarantees and conditions for detention are not met or cannot be met at the border, the emergency asylum management procedure should not apply or should cease to apply, as foreseen in Article 41(9)(d) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].

States may detain an applicant only, if other less coercive alternative measures – like restrictions to freedom of movement under its Article 7 – cannot be applied effectively. The rules and safeguards regarding detention set out in Directive XXX/XXX [Reception Conditions Directive recast], in particular those concerning unaccompanied minors, minors and their families should be respected. Alternatives to detention, such as restrictions in the freedom of movement in accordance with Article 7 of Directive XXX/XXX [Reception Conditions Directive recast], may be as effective as detention in a situation of instrumentalisation of migrants and should therefore be considered by the authorities, particularly for ***vulnerable persons as set out in Directive XXX/XXX [Reception Conditions Directive recast] and*** minors. In any case, if detention is applied and the guarantees and conditions for detention are not met or cannot be met at the border, the emergency asylum management procedure should not apply or should cease to apply, as foreseen in Article 41(9)(d) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].

Or. en

Amendment 56

Patricia Chagnon, Annika Bruna

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) In a situation of instrumentalisation of migrants, ***it should be possible for*** the Member State concerned ***to register applications for international protection within an extended period of four weeks. In addition, it should be possible to examine applications for international protection at the border for a maximum***

Amendment

(9) In a situation of instrumentalisation of migrants, the Member State concerned ***shall have the right to immediately*** return migrants ***to the country of origin and/or to the country that instrumentalised the flows.***

duration of sixteen weeks. If the decision on the application, including a decision on a possible appeal against a negative decision, which should not have automatic suspensive effect, is not taken within the sixteen weeks, entry to the territory should be granted, unless the person is subject to the return procedure. These procedural timelines are conceived to help the Member State concerned to deal with the situation of instrumentalisation of migrants. When confronted with such a situation, the Member State concerned need to divert resources to manage the third country nationals arriving at its borders or that are already present in its territory. As a result, in such situations, the Member State concerned may need time to reorganise their resources and increase their capacity, including with the support of the EU agencies. Furthermore, the number of applicants under the border procedure will be higher than under normal circumstances, and therefore the Member State facing a situation of instrumentalisation may need more time to be able to take decisions without allowing entry into the territory. However, the Member State concerned should prioritise the registration of applications of well-founded cases and unaccompanied minors and minors and their family members.

Or. fr

Amendment 57

Annika Bruna

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) In a situation of instrumentalisation of migrants, it should be possible for the Member State concerned to register

Amendment

(9) In a situation of instrumentalisation of migrants, it should be possible for the Member State concerned to register

applications for international protection within an extended period of four weeks. In addition, it should be possible to examine applications for international protection at the border for a maximum duration of sixteen weeks. If the decision on the application, including a decision on a possible appeal against a negative decision, which should not have automatic suspensive effect, is not taken within the sixteen weeks, entry to the territory should be granted, unless the person is subject to the return procedure. These procedural timelines are conceived to help the Member State concerned to deal with the situation of instrumentalisation of migrants. When confronted with such a situation, the Member State concerned need to divert resources to manage the third country nationals arriving at its borders or that are already present in its territory. As a result, in such situations, the Member State concerned may need time to reorganise their resources and increase their capacity, including with the support of the EU agencies. Furthermore, the number of applicants under the border procedure will be higher than under normal circumstances, and therefore the Member State facing a situation of instrumentalisation may need more time to be able to take decisions without allowing entry into the territory. *However, the Member State concerned should prioritise the registration of applications of well-founded cases and unaccompanied minors and minors and their family members.*

applications for international protection within an extended period of four weeks. In addition, it should be possible to examine applications for international protection at the border for a maximum duration of sixteen weeks. If the decision on the application, including a decision on a possible appeal against a negative decision, which should not have automatic suspensive effect, is not taken within the sixteen weeks, entry to the territory should be granted, unless the person is subject to the return procedure. These procedural timelines are conceived to help the Member State concerned to deal with the situation of instrumentalisation of migrants. When confronted with such a situation, the Member State concerned need to divert resources to manage the third country nationals arriving at its borders or that are already present in its territory. As a result, in such situations, the Member State concerned may need time to reorganise their resources and increase their capacity, including with the support of the EU agencies. Furthermore, the number of applicants under the border procedure will be higher than under normal circumstances, and therefore the Member State facing a situation of instrumentalisation may need more time to be able to take decisions without allowing entry into the territory.

Or. fr

Amendment 58
Pietro Bartolo

Proposal for a regulation
Recital 9

(9) In a situation of instrumentalisation of migrants, it should be possible for the Member State concerned to register applications for international protection within an extended period of four weeks. In addition, it should be possible to examine applications for international protection at the border for a maximum duration of sixteen weeks. If the decision on the application, including a decision on a possible appeal against a negative decision, ***which should not have automatic suspensive effect***, is not taken within the sixteen weeks, entry to the territory should be granted, unless the person is subject to the return procedure. These procedural timelines are conceived to help the Member State concerned to deal with the situation of instrumentalisation of migrants. When confronted with such a situation, the Member State concerned need to divert resources to manage the third country nationals arriving at its borders or that are already present in its territory. As a result, in such situations, the Member State concerned may need time to reorganise their resources and increase their capacity, including with the support of the EU agencies. Furthermore, the number of applicants under the border procedure will be higher than under normal circumstances, and therefore the Member State facing a situation of instrumentalisation may need more time to be able to take decisions without allowing entry into the territory. However, the Member State concerned should prioritise the registration of applications of well-founded cases and unaccompanied minors and minors and their family members.

(9) In a situation of instrumentalisation of migrants, it should be possible for the Member State concerned to register applications for international protection within an extended period of four weeks. In addition, it should be possible to examine applications for international protection at the border for a maximum duration of sixteen weeks. If the decision on the application, including a decision on a possible appeal against a negative decision is not taken within the sixteen weeks, entry to the territory should be granted, unless the person is subject to the return procedure. These procedural timelines are conceived to help the Member State concerned to deal with the situation of instrumentalisation of migrants. When confronted with such a situation, the Member State concerned need to divert resources to manage the third country nationals arriving at its borders or that are already present in its territory. As a result, in such situations, the Member State concerned may need time to reorganise their resources and increase their capacity, including with the support of the EU agencies ***and the solidarity measures of Member States***. Furthermore, the number of applicants under the border procedure will be higher than under normal circumstances, and therefore the Member State facing a situation of instrumentalisation may need more time to be able to take decisions without allowing entry into the territory. However, the Member State concerned should prioritise the registration of applications of well-founded cases, ***vulnerable persons*** and unaccompanied minors and minors and their family members.

Or. en

Amendment 59
Pietro Bartolo

Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) Any violent acts at the border must be avoided at all costs, ***not only to protect the territorial integrity and security of the Member State facing a situation of instrumentalisation but also*** to ensure the security and safety of the third-country nationals or stateless persons, including families and children that are awaiting their opportunity to apply for asylum in the Union peacefully. ***Where the Member State concerned is confronted at its external border with violent actions, including in the context of attempts by third country nationals to force entry en masse and using disproportionate violent means, the Member State concerned should be able to take the necessary measures in accordance with their national law to preserve security, law and order, and ensure the effective application of this Regulation.***

Amendment

(10) Any violent acts at the border must be avoided at all costs, to ensure the security and safety of the third-country nationals or stateless persons, including families and children that are awaiting their opportunity to apply for asylum in the Union peacefully.

Or. en

Amendment 60
Patricia Chagnon, Annika Bruna

Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) ***Any violent acts at the border must be avoided at all costs, not only*** to protect the territorial integrity and security of the Member State facing a situation of instrumentalisation ***but also to ensure the security and safety of the third-country nationals or stateless persons, including families and children that are awaiting their opportunity to apply for asylum in the Union peacefully.*** Where the Member

Amendment

(10) ***The border of a Member State shall be recognised as inviolable, in order*** to protect the territorial integrity and security of the Member State facing a situation of instrumentalisation. Where the Member State concerned is confronted at its external border with violent actions, including in the context of attempts by third country nationals to force entry en masse and using disproportionate violent

State concerned is confronted at its external border with violent actions, including in the context of attempts by third country nationals to force entry en masse and using disproportionate violent means, the Member State concerned should be able to take the necessary measures in accordance with their national law to preserve security, law and order, and ensure the effective application of this Regulation.

means, the Member State concerned should be able to take the necessary measures in accordance with their national law to preserve security, law and order ***and the inviolability of their borders***, and ensure the effective application of this Regulation.

Or. fr

Amendment 61
Patricia Chagnon, Annika Bruna

Proposal for a regulation
Recital 11

Text proposed by the Commission

(11) Where a Member State is faced with a flow of third-country nationals or stateless persons at the border due to instrumentalisation, it might not be possible for the Member State in practice to ensure the material reception conditions normally required as the Member State's capacities might be overstretched. For this reason, ***in a situation of instrumentalisation, the Member State concerned should be able to set modalities for material reception conditions that differ from those provided for in Directive XXX/XXX [Reception Conditions Directive recast] in cases other than those referred to in Article 17(9) of that Directive, while providing third-country nationals and stateless persons with temporary shelter which should be adapted to seasonal weather conditions and covering their basic needs, in particular by providing food, water, clothing, adequate medical care, and assistance to vulnerable persons, in full respect of the right to human dignity. Without prejudice to the obligations set in***

Amendment

(11) Where a Member State is faced with a flow of third-country nationals or stateless persons at the border due to instrumentalisation, it might not be possible for the Member State in practice to ensure the material reception conditions normally required as the Member State's capacities might be overstretched. For this reason, ***where attempts are made to cross its borders illegally, the Member State shall be allowed to take exceptional measures.***

that regard upon Member States by this Regulation, Member States should also ensure access and allow for the provision of humanitarian assistance by the humanitarian organisations in line with the existing needs of the persons concerned.

Or. fr

Amendment 62
Pietro Bartolo

Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) *In order to complement and ensure full coherence with the emergency asylum management procedure at the external border, the competent authorities of the Member State facing a situation of instrumentalisation of migrants should be provided with the necessary flexibility to carry out return procedures, following the application of an emergency asylum management procedure. For this reason, in a situation of instrumentalisation, the Member State concerned should be allowed to derogate from the application of Directive XXX/XXX [Return Directive recast]²² in relation to third-country nationals and stateless persons whose application for international protection was rejected in the context of an emergency asylum management procedure as set out in this Regulation. Where a subsequent application is made merely to delay or frustrate the return, it is possible for Member States to apply the rules set out in Articles 42 and 43 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].* The rules set out in this Regulation are without prejudice to the possibility for Member States to derogate from the application of Directive XXX/XXX [Return Directive recast] by

Amendment

(12) The rules set out in this Regulation are without prejudice to the possibility for Member States to derogate from the application of Directive XXX/XXX [Return Directive recast] by virtue of Article 2(2)(a) of that Directive, in relation to illegally staying third-country nationals or stateless persons apprehended in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or right to stay in that Member State.

virtue of Article 2(2)(a) of that Directive, in relation to illegally staying third-country nationals or stateless persons apprehended in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or right to stay in that Member State.

²² OJ C , , p. .

Or. en

Amendment 63

Patricia Chagnon, Annika Bruna

Proposal for a regulation

Recital 13

Text proposed by the Commission

Amendment

(13) When applying the derogation to the application of Directive XXX/XXX [Return Directive recast], the Member State concerned should ensure full respect of the Charter of Fundamental Rights of the European Union and their international obligations. This includes full respect of the principle of non-refoulement and taking due account of the best interests of the child, family life and the state of health of the third-country national concerned as otherwise set out for derogations in the Return Directive. The Member State also needs to ensure that the treatment and level of protection in relation to limitations on the use of coercive measures, postponement of removal, emergency health care and needs of vulnerable persons and detention conditions, are no less favourable than those set out in Directive XXX/XXX [Return Directive recast].

deleted

Or. fr

Amendment 64
Patricia Chagnon, Annika Bruna

Proposal for a regulation
Recital 14

Text proposed by the Commission

Amendment

(14) Where a Member State applies one or more of the measures in this Regulation, the Member State should inform third-country nationals and stateless persons thereof. In particular, the Member State facing a situation of instrumentalisation should inform third-country nationals or stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the derogations applied, the points accessible for registering and lodging an application for international protection, in particular the location of the nearest points where their application can be registered and lodged, the possibility to appeal the decision on the application, and the duration of the measures. **deleted**

Or. fr

Amendment 65
Patricia Chagnon, Annika Bruna

Proposal for a regulation
Recital 15

Text proposed by the Commission

Amendment

(15) In case of instrumentalisation of migrants, the Member State facing a situation of instrumentalisation should have the possibility to request from other Member States support and solidarity measures that are most suited to its needs to manage the instrumentalisation situation. The support and solidarity measures could take all forms to address the situation of instrumentalisation, **deleted**

including capacity-building measures, support for return and support on the external dimension of the crisis and measures aimed at responding to instrumentalisation situation through cooperation with third countries or outreach to third countries whose nationals are being instrumentalised.

Or. fr

Amendment 66
Pietro Bartolo

Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) In case of instrumentalisation of migrants, the Member State facing a situation of instrumentalisation should have the possibility to request from other Member States support and solidarity measures that are most suited to its needs to manage the instrumentalisation situation. The support and solidarity measures ***could take all forms to address the situation of instrumentalisation, including*** capacity-building measures, ***support for return and support on the external dimension of the crisis*** and measures aimed at responding to instrumentalisation situation through cooperation with third countries or outreach to third countries whose nationals are being instrumentalised.

Amendment

(15) In case of instrumentalisation of migrants, the Member State facing a situation of instrumentalisation should have the possibility to request from other Member States support and solidarity measures that are most suited to its needs to manage the instrumentalisation situation. The support and solidarity measures ***may include relocation***, capacity-building measures, and measures aimed at responding to instrumentalisation situation through cooperation with third countries or outreach to third countries whose nationals are being instrumentalised.

Or. en

Amendment 67
Patricia Chagnon, Annika Bruna

Proposal for a regulation
Recital 16

(16) The other Member States which are not themselves facing a situation of instrumentalisation should be invited to contribute for the benefit of a Member State facing a situation of instrumentalisation by means of support and solidarity measures corresponding to the needs identified. The Commission should coordinate those support and solidarity measures as soon as possible after receiving the request from the Member State facing a situation of instrumentalisation.

deleted

Or. fr

Amendment 68
Pietro Bartolo

Proposal for a regulation
Recital 16

(16) The other Member States which are not themselves facing a situation of instrumentalisation should be invited to contribute for the benefit of a Member State facing a situation of instrumentalisation by means of support and solidarity measures corresponding to the needs identified. The Commission should coordinate those support and solidarity measures as soon as possible after receiving the request from the Member State facing a situation of instrumentalisation.

(16) The other Member States which are not themselves facing a situation of instrumentalisation should be invited to contribute for the benefit of a Member State facing a situation of instrumentalisation by means of support and solidarity measures corresponding to the needs identified. ***When providing solidarity Member States should prioritise the relocation of vulnerable persons.*** The Commission should coordinate those support and solidarity measures as soon as possible after receiving the request from the Member State facing a situation of instrumentalisation.

Or. en

Amendment 69
Patricia Chagnon, Annika Bruna

Proposal for a regulation
Recital 17

Text proposed by the Commission

Amendment

(17) A Member State facing a situation of instrumentalisation of migrants may request support from the EU Asylum Agency, the European Border and Coast Guard Agency or Europol in accordance with their mandates. As appropriate, the Asylum Agency may propose assistance on its own initiative in accordance with Article 16(1)(d) of Regulation XXX/XXX [EUAA Regulation], whereas the European Border and Coast Guard Agency may propose assistance in the field of return in accordance with Articles 48, 50, 52 and 53 of Regulation (EU) 2019/1896 in agreement with the Member State concerned and Europol may propose assistance in accordance with Article 6(1) of Regulation (EU) 2016/794.

deleted

Or. fr

Amendment 70
Lena Düpont, Sandra Kalniete

Proposal for a regulation
Recital 19

Text proposed by the Commission

Amendment

(19) The Council Implementing Decision should include an authorisation of the specific derogations that the Member State facing a situation of instrumentalisation of migrants could apply, and set the date from which they should apply, as well as their duration.

(19) The Council Implementing Decision should include an authorisation of the specific derogations that the Member State facing a situation of instrumentalisation of migrants could apply, and set the date from which they should apply, as well as their duration. *Together with this request, the Member State concerned may notify the Commission of its intention to apply the derogation from the registration deadline before it is authorised in the Council Implementing Decision as well as the*

precise reasons for which an immediate action is required, which should not exceed 15 days from the day following the request, unless authorised in the Council Implementing Decision. The Commission and the Council, when fulfilling their respective responsibilities under the authorisation procedure, should proceed expeditiously in order to avoid the existence of a time gaps between the end of such period and the adoption of the corresponding Council Implementing Decision.

Or. en

Amendment 71

Patricia Chagnon, Annika Bruna

Proposal for a regulation

Recital 20

Text proposed by the Commission

Amendment

(20) In order to support the Member State concerned in providing the necessary assistance to third country nationals falling under the scope of this Regulation, including by promoting voluntary return activities or by carrying out their humanitarian duties, UN agencies and other relevant partner organisations, in particular the International Organization for Migration and the International Federation of Red Cross and Red Crescent Societies, should have effective access to the border under the conditions set out in the Directive (EU) XXX/XXX [Reception Conditions Directive recast] and Regulation (EU) XXX/XXX [Asylum Procedure Regulation]. In accordance with Regulation (EU) XXX/XXX [Asylum Procedure Regulation], the United Nations High Commissioner for Refugees should be allowed access to applicants, including those at the border. To this end, the Member State concerned should work

deleted

in close cooperation with UN agencies and relevant partner organisations.

Or. fr

Amendment 72

Pietro Bartolo

Proposal for a regulation

Article 1 – paragraph 1

Text proposed by the Commission

This Regulation provides for specific rules derogating from those set out in Regulation (EU) XXX/XXX [Asylum Procedure Regulation], ***Directive (EU) XXX/XXX [Reception Conditions Directive recast]*** and Directive (EU) XXX/XXX ***[Return Directive recast]*** ***that may be applied by a Member State in a situation of instrumentalisation of migrants as defined in [Article 2(27)] of the Schengen Borders Code where necessary for responding to such a situation. It also provides for specific rules on support and solidarity measures that may be taken in such situation.***

Amendment

This Regulation provides for specific rules ***temporarily*** derogating from those set out in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and Directive ***2008/115/EC that*** a Member State in a situation of instrumentalisation of migrants ***may seek authorisation to and, if granted, apply*** where ***they are*** necessary ***and proportionate to respond*** to such a situation. It also provides for specific rules on support and solidarity measures that may be ***requested and provided for*** in such situation.

Or. en

Amendment 73

Annika Bruna, Jean-Paul Garraud

Proposal for a regulation

Article premier – paragraph 1 a (new)

Text proposed by the Commission

Amendment

A ‘situation of instrumentalisation of migrants’ means a situation where a third country or non-state organisation, such as a non-governmental organisation (NGO), possibly on the pretext of conducting a humanitarian aid operation, encourages or facilitates the movement of third-

country nationals or stateless persons to the external borders, as defined in Article 2(2) of Regulation (EU) 2016/0399, or to a Member State, thereby destabilising the Union or a Member State, for example by putting at risk essential functions of a Member State including the maintenance of law and order or the safeguarding of its national security.

Or. fr

Amendment 74

Pietro Bartolo

Proposal for a regulation

Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

For the purposes of this Regulation the following definition shall apply: 'instrumentalisation of migrants' means a situation where a third country actively facilitates the movement of a comparatively large number of third country nationals, onto or from within its territory, to the external borders of the Union or to a Member State, where the aim of such actions is evidently to destabilise the Union or a Member State and where it can be demonstrated that such actions put at risk essential functions of a Member State, including the maintenance of law and order or the safeguarding of its national security.

Or. en

Justification

As there is no definition in the EP mandate for the revision of the SBC, a definition is required in this Regulation. This definition amends and clarifies the definition proposed by the Council in its mandate for revision of the SBC.

Amendment 75

Pietro Bartolo

Proposal for a regulation
Chapter II – title

Text proposed by the Commission

II ***Emergency*** migration and asylum
procedure in a situation of
instrumentalisation of migrants

Amendment

II ***Temporary*** migration and asylum
procedure in ***response to*** a situation of
instrumentalisation of migrants

Or. en

Amendment 76
Pietro Bartolo

Proposal for a regulation
Article 2 – title

Text proposed by the Commission

Emergency migration and asylum
procedure in a situation of
instrumentalisation of migrants

Amendment

Temporary migration and asylum
procedure in ***response to*** a situation of
instrumentalisation of migrants

Or. en

Amendment 77
Pietro Bartolo

Proposal for a regulation
Article 2 – paragraph 1 – introductory part

Text proposed by the Commission

1. In a situation of instrumentalisation of migrants ***as referred to in Article 1***, the Member State faced with ***the*** arrival of third-country nationals or stateless persons at its external border as a consequence of such situation may apply, in relation to third-country nationals or stateless persons who are apprehended or found in the proximity of the external border with the third country instrumentalising migrants in connection with an unauthorised crossing

Amendment

1. In a situation of instrumentalisation of migrants, the Member State faced with ***a comparatively large number of*** arrival of third-country nationals or stateless persons at its external border as a ***direct*** consequence of such situation may, ***in accordance with the procedure laid down in Article 7, seek authorisation to*** apply, in relation to third-country nationals or stateless persons who are apprehended or found in the ***immediate*** proximity of the

or who have presented themselves at border crossing points, one or more of the following derogations, ***in accordance with the procedure laid down in Article 6:***

external border with the third country instrumentalising migrants in connection with an unauthorised crossing or who have presented themselves at border crossing points, one or more of the following ***temporary, in limited and well-defined*** derogations:

Or. en

Justification

It must be clear that a Member State must request authorisation for the application of derogations, and that the use of those derogations depends on the outcome of the procedure laid down in Article 7.

Amendment 78

Pietro Bartolo

Proposal for a regulation

Article 2 – paragraph 1 – point a – introductory part

Text proposed by the Commission

(a) by way of derogation from Article 27 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], register applications for international protection made within ***the*** period ***during which this point is applied*** no later than four weeks after the application is made.

Amendment

(a) by way of derogation from Article 27 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], ***and for a maximum period of the initial period of validity of the implementing act referred to in Article 7,*** register applications for international protection made within ***that*** period no later than four weeks after the application is made. ***In line with Article 16(1) of the Reception Conditions Directive, the applicant should benefit from rights under the recast Reception Conditions Directive as soon as he or she has made an application, regardless of when the registration of that application takes place.***

Or. en

Amendment 79

Annika Bruna

Proposal for a regulation

Article 2 – paragraph 1 – point a – paragraph 1

Text proposed by the Commission

Amendment

Where applying this derogation, the Member State concerned shall prioritise the registration of applications likely to be well-founded and those of unaccompanied minors and minors and their family members.

deleted

Or. fr

Amendment 80

Patricia Chagnon

Proposal for a regulation

Article 2 – paragraph 1 – point a – paragraph 1

Text proposed by the Commission

Amendment

Where applying this derogation, the Member State *concerned* shall *prioritise the registration of applications likely to be well-founded and those of unaccompanied minors and minors and their family members.*

Where applying this derogation, the Member State shall *pay particular attention to children and vulnerable persons.*

Or. fr

Amendment 81

Pietro Bartolo

Proposal for a regulation

Article 2 – paragraph 1 – point a – paragraph 1

Text proposed by the Commission

Amendment

Where applying this derogation, the Member State concerned shall prioritise the registration of applications likely to be well-founded *and* those of unaccompanied minors *and* minors and their family members.

Where applying this derogation, the Member State concerned shall prioritise the registration of applications likely to be well-founded, those of unaccompanied minors, *those of* minors and their family members, *and those of persons with special reception or procedural needs.*

Amendment 82

Pietro Bartolo

Proposal for a regulation

Article 2 – paragraph 1 – point b – introductory part

Text proposed by the Commission

(b) by way of derogation from Article 41(2)(a) and (b) and Article 41(5) of Regulation (EU) XXX/XXX [amended Asylum Procedure Regulation], decide at their borders or transit zones on the admissibility and on the merits of ***all applications registered within the period during which this point is applied.***

Amendment

(b) by way of derogation from Article 41(2)(a) and (b) and Article 41(5) of Regulation (EU) XXX/XXX [amended Asylum Procedure Regulation], decide at their borders or transit zones on the admissibility and on the merits of ***an application where the applicant is of a nationality, or, in the case of stateless persons, is a former habitual resident 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— 30% or lower, taking into account the rapidly evolving protection needs that may take place in the country of origin as reflected in the quarterly updates of Eurostat data.***

Or. en

Justification

In accordance with the Commission proposal of 2020 amending its 2016 proposal for an Asylum Procedure Regulation (APR), "the purpose of the joint asylum and return border procedure is to quickly assess abusive asylum requests made at the external borders by applicants coming from third countries with a low recognition rate..." It is impossible to consider an application made by a person coming from a third country with a recognition rate in excess of 30% as abusive without examining it in more detail. The grounds for a border procedure are not met otherwise.

Amendment 83

Annika Bruna

Proposal for a regulation

Article 2 – paragraph 1 – point b – paragraph 1

Text proposed by the Commission

Amendment

Where applying this derogation, the Member State concerned shall prioritise the examination of applications for international protection likely to be well-founded and those lodged by unaccompanied minors and minors and their family members.

deleted

Or. fr

Amendment 84
Pietro Bartolo

Proposal for a regulation
Article 2 – paragraph 1 – point b – paragraph 1

Text proposed by the Commission

Amendment

Where applying this derogation, the Member State concerned shall ***prioritise the examination of applications for international protection likely to be well-founded and those lodged by*** unaccompanied minors ***and*** minors and their family members.

Where applying this derogation, the Member State concerned shall ***not apply the border procedure to*** unaccompanied minors, minors and their family members, ***applicants with special reception needs in accordance with the Reception Conditions Directive and those with special procedural needs in accordance with the Asylum Procedure Regulation, and where there are medical reasons for not applying the border procedure.***

Or. en

Justification

Certain categories of vulnerable applicant should be excluded from this derogation to the border procedure.

Amendment 85
Patricia Chagnon

Proposal for a regulation
Article 2 – paragraph 1 – point b – paragraph 1

Text proposed by the Commission

Amendment

Where applying this derogation, the Member State concerned shall prioritise the examination of applications for international protection likely to be well-founded and those lodged by ***unaccompanied minors and minors and their family members***.

Where applying this derogation, the Member State concerned shall prioritise the examination of applications for international protection likely to be well-founded and those lodged by ***minors, who have been able to prove that they are minors where doubt exists***.

Or. fr

Amendment 86 **Pietro Bartolo**

Proposal for a regulation **Article 2 – paragraph 2**

Text proposed by the Commission

2. Where applying this Article, the principles and guarantees of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] shall apply.

Amendment

2. Where applying this Article, the principles and guarantees of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] shall apply ***in particular***:

(a) Member States shall take into account the best interest of the child as well as respect the protection of their family life.

(b) An applicant for international protection shall not be held in detention for the sole reason that he or she is seeking international protection. Detention may only be used as an exceptional measure of last resort when it proves necessary and on the basis of an individual assessment of each case, and if other less coercive alternative measures cannot be applied effectively. Children, families with children and applicants with special reception needs shall not be detained.

(c) An appeal against a negative decision under a border procedure shall have automatic suspensive effect.

Or. en

Amendment 87

Pietro Bartolo

**Proposal for a regulation
Article 3 – paragraph 1**

Text proposed by the Commission

Amendment

*By way of derogation from Directive
XXX/XXX [Reception Conditions
Directive recast], and in accordance with
the procedure laid down in Article 6, the
Member State faced with the arrival of
third-country nationals or stateless
persons at their external border as a
consequence of a situation of
instrumentalisation of migrants may
temporarily set modalities for material
reception conditions different from those
provided for in Articles 16 and 17 of that
Directive in relation to applicants
apprehended or found in the proximity of
the border with the third country
instrumentalising migrants in connection
with an unauthorised crossing or who
have presented themselves at the border
crossing points, and are subject to the
measures in Article 2 of this Regulation,
provided these Member States cover the
applicants' basic needs, in particular
food, water, clothing, adequate medical
care, and temporary shelter adapted to the
seasonal weather conditions, and in full
respect of human dignity.*

deleted

Or. en

Justification

In line with the provisional agreement on the revision of the Reception Conditions Directive, in particular Recital 8 and Article 17a, a derogation from the obligation to provide material reception conditions is based on the non-compliance of applicants with the requirement to be in the Member State responsible for their asylum application. As a punitive measure, it cannot be applied en masse to persons who are not responsible for the behavior of the third country. It is not necessary or proportionate to provide for such a wide-ranging and unjustified derogation.

**Amendment 88
Patricia Chagnon, Annika Bruna**

Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission

By way of derogation from Directive XXX/XXX [Reception Conditions Directive recast], and in accordance with the procedure laid down in Article 6, the Member State faced with the arrival of third-country nationals or stateless persons at their external border as a consequence of a situation of instrumentalisation of migrants may temporarily set modalities for material reception conditions different from those provided for in Articles 16 and 17 of that Directive in relation to applicants apprehended or found in the proximity of the border with the third country instrumentalising migrants in connection with an unauthorised crossing or who have presented themselves at the border crossing points, and are subject to the measures in Article 2 of this Regulation, provided these Member States cover the applicants' basic needs, in particular food, water, clothing, adequate medical care, and temporary shelter adapted to the seasonal weather conditions, and in full respect of human dignity.

Amendment

The Member State *shall be free to apply the Return Directive in accordance with its means.*

Or. fr

Amendment 89
Pietro Bartolo

Proposal for a regulation
Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

In a situation of instrumentalisation of migrants, and in accordance with the procedure laid down in Article 6, the Member State faced with *the arrival of third-country nationals or stateless*

Amendment

In a situation of instrumentalisation of migrants, and in accordance with the procedure laid down in Article 6, the Member State faced with *that* situation *shall*, in respect of third-country nationals

persons at its external border as a consequence of a situation of instrumentalisation of migrants may, in respect of third-country nationals or stateless persons who do not fulfil the conditions of entry and whose applications were rejected in the context of the emergency asylum management procedure at the border in accordance with Article 2(1) points (b) and (c), and who have no right to remain and are not allowed to remain, **decide not to** apply 41a of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] **and Directive XXX/XXX [Return Directive recast]**. **Where resorting to this derogation**, the Member State concerned shall:

or stateless persons who do not fulfil the conditions of entry and whose applications were rejected in the context of the emergency asylum management procedure at the border in accordance with Article 2(1) points (b) and (c), and who have no right to remain and are not allowed to remain, apply 41a of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]. The Member State concerned shall:

Or. en

Justification

In the EP mandate on the amended APR proposal, the return border procedure is optional. In a situation of instrumentalisation, it might be appropriate to make it mandatory, as foreseen by the Commission and the Council under APR. Moreover, it makes no sense to offer a Member State facing instrumentalisation the option not to apply a return border procedure or the return directive at its external borders for those applicants who have had their applications rejected in the asylum border procedure, without specifying with provisions of Union law would then apply.

Amendment 90

Patricia Chagnon, Annika Bruna

Proposal for a regulation

Article 4 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) respect the principle of non-refoulement and take due account of the best interests of the child, family life and state of health of the third country national concerned as set out in Article 5 of Directive XXX/XXX [the Return Directive recast];

deleted

Or. fr

Amendment 91

Pietro Bartolo

Proposal for a regulation

Article 4 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) ensure that their treatment and level of protection are no less favourable than as set out in Article 10(4) and (5) (Limitations on use of coercive measures)] Article 11(2)(a) – (postponement of removal), Article 17(1)(b) and (d) [emergency health care and taking into account needs of vulnerable persons], and Articles 19 and 20 [conditions for detention and detention of minors and families] of Directive XXX/XXX [Return Directive recast]. *deleted*

Or. en

Justification

The provisions of the Return Directive, in line with APR, should apply in these cases.

Amendment 92

Patricia Chagnon, Annika Bruna

Proposal for a regulation

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. Where a Member State is facing a situation of instrumentalisation of migrants, it may request support and solidarity measures from other Member States in order to manage that situation. Support and solidarity contributions for the benefit of a Member State facing a situation of instrumentalisation of migrants may include the following types of contributions: *deleted*

(a) capacity-building measures in the field

of asylum, reception and return;
(b) operational support in the field of asylum, reception and return;
(c) measures aimed at responding to instrumentalisation situation, including specific measures to support return, through cooperation with third countries or outreach to third countries whose nationals are being instrumentalised; or
(d) any other measure considered adequate to address the instrumentalisation situation and support the Member State concerned.

Or. fr

Amendment 93
Pietro Bartolo

Proposal for a regulation
Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) capacity-building measures in the field of asylum, reception ***and return***;

Amendment

(a) capacity-building measures in the field of asylum ***and*** reception;

Or. en

Amendment 94
Pietro Bartolo

Proposal for a regulation
Article 5 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(a a) relocation of applicants for international protection and of beneficiaries of international protection in accordance with Articles 57 and 58 of Regulation XXX/2024 [Asylum and Migration Management Regulation]

Or. en

Amendment 95

Pietro Bartolo

Proposal for a regulation

Article 5 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) operational support in the field of asylum, reception ***and return***;

(b) operational support in the field of asylum ***and*** reception;

Or. en

Amendment 96

Pietro Bartolo

Proposal for a regulation

Article 5 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) ***measures aimed at responding to instrumentalisation situation, including specific measures to support return, through cooperation with third countries or outreach to third countries whose nationals are being instrumentalised; or***

deleted

Or. en

Amendment 97

Pietro Bartolo

Proposal for a regulation

Article 5 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) ***any other measure considered adequate to address the instrumentalisation situation and support the Member State concerned.***

deleted

Or. en

Amendment 98

Patricia Chagnon, Annika Bruna

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

2. The Member State facing a situation of instrumentalisation shall send a request to the **Commission** for support **and solidarity contributions from other Member States specifying the solidarity measures requested.**

Amendment

2. The Member State facing a situation of instrumentalisation shall send a request to the **Council** for support **from the European Border and Coast Guard Agency, Europol and the European Union Agency for Asylum. These agencies shall intervene in accordance with the national legislation in force.**

Or. fr

Amendment 99

Patricia Chagnon, Annika Bruna

Proposal for a regulation

Article 5 – paragraph 3

Text proposed by the Commission

3. **Without prejudice to the solidarity provisions of Regulation (EU) XXX/XXX [Crisis and force majeure Regulation], the Commission, as soon as possible after receiving the request for support and solidarity measures as referred to in paragraph 2, shall invite other Member States to contribute by means of the support and solidarity measures referred to in paragraph 1 that correspond to the needs of Member State facing a situation of instrumentalisation. The Commission shall coordinate the support and solidarity measures referred to in this Article.**

Amendment

3. **In the event of a migration crisis,** the Commission, **at the request of the Council,** shall **make available the European Agencies whose assistance is sought by the requesting** Member State.

Or. fr

Amendment 100
Patricia Chagnon, Annika Bruna

Proposal for a regulation
Article 5 – paragraph 4

Text proposed by the Commission

Amendment

4. A Member State facing a situation of instrumentalisation of migrants may request support from the EU Asylum Agency, from the European Border and Coast Guard Agency, or from Europol in accordance with their mandates. As appropriate, the EU Asylum Agency may propose assistance on its own initiative in accordance with Article 16(1)(d) of Regulation XXX/XXX [EUAA Regulation]. The European Border and Coast Guard Agency may propose assistance in the area of return in accordance with Articles 48, 50, 52 and 53 of Regulation (EU) 2019/1896 to the Member State concerned. Europol may propose assistance in the area of law enforcement cooperation in accordance with Article 6(1) of Regulation (EU) 2016/794. **deleted**

Or. fr

Amendment 101
Patricia Chagnon, Annika Bruna

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Where applying the derogations referred to in Articles 2, 3 and 4, the Member State concerned shall duly inform third-country nationals or stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the measures applied, the *location of the registration points, including the border*

1. Where applying the derogations referred to in Articles 2, 3 and 4, the Member State concerned shall duly inform third-country nationals or stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the measures applied, the *illegality of their actions and the return to the country of*

crossing points, accessible for registering and lodging an application for international protection, and the duration of the measures.

origin and/or countries having instrumentalised the migration flows.

Or. fr

Amendment 102
Charlie Weimers

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

1. Where applying the derogations referred to in Articles 2, 3 and 4, the Member State concerned shall duly inform third-country nationals or stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the measures applied, the location of the registration points, including the border crossing points, accessible for registering and lodging an application for international protection, and the duration of the measures.

Amendment

1. Where applying the derogations referred to in Articles 2, 3 and 4, the Member State concerned shall duly inform third-country nationals or stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the measures applied, the location of the registration points, including the border crossing points, ***or lack thereof***, accessible for registering and lodging an application for international protection, and the duration of the measures.

Or. en

Amendment 103
Patricia Chagnon, Annika Bruna

Proposal for a regulation
Article 6 – paragraph 2

Text proposed by the Commission

2. ***The Member State facing a situation of instrumentalisation of migrants shall not apply Articles 2, 3 and 4 longer than what is strictly necessary to address the situation of instrumentalisation of migrants, and in any case, no longer than the period set out***

Amendment

deleted

*in the Council Implementing Decision
referred to in paragraph 4 of Article 7.*

Or. fr

Amendment 104

Patricia Chagnon, Annika Bruna

Proposal for a regulation

Article 7 – paragraph 1

Text proposed by the Commission

1. A Member State faced with the arrival of third-country nationals or stateless persons at its external border as a consequence of a situation of instrumentalisation of migrants, *may request the authorisation to apply the derogations provided for in Articles 2, 3 and 4.*

Amendment

1. A Member State faced with the arrival of third-country nationals or stateless persons at its external border as a consequence of a situation of instrumentalisation of migrants *may put up physical barriers to protect itself.*

Or. fr

Amendment 105

Pietro Bartolo

Proposal for a regulation

Article 7 – paragraph 1

Text proposed by the Commission

1. A Member State faced with *the arrival of third-country nationals or stateless persons at its external border as a consequence of* a situation of instrumentalisation of migrants, may request the authorisation to apply the derogations provided for in Articles 2, 3 and 4.

Amendment

1. A Member State faced with a situation of instrumentalisation of migrants, may request the authorisation to apply the derogations provided for in Articles 2 and 4 *and request the application of the solidarity measures provided for in Article 5.*

Or. en

Amendment 106

Patricia Chagnon, Annika Bruna

**Proposal for a regulation
Article 7 – paragraph 2**

Text proposed by the Commission

2. Where the Commission considers it appropriate, on the basis of the information provided by the requesting Member State facing a situation of instrumentalisation of migrants, the **Commission** shall, without delay, make a proposal for **a Council** Implementing Decision **referred to in paragraph 3**.

Amendment

2. Where the Commission considers it appropriate, on the basis of the information provided by the requesting Member State facing a situation of instrumentalisation of migrants, the **Council** shall, without delay, make a proposal for **an** Implementing Decision **and propose intervention by the European Border and Coast Guard Agency**.

Or. fr

Justification

In accordance with Article 202 of the Treaty on European Union and the Treaty establishing the European Community, the Council 'may also reserve the right, in specific cases, to exercise implementing powers directly'.

**Amendment 107
Patricia Chagnon, Annika Bruna**

**Proposal for a regulation
Article 7 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3a. The Council shall take the decision to immediately suspend all financial interventions by the European Union for countries instrumentalising migration flows and/or countries refusing the return of their citizens who have illegally crossed one of the external borders of a Member State of the European Union.

Or. fr

Justification

In accordance with Article 202 of the Treaty on European Union and the Treaty establishing

the European Community, the Council ‘may also reserve the right, in specific cases, to exercise implementing powers directly’.

Amendment 108

Pietro Bartolo

Proposal for a regulation

Article 7 – paragraph 4

Text proposed by the Commission

4. The Council Implementing Decision referred to in paragraph 3 shall set the date from which the rules laid down in Articles 2, 3 and 4 may be applied, as well as the time period for their application, which shall not exceed ***an initial period of six*** months.

Amendment

4. The Council Implementing Decision referred to in paragraph 3 shall set the date from which the rules laid down in Articles 2 and 4 may be applied, as well as the time period for their application, which shall not exceed ***three*** months.

Or. en

Amendment 109

Patricia Chagnon, Annika Bruna

Proposal for a regulation

Article 7 – paragraph 5

Text proposed by the Commission

5. ***The Commission shall keep the situation of instrumentalisation of migrants under constant monitoring and review. Where the Commission considers it appropriate, it may propose the repeal of the Council Implementing Decision referred to in paragraph 3 or the adoption of a new Council Implementing Decision authorising the prolongation of the application of the specific derogations referred to in Articles 2, 3 and 4 for a period, which shall not exceed six months. The Member State concerned shall provide the Commission specific information needed for it to carry out this review and to make the proposal for repeal or prolongation as well as any***

Amendment

deleted

other information the Commission may request.

Or. fr

Amendment 110

Pietro Bartolo

Proposal for a regulation

Article 7 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. A Member State which, at the end of the period of application of the specific derogations provided for in Articles 2 and 4, considers that the conditions for requesting a new application of the derogations provided for in this Regulation, as well as of the solidarity measures, are still met, may only submit one further request. Any new Council Implementing Decision referred to in paragraph 3 shall not exceed a period of three months.

Or. en

Amendment 111

Lena Düpont, Sandra Kalniete

Proposal for a regulation

Article 7 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. A Member State may notify the Commission that it considers it necessary to apply the derogation set out in Article 2(1)(a) before it is authorised to do so in the Council Implementing Decision referred to in paragraph 4. In such a case, the Member State concerned may apply the derogation laid down in Article 2(1)(a) from the day following the request and for a period not exceeding 15 days.

Amendment 112

Patricia Chagnon, Annika Bruna

Proposal for a regulation

Article 8

Text proposed by the Commission

Amendment

Article 8

deleted

Cooperation and assessment

1. The Commission, relevant European Union institutions and agencies and the Member State facing a situation of instrumentalisation of migrants shall closely cooperate and regularly inform each other on the implementation of the derogations and measures referred to in Article 7. The Member State concerned shall continue reporting all relevant data including statistics that are relevant for the implementation of this Regulation, via the EU Migration Preparedness and Crisis Management Network.

2. The Member State facing a situation of instrumentalisation of migrants shall ensure close cooperation with the United Nations High Commissioner for Refugees and relevant partner organisations to determine the modalities for support to applicants in the instrumentalisation situation in line with the rules set out in this Chapter and in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and Directive XXX/XXX [Reception Conditions Directive recast].