European Parliament
2019-2024

Committee on Civil Liberties, Justice and Home Affairs

2016/0224(COD)

16.12.2021

AMENDMENTS
196 - 542

Draft report
Fabienne Keller
(PE697.689v01-00)

Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU

Proposal for a regulation
(COM(2020)0611 – C9-xxxx/xxxx – 2016/0224(COD))

Amendment 196
Domènec Ruiz Devesa

Proposal for a regulation
Article 2 – paragraph 2

Text proposed by the Commission	*Amendment*
2. This Regulation ***does not apply*** to applications for international protection and to requests for diplomatic or territorial asylum submitted to representations of Member States.	2. This Regulation ***applies*** to applications for international protection and to requests for diplomatic or territorial asylum submitted to representations of Member States.

Or. en

Justification

The right to asylum should be guaranteed independently of territoriality criteria. Moreover, guaranteeing a common procedure for international protection in the Union would reduce the loss of lives and the dangers of migratory routes and discrepancies when granting asylum on asylum submitted applications lodged in representations of Member States.

Amendment 197
Sira Rego

Proposal for a regulation
Article 4 – paragraph 2 – point i a (new)

Text proposed by the Commission	*Amendment*
	(ia) 'stateless person' shall have the meaning assigned to it in Article 1 of the Convention relating to the Status of Stateless Persons, signed in New York on 28 September;

Or. en

Amendment 198
Sira Rego

Proposal for a regulation
Article 4 – paragraph 2 – point i b (new)

Text proposed by the Commission	*Amendment*
	(ib) 'national security' covers the internal security and external security and that, consequently, a threat to the functioning of institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests, may affect public security;

Or. en

Amendment 199
Juan Ignacio Zoido Álvarez

Proposal for a regulation
Article 5 a (new)

Text proposed by the Commission	*Amendment*
	Article 5a
	The Member States shall oversee the implementation and functioning of, and respect for, fundamental rights in each phase of the procedures regulated by this Regulation for which they are responsible European institutions and agencies may collaborate with them by providing any support they may request.

Or. es

Amendment 200
Sira Rego

Proposal for a regulation
Article 26 – paragraph 3

Text proposed by the Commission	*Amendment*
3. 'For third-country nationals subject to the screening referred to in	***deleted***

Article 3(1) of Regulation (EU) XXX/XXX [Screening Regulation], paragraphs 1 and 2 shall apply only after the screening has ended.'

Or. en

Amendment 201
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 26 – paragraph 3

Text proposed by the Commission	*Amendment*
3. 'For third-country nationals subject to the screening referred to in Article 3(1) of Regulation (EU) XXX/XXX [Screening Regulation], paragraphs 1 and 2 shall apply only after the screening has ended.'	***deleted***

Or. en

Justification

There is no reason why those who are seeking international protection should have their applications suspended while the Screening is being carried out. Consistent with the position of the Rapporteur in Screening.

Amendment 202
Erik Marquardt

Proposal for a regulation
Article 26 – paragraph 3

Text proposed by the Commission	*Amendment*
3. 'For third-country nationals subject to the screening referred to in Article 3(1) of Regulation (EU) XXX/XXX [Screening Regulation], paragraphs 1 and 2 shall apply only after the screening has	***deleted***

ended.'

Or. en

Amendment 203
Sira Rego

Proposal for a regulation
Article 27 – paragraph 5

Text proposed by the Commission	*Amendment*
5. 'For third-country nationals subject to the screening referred to in Article 3(1) of Regulation (EU) No XXX/XXX [Screening Regulation], paragraphs 1 to 4 shall apply only after the screening has ended.	***deleted***

Or. en

Amendment 204
Erik Marquardt

Proposal for a regulation
Article 27 – paragraph 5

Text proposed by the Commission	*Amendment*
5. 'For third-country nationals subject to the screening referred to in Article 3(1) of Regulation (EU) No XXX/XXX [Screening Regulation], paragraphs 1 to 4 shall apply only after the screening has ended.	***deleted***

Or. en

Amendment 205
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo, Giuliano Pisapia

Proposal for a regulation
Article 27 – paragraph 5

Text proposed by the Commission	*Amendment*
5. 'For third-country nationals subject to the screening referred to in Article 3(1) of Regulation (EU) No XXX/XXX [Screening Regulation], paragraphs 1 to 4 shall apply only after the screening has ended.	***deleted***

Or. en

Justification

There is no reason why those who are seeking international protection should have their applications suspended while the Screening is being carried out. Consistent with the position of the Rapporteur in Screening.

Amendment 206
Sira Rego

Proposal for a regulation
Article 27 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Where biometric data could not be taken during the screening in accordance with Regulation (EU) No XXX/XXX [Eurodac Regulation] or where the applicant was not subject to a screening, the competent authorities shall take the biometric data at the latest upon the registration of the application for international protection and transmit them together with the data referred to in Article 12 (c) to (p) of Regulation (EU) No XXX/XXX [Eurodac Regulation] to the Central System and to the Common Identity Repository respectively in accordance with that Regulation.'	***deleted***

Or. en

Amendment 207
Erik Marquardt

Proposal for a regulation
Article 27 – paragraph 6

Text proposed by the Commission	*Amendment*
6. ***Where*** biometric data ***could not*** be taken ***during the screening in accordance with Regulation (EU) No XXX/XXX [Eurodac Regulation] or where the applicant was not subject to a screening,*** the competent authorities ***shall take the biometric data*** at the latest upon the registration of the application for international protection and transmit them together with the data referred to in Article 12 (c) to (p) of Regulation (EU) No XXX/XXX [Eurodac Regulation] to the Central System and to the Common Identity Repository respectively in accordance with that Regulation.***'***	6. Biometric data ***shall*** be taken ***by*** the competent authorities at the latest upon the registration of the application for international protection and transmit them together with the data referred to in Article 12 (c) to (p) of Regulation (EU) No XXX/XXX [Eurodac Regulation] to the Central System and to the Common Identity Repository respectively in accordance with that Regulation.

Or. en

Amendment 208
Domènec Ruiz Devesa, Juan Fernando López Aguilar

Proposal for a regulation
Article 35 a

Text proposed by the Commission	*Amendment*
Article 35a	***deleted***
Rejection of an application and issuance of a return decision	
Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States shall issue a return decision that respects Directive XXX/XXX/EU [Return Directive]. The return decision shall be issued as part of	

the decision rejecting the application for international protection or, in a separate act. Where the return decision is issued as a separate act, it shall be issued at the same time and together with the decision rejecting the application for international protection.'

Or. en

Justification

Article 35a cancels out the suspensive effect provided for in article 54, which guarantees the right of the applicant to remain on the territory of a Member State. The suspensive effect of an appeal will not be ensured if a return decision could be issued together with the decision to reject International Protection.

Amendment 209
Sira Rego

Proposal for a regulation
Article 35 a

Text proposed by the Commission	*Amendment*
Rejection of an application ***and issuance of a return decision***	Rejection of an application
Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States shall issue a return decision that respects Directive XXX/XXX/EU [Return Directive]. The return decision shall be issued as part of the decision rejecting the application for international protection ***or, in a separate act. Where the return decision is issued as a separate act, it shall be issued at the same time and together with the decision rejecting the application for international protection.'***	Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn ***and that the decision is final***, Member States shall ***examine before issuing a separate return decision whether the applicant fulfils the conditions to apply for a residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other grounds under the applicable national legal framework. Particular attention should be paid to victims of torture, inhumane and degrading treatment, gender-based violence and persons in a vulnerable situation including with PTSD symptoms and stateless persons. If no grounds for***

such a status would be found, Member States may issue a return decision that respects Directive XXX/XXX/EU [Return Directive] ***in a separate act after a full examination that their return would not violate the principle of non refoulement and other fundamental rights obligations under EU and international law, including Article 2 and 3 of the ECHR, articles 2 and 4 of the Charter for Fundamental Rights, and Article 8 of the ECHR and Article 7 of the Charter for Fundamental Rights***. The return decision shall ***for these reasons never*** be issued as part of the decision rejecting the application for international ***protection to enable the thorough assessment of the case.***

Or. en

Amendment 210
Erik Marquardt

Proposal for a regulation
Article 35 a

Text proposed by the Commission	*Amendment*
Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States shall issue a return decision that respects Directive XXX/XXX/EU [Return Directive]***.*** ***The*** return ***decision shall be issued as part*** of the ***decision rejecting the application for*** international ***protection or, in a separate act***. ***Where*** the return decision is issued as a separate act, it ***shall*** be issued at the same time and together with the decision rejecting the application for international protection.***'***	Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn ***and that decision has become final***, Member States shall issue a ***separate*** return decision that respects Directive XXX/XXX/EU [Return Directive]***, provided that the applicant does not fulfil the conditions to apply for a residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other grounds under the applicable national legal framework and that their*** return ***would not lead to risks of violations*** of the ***principle of non-refoulement and other fundamental rights obligations under the***

Charter of Fundamental Rights and other EU and international ***obligations.***. The return decision is issued as a separate act, it ***may*** be issued at the same time and together with the ***final*** decision rejecting the application for international protection***, provided that there has been an individual assessment of the full scope of the principle of non-refoulement***.

Or. en

Amendment 211
Jadwiga Wiśniewska, Patryk Jaki

Proposal for a regulation
Article 35 a

Text proposed by the Commission	*Amendment*
Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States shall issue a return decision that respects Directive XXX/XXX/EU [Return Directive]. The return decision shall be issued ***as part of*** the decision rejecting the application for international protection ***or, in a separate act***. ***Where the return decision is issued as a separate act, it shall be issued at the same time and together with the decision rejecting the application for international protection.***'	Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States shall issue a return decision that respects Directive XXX/XXX/EU [Return Directive]. The return decision shall be issued ***together with*** the decision rejecting the application for international protection.'

Or. pl

Amendment 212
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo, Petar Vitanov

Proposal for a regulation
Article 35 a

Text proposed by the Commission	*Amendment*
Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States ***shall*** issue a return decision that respects Directive XXX/XXX/EU [Return Directive]. The return decision shall be issued as ***part of the decision rejecting the application for international protection or, in*** a separate act. ***Where*** the return decision ***is issued as a separate act, it shall*** be issued at the same time and together with the decision rejecting the application for international protection.***'***	Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States ***may*** issue a return decision that respects Directive XXX/XXX/EU [Return Directive]. ***As it is a separate decision,*** the return decision shall be issued as a separate act. The return decision ***may*** be issued at the same time and together with the decision rejecting the application for international protection.

Or. en

Justification

The return decision should be separate from a decision not to grant international protection to an applicant. This would allow to maintain access to other resident permits and types of authorisations outside asylum, which are available under national law and are currently used by Member States. The provisions of Article 6(5) of the SBC are the only provisions, which allow MS to let people access the territory, even if they do not fulfil the conditions of entry. After that, the MS is free to grant whatever permit/status to the person it wants under its national law. This is approach we are taking in the Screening.

Amendment 213
Sira Rego

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

Text proposed by the Commission	*Amendment*
(i) 'the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20%	***deleted***

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

Or. en

Amendment 214
Erik Marquardt

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

Text proposed by the Commission	*Amendment*
(i) 'the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;'	***deleted***

Or. en

Amendment 215
Juan Ignacio Zoido Álvarez, Elissavet Vozemberg-Vrionidi, Loucas Fourlas

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

Text proposed by the Commission	*Amendment*
(i) ‘the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower***, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;’***	(i) the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower**.**

Or. en

Amendment 216
Caterina Chinnici, Javier Moreno Sánchez

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

Text proposed by the Commission	*Amendment*
(i) ‘the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;’	(i) the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower, unless ***applicants are unaccompanied minors, families with children, and other vulnerable applicants including those with special procedural or reception needs or*** a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as

representative for their protection needs;

Or. en

Amendment 217
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

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

Text proposed by the Commission	*Amendment*
(i) 'the applicant is of a nationality ***or, in the case of stateless persons, a former habitual resident of a third country*** for which the proportion of decisions by the determining authority granting international protection is, according to the latest available ***yearly Union-wide average*** Eurostat data, ***20%*** or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of ***20%*** or lower cannot be considered as representative for their protection needs;'	(i) ' the applicant is of a nationality for which the proportion of decisions by the ***relevant national*** determining authority granting international protection is, according to the latest available Eurostat data, ***10%*** or lower, ***unless the applicant is an unaccompanied minor, a minor, an accompanying family member of a minor, or a vulnerable applicant, including those with special procedural or reception needs, or*** unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of ***10%*** or lower cannot be considered as representative for their protection needs;'

Or. en

Justification

Stateless persons should not have their cases examined in the accelerated or border procedures due to the complexity of their circumstances and requirement to refer them to a procedure to determine their statelessness and rights under the 1954 Convention. All minors, their families and vulnerable groups should be clearly exempted from this criterion.

Amendment 218
Juan Ignacio Zoido Álvarez

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

Text proposed by the Commission	*Amendment*
(i) ***'the*** applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;'	(i) ***the*** applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower ***per Member State***, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;'

Or. es

Justification

The proportion of 20% should be calculated per Member State rather than for the Union as a whole.

Amendment 219
Jadwiga Wiśniewska, Patryk Jaki

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

Text proposed by the Commission	*Amendment*
(i) 'the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available ***yearly*** Union-wide average Eurostat data, 20% or lower, unless a significant change has occurred in the third country concerned since the publication of	(i) 'the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available ***quarterly*** Union-wide average Eurostat data, 20% or lower, unless a significant change has occurred in the third country concerned since the

the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;'	publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;'

Or. pl

Amendment 220
Balázs Hidvéghi, Loránt Vincze

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

Text proposed by the Commission	*Amendment*
(i) 'the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, ***20%*** or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of ***20%*** or lower cannot be considered as representative for their protection needs;'	(i) the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, ***50%*** or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of ***50%*** or lower cannot be considered as representative for their protection needs;'

Or. en

Amendment 221
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

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

Text proposed by the Commission	*Amendment*

(c) 'the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;'	***deleted***

Or. en

Justification

Deletion to ensure consistency with amendment to Article 40(1)(i). A 20% recognition rate means in one person in five is entitled to protection. This is too high a rate to place all those persons in a border procedure. This is all the more so when the rate is based only on decisions at first instance. As the rates for protection related to specific third countries differ greatly from Member State to Member State, it is the rate of protection in the Member State making the decision which is decisive. Applying an EU wide average will lead to the application of the border procedure for applicants with a very high probability of receiving protection, while excluding others from the border procedure whose chances of receiving protection are considerably lower. That is the opposite of what is intended.

Amendment 222
Erik Marquardt

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

Text proposed by the Commission	*Amendment*
(c) 'the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower, unless a significant change has	***deleted***

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

Or. en

Amendment 223
Sira Rego

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

Text proposed by the Commission	*Amendment*
(c) 'the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;'	***deleted***

Or. en

Amendment 224
Juan Ignacio Zoido Álvarez, Elissavet Vozemberg-Vrionidi, Loucas Fourlas

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

Text proposed by the Commission	*Amendment*

(c) ‘the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower***, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;’***	(c) the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower**.**

Or. en

Amendment 225
Juan Ignacio Zoido Álvarez

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

Text proposed by the Commission	*Amendment*
(c) ‘the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;’	(c) the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower ***per Member State***, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs;’

Or. es

Amendment 226
Balázs Hidvéghi, Loránt Vincze

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

Text proposed by the Commission	*Amendment*
(c) ‘the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, ***20%*** or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of ***20%*** or lower cannot be considered as representative for their protection needs;’	(c) the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, ***50%*** or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of ***50%*** or lower cannot be considered as representative for their protection needs;’

Or. en

Amendment 227
Jadwiga Wiśniewska, Patryk Jaki

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

Text proposed by the Commission	*Amendment*
(c) ‘the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available ***yearly*** Union-wide average Eurostat data, 20% or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be	(c) ‘the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available ***quarterly*** Union-wide average Eurostat data, 20% or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be

considered as representative for their protection needs;’	considered as representative for their protection needs;’

Or. pl

Amendment 228
Fabienne Keller

Proposal for a regulation
Article 40 a (new)

Text proposed by the Commission	*Amendment*
	Article 40a
	Data collection on asylum decision
	1. The 20% threshold referred to in Article 10(1a) and (5c) shall represent the final stage of a decision on asylum, after all remedies provided in national law are exhausted.
	2. In application to the first paragraph, by [five years after the entry into force of the Regulation], Member States shall collect and send the relevant data to Eurostat.

Or. en

Amendment 229
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. ***Following the screening procedure carried out in accordance with Regulation (EU) No XXX/XXX [Screening Regulation], and provided that the applicant has not yet been authorised to enter Member States’ territory,*** a Member	1. A Member State may examine an application in a border procedure where that application has been made by a third-country national who does not fulfil the conditions for entry in the territory of a Member State as set out in Article 6 of

State may examine an application in a border procedure where that application has been made by a third-country national ***or stateless person*** who does not fulfil the conditions for entry in the territory of a Member State as set out in Article 6 of Regulation (EU) 2016/399. The border procedure may take place:	Regulation (EU) 2016/399. The border procedure may take place:

Or. en

Justification

The legal fiction of non-entry is not explicitly laid down in the current APD, although it is accepted that it exists. There is no such provision in the Commission proposal from 2016 nor in the European Parliament position on that proposal. A person seeking international protection has a right to remain on the territory of the MS dealing with her application in accordance with Article 9 APR. This should be the starting point. This is in line with the approach of the Rapporteur for the Screening Regulation.

Amendment 230
Sira Rego

Proposal for a regulation
Article 41 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. ***Following the screening procedure carried out in accordance with Regulation (EU) No XXX/XXX [Screening Regulation], and provided that the applicant has not yet been authorised to enter Member States' territory,*** a Member State may examine an application in a border procedure where that application has been made by a third-country national ***or stateless person*** who does not fulfil the conditions for entry in the territory of a Member State as set out in Article 6 of Regulation (EU) 2016/399. The border procedure ***may*** take place:	1. A Member State may examine an application in a border procedure where that application has been made by a third-country national who does not fulfil the conditions for entry in the territory of a Member State as set out in Article 6 of Regulation (EU) 2016/399. The border procedure ***shall respect the principles and guarantees provided for in Chapter II. The border procedure can only*** take place ***after an individual assessment of the circumstances of the case, including an examination of vulnerabilities and potential special reception and procedural needs***:

Or. en

Amendment 231
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 1 – introductory part

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

Or. en

Amendment 232
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. ***Following the screening procedure carried out in accordance with Regulation (EU) No XXX/XXX [Screening Regulation], and provided that the applicant has not yet been authorised to enter Member States' territory,*** a Member State may examine an application in a border procedure where that application has been made by a third-country national or stateless person who does not fulfil the conditions for entry in the territory of a Member State as set out in Article 6 of Regulation (EU) 2016/399. The border	1. A Member State may examine an application in a border procedure where that application has been made by a third-country national or stateless person who does not fulfil the conditions for entry in the territory of a Member State as set out in Article 6 of Regulation (EU) 2016/399. The border procedure may take place***, after an individual assessment of the circumstances of the case, including an examination of vulnerabilities and potential special reception and procedural needs***:

procedure may take place:

Or. en

Amendment 233
Balázs Hidvéghi, Loránt Vincze

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

Text proposed by the Commission	*Amendment*
(a) following an application made at an external border crossing point or in a transit zone;	***deleted***

Or. en

Amendment 234
Erik Marquardt

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

Text proposed by the Commission	*Amendment*
(a) following an application made at an external border crossing point or in a transit zone;	(a) following an application made at an external border crossing point or in a transit zone; ***or***

Or. en

Amendment 235
Sira Rego

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

Text proposed by the Commission	*Amendment*
(b) following apprehension in connection with an unauthorised crossing of the external border;	***deleted***

Or. en

Amendment 236
Balázs Hidvéghi, Loránt Vincze

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

Text proposed by the Commission	*Amendment*
(b) following apprehension in connection with an unauthorised crossing of the external border;	***deleted***

Or. en

Amendment 237
Erik Marquardt

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

Text proposed by the Commission	*Amendment*
(b) following apprehension ***in connection with*** an unauthorised crossing of the external border***;***	(b) following apprehension ***during or immediately after*** an unauthorised crossing of the external border***, provided there is a direct connection to the act of the irregular border crossing.***

Or. en

Amendment 238
Assita Kanko

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

Text proposed by the Commission	*Amendment*
(b) following apprehension in connection with an unauthorised crossing of the external border;	(b) following apprehension ***on the territory of the country, including*** in connection with an unauthorised crossing

of the external border;

Or. en

Amendment 239
Jeroen Lenaers, Tomas Tobé, Lena Düpont

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

Text proposed by the Commission	*Amendment*
(b) following apprehension in ***connection with an*** unauthorised crossing of the external border;	(b) following apprehension in ***a Member States territory after*** unauthorised crossing of the external border;

Or. en

Amendment 240
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

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

Text proposed by the Commission	*Amendment*
(b) following apprehension in connection with an ***unauthorised*** crossing ***of the external border***;	(b) following apprehension in ***direct*** connection with an ***irregular border*** crossing;

Or. en

Justification

The border procedure should not be applicable to persons who an earlier stage have crossed the border of a Member State. It should be clarified that there must be a clear and direct connection with an irregular border crossing. This wording is from the Return Handbook.

Amendment 241
Balázs Hidvéghi, Loránt Vincze

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

Text proposed by the Commission	*Amendment*
(c) following disembarkation in the territory of a Member State after a search and rescue operation;	***deleted***

Or. en

Amendment 242
Sira Rego

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

Text proposed by the Commission	*Amendment*
(c) following disembarkation in the territory of a Member State after a search and rescue operation;	***deleted***

Or. en

Amendment 243
Erik Marquardt

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

Text proposed by the Commission	*Amendment*
(c) following disembarkation in the territory of a Member State after a search and rescue operation;	***deleted***

Or. en

Amendment 244
Erik Marquardt

Proposal for a regulation

Article 41 – paragraph 1 – point d

Text proposed by the Commission	*Amendment*
(d) following relocation in accordance with Article [X] of Regulation (EU) No XXX/XXX [Ex Dublin Regulation].	***deleted***

Or. en

Amendment 245
Balázs Hidvéghi, Loránt Vincze

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

Text proposed by the Commission	*Amendment*
(d) following relocation in accordance with Article [X] of Regulation (EU) No XXX/XXX [Ex Dublin Regulation].	***deleted***

Or. en

Amendment 246
Sira Rego

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

Text proposed by the Commission	*Amendment*
(d) following relocation in accordance with Article [X] of Regulation (EU) No XXX/XXX [Ex Dublin Regulation].	***deleted***

Or. en

Amendment 247
Sira Rego

Proposal for a regulation
Article 41 – paragraph 1 – second subparagraph (new)

Text proposed by the Commission	*Amendment*
	The decision to apply the border procedure shall be issued in writing and the reasons for the application of the procedure shall be stated in fact and in law.

Or. en

Amendment 248
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	1a. If an unaccompanied minor is under the age of 14, the border procedure shall not apply.

Or. en

Amendment 249
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 2 – introductory part

Text proposed by the Commission	*Amendment*
2. Where a border procedure is applied, decisions may be taken on the ***following:***	2. Where a border procedure is applied, decisions may be taken on the ***merits of an asylum application with full respect of all procedural rights and safeguards in this Regulation without prejudice to Article 41 paragraph 11.***

Or. en

Amendment 250

Sira Rego

Proposal for a regulation
Article 41 – paragraph 2 – introductory part

Text proposed by the Commission	*Amendment*
2. Where a border procedure is applied, decisions may be taken on the ***following:***	2. Where a border procedure is applied, decisions may be taken ***only*** on the ***merits of an application in an accelerated examination procedure in the cases referred to in Article 40(1).***

Or. en

Amendment 251
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 2 – introductory part

Text proposed by the Commission	*Amendment*
2. ***Where*** a border procedure ***is applied***, decisions may be taken on the following:	2. ***In*** a border procedure, decisions may be taken on the following:

Or. en

Amendment 252
Sira Rego

Proposal for a regulation
Article 41 – paragraph 2 – point a

Text proposed by the Commission	*Amendment*
(a) the inadmissibility of an application in accordance with Article 36;	***deleted***

Or. en

Amendment 253

Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 2 – point a

Text proposed by the Commission	*Amendment*
(a) the inadmissibility of an application in accordance with Article 36;	***deleted***

Or. en

Justification

This provision extends the possibility to apply the border procedure to many cases covered by the 2016 proposal, including to people coming from a safe country and those who have already applied for asylum. Only on merit examinations should take place in a border procedure.

Amendment 254
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 2 – point a

Text proposed by the Commission	*Amendment*
(a) the inadmissibility of an application in accordance with Article 36;	***deleted***

Or. en

Amendment 255
Sira Rego

Proposal for a regulation
Article 41 – paragraph 2 – point b

Text proposed by the Commission	*Amendment*
(b) the merits of an application in an accelerated examination procedure in the cases referred to in Article 40(1).	***deleted***

Or. en

Amendment 256
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 2 – point b

Text proposed by the Commission	*Amendment*
(b) the merits of an application in an accelerated examination procedure in the cases referred to in Article 40(1).	***deleted***

Or. en

Amendment 257
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 2 – point b

Text proposed by the Commission	*Amendment*
(b) the merits of an application ***in an accelerated examination procedure in the cases referred to in Article 40(1)***	(b) the merits of an application.

Or. en

Amendment 258
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Member State shall examine an application in a border procedure in the cases referred to in paragraph 1 where the circumstances referred to in Article 40(1), point (c), (f) or (i), apply.	***deleted***

Or. en

Amendment 259
Sira Rego

Proposal for a regulation
Article 41 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Member State shall examine an application in a border procedure in the cases referred to in paragraph 1 where the circumstances referred to in Article 40(1), point (c), (f) or (i), apply.	***deleted***

Or. en

Amendment 260
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Member State shall examine an application in a border procedure in the cases referred to in paragraph 1 where the circumstances referred to in Article 40(1), point (c), (f) or (i), apply.	***deleted***

Or. en

Justification

There is no evidence that the mandatory use of border procedures will lead to be faster conclusion of asylum applications, better decision-making, or swifter returns of those subject to a return decision.

Amendment 261

Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Member State shall examine an application in a border procedure in the cases referred to in paragraph 1 where the circumstances referred to in Article 40(1), point (c), (f) or (i), apply.	***deleted***

Or. en

Amendment 262
Lukas Mandl

Proposal for a regulation
Article 41 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Member State shall examine an application in a border procedure in the cases referred to in paragraph 1 where the circumstances referred to in Article 40(1)***, point (c), (f) or (i),*** apply.	3. Member State shall examine an application in a border procedure in the cases referred to in paragraph 1 ***(a)*** where the circumstances referred to in Article 40(1) apply***; (b) where a decision is taken on the inadmissibility of an application in accordance with Article 36; (c) following disembarkation in the territory of a Member State after a search and rescue operation***.

Or. en

Justification

The scope of mandatory border procedures should be broadened to all cases where an accelerated procedure applies, where an inadmissibility decision can be taken and to all cases after SAR operations. Points (a) and (b) are related to cases where special circumstances apply that lead to an acceleration of the procedure or where no decision on the merits has to be taken. SAR cases should be included in order to reduce incentives to make use of this particular dangerous tool.

Amendment 263
Laura Ferrara

Proposal for a regulation
Article 41 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Member State ***shall*** examine an application in a border procedure in the cases referred to in paragraph 1 where the circumstances referred to in Article 40(1), point (c)**,** (f) ***or (i),*** apply.	3. Member State ***may*** examine an application in a border procedure in the cases referred to in paragraph 1 where the circumstances referred to in Article 40(1), point (c) ***or*** (f) apply.

Or. it

Amendment 264
Juan Ignacio Zoido Álvarez, Elissavet Vozemberg-Vrionidi, Loucas Fourlas

Proposal for a regulation
Article 41 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Member State ***shall*** examine an application in a border procedure in the cases referred to in paragraph 1 where the circumstances referred to in Article 40(1), point (c), (f) or (i), apply.	3. Member State ***may*** examine an application in a border procedure in the cases referred to in paragraph 1 where the circumstances referred to in Article 40(1), point (c), (f) or (i), apply.

Or. en

Amendment 265
Erik Marquardt

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

Text proposed by the Commission	*Amendment*
	3a. Individual procedural rights as provided in this Regulation, such as access to information, free legal assistance and representation, and interpretation shall be effectively

guaranteed during the entire border procedure.

Or. en

Amendment 266
Erik Marquardt

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

Text proposed by the Commission	*Amendment*
	3b. By derogation from paragraph 2, where a border procedure is applied, Member States shall not take a decision on the following:
	(a) the admissibility of an application in accordance with Article 36
	(b) the merits of an application in an accelerated examination procedure in the cases referred to in Article 40(1)

Or. en

Amendment 267
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 41 – paragraph 4

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

country is cooperating sufficiently, the Member State shall again apply the provisions of paragraph 3.

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

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

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

Or. en

Amendment 268
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 4

Text proposed by the Commission	*Amendment*
4. A Member State may decide not to apply paragraph 3 to nationals or stateless persons who are habitual residents of third countries for which that Member State has submitted a notification to the Commission in accordance with Article 25a(3) of Regulation (EC) No 810/2009.	***deleted***
Where, following the examination carried out in accordance with Article 25a(4) of Regulation (EC) No 810/2009, the Commission considers that the third country is cooperating sufficiently, the	

Member State shall again apply the provisions of paragraph 3.

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

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

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

Or. en

Amendment 269
Jadwiga Wiśniewska, Patryk Jaki

Proposal for a regulation
Article 41 – paragraph 4

Text proposed by the Commission	*Amendment*
4. A Member State may decide not to apply paragraph 3 to nationals or stateless persons who are habitual residents of third countries for which that Member State has submitted a notification to the Commission in accordance with Article 25a(3) of Regulation (EC) No 810/2009.	***deleted***
Where, following the examination carried out in accordance with Article 25a(4) of Regulation (EC) No 810/2009, the Commission considers that the third country is cooperating sufficiently, the Member State shall again apply the	

provisions of paragraph 3.

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

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

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

Or. pl

Amendment 270
Sira Rego

Proposal for a regulation
Article 41 – paragraph 4 – first paragraph

Text proposed by the Commission	*Amendment*
4. A Member State ***may decide not to*** apply ***paragraph 3*** to nationals or stateless persons who are habitual residents of third countries for which ***that Member State has submitted a notification to the Commission in accordance with Article 25a(3) of Regulation (EC) No 810/2009.***	4. A Member State ***shall not*** apply ***a border procedure*** to nationals or stateless persons who are habitual residents of third countries for which ***there is no reasonable prospect of return given the lack of cooperation of these third countries.***

Or. en

Amendment 271
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 4 – first paragraph

Text proposed by the Commission	*Amendment*
4. A Member State ***may decide not to apply paragraph 3*** to nationals or stateless persons who are habitual residents of third countries for which that Member State has submitted a notification to the Commission in accordance with Article 25a(3) of Regulation (EC) No 810/2009.	4. A Member State ***shall not examine an application in a border procedure with respect*** to nationals or stateless persons who are habitual residents of third countries for which that Member State has submitted a notification to the Commission in accordance with Article 25a(3) of Regulation (EC) No 810/2009.

Or. en

Amendment 272
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 4 – first paragraph

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

Or. en

Justification

Given that a swift return is unlikely in such cases, the application of a border procedure is pointless. Should the person be entitled to international protection, then a decision granting protection should be taken as soon as possible.

Amendment 273
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 4 – second subparagraph

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

Or. en

Amendment 274
Sira Rego

Proposal for a regulation
Article 41 – paragraph 4 – second subparagraph

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

Or. en

Amendment 275
Laura Ferrara

Proposal for a regulation
Article 41 – paragraph 4 – second subparagraph

Text proposed by the Commission	*Amendment*
Where, following the examination carried out in accordance with Article 25a(4) of Regulation (EC) No 810/2009, the	***deleted***

Commission considers that the third country is cooperating sufficiently, the Member State shall again apply the provisions of paragraph 3.

Or. it

Amendment 276
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 4 – second subparagraph

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

Or. en

Amendment 277
Laura Ferrara

Proposal for a regulation
Article 41 – paragraph 4 – third subparagraph

Text proposed by the Commission	*Amendment*
Where the Commission considers that the third country concerned is not cooperating sufficiently, the Member State may continue not to apply paragraph 3:	***deleted***
(a) until an implementing act previously adopted by the Council in accordance with Article 25a(5) of Regulation (EC) No 810/2009 is repealed	

or amended;

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

Or. it

Amendment 278
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 4 – third subparagraph

Text proposed by the Commission	*Amendment*
Where the Commission considers that the third country concerned is not cooperating sufficiently, the Member State may continue not to apply paragraph 3:	***deleted***
(a) until an implementing act previously adopted by the Council in accordance with Article 25a(5) of Regulation (EC) No 810/2009 is repealed or amended;	
(b) where the Commission does not consider that action is needed in accordance with Article 25a of Regulation (EC) No 810/2009, until the Commission reports in its assessment carried out in accordance with paragraph 2 of that Article that there are substantive changes in the cooperation of the third country concerned.	

Or. en

Amendment 279
Sira Rego

Proposal for a regulation
Article 41 – paragraph 4 – third subparagraph

Text proposed by the Commission	*Amendment*
Where the Commission considers that the third country concerned is not cooperating sufficiently, the Member State may continue not to apply paragraph 3:	***deleted***
(a) until an implementing act previously adopted by the Council in accordance with Article 25a(5) of Regulation (EC) No 810/2009 is repealed or amended;	
(b) where the Commission does not consider that action is needed in accordance with Article 25a of Regulation (EC) No 810/2009, until the Commission reports in its assessment carried out in accordance with paragraph 2 of that Article that there are substantive changes in the cooperation of the third country concerned.	

Or. en

Amendment 280
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 4 – third subparagraph – introductory part

Text proposed by the Commission	*Amendment*
Where the Commission considers that the third country concerned is not cooperating sufficiently, the Member State ***may continue not to*** apply ***paragraph 3***:	Where the Commission considers that the third country concerned is not cooperating sufficiently, the Member State ***shall not*** apply ***border procedures***:

Or. en

Amendment 281
Sira Rego

Proposal for a regulation
Article 41 – paragraph 4 – third subparagraph a (new)

Text proposed by the Commission	*Amendment*
	Once an applicant has been exempted from the border procedure, and referred to the regular procedure, that should remain the case for the entire procedure.

Or. en

Amendment 282
Nadine Morano

Proposal for a regulation
Article 41 – paragraph 5

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

Or. fr

Amendment 283
Jadwiga Wiśniewska, Patryk Jaki

Proposal for a regulation
Article 41 – paragraph 5

Text proposed by the Commission	*Amendment*
5. The border procedure may only be applied to unaccompanied minors and to minors below the age of 12 and their family members in the cases referred to in	***deleted***

Article 40(5) (b).

Or. pl

Amendment 284
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 5

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

Or. en

Amendment 285
Sira Rego

Proposal for a regulation
Article 41 – paragraph 5

Text proposed by the Commission	*Amendment*
5. The border procedure ***may only*** be applied to unaccompanied ***minors*** and to ***minors below the age of 12*** and their family members ***in the cases referred to in Article 40(5) (b).***	5. ***In order to guarantee the best interest of the child*** the border procedure ***shall not*** be applied to unaccompanied ***children*** and to ***children*** and their family members***.***

Or. en

Amendment 286
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 41 – paragraph 5

Text proposed by the Commission	*Amendment*
5. The border procedure may only be applied to unaccompanied minors ***and to minors below the age of 12 and their family members*** in the cases referred to in Article 40(5) (b).	5. The border procedure may only be applied to unaccompanied minors in the cases referred to in Article 40(5) (b). ***Where the outcome of the age assessment referred to in Article 24 or the medical examination referred to Article 23 is not sufficiently conclusive, this exception shall not apply.***

Or. en

Amendment 287
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 5

Text proposed by the Commission	*Amendment*
5. The border procedure ***may only*** be applied to unaccompanied minors ***and*** to minors ***below the age of 12*** and their family members ***in the cases referred to in Article 40(5) (b)***.	5. The border procedure ***shall not*** be applied to unaccompanied minors ***or*** to minors and their family members***.***

Or. en

Amendment 288
Caterina Chinnici, Javier Moreno Sánchez

Proposal for a regulation
Article 41 – paragraph 5

Text proposed by the Commission	*Amendment*
5. The border procedure ***may only*** be applied to unaccompanied minors and to minors ***below the age of 12*** and their family members ***in the cases referred to in Article 40(5) (b).***	5. The border procedure ***shall not*** be applied to unaccompanied minors and to minors and their family members

Or. en

Amendment 289
Laura Ferrara

Proposal for a regulation
Article 41 – paragraph 5

Text proposed by the Commission	*Amendment*
5. The border procedure may ***only*** be applied to unaccompanied minors and to minors below the age of 12 and their family members ***in the cases referred to in Article 40(5) (b)***.	5. The border procedure may ***not*** be applied to unaccompanied minors and to minors below the age of 12 and their family members.

Or. it

Amendment 290
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo, Elena Yoncheva

Proposal for a regulation
Article 41 – paragraph 5

Text proposed by the Commission	*Amendment*
5. The border procedure ***may only*** be applied to unaccompanied minors and to minors ***below the age of 12 and*** their family members ***in the cases referred to in Article 40(5) (b)***.	5. The border procedure ***shall not*** be applied to unaccompanied minors and to minors ***with*** their family members.

Or. en

Justification

All children, their families and other vulnerable groups should be clearly exempted from this provision.

Amendment 291
Lukas Mandl

Proposal for a regulation

Article 41 – paragraph 5

Text proposed by the Commission	*Amendment*
5. The border procedure may only be applied to unaccompanied minors ***and to minors below the age of 12 and their family members in the*** cases ***referred to in*** Article ***40(5) (b)***.	5. The border procedure ***according to paragraph 2, point (a)*** may only be applied to unaccompanied minors ***in*** cases ***of*** Article ***40 (5)***.

Or. en

Amendment 292
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 5 a (new)

Text proposed by the Commission	*Amendment*
	5a. The border procedure shall not be applied to applicants with specific procedural or reception needs, following an assessment in line with Article 19 APR.

Or. en

Amendment 293
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 41 – paragraph 5 a (new)

Text proposed by the Commission	*Amendment*
	5a. The border procedure may only be applied to minors below the age of 12 and their family members in the cases referred to in Article 40(5).

Or. en

Amendment 294
Sira Rego

Proposal for a regulation
Article 41 – paragraph 5 a (new)

Text proposed by the Commission	*Amendment*
	5a. The border procedure shall not be applied to people in a situation of vulnerability or with special procedural and reception needs.

Or. en

Amendment 295
Sira Rego

Proposal for a regulation
Article 41 – paragraph 5 b (new)

Text proposed by the Commission	*Amendment*
	5b. The border procedure shall not be applied to persons identified as stateless or at risk of statelessness, who shall be referred to the competent authorities to conduct a full determination of whether the individual is stateless and offer adequate protection, in accordance with national law. If the individual has made an application for international protection, the statelessness determination shall be conducted either in parallel with or following the consideration of the application for international protection, without prejudice to the primacy of international protection status and with full respect of the principle of confidentiality

Or. en

Amendment 296
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz

Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Applicants subject to the border procedure shall not be authorised to enter the territory of the Member State, without prejudice to paragraphs 9 and 11.	***deleted***

Or. en

Justification

The legal fiction of non-entry is not explicitly laid down in the current APD, although it is accepted that it exists. There is no such provision in the Commission proposal from 2016 nor in the European Parliament position on that proposal. A person seeking international protection has a right to remain on the territory of the MS dealing with her application in accordance with Article 9 APR. This should be the starting point. This is in line with the approach of the Rapporteur for the Screening Regulation.

Amendment 297
Sira Rego

Proposal for a regulation
Article 41 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Applicants subject to the border procedure shall ***not*** be authorised to enter the territory of the Member State***, without prejudice to paragraphs 9 and 11***.	6. Applicants subject to the border procedure shall be authorised to enter the territory of the Member State ***and have access to all the rights under Directive XXX/XXX/EU [Reception Conditions Directive recast]. In accordance with Directive XXX/XXX/EU [Reception Conditions Directive recast], a Member State shall not hold an applicant in detention unless it has individually assessed that applicant's case based on the principles of necessity and proportionality. Detention might only be applied as a measure of last resort and for the shortest time as possible, provided that***

an individual and motivated assessment has demonstrated that less coercive measures cannot be applied effectively in the specific case and that detention would not be disproportionately harmful. A vulnerability assessment should always be carried out before detention and repeated regularly. Free legal aid should be available to challenge the detention order.

Or. en

Amendment 298
Juan Ignacio Zoido Álvarez, Elissavet Vozemberg-Vrionidi, Loucas Fourlas

Proposal for a regulation
Article 41 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Applicants subject to the border procedure shall not be ***authorised to enter*** the territory of the Member State, without prejudice to paragraphs 9 and 11.	6. Applicants subject to the border procedure shall not be ***allowed to move freely within*** the territory of the Member State, without prejudice to paragraphs 9 and 11. ***In accordance with Directive XXX/XXX/EU [Reception Conditions Directive recast], a Member State shall take proportionate measures to ensure that applicants in the border procedure shall not be allowed to move freely within their territory and shall not decide to hold an applicant in detention until it has individually assessed that applicant's case and effectively considered alternatives to detention or less coercive measures. Validation of detention shall be applied according to the Member State legislation.***

Or. en

Amendment 299
Maite Pagazaurtundúa

Proposal for a regulation
Article 41 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Applicants subject to the border procedure shall not be ***authorised to enter*** the territory of the Member State, without prejudice to paragraphs 9 and 11.	6. Applicants subject to the border procedure shall not be ***allowed to move freely within*** the territory of the Member State, without prejudice to paragraphs 9 and 11. ***In accordance with Directive XXX/XXX/EU [Reception Conditions Directive recast], a Member State shall take proportionate measures to ensure that applicants in the border procedure shall not be allowed to move freely within their territory not putting an applicant in detention until the applicant's case been individually assessed and effectively considered alternatives to detention or less coercive measures. Validation of detention shall be applied according to the Member State legislation***

Or. en

Amendment 300
Lukas Mandl

Proposal for a regulation
Article 41 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Applicants subject to the border procedure shall not be authorised to enter the territory of the Member State, without prejudice to paragraphs ***9 and 11***.	6. Applicants subject to the border procedure shall not be authorised to enter the territory of the Member State, without prejudice to paragraphs ***7 and 9***. ***Member States shall take all appropriate measures under relevant legislation to prevent unauthorised entry into their territory. This shall include detention in accordance with Article 8 Reception Conditions Directive.***

Or. en

Amendment 301

Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 41 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Applicants subject to the border procedure shall not be authorised to enter the territory of the Member State, without prejudice to paragraphs 9 and 11.	6. Applicants subject to the border procedure shall not be authorised to enter the territory of the Member State, without prejudice to paragraphs 9 and 11. ***When the border procedure ends, the decision to authorise entry shall be explicitly granted and recorded by the Member State carrying out the border procedure.***

Or. en

Amendment 302
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Applicants subject to the border procedure ***shall not be authorised to enter the territory*** of the Member State***, without prejudice to paragraphs 9 and 11***.	6. Applicants subject to the border procedure ***are under the jurisdiction*** of the Member State ***and shall be treated in accordance with Directive XXX/XXX/EU [Reception Conditions Directive recast]***.

Or. en

Amendment 303
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Applicants subject to the border procedure shall not be authorised to enter the territory of the Member State***, without***	6. Applicants subject to the border procedure shall not be authorised to enter the territory of the Member State.

prejudice to paragraphs 9 and 11.

Or. en

Amendment 304
Juan Ignacio Zoido Álvarez, Elissavet Vozemberg-Vrionidi, Loucas Fourlas

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

Text proposed by the Commission	*Amendment*
	6a. In accordance with Article 8(2) of Directive XXX/XXX/EU [Reception Conditions Directive recast] and Directive XXX/XXX/EU [Return Directive recast], Member States may hold an applicant in detention as part of the border procedure provided that it proves necessary following an individual assessment of that applicant's case and that other less coercive alternative measures cannot be applied effectively. The decision to hold an applicant in detention shall be made under the guarantees set out in Article 9 of Directive XXX/XXX/EU [Reception Conditions Directive recast], and the detention period shall be proportionate and terminated as soon as the grounds for it no longer apply.* ***In accordance with Article 7 of Directive XXX/XXX/EU [Reception Conditions Directive recast], Member States may restrict applicants' freedom of movement in order to process applications in the border procedure. ***Member States shall use the alternatives to detention laid down in their national law in accordance with Article 8(4) of Directive XXX/XXX/EU [Reception Conditions Directive recast] that are effectively available where the grounds for detention apply, in particular for specific groups such as minors or families.***

Or. en

Amendment 305
Laura Ferrara

Proposal for a regulation
Article 41 – paragraph 7

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

Or. it

Amendment 306
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 7

Text proposed by the Commission	*Amendment*
7. When applying the border procedure, Member States ***may*** carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) No XXX/XXX [Regulation on Asylum and Migration Management]**,** ***without prejudice*** to the ***deadlines established in paragraph 11***	7. When applying the border procedure, Member States ***shall*** carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) No XXX/XXX [Regulation on Asylum and Migration Management]**.** ***Following the transfer of the applicant*** to the ***responsible Member State, the Member State shall not apply or continue to apply a border procedure.***

Or. en

Amendment 307
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 7

Text proposed by the Commission	*Amendment*
7. When applying the border procedure, Member States may carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) No XXX/XXX [Regulation on Asylum and Migration Management], ***without prejudice to*** the deadlines ***established*** in paragraph 11	7. When applying the border procedure, Member States may carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) No XXX/XXX [Regulation on Asylum and Migration Management], ***the timeframe for establishing the Member State responsible shall not be part of*** the deadlines ***laid down*** in paragraph 11**.**

Or. en

Amendment 308
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 41 – paragraph 7

Text proposed by the Commission	*Amendment*
7. When applying the border procedure, Member States may carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) No XXX/XXX [Regulation on Asylum and Migration Management], without prejudice to the deadlines established in paragraph 11	7. When applying the border procedure, Member States may carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) No XXX/XXX [Regulation on Asylum and Migration Management], ***except in the cases referred to in paragraph 3,*** without prejudice to the deadlines established in paragraph 11

Or. en

Amendment 309
Juan Ignacio Zoido Álvarez, Elissavet Vozemberg-Vrionidi, Loucas Fourlas

Proposal for a regulation
Article 41 – paragraph 7

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

Or. en

Amendment 310
Sira Rego

Proposal for a regulation
Article 41 – paragraph 7

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

Or. en

Amendment 311
Jan-Christoph Oetjen, Sophia in 't Veld, Hilde Vautmans, Michal Šimečka

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

Text proposed by the Commission	*Amendment*
	7a. The responsible authorities shall explore alternatives to detention in border procedures, in particular for minors and applicants with specific vulnerabilities. Where possible, minors should be accommodated in non-custodial community-based placements while their immigration status is being resolved. Unaccompanied minors shall never be detained and shall be placed in appropriate alternative care settings in the national child protection system in line with their best interests and taking into account their views.

Or. en

Amendment 312
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 8

Text proposed by the Commission	*Amendment*
8. Where the conditions for applying the border procedure are met in the Member State from which the applicant is relocated, a border procedure may be applied by the Member State to which the applicant is relocated in accordance with Article [x] of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], including in the cases referred to in paragraph 1, point (d).	***deleted***

Or. en

Amendment 313
Sira Rego

Proposal for a regulation
Article 41 – paragraph 8

Text proposed by the Commission	*Amendment*
8. ***Where the conditions for applying*** the border procedure ***are met in*** the Member State ***from which the applicant is relocated, a border procedure may be applied by the Member State to*** which the applicant ***is relocated in accordance with Article [x] of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], including in the cases referred to in paragraph 1, point (d).***	8. ***In the case of asylum applicants who demonstrate to have family members or other meaningful links to another Member State,*** the border procedure ***shall not apply, or shall cease to apply.*** The Member State ***where the family members are present or with*** which the applicant ***has other meaningful links should be responsible for examining the application for international protection, provided that the persons concerned expressed their consent in writing.***

Or. en

Amendment 314
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 8

Text proposed by the Commission	*Amendment*
8. ***Where the conditions for applying*** the border procedure ***are met in*** the Member State ***from which the applicant is relocated, a border procedure may be applied by the Member State to which the applicant is relocated in accordance with Article [x] of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], including in the cases referred to in paragraph 1, point (d)***.	8. ***In the case of asylum applicants who demonstrate to have family members in another Member State,*** the border procedure ***shall not apply, or shall cease to apply.*** The Member State ***where the family members are present should be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing***.

Or. en

Amendment 315
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 9

Text proposed by the Commission	*Amendment*
9. Member States shall not apply or shall cease to apply the border procedure at any stage of the procedure where:	***deleted***
(a) the determining authority considers that the grounds for rejecting an application as inadmissible or for applying the accelerated examination procedure are not applicable or no longer applicable;	
(b) the necessary support cannot be provided to applicants with special procedural needs in the locations referred to in paragraph 14;	
(c) there are medical reasons for not applying the border procedure,;	
(d) detention is used in individual cases and the guarantees and conditions for detention as provided for in Articles 8 to 11 of Directive XXX/XXX/EU [Reception Conditions Directive] are not met or no longer met and the border procedure cannot be applied to the applicant concerned without detention.	
In such cases, the competent authority shall authorise the applicant to enter the territory of the Member State.	

Or. en

Amendment 316
Lukas Mandl

Proposal for a regulation
Article 41 – paragraph 9 – introductory part

Text proposed by the Commission	*Amendment*
9. Member States shall not apply or shall cease to apply the border procedure ***at any stage of the procedure*** where:	9. Member States shall not apply or shall cease to apply the border procedure ***in exceptional individual circumstances*** where:

Or. en

Justification

Exceptions should be limited to very special cases, or special circumstances, which in particular might lead to issues in relation to the Charter of fundamental rights.

Amendment 317
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 9 – point a

Text proposed by the Commission	*Amendment*
(a) the determining authority considers that the grounds for rejecting an application as inadmissible or for applying the accelerated examination procedure are not applicable or no longer applicable;	***deleted***

Or. en

Amendment 318
Sira Rego

Proposal for a regulation
Article 41 – paragraph 9 – point a

Text proposed by the Commission	*Amendment*
(a) the determining authority considers that the grounds for rejecting an application as inadmissible or for applying the accelerated examination procedure are not applicable or no longer applicable;	***deleted***

Or. en

Amendment 319
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz

Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 9 – point a

Text proposed by the Commission	*Amendment*
(a) the determining authority considers that the grounds ***for rejecting an application as inadmissible or*** for applying the accelerated examination procedure are not applicable or no longer applicable;	(a) the determining authority considers that the grounds for applying the accelerated examination procedure are not applicable or no longer applicable;

Or. en

Justification

Consequential amendment following change to Art. 41(2). Only on merit examinations should take place in a border procedure.

Amendment 320
Lukas Mandl

Proposal for a regulation
Article 41 – paragraph 9 – point a

Text proposed by the Commission	*Amendment*
(a) the determining authority ***considers*** that the grounds for ***rejecting an*** application ***as inadmissible or for applying the accelerated examination*** procedure ***are not applicable or*** no longer ***applicable***;	(a) the determining authority ***can provide substantial reasoning or there is clear evidence*** that the grounds for ***the*** application ***of the border*** procedure no longer ***apply***;

Or. en

Amendment 321
Jadwiga Wiśniewska, Patryk Jaki

Proposal for a regulation
Article 41 – paragraph 9 – point b

Text proposed by the Commission	*Amendment*
(b) the necessary support cannot be	***deleted***

provided to applicants with special procedural needs in the locations referred to in paragraph 14;

Or. pl

Amendment 322
Sira Rego

Proposal for a regulation
Article 41 – paragraph 9 – point b

Text proposed by the Commission	*Amendment*
(b) ***the necessary support cannot be provided to applicants*** with special procedural needs ***in the locations referred to in paragraph 14;***	(b) ***the applicant has been identified as vulnerable or*** with special procedural ***or reception*** needs***; Vulnerabilities should be continuously considered, identified and assessed at all stages of the procedure. Due consideration should be given to persons with less visible vulnerabilities, such as torture survivors, victims of human trafficking and persons with mental health conditions.***

Or. en

Amendment 323
Lukas Mandl

Proposal for a regulation
Article 41 – paragraph 9 – point b

Text proposed by the Commission	*Amendment*
(b) ***the necessary support*** cannot be ***provided to applicants with special procedural needs in the locations referred to in paragraph 14;***	(b) ***the application of the border procedure would result in a real risk of inhumane or degrading treatment for the person concerned within the meaning of Article 4 of the Charter of fundamental rights and this*** cannot be ***prevented by the application of individual guarantees and safeguards.***

Or. en

Amendment 324
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 9 – point b

Text proposed by the Commission	*Amendment*
(b) the ***necessary support cannot be provided to applicants with special*** procedural needs ***in the locations referred to in paragraph 14***;	(b) the ***applicant has been identified as an applicant with specific*** procedural ***or reception*** needs;

Or. en

Amendment 325
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 9 – point b

Text proposed by the Commission	*Amendment*
(b) ***the necessary support cannot be provided to*** applicants with special procedural ***needs in the locations referred to in paragraph 14;***	(b) ***there are vulnerable*** applicants with ***specific reception needs or in need of*** special procedural ***guarantees***

Or. en

Justification

Vulnerable applicants should be exempted by the procedure, including when a vulnerability is identified at a later stage of the procedure. The terminology used is from the EP position on the Reception Conditions Directive and Qualification Directive.

Amendment 326
Jadwiga Wiśniewska, Patryk Jaki

Proposal for a regulation
Article 41 – paragraph 9 – point c

Text proposed by the Commission	*Amendment*
(c) there are medical reasons for not applying the border procedure,;	***deleted***

Or. pl

Amendment 327
Lukas Mandl

Proposal for a regulation
Article 41 – paragraph 9 – point c

Text proposed by the Commission	*Amendment*
(c) there are medical reasons for not applying the border procedure,;	***deleted***

Or. en

Amendment 328
Sira Rego

Proposal for a regulation
Article 41 – paragraph 9 – point c

Text proposed by the Commission	*Amendment*
(c) there are medical reasons for not applying the border procedure,;	(c) there are medical reasons for not applying the border procedure, ***including mental health reasons***;

Or. en

Amendment 329
Lukas Mandl

Proposal for a regulation
Article 41 – paragraph 9 – point d

Text proposed by the Commission *Amendment*

(d) detention is used in individual cases and the guarantees and conditions for detention as provided for in Articles 8 to 11 of Directive XXX/XXX/EU [Reception Conditions Directive] are not met or no longer met and the border procedure cannot be applied to the applicant concerned without detention.	***deleted***

Or. en

Amendment 330
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 9 – point d a (new)

Text proposed by the Commission	*Amendment*
	(da) the debriefing following the screening pursuant to [Screening Regulation] contains elements that indicate that the applicant is in a vulnerable situation, is a victim of torture or has special reception or procedural needs.

Or. en

Amendment 331
Sira Rego

Proposal for a regulation
Article 41 – paragraph 9 – point d a (new)

Text proposed by the Commission	*Amendment*
	(da) restriction of movement is used and the conditions of the facilities are not in line with Directive XXX/XXX/EU [Reception Conditions Directive]

Or. en

Amendment 332
Sira Rego

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

Text proposed by the Commission	*Amendment*
In such cases, the competent authority shall authorise the applicant to enter the territory of the Member State.	***deleted***

Or. en

Amendment 333
Erik Marquardt

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

Text proposed by the Commission	*Amendment*
In such cases, the competent authority shall ***authorise the applicant to enter the territory*** of the ***Member State***.	In such cases, the competent authority shall ***continue to assess the applicant's claim in the regular asylum procedure. Vulnerabilities should be continuously considered, identified and assessed at all stages*** of the ***border procedure***. ***Due consideration should be given to persons with less visible vulnerabilities, such as torture survivors, victims of human trafficking and persons with mental health conditions.***

Or. en

Amendment 334
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

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

Text proposed by the Commission	*Amendment*
In such cases, the competent authority shall authorise the applicant to enter the territory of the Member State.	In such cases, the competent authority shall authorise the applicant to enter the territory of the Member State***, if he or she has not already been authorised to do so***.

Or. en

Amendment 335
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 9 a (new)

Text proposed by the Commission	*Amendment*
	9a. Without prejudice to the legal situation of non-entry, for serious illnesses where it is not possible to provide appropriate medical care at the border, the applicant could be transferred to the territory of the Member States to receive such medical care.

Or. en

Amendment 336
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 10

Text proposed by the Commission	*Amendment*
10. By way of derogation from Article 28 of this Regulation, applications subject to a border procedure shall be lodged no later than five days from registration for the first time or, following a relocation in accordance with Article [x] of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], five	***deleted***

days from when the applicant arrives in the Member State responsible following a transfer pursuant to Article 56(1), point (e), of that Regulation.

Or. en

Justification

There is no justification for providing persons seeking protection in a border procedure less rights than those in an ordinary procedure. The time-limits for lodging an application should be the same in both situations.

Amendment 337
Sira Rego

Proposal for a regulation
Article 41 – paragraph 10

Text proposed by the Commission	*Amendment*
10. By way of derogation from Article 28 of this Regulation, applications subject to a border procedure shall be lodged no later than five days from registration for the first time or, following a relocation in accordance with Article [x] of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], five days from when the applicant arrives in the Member State responsible following a transfer pursuant to Article 56(1), point (e), of that Regulation.	***deleted***

Or. en

Amendment 338
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 10

Text proposed by the Commission	*Amendment*
10. By way of derogation from Article	***deleted***

28 of this Regulation, applications subject to a border procedure shall be lodged no later than five days from registration for the first time or, following a relocation in accordance with Article [x] of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], five days from when the applicant arrives in the Member State responsible following a transfer pursuant to Article 56(1), point (e), of that Regulation.

Or. en

Amendment 339
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 10

Text proposed by the Commission	*Amendment*
10. By way of derogation from Article 28 of this Regulation, applications subject to a border procedure shall be lodged no later than ***five days*** from registration for the first time or, ***following a relocation in accordance with Article [x] of Regulation EU (No) XXX/XXX [Regulation on Asylum and Migration Management], five days*** from when the applicant arrives in the Member State responsible following a transfer pursuant to Article 56(1), point (e), of that Regulation.	10. By way of derogation from Article 28 of this Regulation, applications subject to a border procedure shall be lodged no later than ***one day*** from registration for the first time or, ***one day*** from when the applicant arrives in the Member State responsible following a transfer pursuant to Article 56(1), point (e), of that Regulation.

Or. en

Amendment 340
Jadwiga Wiśniewska, Patryk Jaki

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 1

Text proposed by the Commission	*Amendment*

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

Or. pl

Amendment 341
Sira Rego

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 1

Text proposed by the Commission	*Amendment*
11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall ***encompass the decision referred to in paragraph 2 and 3 and any decision on an appeal if applicable and shall*** be completed within 12 weeks from when the application is registered. ***Following*** that period, the applicant shall be authorised to enter the Member State's territory ***except when Article 41a(1) is applicable***.	11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall be completed within 12 weeks from when the application is registered. ***During*** that period, the applicant shall be authorised to enter the Member State's territory***. After the 12 weeks, applicants should be channelled into the regular asylum procedure, including in case of an ongoing appeal.***

Or. en

Amendment 342
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 1

Text proposed by the Commission	*Amendment*
11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall encompass the decision referred to in paragraph 2 and ***3 and*** any decision on an appeal if applicable and shall be completed within ***12*** weeks from when the application is registered. ***Following that period, the applicant shall be authorised to enter the Member State's territory except when Article 41a(1) is applicable.***	11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall encompass the decision referred to in paragraph 2 and any decision on an appeal if applicable and shall be completed within ***25*** weeks from when the application is registered.

Or. en

Amendment 343
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo, Petar Vitanov, Giuliano Pisapia

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 1

Text proposed by the Commission	*Amendment*
11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall encompass the decision referred to in paragraph 2 and ***3 and any*** decision on an appeal if applicable and shall be completed within 12 weeks from when the application is registered. Following that period, the applicant shall be authorised to enter the Member State's territory ***except when Article 41a(1) is applicable***.	11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall encompass the decision referred to in paragraph 2 and ***may include a*** decision on an appeal if applicable and shall be completed within 12 weeks from when the application is registered. ***If,*** following that period***, the first instance decision and the decision on appeal, if applicable, have not been taken***, the applicant shall be authorised to enter the Member State's territory ***if he or she has not already been to do so***.

Or. en

Justification

The provisions of Article 55 already present a significant interference with the organisation

of judicial work within the Member States. Adding further layers of complexity and new deadlines is not helpful.

Amendment 344
Juan Ignacio Zoido Álvarez, Elissavet Vozemberg-Vrionidi, Loucas Fourlas

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 1

Text proposed by the Commission	*Amendment*
11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall encompass the decision referred to in paragraph 2 and 3 and any decision on an appeal if applicable and shall be completed within 12 weeks from when the application is registered. ***Following that period, the applicant shall be authorised to enter the Member State's territory except when Article 41a(1) is applicable.***	11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall encompass the decision referred to in paragraph 2 and 3 and any decision on an appeal if applicable and shall be completed within 12 weeks from when the application is registered.

Or. en

Amendment 345
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 1

Text proposed by the Commission	*Amendment*
11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall ***encompass the decision referred to in paragraph 2 and 3 and any decision on an appeal if applicable and shall*** be completed within 12 weeks from when the application is registered. Following that period, the applicant shall be ***authorised to enter the Member State's territory except when***	11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall be completed within 12 weeks from when the application is registered. Following that period, the applicant shall be ***channelled into the regular asylum procedure***.

Article 41a(1) is applicable.

Or. en

Amendment 346
Assita Kanko

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 1

Text proposed by the Commission	*Amendment*
11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall encompass the decision referred to in paragraph 2 and 3 and any decision on an appeal if applicable and shall be completed within ***12*** weeks from when the application is registered. Following that period, the applicant shall be authorised to enter the Member State's territory except when Article 41a(1) is applicable.	11. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall encompass the decision referred to in paragraph 2 and 3 and any decision on an appeal if applicable and shall be completed within ***16*** weeks from when the application is registered. Following that period, the applicant shall be authorised to enter the Member State's territory except when Article 41a(1) is applicable.

Or. en

Amendment 347
Sira Rego

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 2

Text proposed by the Commission	*Amendment*
By way of derogation from the time limits set in Articles 34, 40(2) and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within 12 weeks from when the application is	***deleted***

registered.

Or. en

Amendment 348
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo, Petar Vitanov, Giuliano Pisapia

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 2

Text proposed by the Commission	*Amendment*
By way of derogation from the time limits set in Articles 34, 40(2) and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within 12 weeks from when the application is registered.	***deleted***

Or. en

Amendment 349
Patryk Jaki, Jadwiga Wiśniewska

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 2

Text proposed by the Commission	*Amendment*
By way of derogation from the time limits set in Articles 34, 40(2) and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within	***deleted***

12 weeks from when the application is registered.

Or. pl

Amendment 350
Assita Kanko

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 2

Text proposed by the Commission	*Amendment*
By way of derogation from the time limits set in Articles 34, 40(2) and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within ***12*** weeks from when the application is registered.	By way of derogation from the time limits set in Articles 34, 40(2) and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within ***16*** weeks from when the application is registered.

Or. en

Amendment 351
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 2

Text proposed by the Commission	*Amendment*
By way of derogation from the time limits set in Articles 34, 40(2) and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within ***12*** weeks from when the application is registered.	By way of derogation from the time limits set in Articles 34, 40(2) and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within ***25*** weeks from when the application is registered.

Or. en

Amendment 352
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 11 – subparagraph 2

Text proposed by the Commission	*Amendment*
By way of derogation from the time limits set in Articles 34***, 40(2)*** and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within 12 weeks from when the application is registered.	By way of derogation from the time limits set in Articles 34***(2)*** and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within 12 weeks from when the application is registered.

Or. en

Amendment 353
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – introductory part

Text proposed by the Commission	*Amendment*
12. ***By way of derogation from paragraph 11 of this Article,*** the applicant shall not be authorised to enter the Member State's territory ***where:***	12. The applicant shall not be authorised to enter the Member State's territory ***until a positive decision on the merits of the application is rendered granting international protection to the applicant.***

Or. en

Amendment 354
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – introductory part

Text proposed by the Commission	*Amendment*
12. ***By way of derogation from paragraph 11 of this Article, the applicant*** shall ***not be authorised to enter the Member State's territory where:***	12. ***During the border procedure applicants*** shall ***have the automatic right to remain during the period of appeal against a negative asylum decision and pending its outcome.***

Or. en

Amendment 355
Sira Rego

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – introductory part

Text proposed by the Commission	*Amendment*
12. ***By way of derogation from paragraph 11 of this Article, the applicant*** shall ***not be authorised to enter the Member State's territory where:***	12. ***Applicants*** shall ***have the right to remain during the appeal until the final decision.***

Or. en

Amendment 356
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – point a

Text proposed by the Commission	*Amendment*
(a) the applicant's right to remain has been revoked in accordance with Article 9(3), point (a);	***deleted***

Or. en

Amendment 357

Sira Rego

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – point a

Text proposed by the Commission	*Amendment*
(a) the applicant's right to remain has been revoked in accordance with Article 9(3), point (a);	***deleted***

Or. en

Amendment 358
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – point a

Text proposed by the Commission	*Amendment*
(a) the applicant's right to remain has been revoked in accordance with Article 9(3), point (a);	***deleted***

Or. en

Amendment 359
Sira Rego

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) the applicant has no right to remain in accordance with Article 54 and has not requested to be allowed to remain for the purposes of an appeal procedure within the applicable time-limit;	***deleted***

Or. en

Amendment 360
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) the applicant has no right to remain in accordance with Article 54 and has not requested to be allowed to remain for the purposes of an appeal procedure within the applicable time-limit;	***deleted***

Or. en

Amendment 361
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) the applicant has no right to remain in accordance with Article 54 and has not requested to be allowed to remain for the purposes of an appeal procedure within the applicable time-limit;	***deleted***

Or. en

Amendment 362
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1– point b

Text proposed by the Commission	*Amendment*
(b) ***the applicant has no*** right to remain in accordance with Article 54 ***and has not requested to be allowed to remain***	(b) ***a court or tribunal has revoked the applicant's*** right to remain in accordance with Article 54;

for the purposes of an appeal procedure within the applicable time-limit;

Or. en

Justification

To ensure that the right to an effective remedy is meaningful, an applicant must always have the right to remain pending the first level of appeal. It should always be for a Court or Tribunal to determine, on the facts, whether a right to remain should be granted. This is equally applicable to subsequent applications.

Amendment 363
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – point c

Text proposed by the Commission	*Amendment*
(c) the applicant has no right to remain in accordance with Article 54 and a court or tribunal has decided that the applicant is not to be allowed to remain pending the outcome of an appeal procedure.	***deleted***

Or. en

Amendment 364
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – point c

Text proposed by the Commission	*Amendment*
(c) the applicant has no right to remain in accordance with Article 54 and a court or tribunal has decided that the applicant is not to be allowed to remain pending the outcome of an appeal procedure.	***deleted***

Or. en

Amendment 365
Sira Rego

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – point c

Text proposed by the Commission	*Amendment*
(c) the applicant has no right to remain in accordance with Article 54 and a court or tribunal has decided that the applicant is not to be allowed to remain pending the outcome of an appeal procedure.	***deleted***

Or. en

Amendment 366
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – point c

Text proposed by the Commission	*Amendment*
(c) the applicant has no right to remain in accordance with Article 54 and a court or tribunal has decided that the applicant is not to be allowed to remain pending the outcome of an appeal procedure.	***deleted***

Or. en

Amendment 367
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 1 – point c a (new)

Text proposed by the Commission	*Amendment*
	(ca) the applicant is a danger to national security or public order.

Or. en

Amendment 368
Sira Rego

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 2

Text proposed by the Commission	*Amendment*
In such cases, where the applicant has been subject to a return decision issued in accordance with the Directive XXX/XXX/EU [Return Directive] or a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, Article 41a shall apply.	***deleted***

Or. en

Amendment 369
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 2

Text proposed by the Commission	*Amendment*
In such cases, where the applicant has been subject to a return decision issued in accordance with the Directive XXX/XXX/EU [Return Directive] or a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, Article 41a shall apply.	***deleted***

Or. en

Amendment 370
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez

Proposal for a regulation
Article 41 – paragraph 12 – subparagraph 2

Text proposed by the Commission	*Amendment*
In such cases, where the applicant has been subject to a return decision issued in accordance with the Directive XXX/XXX/EU [Return Directive] or a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, Article 41a ***shall apply***.	In such cases, where the applicant has been subject to a return decision issued in accordance with the Directive XXX/XXX/EU [Return Directive] or a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, Article 41a ***may be applied***.

Or. en

Amendment 371
Sira Rego

Proposal for a regulation
Article 41 – paragraph 13

Text proposed by the Commission	*Amendment*
13. During the examination of applications subject to a border procedure, the applicants shall be ***kept at or in proximity*** to the ***external border or transit zones***. Each Member State shall notify to the Commission, [two months after the date of the application of this Regulation] at the latest, the locations where the border procedure will be carried out***, at the external borders, in the proximity to the external border or transit zones, including when applying paragraph 3*** and ensure that the capacity of those locations is sufficient to process the applications covered by that paragraph. Any changes in the identification of the locations at which the border procedure is applied, shall be notified to the Commission two months in	13. During the examination of applications subject to a border procedure, the applicants shall be ***accommodated in accordance with Article 7 of Directive XXX/XXX/EU (Reception Conditions Directive). The assigned area shall not affect the unalienable sphere of private life and shall allow effective access to all rights and benefits under this Directive. Liberty should be the norm in these locations and detention should remain a measure of last resort. Any detention decision must be taken on the basis of an individual assessment. It must be determined to be necessary, reasonable and proportionate to a legitimate purpose. The decision to place in detention must be reviewed with the least possible delay by a judicial or other independent authority***

advance of the changes taking effect.

and be subject to the ***right to appeal. The necessity to maintain in detention must be reviewed periodically***. Each Member State shall notify to the Commission, [two months after the date of the application of this Regulation] at the latest, the locations where the border procedure will be carried out and ensure that the capacity of those locations is sufficient to process the applications covered by that paragraph ***while guaranteeing all rights under the Reception Conditions Directive***. Any changes in the identification of the locations at which the border procedure is applied, shall be notified to the Commission two months in advance of the changes taking effect.

Or. en

Amendment 372
Jan-Christoph Oetjen

Proposal for a regulation
Article 41 – paragraph 13

Text proposed by the Commission	*Amendment*
13. During the examination of applications subject to a border procedure, the applicants ***shall*** be kept at or in proximity to the external border or transit zones. Each Member State shall notify to the Commission, [two months after the date of the application of this Regulation] at the latest, the locations where the border procedure will be carried out***, at the external borders, in the proximity to the external border or transit zones***, including when applying paragraph 3 and ensure that the capacity of those locations is sufficient to process the applications covered by that paragraph. Any changes in the identification of the locations at which the border procedure is applied, shall be notified to the Commission two months in	13. During the examination of applications subject to a border procedure, the applicants ***may*** be kept ***at any appropriate location within the territory of a Member State, including*** at or in proximity to the external border or transit zones ***provided that they are in full compliance with Directive XXX/XXX/EU (Reception Conditions Directive) and that the applicants' specific needs are properly safeguarded***. Each Member State shall notify to the Commission, [two months after the date of the application of this Regulation] at the latest, the locations where the border procedure will be carried out, including when applying paragraph 3 and ensure that the capacity of those locations is sufficient to process the applications covered by that paragraph.

advance of the changes taking effect.	Any changes in the identification of the locations at which the border procedure is applied, shall be notified to the Commission two months in advance of the changes taking effect.

Or. en

Amendment 373
Juan Ignacio Zoido Álvarez

Proposal for a regulation
Article 41 – paragraph 13

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

Or. es

Amendment 374
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 13

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

Or. en

Amendment 375
Assita Kanko

Proposal for a regulation
Article 41 – paragraph 13

Text proposed by the Commission	*Amendment*
13. During the examination of applications subject to a border procedure, the applicants shall be kept at or in proximity to the external border or transit zones. Each Member State shall notify to the Commission, [two months after the date of the application of this Regulation] at the latest, the locations where the border procedure will be carried out***, at the external borders, in the proximity to the external border or transit zones***, including when applying paragraph 3 and ensure that the capacity of those locations is sufficient	13. During the examination of applications subject to a border procedure, the applicants shall be kept at or in proximity to the external border or transit zones***. Member States may also choose other locations, based on geographical, logistical or other needs***. Each Member State shall notify to the Commission, [two months after the date of the application of this Regulation] at the latest, the locations where the border procedure will be carried out, including when applying paragraph 3 and ensure that the capacity of those

to process the applications covered by that paragraph. Any changes in the identification of the locations at which the border procedure is applied, shall be notified to the Commission two months in advance of the changes taking effect.	locations is sufficient to process the applications covered by that paragraph. Any changes in the identification of the locations at which the border procedure is applied, shall be notified to the Commission two months in advance of the changes taking effect.

Or. en

Amendment 376
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 13

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

Or. en

Justification

The Reception Conditions Directive applies to all applicants for international protection. This applies equally to the border procedure, which in any event should not be mandatory. Other changes are for consistency purposes.

Amendment 377
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 13

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

Or. en

Amendment 378
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 13 a (new)

Text proposed by the Commission	*Amendment*
	13a. Member States should ensure that the necessary arrangements are made to accommodate applicants in accordance with Article 7 [Reception Conditions Directive], which states that applicants may move freely within the territory of the host Member State or within an area

assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow effective access to all rights and benefits under this Directive.

Or. en

Amendment 379
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 13 b (new)

Text proposed by the Commission	*Amendment*
	13b. Where Member States impose restrictions on freedom of movement, a decision in writing should qualify the measures as either detention or restrictions on freedom of movement, and should state the reasons for these measures in fact and law.

Or. en

Amendment 380
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 13 c (new)

Text proposed by the Commission	*Amendment*
	13c. A Member State shall not hold an applicant in detention in the context of a border procedure unless it has individually assessed that applicant's case based on the principles of necessity and proportionality. Detention shall only be applied as a measure of last resort and for the shortest time as possible, provided that an individual and motivated assessment has demonstrated that less coercive measures cannot be applied

effectively in the specific case and that detention would not be disproportionately harmful. A vulnerability assessment should always be carried out before detention and repeated regularly. Free legal aid should be available to challenge the detention order.

Or. en

Amendment 381
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 13 d (new)

Text proposed by the Commission	*Amendment*
	13d. Member States shall ensure that staff who engage in the border procedure have been provided with appropriate training including on fundamental rights.

Or. en

Amendment 382
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 13 e (new)

Text proposed by the Commission	*Amendment*
	13e. Member States shall set up an independent monitoring mechanism, allowing independent human right bodies in line with the Paris Principles, to regularly assess the conditions in the facilities used for the purpose of a border procedure and issue recommendations for their amelioration, sharing them with the Commission.

Or. en

Amendment 383
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 13 f (new)

Text proposed by the Commission	*Amendment*
	13f. National authorities shall grant humanitarian actors, international organisations, non-governmental organisations and other relevant stakeholders effective access to all applicants subject to border procedures as well as the facilities in which border procedures take place at the borders or in transit zones.

Or. en

Amendment 384
Assita Kanko

Proposal for a regulation
Article 41 – paragraph 14

Text proposed by the Commission	*Amendment*
14. In situations where the capacity of the locations notified by Member States pursuant to paragraph 14 is temporarily insufficient to process the applicants covered by paragraph 3, Member States may designate other locations within the territory of the Member State and upon notification to the Commission accommodate applicants there, on a temporary basis and for the shortest time necessary.	***deleted***

Or. en

Amendment 385

Juan Ignacio Zoido Álvarez, Elissavet Vozemberg-Vrionidi, Loucas Fourlas

Proposal for a regulation
Article 41 – paragraph 14

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

Or. en

Amendment 386
Sira Rego

Proposal for a regulation
Article 41 – paragraph 14

Text proposed by the Commission	*Amendment*
14. In situations where the capacity of the locations notified by Member States pursuant to paragraph 14 is temporarily insufficient to process the applicants covered by paragraph 3, Member States ***may designate other locations within the territory of the Member State and upon notification to the Commission accommodate*** applicants ***there, on a temporary basis and for the shortest time necessary***.	14. In situations where the capacity of the locations notified by Member States pursuant to paragraph 14 is temporarily insufficient to process the applicants covered by paragraph 3, Member States ***shall channel*** applicants ***into the regular asylum procedure***.

Or. en

Amendment 387
Erik Marquardt

Proposal for a regulation
Article 41 – paragraph 14

Text proposed by the Commission	*Amendment*
14. In situations where the capacity of the locations notified by Member States pursuant to paragraph ***14*** is temporarily insufficient to process the applicants covered by paragraph 3, Member States ***may designate other locations within the territory of the Member State and upon notification to the Commission accommodate*** applicants ***there, on a temporary basis and for the shortest time necessary***.	14. In situations where the capacity of the locations notified by Member States pursuant to paragraph ***13*** is temporarily insufficient to process the applicants covered by paragraph 3, Member States ***shall channel*** applicants ***into the regular asylum procedure***.

Or. en

Amendment 388
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 – paragraph 14

Text proposed by the Commission	*Amendment*
14. In situations where the capacity of the locations notified by Member States pursuant to paragraph 14 is temporarily insufficient to process the applicants covered by paragraph 3, Member States may designate other locations within the territory of the Member State and upon notification to the Commission accommodate applicants there***, on a temporary basis and for the shortest time necessary***.	14. In situations where the capacity of the locations notified by Member States pursuant to paragraph 14 is temporarily insufficient to process the applicants covered by paragraph 3, Member States may designate other locations within the territory of the Member State and upon notification to the Commission ***to*** accommodate applicants there.

Or. en

Amendment 389

Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 – paragraph 14

Text proposed by the Commission	*Amendment*
14. In situations where the capacity of the locations notified by Member States pursuant to paragraph ***14*** is temporarily insufficient to process the applicants covered by ***paragraph 3***, Member States may designate other locations within the territory of the Member State and upon notification to the Commission accommodate applicants there, on a temporary basis and for the shortest time necessary.	14. In situations where the capacity of the locations notified by Member States pursuant to paragraph ***13*** is temporarily insufficient to process the applicants covered by ***border procedures***, Member States may designate other locations within the territory of the Member State and upon notification to the Commission accommodate applicants there, on a temporary basis and for the shortest time necessary.

Or. en

Amendment 390
Juan Ignacio Zoido Álvarez

Proposal for a regulation
Article 41 – paragraph 14

Text proposed by the Commission	*Amendment*
14. ***In situations where the capacity of the*** locations ***notified by Member States pursuant to paragraph 14 is temporarily insufficient to process the applicants*** covered by paragraph 3***, Member States may designate other locations within the territory of the Member State*** and upon notification to the Commission accommodate applicants there, on a temporary basis and for the shortest time necessary.	14. ***Member States may, if need be, designate other*** locations ***within their territory for the purpose of processing applications*** covered by paragraph 3 and***,*** upon notification to the Commission***,*** accommodate applicants there, on a temporary basis and for the shortest time necessary.

Or. es

Amendment 391
Sira Rego

Proposal for a regulation
Article 41 – paragraph 14 a (new)

Text proposed by the Commission	*Amendment*
	14a. Member States shall ensure that applicants have effective access to Non-governmental organisations in facilities used for the purposes of a border procedure. Non-governmental organisations shall be allowed to access these facilities without having to sign separate bilateral agreement and shall be able to carry out unannounced and frequent visits in compliance with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Under no circumstance shall non-governmental organisations be requested to share data or information on beneficiaries with state authorities or other entities.

Or. en

Amendment 392
Sira Rego

Proposal for a regulation
Article 41 – paragraph 14 b (new)

Text proposed by the Commission	*Amendment*
	14b. Where Member States impose restrictions on freedom of movement, a decision in writing should qualify the measures as either detention or restrictions on freedom of movement, and the reasons for the actual restrictions ordered should be stated in fact be guaranteed to and in law.

Or. en

Amendment 393
Sira Rego

Proposal for a regulation
Article 41 – paragraph 14 c (new)

Text proposed by the Commission	*Amendment*
	14c. When applying the border procedure, Member States shall take into account that an applicant for international protection should not be held in detention for the sole reason that he or she is seeking international protection. Detention can only be imposed as a measure of a last resort based on the legal grounds set out in article 8 of the Reception Directive (RCD) and 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.

Or. en

Amendment 394
Sira Rego

Proposal for a regulation
Article 41 – paragraph 14 d (new)

Text proposed by the Commission	*Amendment*
	14d. Applicants should be have the right to free legal assistance at all stages of the procedure, as soon as the application for international protection is made. In case of individuals residing or being held in facilities operated by Member States, there should be immediate and unhindered access of legal practitioners to individuals in such facilities, including in quarantine sites. Free legal aid should also challenge any detention order or restriction of movement

restrictions.

Or. en

Amendment 395
Sira Rego

Proposal for a regulation
Article 41 a – title

Text proposed by the Commission	*Amendment*
Border procedure for carrying out return	***deleted***

Or. en

Amendment 396
Erik Marquardt

Proposal for a regulation
Article 41 a – title

Text proposed by the Commission	*Amendment*
Border procedure for carrying out return	***deleted***

Or. en

Amendment 397
Sira Rego

Proposal for a regulation
Article 41 a – paragraph 1

Text proposed by the Commission	*Amendment*
1. Third-country nationals and stateless persons whose application is rejected in the context of the procedure referred to in Article 41 shall not be authorised to enter the territory of the Member State.	***deleted***

Or. en

Amendment 398
Erik Marquardt

Proposal for a regulation
Article 41 a – paragraph 1

Text proposed by the Commission	*Amendment*
1. Third-country nationals and stateless persons whose application is rejected in the context of the procedure referred to in Article 41 shall not be authorised to enter the territory of the Member State.	***deleted***

Or. en

Amendment 399
Caterina Chinnici, Javier Moreno Sánchez

Proposal for a regulation
Article 41 a – paragraph 1

Text proposed by the Commission	*Amendment*
1. Third-country nationals and stateless persons whose application is rejected in the context of the procedure referred to in Article 41 shall not be authorised to enter the territory of the Member State.	1. ***Adult*** third-country nationals and stateless persons whose application is rejected in the context of the procedure referred to in Article 41 shall not be authorised to enter the territory of the Member State***, except when they are accompanied by minor family members***. ***When there is a doubt about the applicant's age, the benefit of the doubt shall be given.***

Or. en

Amendment 400
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Birgit Sippel, Javier Moreno Sánchez, Pietro

Bartolo, Giuliano Pisapia

Proposal for a regulation
Article 41 a – paragraph 1

Text proposed by the Commission	*Amendment*
1. Third-country nationals ***and stateless persons*** whose application is rejected in the context of the procedure referred to in Article 41 shall not be authorised to enter the territory of the Member State.	1. Third-country nationals whose application is rejected in the context of the procedure referred to in Article 41 ***and who have not been authorised to enter the territory of the Member State,*** shall not be authorised to enter the territory of that Member State, ***without prejudice to Article 6(5) of the Regulation (EU) 2016/399***.

Or. en

Justification

For consistency with earlier amendments. Under the SBC, MS retain a discretion to permit entry. We will not remove that discretion here.

Amendment 401
Sira Rego

Proposal for a regulation
Article 41 a – paragraph 2

Text proposed by the Commission	*Amendment*
2. Persons referred to in paragraph 1 shall be kept for a period not exceeding 12 weeks in locations at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it can resort to the use of other locations within its territory. The 12-week period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain.	***deleted***

Or. en

Amendment 402
Erik Marquardt

Proposal for a regulation
Article 41 a – paragraph 2

Text proposed by the Commission	*Amendment*
2. Persons referred to in paragraph 1 shall be kept for a period not exceeding 12 weeks in locations at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it can resort to the use of other locations within its territory. The 12-week period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain.	***deleted***

Or. en

Amendment 403
Lukas Mandl

Proposal for a regulation
Article 41 a – paragraph 2

Text proposed by the Commission	*Amendment*
2. Persons referred to in paragraph 1 shall be kept for a period not exceeding ***12*** weeks in locations at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it can resort to the use of other locations ***within its territory. The 12-*** week period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain.	2. Persons referred to in paragraph 1 shall be kept for a period not exceeding ***20*** weeks in locations at or in proximity to ***the external border or transit zones by applying detention according to Article 41g or where conditions for detention provided for in Article 41g are not met or no longer met by requiring them to reside at*** the external border or transit zones; where a Member State cannot accommodate them in those locations, it can resort to the use of other locations ***in proximity to the external border or transit zones. The 20-***week period shall start from when the applicant, third-country national or stateless person no longer has a right to

remain and is not allowed to remain.

Or. en

Justification

Persons in the border return procedure should be referred to detention or alternative measures by the authorities as important measures to avoid secondary movements.

Amendment 404
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 a – paragraph 2

Text proposed by the Commission	*Amendment*
2. Persons referred to in paragraph 1 shall be ***kept*** for a period not exceeding 12 weeks in locations at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it can resort to the use of other locations within its territory. The 12-week period shall start from when the applicant***, third-country national or stateless person*** no longer has a right to remain ***and is not allowed*** to remain.	2. Persons referred to in paragraph 1 shall be ***accommodated*** for a period not exceeding 12 weeks in locations at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it can resort to the use of other locations within its territory. The 12-week period shall start from when the applicant no longer has a right to remain ***or has had his or her right*** to remain ***revoked by a court or tribunal***. ***Unaccompanied minors, minors with their families, and other vulnerable groups including persons with specific reception needs or in need of special procedural guarantees shall be exempted from the border procedure for carrying out return.***

Or. en

Justification

For consistency with earlier amendments. As for the accelerated and asylum border procedure, minors and vulnerable applicants should be exempted from the return border procedure.

Amendment 405
Assita Kanko

Proposal for a regulation
Article 41 a – paragraph 2

Text proposed by the Commission	*Amendment*
2. Persons referred to in paragraph 1 shall be kept for a period not exceeding ***12*** weeks in locations at or in proximity to the external border or transit zones***; where a Member State cannot accommodate them in those*** locations***, it can resort to the use of other locations within its territory. The 12***-week period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain.	2. Persons referred to in paragraph 1 shall be kept for a period not exceeding ***16*** weeks in locations at or in proximity to the external border or transit zones ***or in other designated*** locations***. The 16***-week period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain.

Or. en

Amendment 406
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 41 a – paragraph 2

Text proposed by the Commission	*Amendment*
2. Persons referred to in paragraph 1 shall be kept for a period not exceeding 12 weeks in locations at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it can resort to the use of other locations within its territory. The 12-week period shall start from when the ***applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain.***	2. Persons referred to in paragraph 1 shall be kept for a period not exceeding 12 weeks in locations at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it can resort to the use of other locations within its territory***, provided that the efficiency of the procedure and restrictions to the freedom of movement can be preserved***. The 12-week period shall start from when the ***return decision have gained legal force.***

Or. en

Amendment 407
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 a – paragraph 2

Text proposed by the Commission	*Amendment*
2. Persons referred to in paragraph 1 shall be kept for a period not exceeding ***12 weeks*** in locations at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it can resort to the use of other locations within its territory. The ***12-week*** period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain.	2. Persons referred to in paragraph 1 shall be kept for a period not exceeding ***4 months*** in locations at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it can resort to the use of other locations within its territory. The ***4 months*** period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain.

Or. en

Amendment 408
Erik Marquardt

Proposal for a regulation
Article 41 a – paragraph 3

Text proposed by the Commission	*Amendment*
3. For the purposes of this Article, Article 3, Article 4(1), Articles 5 to 7, Article 8(1) to (5), Article 9(2) to (4), Articles 10 to 13, Article 15, Article 17(1), Article 18(2) to (4) and Articles 19 to 21 of Directive XXX/XXX/EU [recast Return Directive] shall apply.	***deleted***

Or. en

Amendment 409
Sira Rego

Proposal for a regulation
Article 41 a – paragraph 3

Text proposed by the Commission	*Amendment*
3. For the purposes of this Article, Article 3, Article 4(1), Articles 5 to 7, Article 8(1) to (5), Article 9(2) to (4), Articles 10 to 13, Article 15, Article 17(1), Article 18(2) to (4) and Articles 19 to 21 of Directive XXX/XXX/EU [recast Return Directive] shall apply.	***deleted***

Or. en

Amendment 410
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 a – paragraph 3

Text proposed by the Commission	*Amendment*
3. ***For the purposes of this Article, Article 3, Article 4(1), Articles 5 to 7, Article 8(1) to (5), Article 9(2) to (4), Articles 10 to 13, Article 15, Article 17(1), Article 18(2) to (4) and Articles 19 to 21 of Directive XXX/XXX/EU [recast*** Return Directive***] shall apply***.	3. ***When applying the border procedure for carrying out return, the*** Return Directive ***applies to all elements of the return procedure that are not regulated in this Article***.

Or. en

Justification

Unless APR lays down specific rules on Return, the Return Directive should apply. This is a clearer legislative outcome than defining certain specific provisions of the Directive which apply.

Amendment 411
Balázs Hidvéghi, Loránt Vincze

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

Text proposed by the Commission	*Amendment*
	3a. When the return decision cannot be enforced within the maximum period referred to in paragraph 2, Member States shall continue return procedures in accordance with Directive XXX/XXX/EU [Return Directive]. Persons referred to in this paragraph shall not be authorised to enter the territory of the Member State.

Or. en

Amendment 412
Erik Marquardt

Proposal for a regulation
Article 41 a – paragraph 4

Text proposed by the Commission	*Amendment*
4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure not exceeding 15 days.	***deleted***

Or. en

Amendment 413
Sira Rego

Proposal for a regulation
Article 41 a – paragraph 4

Text proposed by the Commission	*Amendment*
4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure not exceeding 15 days.	***deleted***

Or. en

Amendment 414
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 41 a – paragraph 4

Text proposed by the Commission	*Amendment*
4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure not exceeding 15 days.	4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure not exceeding 15 days. ***In the framework of this Article, the European Border and Coast Guard Agency and the European Union Agency for Asylum shall, within its mandate, support national authorities with return operations.***

Or. en

Amendment 415
Juan Ignacio Zoido Álvarez, Elissavet Vozemberg-Vrionidi, Loucas Fourlas

Proposal for a regulation
Article 41 a – paragraph 4

Text proposed by the Commission	*Amendment*
4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure not exceeding ***15 days***.	4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure not exceeding ***20 days and shall cooperate with competent authorities***.

Or. en

Amendment 416
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 a – paragraph 4

Text proposed by the Commission	*Amendment*
4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure not exceeding 15 days.	4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 ***who have not been detained*** may be granted a period for voluntary departure not exceeding 15 days.

Or. en

Amendment 417
Assita Kanko

Proposal for a regulation
Article 41 a – paragraph 4

Text proposed by the Commission	*Amendment*
4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure not exceeding ***15*** days.	4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure not exceeding ***20*** days.

Or. en

Amendment 418
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 a – paragraph 4

Text proposed by the Commission	*Amendment*
4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure ***not exceeding 15*** days.	4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure ***of 30*** days.

Or. en

Justification

This is the standard period for voluntary departure in line with the compromise found for the Returns Directive.

Amendment 419
Nadine Morano

Proposal for a regulation
Article 41 a – paragraph 4 a (new)

Text proposed by the Commission	*Amendment*
	4a. A period for voluntary departure cannot be granted where it has been assessed that third-country nationals pose a risk of absconding, have had a previous application for legal stay dismissed as fraudulent, manifestly unfounded or inadmissible, or they pose a risk to public policy, public security or national security.

Or. fr

Amendment 420
Erik Marquardt

Proposal for a regulation
Article 41 a – paragraph 5

Text proposed by the Commission	*Amendment*
5. Persons referred to in paragraph 1 who have been detained during the procedure referred to in Article 41 and who no longer have a right to remain and are not allowed to remain may continue to be detained for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process.	***deleted***

Or. en

Amendment 421
Sira Rego

Proposal for a regulation
Article 41 a – paragraph 5

Text proposed by the Commission	*Amendment*
5. Persons referred to in paragraph 1 who have been detained during the procedure referred to in Article 41 and who no longer have a right to remain and are not allowed to remain may continue to be detained for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process.	***deleted***

Or. en

Amendment 422
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 41 a – paragraph 5

Text proposed by the Commission	*Amendment*
5. Persons referred to in paragraph 1 who have been detained during the procedure referred to in Article 41 and who no longer have a right to remain and are not allowed to remain may continue to be detained for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process.	5. Persons referred to in paragraph 1 who have been detained during the procedure referred to in Article 41 and who no longer have a right to remain and are not allowed to remain may continue to be detained for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process. ***A Member State may, in accordance with national law, impose additional obligations on the applicant in order to prevent unauthorised movements.***

Or. en

Amendment 423
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 a – paragraph 5

Text proposed by the Commission	*Amendment*
5. ***Persons*** referred to in paragraph 1 who ***have*** been detained during the procedure referred to in Article 41 and who no longer ***have*** a right to remain ***and are not allowed*** to remain may continue to be detained for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process.	5. ***A person*** referred to in paragraph 1 who ***has*** been detained during the procedure referred to in Article 41 and who no longer ***has*** a right to remain ***or who has had her/ his right*** to remain ***revoked by a court or tribunal*** may continue to be detained for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process.

Or. en

Justification

For consistency with earlier amendments.

Amendment 424
Sira Rego

Proposal for a regulation
Article 41 a – paragraph 6

Text proposed by the Commission	*Amendment*
6. Persons referred to in paragraph 1 who no longer have a right to remain and are not allowed to remain, and who were not detained during the procedure referred to in Article 41, may be detained if there is a risk of absconding within the meaning of Directive XXX/XXX/EU [Return Directive], if they avoid or hamper the preparation of return or the removal process or they pose a risk to public policy, public security or national security.	***deleted***

Or. en

Amendment 425
Erik Marquardt

Proposal for a regulation
Article 41 a – paragraph 6

Text proposed by the Commission	*Amendment*
6. Persons referred to in paragraph 1 who no longer have a right to remain and are not allowed to remain, and who were not detained during the procedure referred to in Article 41, may be detained if there is a risk of absconding within the meaning of Directive XXX/XXX/EU [Return Directive], if they avoid or hamper the preparation of return or the removal process or they pose a risk to public policy, public security or national security.	***deleted***

Or. en

Amendment 426
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 a – paragraph 6

Text proposed by the Commission	*Amendment*
6. ***Persons*** referred to in paragraph 1 who no longer ***have*** a right to remain ***and are not allowed*** to remain, and who ***were*** not detained during the procedure referred to in Article 41, may be detained if there is a risk of absconding within the meaning of Directive XXX/XXX/EU [Return Directive], if ***they avoid or hamper*** the preparation of return or the removal process or they pose a risk to public policy,	6. ***A person*** referred to in paragraph 1 who no longer ***has*** a right to remain ***or who has had her/his right*** to remain ***revoked by a court or tribunal***, and who ***was*** not detained during the procedure referred to in Article 41, may be detained if there is a risk of absconding within the meaning of Directive XXX/XXX/EU [Return Directive], if ***he/she avoids or hampers*** the preparation of return or the removal

public security or national security.	process or they pose a risk to public policy, public security or national security. ***Detention should remain a measure of last resort and may be used if no other sufficient but less coercive measures can be applied effectively. Any detention decision shall be taken on the basis of an individual assessment, and shall be determined to be necessary, reasonable and proportionate to a legitimate purpose.***

Or. en

Justification

For consistency with earlier amendments. To better reflect current asylum language on detention.

Amendment 427
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 a – paragraph 6

Text proposed by the Commission	*Amendment*
6. Persons referred to in paragraph 1 who no longer have a right to remain and are not allowed to remain, and who were not detained during the procedure referred to in Article 41, may be detained if there is a risk of absconding within the meaning of Directive XXX/XXX/EU [Return Directive], if they avoid or hamper the preparation of return or the removal process or they pose a risk to public policy, public security or national security.	6. Persons referred to in paragraph 1 who no longer have a right to remain and are not allowed to remain, and who were not detained during the procedure referred to in Article 41, may be detained ***for the purpose of preventing entry into the territory of the Member State,*** if there is a risk of absconding within the meaning of Directive XXX/XXX/EU [Return Directive], if they avoid or hamper the preparation of return or the removal process or they pose a risk to public policy, public security or national security.

Or. en

Amendment 428
Erik Marquardt

Proposal for a regulation
Article 41 a – paragraph 7

Text proposed by the Commission	*Amendment*
7. Detention shall be maintained for as short a period as possible, as long as removal arrangements are in progress and executed with due diligence. The period of detention shall not exceed the period referred to in paragraph 2 and shall be included in the maximum periods of detention set in Article 15 (5) and (6) of Directive XXX/XXX/EU [Return Directive].	***deleted***

Or. en

Amendment 429
Sira Rego

Proposal for a regulation
Article 41 a – paragraph 7

Text proposed by the Commission	*Amendment*
7. Detention shall be maintained for as short a period as possible, as long as removal arrangements are in progress and executed with due diligence. The period of detention shall not exceed the period referred to in paragraph 2 and shall be included in the maximum periods of detention set in Article 15 (5) and (6) of Directive XXX/XXX/EU [Return Directive].	***deleted***

Or. en

Amendment 430
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 a – paragraph 7

Text proposed by the Commission	*Amendment*
7. Detention shall be maintained for as short a period as possible, as long as removal arrangements are in progress and executed with due diligence. The period of detention shall not exceed the period referred to in paragraph 2 ***and shall be included in*** the maximum ***periods of detention set in*** Article ***15 (5) and (6)*** of Directive XXX/XXX/EU [Return Directive].	7. Detention shall be maintained for as short a period as possible, as long as removal arrangements are in progress and executed with due diligence. The period of detention shall not exceed the period referred to in paragraph 2***. When the return decision cannot be enforced within*** the maximum ***period referred to in paragraph 2, the third-country national may be further detained in accordance with*** Article ***18*** of Directive XXX/XXX/EU [Return Directive].

Or. en

Amendment 431
Caterina Chinnici, Javier Moreno Sánchez

Proposal for a regulation
Article 41 a – paragraph 7

Text proposed by the Commission	*Amendment*
7. Detention shall be maintained for as short a period as possible, as long as removal arrangements are in progress and executed with due diligence. The period of detention shall not exceed the period referred to in paragraph 2 and shall be included in the maximum periods of detention set in Article 15 (5) and (6) of Directive XXX/XXX/EU [Return Directive].	7. Detention shall be maintained for as short a period as possible, as long as removal arrangements are in progress and executed with due diligence. The period of detention shall not exceed the period referred to in paragraph 2 and shall be included in the maximum periods of detention set in Article 15 (5) and (6) of Directive XXX/XXX/EU [Return Directive]. ***Minors, whether accompanied or unaccompanied, shall not be detained.***

Or. en

Amendment 432
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 41 a – paragraph 7

Text proposed by the Commission	*Amendment*
7. Detention shall be maintained for as short a period as possible, as long as removal arrangements are in progress and executed with due diligence. The period of detention shall not exceed ***the period referred to in paragraph 2 and shall be included in the*** maximum periods of detention set in Article 15 (5) and (6) of Directive XXX/XXX/EU [Return Directive].	7. Detention shall be maintained for as short a period as possible, as long as removal arrangements are in progress and executed with due diligence. The period of detention shall not exceed maximum periods of detention set in Article 15 (5) and (6) of Directive XXX/XXX/EU [Return Directive].

Or. en

Amendment 433
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo, Giuliano Pisapia

Proposal for a regulation
Article 41 a – paragraph 7

Text proposed by the Commission	*Amendment*
7. Detention shall be maintained for as short a period as possible, as long as removal ***arrangements are in progress*** and executed with due diligence. The period of detention shall not exceed the period referred to in paragraph 2 and shall be included in the maximum periods of detention set in Article 15 (5) and (6) of Directive XXX/XXX/EU [Return Directive].	7. Detention shall be maintained for as short a period as possible, ***and only*** as long as ***a reasonable prospect of*** removal ***exists*** and executed with due diligence. The period of detention shall not exceed the period referred to in paragraph 2 and shall be included in the maximum periods of detention set in Article 15 (5) and (6) of Directive XXX/XXX/EU [Return Directive].

Or. en

Justification

In line with the compromise on the Return Directive.

Amendment 434
Erik Marquardt

Proposal for a regulation
Article 41 a – paragraph 8

Text proposed by the Commission	*Amendment*
8. Member States that, following the rejection of an application in the context of the procedure referred to in Article 41, issue a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, and that have decided not to apply Directive XXX/XXX/EU [Return Directive] in such cases pursuant to Article 2(2), point (a), of that Directive, shall ensure that the treatment and level of protection of the third-country nationals and stateless persons subject to a refusal of entry are in accordance with Article 4(4) of Directive XXX/XXX/EU [Return Directive] and are equivalent to the ones set out in paragraphs 2, 4 and 7 of this Article.'	***deleted***

Or. en

Amendment 435
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 41 a – paragraph 8

Text proposed by the Commission	*Amendment*
8. Member States that, following the rejection of an application in the context of the procedure referred to in Article 41, issue a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, and that have decided not to apply Directive XXX/XXX/EU [Return Directive] in such cases pursuant to Article 2(2), point (a), of that Directive, shall ensure that the treatment and level of protection of the third-country nationals and stateless persons subject to	***deleted***

a refusal of entry are in accordance with Article 4(4) of Directive XXX/XXX/EU [Return Directive] and are equivalent to the ones set out in paragraphs 2, 4 and 7 of this Article.'

Or. en

Justification

In line with the compromise on the Return Directive. This provision risks to create a parallel regime for some third country nationals. The Return Directive should always be applicable.

Amendment 436
Sira Rego

Proposal for a regulation
Article 41 a – paragraph 8

Text proposed by the Commission	*Amendment*
8. Member States that, following the rejection of an application in the context of the procedure referred to in Article 41, issue a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, and that have decided not to apply Directive XXX/XXX/EU [Return Directive] in such cases pursuant to Article 2(2), point (a), of that Directive, shall ensure that the treatment and level of protection of the third-country nationals and stateless persons subject to a refusal of entry are in accordance with Article 4(4) of Directive XXX/XXX/EU [Return Directive] and are equivalent to the ones set out in paragraphs 2, 4 and 7 of this Article.'	***deleted***

Or. en

Amendment 437
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation

Article 41 a – paragraph 8

Text proposed by the Commission	*Amendment*
8. Member States ***that, following the rejection of an application in the context of the procedure referred to in Article 41, issue a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, and that have decided*** not to apply ***Directive XXX/XXX/EU*** [Return Directive] in such cases pursuant to Article 2(2)***,*** point (a)***,*** of that Directive***,*** shall ensure that the treatment and level of protection of the third-country nationals and stateless persons subject to a refusal of entry are in accordance with Article 4(4) of Directive XXX/XXX/EU [Return Directive] and are equivalent to the ones set out in paragraphs 2, 4 and 7 of this Article.'	8. Member States ***may decide*** not to apply ***Directive/EU*** [Return Directive] in such cases pursuant to Article 2(2) point (a) of that Directive***. Member States*** shall ensure that the treatment and level of protection of the third-country nationals and stateless persons subject to a refusal of entry are in accordance with Article 4(4) of Directive XXX/XXX/EU [Return Directive] and are equivalent to the ones set out in paragraphs 2, 4 and 7 of this Article.'

Or. en

Amendment 438
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 41 a – paragraph 8

Text proposed by the Commission	*Amendment*
8. Member States that, following the rejection of an application in the context of the procedure referred to in Article 41, issue a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, and ***that have decided not to apply Directive XXX/XXX/EU [Return Directive] in such cases pursuant to Article 2(2), point (a), of that Directive,*** shall ensure that the treatment and level of protection of the third-country nationals and stateless persons subject to ***a refusal of entry*** are in accordance with Article 4(4) of Directive XXX/XXX/EU [Return Directive] and are equivalent to the ones	8. Member States that ***have decided not to apply Directive XXX/XXX/EU [Return Directive] pursuant to Article 2(2), point (a) of that Directive***, following the rejection of an application in the context of the procedure referred to in Article 41, ***may*** issue a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, and shall ensure that the treatment and level of protection of the third-country nationals and stateless persons subject to ***their national procedures*** are in accordance with Article 4(4) of Directive XXX/XXX/EU [Return Directive] and are equivalent to the ones

set out in paragraphs 2, 4 and 7 of this Article.’	set out in paragraphs 2, 4 and 7 of this Article.’

Or. en

Amendment 439
Elissavet Vozemberg-Vrionidi, Loucas Fourlas, Juan Ignacio Zoido Álvarez

Proposal for a regulation
Article 41 b (new)

Text proposed by the Commission	*Amendment*
	Article 41b
	Staff in the border procedure
	1. Member States shall ensure that their staff who engage in the border procedure have been provided with an appropriate level and training in all circumstances. Member States shall ensure that applicants have effective access to non-governmental organisations in facilities used for the purposes of a border procedure.
	2. Where requested by a Member State, Union bodies, offices and agencies shall provide it with rapid and tailored support in the border procedure as specified in Article 57a, in particular where that Member State experiences a significant increase of applications.

Or. en

Amendment 440
Erik Marquardt

Proposal for a regulation
Article 43

Text proposed by the Commission	*Amendment*
(17) Article 43 is amended as follows:	***deleted***

(a) 'Point (a) is deleted.

The following point (c) is added in Article 43:

(c) a first subsequent application has been lodged within one year of the decision of the determining authority on the first application merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State, pending the finalisation of the decision declaring that application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented in accordance with Article 42(4)'

Or. en

Amendment 441
Sira Rego

Proposal for a regulation
Article 43

Text proposed by the Commission	*Amendment*
(17) Article 43 is amended as follows:	***deleted***
(a) 'Point (a) is deleted.	
The following point (c) is added in Article 43:	
(c) a first subsequent application has been lodged within one year of the decision of the determining authority on the first application merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State, pending the finalisation of the decision declaring that application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented in accordance with Article	

42(4)'

Or. en

Amendment 442
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 43 – subparagraph 2 – point c

Text proposed by the Commission	*Amendment*
(c) a first subsequent application has been lodged within one year of the decision of the determining authority on the first application ***merely*** in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State, pending the finalisation of the decision declaring that application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented in accordance with Article 42(4)'	(c) a first subsequent application has been lodged within one year of the decision of the determining authority on the first application ***and a court or tribunal has determined that it has been lodged solely*** in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State, pending the finalisation of the decision declaring that application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented in accordance with Article 42(4)'

Or. en

Justification

For consistency with earlier amendments.

Amendment 443
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 43 – subparagraph 2 – point c

Text proposed by the Commission	*Amendment*
(c) a ***first*** subsequent application has	(c) a subsequent application has been

been lodged ***within one year of the decision of the determining authority on the first application*** merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State, pending the finalisation of the decision declaring that application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented in accordance with Article 42(4)'	lodged merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State, pending the finalisation of the decision declaring that application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented in accordance with Article 42(4)'

Or. en

Amendment 444
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 43 – subparagraph 2 – point c

Text proposed by the Commission	*Amendment*
(c) a first subsequent application has been lodged ***within one year of the decision of the determining authority on the first application*** merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State, pending the finalisation of the decision declaring that application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented in accordance with Article 42(4)'	(c) a first subsequent application has been lodged merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State, pending the finalisation of the decision declaring that application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented in accordance with Article 42(4)'

Or. en

Amendment 445
Erik Marquardt

Proposal for a regulation
Article 53 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. Applicants shall have the right to an effective remedy before a court or tribunal against:	1. Applicants shall have the right to an effective remedy before a court or tribunal ***in accordance with the basic principles and guarantees provided for in Chapter II*** against ***the following***:

Or. en

Amendment 446
Sira Rego

Proposal for a regulation
Article 53 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. Applicants shall have the right to an effective remedy before a court or tribunal against:	1. Applicants shall have the right to an effective remedy before a court or tribunal ***in accordance with the principles and guarantees provided for in Chapter II*** against:

Or. en

Amendment 447
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 53 – paragraph 1 – subparagraph 1 – point a a (new)

Text proposed by the Commission	*Amendment*
	(aa) a decision to channel the applicant into an accelerated procedure in accordance with Article 40;

Or. en

Justification

To enable applicants to exercise properly their right to an effective remedy, they must be able

to challenge the decision of asylum authorities to place them into accelerated or border procedures. Both of these procedures have procedural consequences for applicants, which result in those applicants enjoying fewer procedural rights. It is too late for an effective remedy to be granted once the decision asylum is taken as the rights, which are restricted cannot be retrospectively restored in favour of the applicant.

Amendment 448
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 53 – paragraph 1 – subparagraph 1 – point a b (new)

Text proposed by the Commission	*Amendment*
	(ab) a decision to channel the applicant into a border procedure in accordance with Article 41;

Or. en

Justification

To enable applicants to exercise properly their right to an effective remedy, they must be able to challenge the decision of asylum authorities to place them into accelerated or border procedures. Both of these procedures have procedural consequences for applicants, which result in those applicants enjoying fewer procedural rights. It is too late for an effective remedy to be granted once the decision asylum is taken as the rights, which are restricted cannot be retrospectively restored in favour of the applicant.

Amendment 449
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 53 – paragraph 1 – subparagraph 1 – point a c (new)

Text proposed by the Commission	*Amendment*
	(ac) a decision to apply detention during a border procedure;

Or. en

Justification

It should always be possible to challenge a detention decision.

Amendment 450
Sylvie Guillaume, Pietro Bartolo, Juan Fernando López Aguilar, Bettina Vollath, Birgit Sippel, Elena Yoncheva, Javier Moreno Sánchez, Giuliano Pisapia, Domènec Ruiz Devesa, Petar Vitanov

Proposal for a regulation
Article 53 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) a decision rejecting an application as unfounded in relation to both refugee and subsidiary protection status;	(b) a decision rejecting an application as ***unfounded or manifestly*** unfounded in relation to both refugee and subsidiary protection status;

Or. en

Justification

The 2016 APR proposal included the explicit right to an effective remedy to challenge a finding that an application is manifestly unfounded. That right must remain.

Amendment 451
Sira Rego

Proposal for a regulation
Article 53 – paragraph 1 – subparagraph 1 – point d a (new)

Text proposed by the Commission	*Amendment*
	(da) a detention order or a decision to apply, within the border procedure, restrictions to the freedom of movement.

Or. en

Amendment 452
Erik Marquardt

Proposal for a regulation

Article 53 – paragraph 1 – subparagraph 1 – point d a (new)

Text proposed by the Commission	*Amendment*
	(da) a detention decision

Or. en

Amendment 453
Sira Rego

Proposal for a regulation
Article 53 – paragraph 1 – subparagraph 1 – point d b (new)

Text proposed by the Commission	*Amendment*
	(db) a decision rejecting an application for a residence permit on compassionate, humanitarian or other grounds;

Or. en

Amendment 454
Sira Rego

Proposal for a regulation
Article 53 – paragraph 1 – subparagraph 1 – point d c (new)

Text proposed by the Commission	*Amendment*
	(dc) a decision to apply the border procedure.

Or. en

Amendment 455
Erik Marquardt

Proposal for a regulation
Article 53 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission	*Amendment*

(e) ***a return decision***.	(e) ***decisions taken in a border procedure***.

Or. en

Amendment 456
Jan-Christoph Oetjen, Sophia in 't Veld, Hilde Vautmans, Michal Šimečka

Proposal for a regulation
Article 53 – paragraph 1 – subparagraph 1 – point e a (new)

Text proposed by the Commission	*Amendment*
	(ea) a decision determining the applicant's age.

Or. en

Amendment 457
Jeroen Lenaers, Tomas Tobé, Lena Düpont

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

Text proposed by the Commission	*Amendment*
Return decisions shall be appealed before the same court or tribunal and within the same judicial proceedings and the same time-limits as decisions referred to in points (a), (b), (c) and (d).	***In order to fulfil the time-limits provided for in this regulation,*** return decisions shall be appealed before the same court or tribunal and within the same judicial proceedings and the same time-limits as decisions referred to in points (a), (b), (c) and (d).

Or. en

Amendment 458
Sira Rego

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

Text proposed by the Commission	*Amendment*
Return decisions shall ***be appealed before the same court or tribunal and within the same judicial proceedings and the same time-limits as decisions referred to in points (a), (b), (c) and (d)***.	***Applicants*** shall ***have the right to free legal assistance in order to be able to exercise their right to effective remedy***.

Or. en

Amendment 459
Erik Marquardt

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

Text proposed by the Commission	*Amendment*
Return decisions shall be ***appealed before the same court or tribunal and within the same judicial proceedings and the same time-limits as decisions referred to in points (a), (b), (c) and (d)***.	***Applicants shall have access to independent free legal assistance and*** shall be ***notified of this right during the screening carried out in accordance with [Screening Regulation] or at the latest when their asylum application is registered***.

Or. en

Amendment 460
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

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

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

Or. en

Justification

This will depend on the organisation of the judicial system of the Member State in question.

Amendment 461
Erik Marquardt

Proposal for a regulation
Article 53 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Persons recognised as eligible for subsidiary protection shall have the right to an effective remedy against a decision considering their application unfounded in relation to refugee status. ***Where subsidiary protection status granted by a Member State offers the same rights and benefits as refugee status under Union and national law, the appeal against that decision in that Member State may be considered as inadmissible where provided for in national law.***	2. Persons recognised as eligible for subsidiary protection shall have the right to an effective remedy against a decision considering their application unfounded in relation to refugee status.

Or. en

Amendment 462
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Pietro Bartolo, Javier Moreno Sánchez

Proposal for a regulation
Article 53 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Persons recognised as eligible for subsidiary protection shall have the right to an effective remedy against a decision considering their application unfounded in relation to refugee status. ***Where subsidiary protection status granted by a Member State offers the same rights and benefits as refugee status under Union***	2. Persons recognised as eligible for subsidiary protection shall have the right to an effective remedy against a decision considering their application unfounded in relation to refugee status.

and national law, the appeal against that decision in that Member State may be considered as inadmissible where provided for in national law.

Or. en

Justification

In accordance with the provisional agreement on QR (Article 13), where an applicant is entitled to refugee status, she should be granted that status. An applicant must therefore always have the right to challenge a decision granting subsidiary protection where she believes that refugee status should have been granted.

Amendment 463
Sira Rego

Proposal for a regulation
Article 53 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Persons recognised as eligible for subsidiary protection shall have the right to an effective remedy against a decision considering their application unfounded in relation to refugee status. ***Where subsidiary protection status granted by a Member State offers the same rights and benefits as refugee status under Union and national law, the appeal against that decision in that Member State may be considered as inadmissible where provided for in national law.***	2. Persons recognised as eligible for subsidiary protection shall have the right to an effective remedy against a decision considering their application unfounded in relation to refugee status.

Or. en

Justification

The right to an effective remedy should not be limited to applicants for subsidiary protection against a decision denying refugee status even though they are comparable and similar rights.

Amendment 464
Erik Marquardt

Proposal for a regulation
Article 53 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a. The applicant shall have a right to an oral hearing before a first appeal court of tribunal.

Or. en

Amendment 465
Erik Marquardt

Proposal for a regulation
Article 53 – paragraph 3

Text proposed by the Commission	*Amendment*
3. An effective remedy within the meaning of paragraph 1 shall provide for a full and ex nunc examination of both facts and points of law***, at least before a court or tribunal of first instance***, including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX/XXX [Qualification Regulation].	3. An effective remedy within the meaning of paragraph 1 shall provide for a full and ex nunc examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX/XXX [Qualification Regulation]***, as well as an examination pursuant to Articles 2, 3 and 8 ECHR and Articles 2, 4 and 7 of the Charter for Fundamental Rights***.

Or. en

Amendment 466
Sira Rego

Proposal for a regulation
Article 53 – paragraph 3

Text proposed by the Commission	*Amendment*
3. An effective remedy within the meaning of paragraph 1 shall provide for a full and ex nunc examination of both facts	3. An effective remedy within the meaning of paragraph 1 shall provide for a full and ex nunc examination of both facts

and points of law***, at least before a court or tribunal of first instance***, including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX/XXX [Qualification Regulation].	and points of law, including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX/XXX [Qualification Regulation] ***as well as an examination pursuant to Article 2 and 3 of the ECHR and Article 2 and 4 of the Charter for Fundamental Rights, and Article 8 of the ECHR and Article 7 of the Charter for Fundamental Rights***.

Or. en

Amendment 467
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 53 – paragraph 3

Text proposed by the Commission	*Amendment*
3. An effective remedy within the meaning of paragraph 1 shall provide for a full and ex nunc examination of both facts and points of law, at least before a court or tribunal of first instance, including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX/XXX [Qualification Regulation].	3. An effective remedy within the meaning of paragraph 1 shall provide for a full and ex nunc examination of both facts and points of law, at least ***an oral hearing*** before a court or tribunal of first instance, including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX/XXX [Qualification Regulation].

Or. en

Justification

In line with amendment 309 of the EP position on Article 53 of the 2016 Proposal.

Amendment 468
Erik Marquardt

Proposal for a regulation
Article 53 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. In case of a negative decision on an asylum request in an asylum border procedure as regulated by Article 41 of this Regulation, the judicial review at first instance shall automatically include a review of the decision to channel an applicant into that procedure.

Or. en

Amendment 469
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 53 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. The examination before a court or tribunal shall be through written submissions, unless the court or tribunal consider a hearing necessary for the examination referred to in subparagraph 3 of this Article.

Or. en

Amendment 470
Erik Marquardt

Proposal for a regulation
Article 53 – paragraph 4

Text proposed by the Commission	*Amendment*
4. Applicants shall be provided with interpretation for the purpose of a hearing before the competent court or tribunal ***where such a hearing takes place and where appropriate communication cannot otherwise be ensured***.	4. Applicants shall be provided with interpretation ***in a language they understand*** for the purpose of a hearing before the competent court or tribunal.

Or. en

Amendment 471
Sira Rego

Proposal for a regulation
Article 53 – paragraph 4

Text proposed by the Commission	*Amendment*
4. Applicants shall be provided with interpretation for the purpose of a hearing before the competent court or tribunal where such a hearing takes place ***and where appropriate communication cannot otherwise be ensured***.	4. Applicants shall be provided with interpretation ***in a language they understand by qualified personnel*** for the purpose of a hearing before the competent court or tribunal where such a hearing takes place.

Or. en

Amendment 472
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 53 – paragraph 4

Text proposed by the Commission	*Amendment*
4. Applicants shall be provided with interpretation for the purpose of a hearing before the competent court or tribunal ***where such a hearing takes place and where*** appropriate communication cannot otherwise be ensured.	4. ***Where such a hearing takes place,*** applicants shall be provided with interpretation for the purpose of a hearing before the competent court or tribunal ***if*** appropriate communication cannot otherwise be ensured.

Or. en

Amendment 473
Sira Rego

Proposal for a regulation
Article 53 – paragraph 5

Text proposed by the Commission	*Amendment*
5. ***Where the*** court or tribunal	5. ***A*** court or tribunal shall ensure the

considers it necessary, it shall ensure the translation of relevant documents that have not already been translated in accordance with Article 33(4). Alternatively, translations of those relevant documents may be provided by other entities and paid for from public funds in accordance with national law.

translation of ***all*** relevant documents that have not already been translated in accordance with Article 33(4). Alternatively, translations of those relevant documents may be provided by other entities and paid for from public funds in accordance with national law.

Or. en

Amendment 474
Sira Rego

Proposal for a regulation
Article 53 – paragraph 5 a (new)

Text proposed by the Commission	*Amendment*
	5a. When the appeal involves a minor, information shall also be provided in a child-friendly way. Unaccompanied minors and families with minor children shall have access to free legal assistance. Unaccompanied minors shall be assisted by a legal representative [guardian] throughout the procedure.

Or. en

Amendment 475
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo, Giuliano Pisapia

Proposal for a regulation
Article 53 – paragraph 6

Text proposed by the Commission	*Amendment*
6. If the documents are not submitted in time for the court or tribunal to ensure their translation, the court or tribunal may refuse to take those documents into account if they are not accompanied by a	***deleted***

translation provided by the applicant.

Or. en

Justification

This new paragraph undermines the right of courts to take account of relevant documents and infringes on national rules regarding admissibility of evidence.

Amendment 476
Erik Marquardt

Proposal for a regulation
Article 53 – paragraph 6

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

Or. en

Amendment 477
Sira Rego

Proposal for a regulation
Article 53 – paragraph 6

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

Or. en

Amendment 478
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 53 – paragraph 7 – introductory part

Text proposed by the Commission	*Amendment*
7. Member States shall lay down ***the following time-limits*** in their national law for applicants to lodge appeals against the decisions referred to in paragraph 1***:***	7. Member States shall lay down in their national law ***time-limits of at least 15 working days from receipt of the notification of a decision rejecting an application,*** for applicants to lodge appeals against the decisions referred to in paragraph 1**.**

Or. en

Justification

Adapted to be in line with AM 310 of the EP position on Article 53 of the 2016 proposal. There should be a timeline of at least 15 days to lodge an appeal for all procedures.

Amendment 479
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 53 – paragraph 7 – point a

Text proposed by the Commission	*Amendment*
(a) at least one week in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn or as unfounded if at the time of the decision any of the circumstances listed in Article 40(1) or (5) apply;	***deleted***

Or. en

Amendment 480

Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 53 – paragraph 7 – point a

Text proposed by the Commission	*Amendment*
(a) ***at least*** one week in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn or as unfounded if at the time of the decision any of the circumstances listed in Article 40(1) or (5) apply;	(a) ***a maximum of*** one week in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn or as unfounded if at the time of the decision any of the circumstances listed in Article 40(1) or (5) apply;

Or. en

Amendment 481
Sira Rego

Proposal for a regulation
Article 53 – paragraph 7 – point a

Text proposed by the Commission	*Amendment*
(a) at least one ***week*** in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn or as unfounded if at the time of the decision any of the circumstances listed in Article 40(1) or (5) apply;	(a) at least one ***month*** in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn or as unfounded if at the time of the decision any of the circumstances listed in Article 40(1) or (5) apply;

Or. en

Amendment 482
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 53 – paragraph 7 – point a

Text proposed by the Commission	*Amendment*
(a) ***at least one week*** in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn or as unfounded if at the time of the decision any	(a) ***3 days*** in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn or as unfounded if at the time of the decision any of the

of the circumstances listed in Article 40(1) or (5) apply;	circumstances listed in Article 40(1) or (5) apply;

Or. en

Amendment 483
Erik Marquardt

Proposal for a regulation
Article 53 – paragraph 7 – point a

Text proposed by the Commission	*Amendment*
(a) at least one ***week*** in the case of a decision rejecting an application ***as inadmissible***, as implicitly withdrawn or as unfounded if at the time of the decision any of the circumstances listed in Article 40(1) or (5) apply;	(a) at least one ***month*** in the case of a decision rejecting an application , as implicitly withdrawn or as unfounded if at the time of the decision any of the circumstances listed in Article 40(1) or (5) apply;

Or. en

Amendment 484
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 53 – paragraph 7 – point b

Text proposed by the Commission	*Amendment*
(b) between a minimum of two weeks and a maximum of two months in all other cases.	***deleted***

Or. en

Amendment 485
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 53 – paragraph 7 – point b

Text proposed by the Commission	*Amendment*
(b) ***between a minimum of two weeks and a maximum of two months*** in all other cases.	(b) ***one week*** in all other cases.

Or. en

Amendment 486
Sira Rego

Proposal for a regulation
Article 53 – paragraph 7 – point b

Text proposed by the Commission	*Amendment*
(b) ***between a minimum of two weeks and a maximum of two months*** in all other cases.	(b) ***at least one month*** in all other cases.

Or. en

Amendment 487
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 53 – paragraph 7 – point b

Text proposed by the Commission	*Amendment*
(b) between a minimum of two weeks and a maximum of ***two months*** in all other cases.	(b) between a minimum of two weeks and a maximum of ***four weeks*** in all other cases.

Or. en

Amendment 488
Assita Kanko

Proposal for a regulation
Article 53 – paragraph 7 – point b

Text proposed by the Commission	*Amendment*
(b) between a minimum of two weeks and a maximum of ***two months*** in all other cases.	(b) between a minimum of two weeks and a maximum of ***one month*** in all other cases.

Or. en

Amendment 489
Erik Marquardt

Proposal for a regulation
Article 53 – paragraph 7 – point b

Text proposed by the Commission	*Amendment*
(b) between a minimum of ***two weeks*** and a maximum of two months in all other cases.	(b) between a minimum of ***one month*** and a maximum of two months in all other cases.

Or. en

Amendment 490
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 53 – paragraph 7 – point b a (new)

Text proposed by the Commission	*Amendment*
	(ba) Member States may extend the time limits laid down in this paragraph if the specific circumstances of the application make it necessary.

Or. en

Justification

In line with AM 313 of the EP position on Article 53 of the 2016 proposal.

Amendment 491
Erik Marquardt

Proposal for a regulation
Article 53 – paragraph 8

Text proposed by the Commission	*Amendment*
8. The time-limits referred to in paragraph 7 shall start to run from the date when the decision of the determining authority ***is notified to*** the applicant ***or his or her representative or*** legal adviser. The procedure for notification shall be laid down in national law.	8. The time-limits referred to in paragraph 7 shall start to run from the date when the ***applicant effectively receives the*** decision of the determining authority***. If*** the applicant ***has requested free legal assistance, the time-limits shall only start to run from the date on which a*** legal adviser ***is appointed in case this date is later than the one of notification***. The procedure for notification shall be laid down in national law.

Or. en

Amendment 492
Sira Rego

Proposal for a regulation
Article 53 – paragraph 8

Text proposed by the Commission	*Amendment*
8. The time-limits referred to in paragraph 7 shall start to run from the date when the decision of the determining authority is notified to the applicant or his or her representative or legal adviser. The procedure for notification shall be laid down in national law.	8. The time-limits referred to in paragraph 7 shall start to run from the date when the decision of the determining authority is notified to the applicant or his or her representative or legal adviser. The procedure for notification shall be laid down in national law. ***If free legal assistance would still not have been granted to the applicant when the decision is notified, the time-limits shall only start to run from the date by which a legal representative is appointed.***

Or. en

Amendment 493
Sylvie Guillaume, Pietro Bartolo, Juan Fernando López Aguilar, Bettina Vollath, Birgit Sippel, Elena Yoncheva, Javier Moreno Sánchez, Giuliano Pisapia, Domènec Ruiz Devesa, Petar Vitanov

Proposal for a regulation
Article 53 – paragraph 9

Text proposed by the Commission	*Amendment*
9. Member States shall provide for only one level of appeal in relation to a decision taken in the context of the border procedure.	***deleted***

Or. en

Amendment 494
Sira Rego

Proposal for a regulation
Article 53 – paragraph 9

Text proposed by the Commission	*Amendment*
9. Member States shall provide for only one level of appeal in relation to a decision taken in the context of the border procedure.	***deleted***

Or. en

Justification

It should be noted that the principle of double level of appeals (often administrative followed by judicial) exists in several countries, specifically in the field of asylum law (see Austria, Belgium, Finland, the Netherlands, Portugal, Romania, and the UK). Reducing the level of appeal to only one appeal could possibly be considered as unconstitutional in some of the countries (e.g. Belgium and Austria).

Amendment 495
Erik Marquardt

Proposal for a regulation
Article 53 – paragraph 9

Text proposed by the Commission	*Amendment*
9. Member States shall provide for only one level of appeal in relation to a decision taken in the context of the border procedure.	***deleted***

Or. en

Amendment 496
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 53 – paragraph 9

Text proposed by the Commission	*Amendment*
9. Member States shall provide for only one level of appeal in relation to a decision taken in the context of the border procedure.	9. Member States shall provide for only one level of appeal in relation to a decision taken in the context of the border procedure ***as the principle of effective judicial protection requires***.

Or. en

Amendment 497
Sira Rego

Proposal for a regulation
Article 54 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The effects of a return decision shall be automatically suspended for as long as an applicant has a right to remain or is allowed to remain in accordance with this Article.	***deleted***

Or. en

Amendment 498

Erik Marquardt

Proposal for a regulation
Article 54 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The effects of a return decision shall be automatically suspended for as long as an applicant has a right to remain or is allowed to remain in accordance with this Article.	***deleted***

Or. en

Amendment 499
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Pietro Bartolo, Javier Moreno Sánchez

Proposal for a regulation
Article 54 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The effects of a return decision shall be automatically suspended ***for as long as an applicant has a*** right to ***remain or is allowed to remain in accordance with this Article***.	1. The effects of a return decision shall be automatically suspended ***until the time-limit within which to exercise their*** right to ***an effective remedy before a court or tribunal of first instance has expired and, where such a right has been exercised within the time-limit, pending the outcome of the remedy***.

Or. en

Justification

It should be clear that applicants always have an automatic right to remain pending a first level of appeal.

Amendment 500
Domènec Ruiz Devesa, Juan Fernando López Aguilar

Proposal for a regulation

Article 54 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The effects of a return decision shall be automatically suspended ***for as long as an applicant has a*** right to remain ***or is allowed to remain in accordance with this Article.***	1. The effects of a return decision shall be automatically suspended ***and applicants shall have the*** right to remain ***on the territory of the Member States until the right to an effective remedy before a court or tribunal has been fully exhausted, including further appeals against a first or subsequent appeal decision;***

Or. en

Amendment 501
Nadine Morano

Proposal for a regulation
Article 54 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The effects of a return decision shall be automatically suspended ***for as long as an applicant has a right to remain or is allowed to remain in accordance with this Article***.	1. The effects of a return decision shall ***not*** be automatically suspended.

Or. fr

Amendment 502
Domènec Ruiz Devesa, Juan Fernando López Aguilar

Proposal for a regulation
Article 54 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Applicants shall have the right to remain on the territory of the Member States until the time-limit within which to exercise their right to an effective remedy before a court or tribunal of first instance	***deleted***

has expired and, where such a right has been exercised within the time-limit, pending the outcome of the remedy.

Or. en

Amendment 503
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Pietro Bartolo, Javier Moreno Sánchez

Proposal for a regulation
Article 54 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Applicants shall have the right to remain on the territory of the Member States until the time-limit within which to exercise their right to an effective remedy before a court or tribunal of first instance has expired and, where such a right has been exercised within the time-limit, pending the outcome of the remedy.	***deleted***

Or. en

Amendment 504
Sira Rego

Proposal for a regulation
Article 54 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Applicants shall have the right to remain on the territory of the Member States ***until the time-limit within which*** to exercise their right to an effective remedy before a court or tribunal ***of first instance has expired and, where such a right has been exercised within the time-limit, pending the outcome of the remedy***.	2. Applicants shall have the ***automatic*** right to remain on the territory of the Member States ***in order*** to exercise their right to an effective remedy before a court or tribunal.

Or. en

Amendment 505
Erik Marquardt

Proposal for a regulation
Article 54 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Applicants shall have the right to remain on the territory of the Member States until the time-limit within which to exercise their right to an effective remedy before a court or tribunal ***of first instance*** has expired and, where such a right has been exercised within the time-limit, pending the outcome of the remedy.	2. Applicants shall have the right to remain on the territory of the Member States until the time-limit within which to exercise their right to an effective remedy before a court or tribunal has expired and, where such a right has been exercised within the time-limit, pending the outcome of the remedy.

Or. en

Amendment 506
Sira Rego

Proposal for a regulation
Article 54 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The applicant shall not have the right to remain pursuant to paragraph 2 where the competent authority has taken one of the following decisions:	***deleted***
(a) a decision which rejects an application as unfounded or manifestly unfounded if at the time of the decision any of the circumstances listed in Article 40(1) and (5) apply [including safe country of origin] or in the cases subject to the border procedure;	
(b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) [first country of asylum] or (c) [subsequent applications without new elements];	

(c) a decision which rejects an application as implicitly withdrawn;

(d) a decision which rejects a subsequent application as unfounded or manifestly unfounded;

(e) a decision to withdraw international protection in accordance with Article 14(1), points (b), (d) and (e), and Article 20(1), point (b), of Regulation No XXX/XXX (Qualification Regulation).

Or. en

Amendment 507
Erik Marquardt

Proposal for a regulation
Article 54 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The applicant shall not have the right to remain pursuant to paragraph 2 where the competent authority has taken one of the following decisions:	***deleted***
(a) a decision which rejects an application as unfounded or manifestly unfounded if at the time of the decision any of the circumstances listed in Article 40(1) and (5) apply [including safe country of origin] or in the cases subject to the border procedure;	
(b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) [first country of asylum] or (c) [subsequent applications without new elements];	
(c) a decision which rejects an application as implicitly withdrawn;	
(d) a decision which rejects a subsequent application as unfounded or manifestly unfounded;	
(e) a decision to withdraw international protection in accordance	

with Article 14(1), points (b), (d) and (e), and Article 20(1), point (b), of Regulation No XXX/XXX (Qualification Regulation).

Or. en

Amendment 508
Domènec Ruiz Devesa, Juan Fernando López Aguilar

Proposal for a regulation
Article 54 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The applicant shall not have the right to remain pursuant to paragraph 2 where the competent authority has taken one of the following decisions:	***deleted***
(a) a decision which rejects an application as unfounded or manifestly unfounded if at the time of the decision any of the circumstances listed in Article 40(1) and (5) apply [including safe country of origin] or in the cases subject to the border procedure;	
(b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) [first country of asylum] or (c) [subsequent applications without new elements];	
(c) a decision which rejects an application as implicitly withdrawn;	
(d) a decision which rejects a subsequent application as unfounded or manifestly unfounded;	
(e) a decision to withdraw international protection in accordance with Article 14(1), points (b), (d) and (e), and Article 20(1), point (b), of Regulation No XXX/XXX (Qualification Regulation).	

Or. en

Justification

Deletion as it limits the suspensive effect and thus constrains the right to effective remedy. The suspensive effect of the appeal must be guaranteed in all cases in accordance with the case law of the European Court of Human Rights

Amendment 509
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 54 – paragraph 3 – introductory part

Text proposed by the Commission	*Amendment*
3. ***The applicant*** shall ***not*** have the right to remain pursuant to paragraph ***2*** where ***the competent*** authority has taken one of the following decisions:	3. ***A court or tribunal*** shall have the ***power to revoke the applicant's*** right to remain pursuant to paragraph ***1, in relation to a second level of appeal, upon request by the determining authority,*** where ***that determining*** authority has taken one of the following decisions:

Or. en

Amendment 510
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Pietro Bartolo

Proposal for a regulation
Article 54 – paragraph 3 – point a

Text proposed by the Commission	*Amendment*
(a) a decision which rejects an application as ***unfounded or*** manifestly unfounded if at the time of the decision any of the circumstances listed in Article 40(1) and (5) apply ***[including safe country of origin] or in the cases subject to the border procedure***;	(a) a decision which rejects an application as manifestly unfounded if at the time of the decision any of the circumstances listed in Article 40(1) and (5) apply;

Or. en

Justification

Consistent with the EP position on the 2016 proposal

Amendment 511
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 54 – paragraph 3 – point b

Text proposed by the Commission	*Amendment*
(b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) [first country of asylum] or (c) [subsequent applications without new elements];	(b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) [first country of asylum] or (c) [subsequent applications without new elements]; ***including cases in which the application has not been examined on the merits because another Member State has granted international protection to the applicant;***

Or. en

Amendment 512
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 54 – paragraph 3 – point b

Text proposed by the Commission	*Amendment*
(b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) [first country of asylum] or (c) [subsequent applications without new elements];	(b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) [first country of asylum] ***(b) [safe third country]*** or (c) [subsequent applications without new elements];

Or. en

Amendment 513
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno

Sánchez, Pietro Bartolo

Proposal for a regulation
Article 54 – paragraph 3 – point b

Text proposed by the Commission	*Amendment*
(b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) [first country of asylum] ***or (c) [subsequent applications without new elements]***;	(b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) [first country of asylum];

Or. en

Justification

Consistent with the EP position on the 2016 proposal

Amendment 514
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Pietro Bartolo, Javier Moreno Sánchez

Proposal for a regulation
Article 54 – paragraph 3 – point d

Text proposed by the Commission	*Amendment*
(d) a decision which rejects a subsequent application as unfounded or manifestly unfounded;	***deleted***

Or. en

Amendment 515
Jeroen Lenaers, Tomas Tobé, Lena Düpont

Proposal for a regulation
Article 54 – paragraph 3 – point d

Text proposed by the Commission	*Amendment*
(d) a decision which rejects a subsequent application as unfounded or	(d) a decision which rejects a subsequent application as ***inadmissible,***

manifestly unfounded;	unfounded or manifestly unfounded;

Or. en

Amendment 516
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 54 – paragraph 3 – point e

Text proposed by the Commission	*Amendment*
(e) a decision to withdraw international protection in accordance with Article 14(1), points (b), (d) and (e), and Article 20(1), point (b), of Regulation No XXX/XXX (Qualification Regulation).	***deleted***

Or. en

Justification

Where a person has been granted international protection, she should always have the right to remain on the territory until a decision has been taken at the first level of appeal.

Amendment 517
Balázs Hidvéghi, Loránt Vincze

Proposal for a regulation
Article 54 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. The applicant shall not have the right to remain pursuant to Article 2 in the case of a subsequent application after the termination of the previous procedure with final effect.

Or. en

Amendment 518
Sira Rego

Proposal for a regulation
Article 54 – paragraph 4

Text proposed by the Commission	*Amendment*
4. In the cases referred to in paragraph 3, a court or tribunal shall have the power to decide, following an examination of both facts and points of law, whether or not the applicant shall be allowed to remain on the territory of the Member States pending the outcome of the remedy upon the applicant's request. The competent court or tribunal may under national law have the power to decide on this matter ex officio.	***deleted***

Or. en

Amendment 519
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 54 – paragraph 4

Text proposed by the Commission	*Amendment*
4. In the cases referred to in paragraph 3, a court or tribunal shall have the power to decide, following an examination of both facts and points of law, whether or not the applicant shall be allowed to remain on the territory of the Member States pending the outcome of the remedy upon the applicant's request. The competent court or tribunal may under national law have the power to decide on this matter ex officio.	***deleted***

Or. en

Justification

Consequential amendment following amendments to paragraphs 1 and 2.

Amendment 520
Domènec Ruiz Devesa, Juan Fernando López Aguilar

Proposal for a regulation
Article 54 – paragraph 4

Text proposed by the Commission	*Amendment*
4. In the cases referred to in paragraph 3, a court or tribunal shall have the power to decide, following an examination of both facts and points of law, whether or not the applicant shall be allowed to remain on the territory of the Member States pending the outcome of the remedy upon the applicant's request. The competent court or tribunal may under national law have the power to decide on this matter ex officio.	***deleted***

Or. en

Amendment 521
Erik Marquardt

Proposal for a regulation
Article 54 – paragraph 4

Text proposed by the Commission	*Amendment*
4. In the cases referred to in paragraph 3, a court or tribunal shall have the power to decide, following an examination of both facts and points of law, whether or not the applicant shall be allowed to remain on the territory of the Member States pending the outcome of the remedy upon the applicant's request. The competent court or tribunal may under national law have the power to decide on this matter ex officio.	***deleted***

Or. en

Amendment 522
Sira Rego

Proposal for a regulation
Article 54 – paragraph 5

Text proposed by the Commission	*Amendment*
5. For the purpose of paragraph 4, the following conditions shall apply:	***deleted***
(a) the applicant shall have a time-limit of at least 5 days from the date when the decision is notified to him or her to request to be allowed to remain on the territory pending the outcome of the remedy;	
(b) the applicant shall be provided with interpretation in the event of a hearing before the competent court or tribunal, where appropriate communication cannot otherwise be ensured;	
(c) the applicant shall be provided, upon request, with free legal assistance and representation in accordance with Article 15(4) and (5);	
(d) the applicant shall have a right to remain:	
(i) until the time-limit for requesting a court or tribunal to be allowed to remain has expired;	
(ii) where the applicant has requested to be allowed to remain within the set time-limit, pending the decision of the court or tribunal on whether or not the applicant shall be allowed remain on the territory.	

Or. en

Amendment 523
Erik Marquardt

Proposal for a regulation
Article 54 – paragraph 5

Text proposed by the Commission	*Amendment*
5. For the purpose of paragraph 4, the following conditions shall apply:	***deleted***
(a) the applicant shall have a time-limit of at least 5 days from the date when the decision is notified to him or her to request to be allowed to remain on the territory pending the outcome of the remedy;	
(b) the applicant shall be provided with interpretation in the event of a hearing before the competent court or tribunal, where appropriate communication cannot otherwise be ensured;	
(c) the applicant shall be provided, upon request, with free legal assistance and representation in accordance with Article 15(4) and (5);	
(d) the applicant shall have a right to remain:	
(i) until the time-limit for requesting a court or tribunal to be allowed to remain has expired;	
(ii) where the applicant has requested to be allowed to remain within the set time-limit, pending the decision of the court or tribunal on whether or not the applicant shall be allowed remain on the territory.	

Or. en

Amendment 524
Domènec Ruiz Devesa, Juan Fernando López Aguilar

Proposal for a regulation

Article 54 – paragraph 5

Text proposed by the Commission	*Amendment*
5. For the purpose of paragraph 4, the following conditions shall apply:	***deleted***
(a) the applicant shall have a time-limit of at least 5 days from the date when the decision is notified to him or her to request to be allowed to remain on the territory pending the outcome of the remedy;	
(b) the applicant shall be provided with interpretation in the event of a hearing before the competent court or tribunal, where appropriate communication cannot otherwise be ensured;	
(c) the applicant shall be provided, upon request, with free legal assistance and representation in accordance with Article 15(4) and (5);	
(d) the applicant shall have a right to remain:	
(i) until the time-limit for requesting a court or tribunal to be allowed to remain has expired;	
(ii) where the applicant has requested to be allowed to remain within the set time-limit, pending the decision of the court or tribunal on whether or not the applicant shall be allowed remain on the territory.	

Or. en

Amendment 525
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Pietro Bartolo, Javier Moreno Sánchez

Proposal for a regulation
Article 54 – paragraph 5 – introductory part

Text proposed by the Commission	*Amendment*
5. For the purpose of paragraph ***4***, the following conditions shall apply:	5. For the purpose of paragraph ***2***, the following conditions shall apply:

Or. en

Justification

Applicants should always enjoy the right to remain pending a first level of appeal. This is the only way to ensure their capacity to exercise their right to an effective remedy. As regards a second level of appeal, the right to remain might be revoked in certain circumstances provided that a court or tribunal take the decision to revoke.

Amendment 526
Jeroen Lenaers, Tomas Tobé, Lena Düpont

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

Text proposed by the Commission	*Amendment*
(a) the applicant shall have a time-limit ***of at least 5 days*** from the date when the decision is notified to him or her to request to be allowed to remain on the territory pending the outcome of the remedy;	(a) the applicant shall have a time-limit ***between a minimum of two days and a maximum of one week*** from the date when the decision is notified to him or her to request to be allowed to remain on the territory pending the outcome of the remedy;

Or. en

Amendment 527
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

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

Text proposed by the Commission	*Amendment*
(a) the ***applicant*** shall ***have a time-limit of at least*** 5 days from the date when the ***decision is notified to him or her to***	(a) the ***request to revoke the right to remain*** shall ***be made by the determining authority within*** 5 days from the date when

request to be allowed to remain on the territory pending the outcome of the remedy;	the ***applicant has lodged her/his appeal***;

Or. en

Amendment 528
Balázs Hidvéghi, Loránt Vincze

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

Text proposed by the Commission	*Amendment*
(a) the applicant shall have a time-limit of at least ***5*** days from the date when the decision is notified to him or her to request to be allowed to remain on the territory pending the outcome of the remedy;	(a) the applicant shall have a time-limit of at least ***3*** days from the date when the decision is notified to him or her to request to be allowed to remain on the territory pending the outcome of the remedy;

Or. en

Amendment 529
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Pietro Bartolo, Javier Moreno Sánchez

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

Text proposed by the Commission	*Amendment*
(i) until ***the time-limit for requesting*** a court or tribunal ***to*** be allowed to remain ***has expired;***	(i) until a court or tribunal ***has ruled on whether or not he/she shall*** be allowed to remain ***on the territory.***

Or. en

Justification

Applicants should always enjoy the right to remain pending a first level of appeal. This is the only way to ensure their capacity to exercise their right to an effective remedy. As regards a second level of appeal, the right to remain might be revoked in certain circumstances provided that a court or tribunal take the decision to revoke.

Amendment 530
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Pietro Bartolo, Javier Moreno Sánchez

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

Text proposed by the Commission	*Amendment*
(ii) where the applicant has requested to be allowed to remain within the set time-limit, pending the decision of the court or tribunal on whether or not the applicant shall be allowed remain on the territory.	***deleted***

Or. en

Amendment 531
Erik Marquardt

Proposal for a regulation
Article 54 – paragraph 6

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

Or. en

Amendment 532
Domènec Ruiz Devesa, Juan Fernando López Aguilar

Proposal for a regulation
Article 54 – paragraph 6

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

Or. en

Amendment 533
Sira Rego

Proposal for a regulation
Article 54 – paragraph 6

Text proposed by the Commission	*Amendment*
6. In cases of subsequent applications, by way of derogation from paragraph 6, point (d) of this Article, Member States may provide in national law that the applicant shall not have a right to remain, without prejudice to the respect of the principle of non-refoulement, if the appeal has been made merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent	***deleted***

removal from the Member State, in cases where it is immediately clear to the court that no new elements have been presented in accordance with Article 42(4).

Or. en

Amendment 534
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 54 – paragraph 6

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

Or. en

Amendment 535
Sira Rego

Proposal for a regulation
Article 54 – paragraph 7

Text proposed by the Commission	*Amendment*
7. An applicant who lodges a further appeal against a first or subsequent appeal decision shall not have a right to remain on the territory of the Member State, without prejudice to the possibility for a court or tribunal to allow the applicant to remain upon the applicant's request or acting ex officio.'	***deleted***

Or. en

Amendment 536
Erik Marquardt

Proposal for a regulation
Article 54 – paragraph 7

Text proposed by the Commission	*Amendment*
7. An applicant who lodges a further appeal against a first or subsequent appeal decision shall not have a right to remain on the territory of the Member State, without prejudice to the possibility for a court or tribunal to allow the applicant to remain upon the applicant's request or acting ex officio.'	***deleted***

Or. en

Amendment 537
Domènec Ruiz Devesa, Juan Fernando López Aguilar

Proposal for a regulation
Article 54 – paragraph 7

Text proposed by the Commission	*Amendment*
7. An applicant who lodges a further appeal against a first or subsequent appeal decision shall not have a right to remain on the territory of the Member State, without prejudice to the possibility	***deleted***

for a court or tribunal to allow the applicant to remain upon the applicant's request or acting ex officio.'

Or. en

Amendment 538
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo, Giuliano Pisapia

Proposal for a regulation
Article 54 – paragraph 7

Text proposed by the Commission	*Amendment*
7. An applicant who lodges a further appeal against a first or subsequent appeal decision ***shall not have a*** right to remain on the territory of the Member State***, without prejudice to the possibility for*** a court or tribunal ***to allow the applicant to remain upon the applicant's*** request ***or acting ex officio****.'*	7. An applicant who lodges a further appeal against a first or subsequent appeal decision ***may have the*** right to remain on the territory of the Member State ***revoked by*** a court or tribunal***, acting on a*** request ***from the determining authority***.

Or. en

Justification

For consistency with earlier amendments. In all instances, it must be a judge to determine that the right to remain should be withdrawn. It is not appropriate to grant this power to competent authorities which have already decided that the application is unfounded as their view of the application is already formed.

Amendment 539
Pietro Bartolo, Juan Fernando López Aguilar, Bettina Vollath, Birgit Sippel, Elena Yoncheva, Javier Moreno Sánchez, Giuliano Pisapia, Domènec Ruiz Devesa, Petar Vitanov

Proposal for a regulation
Article 54 – paragraph 7

Text proposed by the Commission	*Amendment*
7. An applicant who lodges a further	7. An applicant who lodges a further

appeal against a first or subsequent appeal decision ***shall not have a*** right to remain on the territory of the Member State***, without prejudice to the possibility for*** a court or tribunal ***to allow the applicant to remain upon the applicant's*** request ***or acting ex officio***.***'***	appeal against a first or subsequent appeal decision ***may have the*** right to remain on the territory of the Member State ***revoked by*** a court or tribunal***, acting on a*** request ***from the determining authority***.

Or. en

Justification

For consistency with earlier amendments. In all instances, it must be a judge to determine that the right to remain should be withdrawn. It is not appropriate to grant this power to competent authorities which have already decided that the application is unfounded as their view of the application is already formed.

Amendment 540
Bettina Vollath, Sylvie Guillaume, Juan Fernando López Aguilar, Domènec Ruiz Devesa, Elena Yoncheva, Petar Vitanov, Giuliano Pisapia, Birgit Sippel, Javier Moreno Sánchez, Pietro Bartolo

Proposal for a regulation
Article 54 a (new)

Text proposed by the Commission	*Amendment*
	Article 54a
	Monitoring of respect for fundamental rights
	1. Member States shall adopt relevant provisions to investigate allegations of non-respect for fundamental rights during border surveillance, screening, asylum and return procedures and shall adopt provisions under national law to penalise a failure to respect fundamental rights. The penalties provided for shall be effective, proportionate and dissuasive.
	2. Each Member State shall establish an independent monitoring mechanism
	– to ensure compliance with EU and international law, including the Charter of Fundamental Rights, during border

surveillance, the screening, asylum and return procedures;

– to monitor investigations, and where necessary trigger such investigations into allegations of non-respect for fundamental rights in all relevant activities in relation to border surveillance, the screening, asylum and return procedures, for all third-country nationals who:

(a) are involved in irregularly crossing the external border of a Member State by land, sea or air, except third country nationals for whom the Member State is not required to take the biometric data pursuant to Article 14(1) and (3) of Regulation (EU) 603/2013 for reasons other than their age;

(b) are disembarked in the territory of a Member State following a search and rescue operation, or

(c) who apply for international protection at external border crossing points of in transit zones and who do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399.

– to ensure that allegations of non-respect for fundamental rights in relation to the screening, including in relation to access to the asylum procedure and non-compliance with the principle of non-refoulement, are dealt with effectively and without undue delay.

– where applicable, to ensure compliance with the relevant rules on detention of the person concerned, in particular concerning the grounds, the duration and conditions of the detention;

– to ensure compliance with the procedural safeguards applicable to the person concerned.

Member States shall put in place adequate safeguards to guarantee the independence of the mechanism and shall involve national human rights institutions,

national ombudspersons, international organisations or relevant non-governmental organisations in the management and operation of the mechanism. Insofar as one or more of those institutions, or organisations are not directly involved in the mechanism, the bodies responsible for the monitoring mechanism shall establish and maintain close links with them.

In order for the mechanism to be effective, Member States shall provide bodies responsible for the mechanism with access to all relevant locations, individuals and documents, insofar as such access is necessary to allow the body responsible for the mechanism to fulfil its obligations set out in this Article.

In addition, the bodies responsible for the monitoring mechanism shall establish and maintain close links with the national data protection authorities and the European Data Protection Supervisor.

The Fundamental Rights Agency shall issue general guidance for Member States on the setting up of such mechanism and its independent functioning. Member States may request the Fundamental Rights Agency to support them in developing their national monitoring mechanism, including the safeguards for independence of such mechanism, as well as the monitoring methodology and appropriate training schemes.

The mechanisms referred to above shall be without prejudice to the monitoring mechanism for [...] the operational and technical application of the CEAS as set out in Article 13 [EUAA Regulation] and to the role of the fundamental rights monitors in monitoring respect for fundamental rights in all activities of the European Border and Coast Guard Agency as set out in Article 80, Regulation (No) 2019/1896.[European Border and Coast Guard Agency].

Or. en

Amendment 541
Erik Marquardt

Proposal for a regulation
Article 54 a (new)

Text proposed by the Commission	*Amendment*
	Article 54a
	Monitoring of fundamental rights in the border procedure
	1. The Commission shall set up an independent monitoring mechanism, in cooperation with the Member States, NHRIs and relevant Union bodies, in particular the European Union Agency for Asylum, in line with the mechanism established by [Screening Regulation].
	That mechanism shall aim to ensure:
	(a) that all actors involved in the border procedure comply with Union and international law during the border procedure;
	(b) compliance, where applicable, with European rules on the detention of persons, in particular rules concerning the grounds for and the duration of detention as well as the applicable legal requirements;
	(c) that allegations of breaches of fundamental rights in relation to the asylum border procedures, including in relation to access to the asylum procedure and the principle of non-refoulement, are investigated and followed up effectively and without undue delay.
	2. The findings of the border monitoring mechanism should be made available to police authorities, for subsequent enquiries and potential disciplinary measures, as well as to the judicial authorities, for subsequent

criminal investigations of serious violations of human rights.

3. The Commission shall put in place adequate safeguards to guarantee the independence of the monitoring mechanism referred to in the first subparagraph. The border monitoring mechanism should notably be allowed to receive and act on information provided by relevant and competent national, regional and international bodies as well as non-governmental organizations.

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

5. The EU Asylum Agency shall carry out the monitoring function in Article 13 and 14 [EUAA Regulation] with regard to all aspects of the border procedure, including the facilities in which border procedures take place.

6. The Commission shall invite relevant national, international and non-governmental organisations and bodies to participate in the monitoring carried out as part of the monitoring mechanism referred to in the first subparagraph. Where monitoring carried out as part of the monitoring mechanism referred to in paragraph 2 determines that there have been breaches of fundamental rights, effective remedies shall be made available to the victims of the identified human rights violations.

Or. en

Amendment 542
Sira Rego

Proposal for a regulation
Article 54 a (new)

Text proposed by the Commission	*Amendment*
	Article 54a
	Monitoring of fundamental rights
	1. In addition to the provisions foreseen in Article 7 of the [Screening Regulation], Member States shall adopt relevant provisions to investigate allegations of non-respect for fundamental rights during the asylum procedure, in addition to border surveillance, and return procedures.
	2. Independent human rights bodies, at national, European and international level, shall be the implementing components of an Independent Monitoring Mechanism and shall be able to access the facilities used for the purpose of a border procedure, as well as the land and sea borders, including through unannounced visits, in order to monitor the respect of fundamental rights under the scope of the current Regulation.
	3. Member States should enable the involved national independent authorities to trigger, refer to Justice and conduct investigations into misconduct at their own initiative and should allow national and international human rights bodies to report, also at their own initiative, and participate in or conduct such investigations. Member States should ensure access to documentation, places of detention, police stations and other relevant sites and areas to conduct such investigations. The information and findings of these authorities and bodies must be publicly accessible and transparent.
	4. Civil Society Organisations shall be able to alert these authorities and bodies of potential violations, providing

evidence and reports, referring victims, and representing or filing complaints on their behalf, regardless if at the time the complainants are on the Member State's territory.

5. In order to monitor all applicants' proper access to the asylum procedure and the rights foreseen by it, a specific independent complaint mechanism shall be set up by the involved national and international authorities and bodies, for applicants, including the ones who have not been allowed the right to enter the territory, are at risk of being returned and/or have been returned to a third country. Such a mechanism shall include a 24/7 hotline that can be accessed by persons in order to prevent further fundamental rights abuses, notably in case a person would be at risk of being arbitrarily returned to a third country.

6. The Independent Monitoring Mechanism shall also be able to monitor the eventual process of sanctions and redress that Member States would have to implement as decided by judicial or other national or European authorities.

Or. en