



Text of all instruments adopted as part of the New Pact on Migration and Asylum as adopted on 18 April 2024

- 1. Screening**
- 2. Asylum & Migration Management (including
Dublin IV and solidarity)**
- 3. Asylum Procedures**
- 4. Return and Border Procedures**
- 5. Crisis and force majeure (including provisions
on instrumentalization)**
- 6. Eurodac**
- 7. Reception conditions**
- 8. Qualification**
- 9. European Asylum Agency**
- 10. EU Resettlement Framework**

**Brussels, 18 April 2024 (OR.
en)**

**Interinstitutional File:
2020/0278(COD)**

8589/24

**CODEC 1018
FRONT 112
IXIM 101
COMIX 167
PE 83**

INFORMATION NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817

- Outcome of the European Parliament's first reading (Brussels, 10 to 11 April 2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 210) to the abovementioned proposal for a Regulation, for which Birgit SIPPEL (S&D, DE) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. In addition, the ID political group tabled 6 amendments (amendments number 211-217).

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 10 April 2024, the plenary adopted the compromise amendment (amendment number 210) to the abovementioned proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)0181

Screening of third country nationals at the external borders

European Parliament legislative resolution of 10 April 2024 on the proposal for a regulation of the European Parliament and of the Council introducing a screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (COM(2020)0612 – C9-0307/2020 – 2020/0278(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0612),
- having regard to Article 294(2) and Article 77(2) points (b) and (d), of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0307/2020),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Hungarian Parliament and the Italian Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Economic and Social Committee of 25 February 2021¹,
- having regard to the opinion of the Committee of the Regions of 19 March 2021²,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 8 February 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

¹ OJ C 155, 30.4.2021, p. 58.

² OJ C 175, 7.5.2021, p. 32.

- having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0149/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Regulation (EU) 2024/... of the European Parliament and of the Council introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2), points (b) and (d), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 155, 30.4.2021, p. 58.

² OJ C 175, 7.5.2021, p. 32.

³ Position of the European Parliament of 10 April 2024.

Whereas:

- (1) The Schengen area was created to achieve ■ an area without internal **borders** in which the free movement of persons is ensured, as set out in Article 3(2) of the Treaty on European Union (TEU). The good functioning of that area relies on mutual trust between the Member States and efficient management of the external border.

(2) The rules governing border control of persons crossing the external borders of the Member States of the Union are laid down in Regulation (EU) 2016/399 of the European Parliament and of the Council⁴. ***Despite the border surveillance measures that are applied, Member States could be faced with unauthorised border crossings by third-country nationals avoiding border checks.*** To further develop the Union's policy with a view to carrying out checks on persons and efficiently monitoring the crossing of external borders referred to in Article 77(1) of the Treaty on the Functioning of the European Union (TFEU), additional measures should address situations where third-country nationals ***are apprehended in connection with an unauthorised crossing of*** the external borders, ■ where third-country nationals are disembarked following search and rescue ***operations, and where*** third- country nationals ***make an application for*** international protection at a border crossing point without fulfilling entry conditions. This Regulation complements Regulation (EU) 2016/399 with regard to those situations. It is essential to ensure that, in those situations, third-country nationals are screened, in order to facilitate a proper identification and to allow for them to be referred efficiently to the ***appropriate*** procedures which, depending on the circumstances, ***might be the procedure*** for international protection or procedures respecting Directive 2008/115/EC of the European Parliament and of the Council⁵. The screening of such third-country nationals should seamlessly complement the checks carried out at the external border or compensate for the fact that those checks have ***not taken place*** when crossing the external border.

⁴ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

⁵ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third- country nationals (OJ L 348, 24.12.2008, p. 98).

(3) Border control is in the interest not only of the Member States at whose external borders it is carried out but of all Member States that have abolished internal border control. Border control should help to **reduce** illegal migration, **to combat the smuggling** and trafficking of human beings, and to prevent any threat to the Member States' internal security, public policy, public health and international relations. ***When carrying out border control, Member States are to act in compliance with relevant Union and international law, including the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, with obligations related to international protection, in particular the principle of non-refoulement, and with fundamental rights.*** As such, measures taken at the external borders are important elements of a comprehensive approach to migration, allowing Member States to address the challenge of mixed arrivals of **irregular** migrants and persons **in need of** international protection.

(4) According to Regulation (EU) 2016/399, border control consists of border checks carried out at the border crossing points and border surveillance, which is carried out between the border crossing points, in order to prevent third-country nationals from **border crossing not authorised under that Regulation or from** circumventing border checks. Pursuant to the provisions on border surveillance in Regulation (EU) 2016/399, a person who has crossed a border in an unauthorised manner and who has no right to stay on the territory of the Member State concerned is to be apprehended and made subject to procedures respecting Directive 2008/115/EC. Pursuant to Regulation (EU) 2016/399, border control is to be carried out without prejudice to the rights of refugees and persons requesting international protection, in particular as regards *non-refoulement*.

(5) Border guards are often **faced** with third-country nationals who are requesting international protection without travel documents, both following apprehension during border surveillance and during checks at the border crossing points. Moreover, at some border sections border guards are **faced** with large numbers of arrivals at the same time. In such circumstances, it is particularly difficult **and important** to ensure that all relevant databases are consulted and to ■ determine the appropriate ■ procedure **as quickly as possible**.

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(6) In particular, the screening of third-country nationals should **contribute** to **ensuring** that they are referred to the appropriate procedures at the earliest stage possible and that those procedures are continued without interruption or delay. At the same time, the screening should help to counter the practice whereby some applicants for international protection abscond after having been authorised to enter the territory of a Member State based on their request for international protection, in order to pursue such requests in another Member State or not at all.

(7) The screening of third-country nationals who apply for international protection, should be followed by an examination of the need for international protection. It should enable the collection and sharing with the authorities competent for that examination of any information that is relevant for the latter to identify the appropriate procedure for the examination of the application **without prejudging the type of procedure**, thus speeding up that examination. The screening should also **contribute to identifying vulnerable persons** so that any special █ needs are fully taken into account in the determination of and the pursuit of the applicable procedure.

(8) The obligations **on Member States** stemming from this Regulation should be without prejudice to Regulation (EU) 2024/... of the European Parliament and of the Council⁶⁺.

(9) This Regulation should apply to third-country nationals and stateless persons **regardless of whether they have made an application for international protection** who are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air, except third-country nationals for whom the Member State concerned is not required to take the biometric data pursuant to Regulation (EU) 2024/... of the European Parliament and of the Council⁷⁺⁺ for reasons other than their age, as well as to **those third-country nationals** who have been disembarked following search and rescue operations, **and do not fulfil the entry conditions set out in Regulation (EU) 2016/399**.

For those third-country nationals who have been disembarked following search and rescue operations, **the application of this Regulation should be without prejudice to the obligations of Member States according to international law regarding search and rescue operations**. This Regulation should also apply to those persons who seek international protection at the border crossing points or in transit zones without fulfilling the entry conditions **or where third-country nationals, after having been authorised to enter pursuant to Regulation (EU) 2016/399** on humanitarian grounds, on grounds of national interest or because of international obligations, **make an application for international protection**.

⁶ Regulation (EU) 2024/... of the European Parliament and of the Council of ... on asylum and migration management, amending Regulations (EU) 2021/1147, and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, ..., ELI:...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

⁷ Regulation (EU) 2024/... of the European Parliament and of the Council of ... on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/... and (EU) 2024/... of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ L, 2024/..., ..., ELI: ...).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)) and insert the number, date and OJ reference of that Regulation in the footnote, as well as the number of the Regulations contained in document PE-CONS 21/24 (2020/0279(COD)) and in document PE-CONS 18/24 (2016/0225(COD)), respectively, in the title in the footnote.

(10) The screening should be conducted at any adequate and appropriate location designated by each Member State, generally situated at or in proximity to the external border or, alternatively, in other locations within the territory, taking into account geography and existing infrastructures, ensuring that the screening can be carried out without delay. The screening of third-country nationals illegally staying within Member States' territory who have crossed an external border to enter the territory of the Member States in an unauthorised manner and who have not been already subjected to the screening in a Member State, should be conducted at any adequate and appropriate location designated by each Member State within its territory.

(11) Third-country nationals subject to the screening should remain available to the screening authorities during the screening. Member States should lay down in their national law provisions to ensure the presence of those third-country nationals during the screening in order to prevent absconding. Where it proves necessary and on the basis of an individual assessment of each case, Member States may detain a person subject to the screening, if other less coercive alternative measures cannot be applied effectively. Detention should only be applied as a measure of last resort in accordance with the principles of necessity and proportionality and should be subject to an effective remedy, in line with national, Union and international law. The relevant provisions of Directive (EU) 2024/... of the European Parliament and of the Council⁸⁺, for applicants for international protection, and the relevant rules on detention set out in Directive 2008/115/EC, for third-country nationals who have not made an application for international protection, should apply during the screening.

(12) Wherever it becomes clear during the screening that a third-country national subject to such screening fulfils the entry conditions for third-country nationals laid down in Regulation (EU) 2016/399, the screening should end and the third-country national concerned should be authorised to enter the territory, without prejudice to the application of penalties for the unauthorised crossing of external borders at places other than border crossing points or at times other than the fixed opening hours as referred to in that

⁸ Directive (EU) 2024/... of the European Parliament and of the Council of ... laying down the standards for the reception of applicants for international protection (OJ L, 2024/..., ..., ELI: ...).

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)) and insert the number, date, title, OJ reference and ELI reference of that Directive in the footnote.

Regulation.

(13) In view of the purpose of the derogations from the entry conditions for third-country nationals established by Regulation (EU) 2016/399, persons whose entry has been authorised by a Member State in accordance with such derogations under that Regulation in an individual decision should not be subjected to the screening even if they do not fulfil all entry conditions, ***unless they make an application for international protection.***

(14) All third-country nationals subject to the screening should be submitted to checks, in order to ***identify or verify*** their identity and to ***verify whether*** they ***might*** pose a threat to internal security or public health. In the case of persons ***making an application for*** international protection at border crossing points, the identity and security checks carried out in the context of border checks should be taken into account to avoid duplication of checks.

(15) On completion of the screening, the third-country nationals concerned should either be referred to the **authorities competent for registering the** application for **■** international protection or be made subject to procedures respecting Directive 2008/115/*EC*, as appropriate. The relevant information obtained during the screening should be provided to the competent authorities to support the further assessment of each individual case, in full respect of fundamental rights. **Where necessary, the checks established by this Regulation should be continued by the respective competent authorities within the ensuing procedure.** The procedures established by Directive 2008/115/*EC* should start to apply only after the screening has ended. The provisions on the registration of applications for international protection of Regulation 2024/... of the European Parliament and of the Council⁹⁺ should apply only after the screening has ended. That should be without prejudice to the fact that the persons applying for international protection at the moment of apprehension, in the course of border control at the border crossing point or during the screening, should be considered applicants **for international protection and Regulation (EU) 2024/...⁺⁺ and Directive (EU) 2024/...⁺⁺⁺ should apply to them.**

⁹ Regulation (EU) .../... of the European Parliament and of the Council of ... establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, ..., ELI:...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224(COD)).

⁺⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

(16) *Persons applying for international protection to whom Member States are not able to apply or are no longer able to apply an asylum border procedure in accordance with the provision on the exceptions to the asylum border procedure in Regulation (EU) 2024/...⁺ should, as a rule, be authorised to enter the territory.*

(17) The screening could also be followed by relocation under the mechanism for solidarity established by Regulation (EU) 2024/...⁺⁺ ***or another existing solidarity mechanism.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

(18) In accordance with the presumption as regards fulfilment of conditions of duration of stay laid down in Regulation (EU) 2016/399, the fulfilment of entry conditions and the authorisation of entry are expressed in an entry stamp in a travel document. The absence of such entry stamp or the absence of a travel document might therefore be considered as an indication that the holder does not fulfil the entry conditions. With the start of the operation of the Entry/Exit System established by Regulation (EU) 2017/2226 of the European Parliament and of the Council¹⁰ (EES) leading to substitution of the stamps with an entry in the EES, that presumption will become more reliable. Member States should therefore carry out the screening of third-country nationals who are already within their territory and who are unable to prove that they fulfilled the conditions of entry into the territory of the Member States. The screening of such third-country nationals is necessary in order to compensate for the fact that they presumably managed to evade entry checks upon arrival in the Schengen area and therefore could have not been either refused entry or referred to the appropriate procedure following the screening. Carrying out the screening could also help in ascertaining, through the consultation of the databases referred to in this Regulation, that the persons concerned do not pose a threat to internal security. By the end of the screening within the territory, the third-country nationals concerned should be subject to a return procedure or, where they apply for international protection, to the appropriate asylum procedure. Third-country nationals should not be subjected to repeated screenings.

¹⁰ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

(19) Member States should be able to refrain from carrying out the screening within the territory if a third-country national staying illegally on their territory is sent back, immediately after apprehension, to another Member State under bilateral agreements or arrangements or under bilateral cooperation frameworks. In that case, the Member State to which the third-country national concerned has been sent back should carry out the screening without delay.

(20) This Regulation is without prejudice to provisions of national law covering the identification of third-country nationals suspected of staying in a Member State illegally where such identification is in order to research, within a brief but reasonable time, the information enabling the determination of the illegality or legality of the stay.

(21) Without prejudice to the rules on border control applicable at the internal borders of the Member States where a decision to lift such controls has not yet been taken, the screening of third country nationals apprehended in connection with an unauthorised crossing of such internal borders where the controls have not yet been lifted should follow the rules established by this Regulation for the screening within the territory and not the rules established for the screening at the external border.

(22) The screening at the external border should be completed as soon as possible, and should not exceed seven days. The screening within the territory should be completed as soon as possible, and should not exceed three days. Member States should not be prevented from completing the screening at the external border and the screening within the territory in shorter periods, provided that the checks provided for in this Regulation are carried out.

(23) *The screening is part of the European integrated border management. The Instrument for Financial Support for Border Management and Visa Policy, established, as part of the Integrated Border Management Fund, by Regulation (EU) 2021/1148 of the European Parliament and of the Council¹¹, in particular can be mobilised to provide support to Member States' actions falling under this Regulation, in line with the rules governing the use of that Instrument and without prejudice to other priorities underpinned by it.*

¹¹ Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (OJ L 251, 15.7.2021, p. 48).

(24) In order to achieve the objectives of the screening, **a stronger framework for** close cooperation should be ensured between the competent national authorities referred to in the provision on implementation of control of Regulation (EU) 2016/399, the authorities **responsible for asylum procedures and reception of applicants**, the authorities **responsible for the protection of public health** and the authorities responsible for carrying out return procedures respecting Directive 2008/115/EC. Member States should be allowed to avail themselves of the support of the relevant agencies, in particular the European Border and Coast Guard Agency established by Regulation (EU) 2019/1896 of the European Parliament and of the Council¹² (the ‘European Border and Coast Guard Agency’) and the European Union Agency for Asylum established by Regulation (EU) 2021/2303 of the European Parliament and of the Council¹³ (the ‘European Union Agency for Asylum’), within the limits of their mandates. Member States should involve **national child protection authorities and national authorities in charge of detecting and identifying victims of** trafficking in human beings wherever the screening reveals facts relevant for trafficking in line with Directive 2011/36/EU of the European Parliament and of the Council¹⁴.

¹² Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

¹³ Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1).

¹⁴ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

(25) During the screening, the best interests of the child should always be a primary consideration in accordance with Article 24(2) of the Charter of Fundamental Rights of the European Union (the ‘Charter’). Child protection authorities should, wherever necessary, be closely involved in the screening to ensure that the best interests of the child are duly taken into account throughout the screening. A representative should be appointed to represent and assist the unaccompanied minor during the screening or, where a representative has not been appointed, a person trained to safeguard the best interests and general wellbeing of the minor should be designated. Where applicable, that representative should be the same as the representative appointed in accordance with the rules on unaccompanied minors in Directive (EU) 2024/...⁺. The trained person should be the person designated to provisionally act as a representative under that Directive, where that person has been designated.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

(26) When **applying this Regulation, the Member States** should ensure the respect for human dignity and should not discriminate against persons on grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, disability, age or sexual orientation.

(27) In order to ensure compliance with Union and international law, including the Charter, during the screening, each Member State should **provide for** a monitoring mechanism and put in place adequate safeguards for the independence thereof, **such as respect of the Paris Principles, adopted by the United Nations General Assembly Resolution 48/134 of 20 December 1993, of the Venice Principles, adopted by the Venice Commission at its 118th Plenary Session of 15-16 March 2019, the United Nations General Assembly Resolution of 28 December 2020 on the role of the Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law, and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 (“OPCAT”). For that purpose, Member States should be able to have recourse to already existing national fundamental rights monitoring mechanisms in accordance with the requirements set out in this Regulation.** The monitoring mechanism provided for by each Member State should cover in particular respect for fundamental rights in relation to the screening, as well as the respect for the applicable **Union and** national rules regarding detention and compliance with the principle of *non-refoulement*. The European Union Agency for Fundamental Rights established by Council Regulation (EC) No 168/2007¹⁵ (the ‘Fundamental Rights Agency’) should establish general guidance as to the establishment and the independent functioning of such monitoring mechanisms. Member States should furthermore be allowed to request the support of the Fundamental Rights Agency for developing their national monitoring mechanism. Member States should also be allowed to seek advice from the Fundamental Rights Agency with regard to establishing the methodology for their national monitoring mechanism and with regard to appropriate training measures. Member States should also be allowed to invite relevant and competent national, international and non-governmental organisations and bodies to participate in the monitoring. The independent monitoring mechanism should be without prejudice to the

¹⁵ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ L 53, 22.2.2007, p. 1).

monitoring of fundamental rights provided by the European Border and Coast Guard Agency's fundamental rights monitors provided for in Regulation (EU) 2019/1896, ***the monitoring mechanism for the purpose of monitoring the operational and technical application of the Common European Asylum System as set out in Regulation (EU) 2021/2303, the evaluation and monitoring mechanism established by Council Regulation (EU) 2022/922¹⁶ and monitoring carried out by existing national or international monitoring bodies.*** Member States should investigate allegations of the breach of the fundamental rights during the screening, including by ensuring that complaints are dealt with expeditiously and in an appropriate way.

¹⁶ Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013 (OJ L 160, 15.6.2022, p. 1).

- (28) *Member States should equip the independent monitoring mechanism with appropriate financial means.*
- (29) *The mere existence of judicial remedies in individual cases or national systems that supervise the efficiency of the screening is not sufficient to comply with the requirements concerning the monitoring of fundamental rights under this Regulation.*
- (30) *The screening* ■ *authorities should fill in a* **screening** *form. The form should be transmitted* **by any appropriate means, including digital tools**, *to the authorities* **registering** *applications for international protection or to the authorities competent for return* **procedures**, *depending to whom the* **person** *is* **referred**.
- (31) *This Regulation should be without prejudice to actions undertaken in accordance with national law with a view to establishing the identity of the person concerned or assessing possible threats to internal security.*

(32) The information in the screening form should be recorded in such a way that it is amenable to administrative and judicial review during any ensuing asylum or return procedure. The person subject to the screening should have the possibility to indicate to the screening authorities that the information contained in the form is incorrect. Any such indication should be recorded in the screening form without delaying the completion of the screening.

(33) Information contained in the screening form should be made available either on paper or in an electronic format to the person concerned, with the exception of the information related to the consultation of relevant databases for security checks. In the case of minors, the information contained in the screening form should be provided to the adult or adults responsible for the child. In the case of unaccompanied minors, the information contained in the screening form should be provided to the representative of the child or the person trained to safeguard the best interests and general well-being of the minor.

(34) The processing of data during the screening procedure should always be carried out in accordance with the applicable Union data protection law, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁷.

(35) The biometric data taken during the screening should, together with the data referred to in the provisions on the collection and transmission of biometric data of applicants for international protection, of third-country nationals or stateless persons apprehended in connection with the irregular crossing of an external border, of third-country nationals or stateless persons illegally staying in a Member State and of third-country nationals or stateless persons disembarked following a search and rescue operation of Regulation (EU) 2024/...⁺, be transmitted to Eurodac established by that Regulation ('Eurodac') by the competent authorities in accordance with the deadlines provided for in that Regulation.

(36) Third-country nationals subjected to the screening should be subject to a preliminary health check by qualified medical personnel with a view to identifying any needs for health care or isolation on public health grounds. Qualified medical personnel should be able to decide, based on the medical circumstances concerning the general state of each individual third-country national, that no further health check during the screening is necessary. That preliminary health check should be carried out by qualified medical personnel belonging to one of the following categories of the ISCO-08 classification of the International Standard Classification of Occupations under the responsibility of the International Labour Organization: 221 Medical Doctors, 2221 Nursing Professionals, or 2240 Paramedical Practitioners.

¹⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

(37) A preliminary vulnerability check should be carried out with a view to identifying persons with indications of being vulnerable, of being victims of torture or other inhuman or degrading treatment, or of being stateless, or who may have special reception or procedural needs within the meaning of Directive (EU) 2024/...⁺ and Regulation (EU) 2024/...⁺⁺, respectively. This should be without prejudice to further assessment in ensuing procedures following the completion of the screening. The vulnerability check should be carried out by specialised personnel of the screening authorities trained for that purpose.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224(COD)).

(38) During the screening, all persons concerned should be guaranteed a standard of living complying with the Charter and have access to emergency health care and essential treatment of illnesses. Particular attention should be paid to individuals with vulnerabilities, such as pregnant women, elderly persons, single-parent families, persons with an immediately identifiable physical or mental disability, persons visibly having suffered psychological or physical trauma and unaccompanied minors. In particular, in the case of a minor, information should be provided in a child-friendly and age-appropriate manner. All the authorities involved in the performance of the tasks related to the screening should **report any situation of vulnerabilities observed or reported to them**, should respect human dignity and privacy, and should refrain from any discrimination.

(39) Since third-country nationals subject to the screening might not **have** the necessary identity and travel documents required for the legal crossing of the external border, an identification **or verification** procedure should be **carried out** as part of the screening.

(40) The Common Identity Repository (CIR) was established by Regulations (EU) 2019/817¹⁸ and (EU) 2019/818¹⁹ of the European Parliament and of the Council to facilitate and assist in the correct identification of persons to facilitate and assist in the correct identification of persons registered in the EES, the Visa Information System established by Council Decision 2004/512/EC²⁰ (VIS), the European Travel Information and Authorisation System established by Regulation (EU) 2018/1240 of the European Parliament and of the Council²¹ (ETIAS), Eurodac and the centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons established by Regulation (EU) 2019/816 of the European Parliament and of the Council²² (ECRIS-TCN), including of unknown persons who are unable to identify themselves. For that purpose, the CIR contains only the identity, travel document and biometric data recorded in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN, logically separated. Only the personal data strictly necessary to perform an accurate identity check is stored in the CIR. The personal data recorded in the CIR **are** automatically deleted where the data are deleted from the underlying systems. Consultation of the CIR enables a reliable and exhaustive identification **or verification of identity** of persons, by making it possible to consult all identity data present in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in one go, in a fast and reliable manner, while ensuring **the** protection of the data and avoiding the

¹⁸ Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).

¹⁹ Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).

²⁰ Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) (OJ L 213, 15.6.2004, p. 5).

²¹ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

²² Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1).

unnecessary processing or duplication of data.

(41) In order to establish ***the identity or to verify*** the identity of the person subject to the screening, a verification should be initiated in the CIR in the presence of that person during the screening. During that verification, the biometric data of the person should be checked against the data contained in the CIR. Where the biometric data of a person cannot be used or if a query with those data fails ***or returns no hits***, the query could be carried out with the identity data of the person in combination with travel document data, where such data are available, ***or with data or information provided by or obtained from the third-country national concerned***. In accordance with the principles of necessity and proportionality, and where the query indicates that data on that person are stored in the CIR, Member State authorities should have access to the CIR to consult the identity data, travel document data and biometric data of that person, without the CIR providing any indication as to which EU information system contains the data.

(42) Since the use of the CIR for identification purposes has been limited by Regulations (EU) 2019/817 **and (EU) 2019/818** to facilitating and assisting in the correct identification of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in situations of police checks within the territory of the Member States, **those Regulations** need to be amended to provide for the additional purpose of using the CIR to identify **or verify the identity of** persons during the screening. **In the case of Regulation (EU) 2019/818, such amendment should for reasons of variable geometry take place through a different Regulation than this Regulation.**

(43) Given that many persons submitted to the screening might not **have** any travel documents, the screening authorities should have access to any other relevant documents held by the persons concerned in cases where the biometric data of such persons are not usable or yield no result in the CIR. The authorities should also be allowed to use data from those documents, other than biometric data, to carry out checks against the relevant databases.

(44) The identification **or verification of identity** of persons during border checks at the border crossing point and any consultation of the databases in the context of border surveillance or police checks in the external border area **or within the territory** by the authorities who referred the person concerned to the screening should be considered as part of the screening and should not be repeated, unless there are special circumstances justifying such repetition. ***The taking of biometric data for the purpose of both identification or verification of identity and the registration in accordance with the requirements of Regulation (EU)2024/...⁺ should take place once as part of the screening.***

(45) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission, enabling it to set out the detailed procedure and specifications for retrieving data and to specify the procedure for cooperation between the authorities responsible for carrying out the screening, Interpol National Central Bureaux **and** Europol national units, respectively, to determine the **threat** to internal security. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²³.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD))

²³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (46) The screening should also verify whether the entry of the third-country nationals concerned into the Union ***might*** pose a threat to internal security ■ .
- (47) As the screening concerns ***third-country nationals*** present at the external border without fulfilling entry conditions, ■ ***third-country nationals*** disembarked after a search and rescue operation without fulfilling entry conditions, ***and third-country nationals illegally staying within the territory of Member States***, the security checks as part of the screening should be at least of a similar level as the checks performed in respect of third-country nationals ***who*** apply ■ beforehand for an authorisation to enter the Union for a short stay, whether they are under a visa obligation or not.

(48) For third-country nationals who are exempt on the basis of their nationality from the visa requirement under Regulation (EU) 2018/1806 of the European Parliament and the Council²⁴, Regulation (EU) 2018/1240 provides that they have to apply for a travel authorisation to come to the Union for a short stay. Before receiving that travel authorisation, the persons concerned are submitted to security checks of the personal data they submit against a number of Union databases, namely VIS, the Schengen Information System established by Regulations (EU) 2018/1860²⁵, (EU) 2018/1861²⁶ and (EU) 2018/1862²⁷ of the European Parliament and the Council (SIS), the EES, ETIAS, the Europol data processed for the purpose of cross-checking as referred to in Regulation (EU) 2016/794 of the European Parliament and the Council²⁸, ECRIS-TCN,¹ as well as Interpol's Stolen and Lost Travel Document database (SLTD) and Travel Documents Associated with Notices database (TDAWN). Third-country nationals who are subject to the visa requirement under Regulation (EU) 2018/1806 are submitted to security checks before a visa is issued, against the same databases as third-country nationals not subject to that visa requirement, pursuant to Regulations (EC) No 810/2009²⁹ and (EC) No

²⁴ Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 303, 28.11.2018, p. 39).

²⁵ Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals (OJ L 312, 7.12.2018, p. 1).

²⁶ Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p. 14).

²⁷ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).

²⁸ Regulation (EU) 2016/794 of the European Parliament and the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

²⁹ Regulation (EC) No 810/2009 of the European Parliament and the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

767/2008³⁰ of the European Parliament and the Council.

(49) As regards persons subject to the screening, automated verifications for security purposes should be carried out against the same systems as provided for applicants for a visa, a long- stay visa, a residence permit under VIS or a travel authorisation under ETIAS, namely VIS, the EES, ETIAS, ***including the ETIAS watchlist referred to in Regulation (EU) 2018/1240***, SIS, ECRIS-TCN as regards persons convicted in relation to terrorist offences and other forms of serious criminal offences, ***Europol*** data processed for the purpose of cross-checking as referred to in Regulation (EU) 2016/794, SLTD and TDAWN.

³⁰ Regulation (EC) No 767/2008 of the European Parliament and the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

(50) ***The consultation of the relevant databases for security purposes*** should be conducted in a manner that ensures that only data necessary for carrying out the security checks is retrieved from those databases. With regard to persons who have ***made an application for*** international protection at a border crossing point ***or in transit zones***, the consultation of databases for the security check as part of the screening should focus on the databases that were not consulted during the border checks at the external border, thus avoiding repeated consultations.

(51) Where justified, ■ the screening could also include verification of objects in the possession of third-country nationals, in accordance with national law. Any measures applied in ***the*** context ***of a security check*** should be proportionate and should respect the human dignity of the persons subject to the screening. The authorities involved should ensure that the fundamental rights of the individuals concerned are respected, including the right to protection of personal data and freedom of expression.

(52) Since access to the EES, ETIAS, VIS and ECRIS-TCN is necessary for the **screening** authorities ■ in order to verify whether the person **might** pose a threat to internal security ■, Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and Regulation (EU) ■ 2019/816 should be amended to provide for that ■ access right, which is currently not provided by those Regulations. In the case of Regulation (EU) 2019/816, such amendment should for reasons of variable geometry take place through a different Regulation than this Regulation.

(53) The European search portal established by Regulation (EU) 2019/817 (ESP) should be used to carry out the searches against the **CIR for identification or verification of identity**.

(54) *It should be possible for the screening authorities to use the ESP to carry out the searches against the EES, ETIAS, VIS, SIS and ECRIS-TCN, Europol data, SLTD and TDAWN, for the purpose of security checks, as applicable.*

(55) *The consultation of Union databases for the purposes of identification or verification of identity or of security checks can be justified for the effective implementation of the screening and for achieving the same objective for which each of those databases has been established, namely the effective management of the Union's external borders in the context of the European integrated border management.*

(56) *In the event of a hit for the purposes of identification or verification of identity or of a security check, the screening authority should verify that data recorded in EU information systems or Europol data correspond to the data triggering a hit.*

(57) *It should also be possible for the screening authorities to check the relevant national databases in the context of identification or verification of identity or of security checks in accordance with national law.*

(58) *For the purposes of complying with the obligation to perform identification or verification of identity and security checks during the screening, Member States who do not yet apply some provisions of the Schengen acquis in full and do not therefore have access to all EU information systems and Union databases are responsible for performing identity and security checks by carrying out searches only in those systems and databases to which they have access.*

(59) Since the objectives of this Regulation, namely **to strengthen** the control of **third-country nationals crossing the external borders and to provide for** the identification or **verification of identity of all third-country nationals subject to the screening and for the consultation of relevant databases in order to verify whether the third-country nationals subject to the screening might pose a threat to internal security and contribute to** their referral to the appropriate procedures, cannot be sufficiently achieved by **the** Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(60) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, as annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(61) This Regulation constitutes a development of the provisions of the Schengen *acquis*, in which Ireland does not take part, in accordance with Council Decision 2002/192/EC³¹. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

³¹ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

(62) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC³².

(63) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC³³.

³² Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

³³ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

(64) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU³⁴.

(65) As regards Cyprus , this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 3(1) of the 2003 Act of Accession .

³⁴ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

(66) *As regards Cyprus, Council Regulation (EC) No 866/2004³⁵ provides for specific rules that apply to the line between the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus exercises effective control and those areas in which the Government of the Republic of Cyprus does not exercise effective control. Under this Regulation, although that line does not constitute an external border, checks are to be carried out on all persons crossing the line through an authorised or unauthorised crossing point with the aim to combat illegal immigration of third-country nationals and to detect and prevent any security risk. It follows that the screening at the external border may also apply to third-country nationals who are apprehended in connection with an unauthorised crossing of that line and to those who have made an application for international protection at the authorised crossing points.*

³⁵ Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession (OJ L 161, 30.4.2004, p. 128).

(67) *Denmark, Norway, Iceland, Switzerland, and Liechtenstein are not bound by Directive (EU) 2024/...⁺. In those States the reception conditions for applicants for international protection are regulated by relevant national legislation based on the application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967. As regards those States, references made in this Regulation to that Directive should be understood as references to corresponding provisions in national law,*

HAVE ADOPTED THIS REGULATION:

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

Article 1
Subject matter ■

This Regulation establishes:

- (a) the screening at the external borders of the Member States *of third-country nationals* ■ who, *without fulfilling the entry conditions set out in Article 6 of Regulation (EU) 2016/399*, have crossed the external border in an unauthorised manner, ■ have applied for international protection during border checks, *or have been* disembarked after a search and rescue operation, before they are referred to the appropriate procedure, *and*
- (b) *the screening of third-country nationals illegally staying within the territory of the Member States where there is no indication that those third-country nationals have been subject to controls at external borders*, before they are referred to the appropriate procedure.

■

The objective of the screening shall be to strengthen the control of third-country nationals crossing the external borders, to identify all third-country nationals subject to the screening and *to check* against *the* relevant databases *whether* the persons subject to the screening *might* pose a threat to internal security. The screening shall also entail *preliminary* health *and vulnerability* checks ■ to identify ■ *persons* in need of health care *and persons that might pose* a threat to public health, and to identify vulnerable persons. Such checks shall facilitate the referral of such persons to the appropriate procedure.

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This Regulation also provides for an independent monitoring mechanism in each Member State to monitor compliance with Union and international law, including the Charter of Fundamental Rights of the European Union (the ‘Charter’), during the screening.

Article 2 Definitions

For the purposes of this Regulation, the following definitions apply:

■

- (1) ‘threat to public health’ means ‘threat to public health’ ■ as defined in Article 2, point (21), of Regulation (EU) 2016/399;
- (2) ‘verification’ means ‘verification’ as defined *in Article 4, point (5), of Regulation (EU) 2019/817*;
- (3) ‘identification’ means ‘identification’ as defined *in Article 4, point (6), of Regulation (EU) 2019/817*;
- (4) ‘third-country national’ means ‘third-country national’ as defined in Article 2, point (6), of Regulation (EU) 2016/399;

- (5) *‘stateless person’ means a person who is not considered as a national by any State under the operation of its law;*
- (6) *‘Europol data’ means ‘Europol data’ as defined in Article 4, point (16), of Regulation (EU) 2019/817;*
- (7) *‘representative’ means a natural person or an organisation, including a public authority, appointed by the competent authorities or bodies to represent, assist and act, as applicable, on behalf of an unaccompanied minor;*
- (8) *‘biometric data’ means ‘biometric data’ as defined in Article 4, point (11), of Regulation (EU) 2019/817;*
- (9) *‘minor’ means a third-country national or stateless person below the age of 18 years;*

- (10) *‘screening authorities’ means all competent authorities designated by national law to carry out one or more of the tasks under this Regulation, except for the health checks referred to in Article 12(1);*
- (11) *‘unaccompanied minor’ means a minor who arrives on the territory of the Member State unaccompanied by an adult responsible for him or her, whether by the law or practice of the Member State concerned, and for as long as such minor is not effectively taken into the care of such an adult, including a minor who is left unaccompanied after entering the territory of a Member State;*
- (12) *‘detention’ means the confinement of a person by a Member State within a particular place, where such person is deprived of freedom of movement;*
- (13) *‘Interpol databases’ means ‘Interpol databases’ as defined in Article 4, point (17), of Regulation (EU) 2019/817;*
- (14) *‘search and rescue operation’ means an operation of search and rescue as referred to in the International Convention on Maritime Search and Rescue adopted in Hamburg, Germany, on 27 April 1979.*

Article 3 Fundamental rights

When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter, with relevant international law, including the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, with the obligations related to access to international protection, in particular the principle of non-refoulement, and with fundamental rights.

Article 4

Relation with other legal instruments

1. ***For third-country nationals subject to the screening who have made an application for international protection:***

a) the registration of the application for international protection made in accordance with Regulation (EU) 2024/...⁺ shall be determined by Article 27 of that Regulation; and

b) the application of the common standards for the reception of applicants for international protection of Directive (EU) 2024/...⁺⁺ shall be determined by Article 3 of that Directive.

2. ***Without prejudice to Article 8(7) of this Regulation, Directive 2008/115/EC or national provisions respecting Directive 2008/115/EC shall apply only after the screening has ended, except for the screening referred to in Article 7 of this Regulation, where that Directive or national provisions respecting that Directive shall apply in parallel with the screening referred to in Article 7 of this Regulation.***

Article 5

Screening at the external border

1. ***The screening provided for under this Regulation shall apply to all third-country nationals, regardless of whether they have made an application for international protection, who do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399 and who:***

(a) are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air, except third-country nationals for whom the Member State concerned is not required to take the biometric data pursuant to Article 22(1) and (4) of Regulation (EU) 2024/...⁺ for reasons other than their age, or

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

- (b) are disembarked in the territory of a Member State following a search and rescue operation. █

█

2. The screening *provided for under this Regulation* shall **■** apply to all third-country nationals who *have made an application* for international protection at external border crossing points or in transit zones and who do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399.

■

3. *Third-country nationals who have been authorised to enter pursuant to Article 6(5) of Regulation (EU) 2016/399 shall not be subject to the screening. However, third-country nationals who are authorised to enter pursuant to Article 6(5)(c) of that Regulation and who make an application for international protection shall be subject to the screening.*

Where it becomes apparent during the screening that the third-country national concerned fulfils the entry conditions set out in Article 6 of Regulation (EU) 2016/399, the screening of that third-country national shall end.

The screening may be discontinued where the third-country nationals concerned leaves the territory of the Member States, for their country of origin or country of residence or for another third country to which the third-country nationals concerned voluntarily decide to return and where the return of those third-country nationals is accepted.

Article 6

Authorisation to enter the territory of a Member State

During the screening, the persons referred to in Article 5(1) and (2) shall not be authorised to enter the territory of a Member State. ***Member States shall lay down in their national law provisions to ensure that persons referred to in Article 5(1) and (2) remain available to the authorities responsible for carrying out the screening in the locations as referred to in Article 8, for the duration of the screening, to prevent any risk of absconding, potential threats to internal security resulting from such absconding or potential threats to public health resulting from such absconding.***

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Article 7

Screening within the territory

1. Member States shall carry out the screening of third-country nationals *illegally staying* within their territory *only* where ■ such third-country nationals have crossed an external border to enter the territory of the Member States in an *unauthorised* manner *and have not already been subjected to the screening in a Member State. Member States shall lay down in their national law provisions to ensure that those third-country nationals remain available to the authorities* responsible for carrying out the screening *for the duration of the screening, to prevent any risk of absconding and potential threats to internal security resulting from such absconding.*
2. *Member States may refrain from carrying out the screening in accordance with paragraph 1 if a third-country national staying illegally on their territory is sent back, immediately after apprehension, to another Member State under bilateral agreements or arrangements or under bilateral cooperation frameworks. In that case, the Member State to which the third-country national concerned has been sent back shall carry out the screening.*
3. Article 5(3), second and third subparagraphs shall apply to the *screening in accordance with paragraph 1 of this Article.*

Article 8

Requirements concerning the screening

1. In the ***cases referred*** to in Article 5, the screening shall be conducted at ***any adequate and appropriate*** location ***designated by each Member State, generally*** situated at or in proximity to the external borders ***or, alternatively, in other locations within its territory.***
2. In the cases referred to in Article 7, the screening shall be conducted at any ***adequate and appropriate*** location ***designated by each Member State*** within the territory of a Member State.
3. In the cases referred to in Article 5 of this Regulation, the screening shall be carried out without delay and in any case be completed within ***seven*** days from the apprehension in the external border area, the disembarkation in the territory of the Member State concerned or the presentation at the border crossing point. ■ With regard to persons referred to in Article 5(1), point (a), of this Regulation to whom Article ***23(1)*** and (4) of Regulation (EU) 2024/...⁺ applies, where ***those persons*** remain physically at the external border for more than 72 hours, the ***screening of them shall be carried out thereafter and the*** period for the screening shall be reduced to ***four*** days.

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⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

4. The screening referred to in Article 7 shall be carried out without delay and be completed within three days from apprehension of the third-country national.
5. The screening shall comprise the following **■** elements:
 - (a) **a** preliminary health *check in accordance with Article 12*;
 - (b) **a preliminary** vulnerability check in accordance with Article 12;
 - (c) identification **or verification of identity** in accordance with Article 14;
 - (d) the registration of biometric data in *accordance with [Articles 15, 22 and 24 of Regulation (EU) 2024/...⁺*, to the extent that it has not yet occurred;
 - (e) **a** security check in accordance with Articles 15 and 16;
 - (f) the filling out of a **screening** form in accordance with Article 17;
 - (g) referral to the appropriate procedure in accordance with Article 18.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

6. *Organisations and persons providing advice and counselling shall have effective access to third-country nationals during the screening. Member States may impose limits to such access by virtue of national law where such limits are objectively necessary for the security, public order or administrative management of a border crossing point or of a facility where the screening is carried out, provided that such access is not severely restricted or rendered impossible.*
7. *The relevant rules on detention set out in Directive 2008/115/EC shall apply during the screening in respect of third-country nationals who have not made an application for international protection.*
8. *Member States shall ensure that all persons subject to the screening are accorded a standard of living which guarantees their subsistence, protects their physical and mental health and respects their rights under the Charter.*
9. Member States shall designate **screening** authorities *and ensure that the staff of those authorities who* carry out the screening *have the appropriate knowledge and have received the necessary training in accordance with Article 16 of Regulation (EU) 2016/399.*

Member States shall ***ensure that*** qualified medical ***personnel carry*** out the ***preliminary*** health check provided for in Article 12 ***and that specialised personnel of the screening authorities trained for that purpose carry out the preliminary vulnerability check provided for in that Article.*** National child protection authorities and national ***authorities in charge of detecting and identifying victims of*** trafficking in human beings ***or equivalent mechanisms*** shall also be involved in those checks, where appropriate. ■

Member States shall also ensure that only duly authorised staff of the screening authorities responsible for the identification or verification of identity and the security check have access to the data, systems and databases referred to in Articles 14 and 15.

Member States shall ***deploy*** appropriate staff and sufficient resources to carry out the screening in an efficient way.

The ***screening*** authorities may be assisted or supported in the performance of the screening by experts or liaison officers and teams deployed by the European Border and Coast Guard Agency and the ■ European Union Agency for Asylum ■ within the limits of their mandates, ***provided that such experts or liaison officers and teams have the relevant training as referred to in the first and second subparagraphs.***

Article 9

Obligations of third-country nationals subjected to the screening

- 1. *During the screening, third-country nationals subject to the screening shall remain available to the screening authorities.***
- 2. *Third-country nationals shall:***
 - a) indicate their name, date of birth, gender and nationality, and provide documents and information, where available, that prove those data;***
 - b) provide biometric data as referred to in Regulation (EU) 2024/...⁺.***

Article 10

Monitoring of fundamental rights

- 1. Member States shall adopt relevant provisions to investigate allegations of failure to respect fundamental rights in relation to the screening.**

Member States shall ensure, where appropriate, referral for the initiation of civil or criminal justice proceedings in cases of failure to respect or to enforce fundamental rights, in accordance with national law.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD))

2. Each Member State shall ***provide for*** an independent ***monitoring mechanism in accordance with the requirements set out in this Article, which shall:***

(a) monitor compliance with Union and international law, including the Charter, ***in particular as regards access to the asylum procedure, the principle of non-refoulement, the best interest of the child and the relevant rules on detention, including relevant provisions on detention in national law, during the screening;*** and

(b) ensure that substantiated allegations of failure to respect fundamental rights in ***all relevant activities in*** relation to the screening are dealt with effectively and without undue delay, ***trigger , where necessary, investigations into such allegations and monitor the progress of such investigations.***

The independent monitoring mechanism shall cover all activities undertaken by the Member States in implementing this Regulation.

The independent monitoring mechanism shall have the power to issue annual recommendations to Member States.

Member States shall put in place adequate safeguards to guarantee the independence of the independent monitoring mechanism. *National Ombudspersons and national human rights institutions, including national preventive mechanisms established under the OPCAT, shall participate in the operation of the independent monitoring mechanism and may be appointed to carry out all or part of the tasks of the independent monitoring mechanism. The independent monitoring mechanism may also involve relevant international and non-governmental organisations and public bodies independent from the authorities carrying out the screening. Insofar as one or more of those institutions, organisations or bodies are not directly involved in the independent monitoring mechanism, the independent monitoring mechanism shall establish and maintain close links with them. The independent monitoring mechanism shall establish and maintain close links with the national data protection authorities and the European Data Protection Supervisor.*

■

The independent monitoring mechanism shall carry out its tasks on the basis of on-the-spot checks and random and unannounced checks.

Member States shall provide the independent monitoring mechanism with access to all relevant locations, including reception and detention facilities, individuals and documents, insofar as such access is necessary to allow the independent monitoring mechanism to fulfil the obligations set out in this Article. Access to relevant locations or classified information shall be granted only to persons acting on behalf of the independent monitoring mechanism and having received the appropriate security clearance issued by a competent authority in accordance with national law.

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

The Commission shall take into account the findings of the independent monitoring mechanisms in its assessment of the effective application and implementation of the Charter according to Article 15(1) and Annex III of Regulation (EU) 2021/1060 of the European Parliament and of the Council³⁶.

- 3. The independent monitoring mechanism referred to in paragraph 2 of this Article shall be without prejudice to the monitoring mechanism for the purpose of monitoring the operational and technical application of the Common European Asylum System as set out in Article 14 of Regulation (EU) 2021/2303 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 of Regulation (EU) 2019/1896.*
- 4. Member States shall equip the independent monitoring mechanism referred to in paragraph 2 with appropriate financial means.*

³⁶ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

Article 11 Provision of information

1. ***Member States shall ensure that third-country nationals subject to the screening are informed about [] :***

- (a) ***the purpose, duration and elements*** of the screening, as well as the manner in which it is carried out and its possible outcomes;
- (b) ***the right to apply for international protection and the applicable rules on making an application for international protection, where applicable in the circumstances specified in Article 30 of Regulation (EU) 2024/...⁺, and, for those third-country nationals having made an application for international protection, the obligations and the consequences of non-compliance laid down in Articles 17 and 18 of Regulation (EU) 2024/...⁺⁺;***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (c) the rights and obligations ■ of third -country nationals during the screening, including their obligations under **Article 9** and the ***possibility to contact and be contacted by the organisations and persons referred to in Article 8(6)***;
- (d) ***the rights conferred on data subjects by the applicable Union data protection law, in particular Regulation (EU) 2016/679.***

■

2. ***Member States shall also ensure, where appropriate, that third-country nationals subject to the screening are informed about:***

- (a) the applicable rules on the conditions of entry for third-country nationals in accordance with Regulation (EU) 2016/399, as well as on other conditions of entry, stay and residence of the Member State concerned, to the extent that that information has not been given already;

■

(b) *the obligation to return in accordance with Directive 2008/115/EC and the possibilities to enrol in a programme providing logistical, financial and other material or in-kind assistance for the purpose of supporting voluntary departure;*

(c) *the conditions of relocation in accordance with Article 67 of Regulation (EU) 2024/...⁺ or another existing solidarity mechanism.*

3. The information provided during the screening shall be given in a language which the third-country national understands or is reasonably supposed to understand. The information shall be ***provided*** in writing, ***on paper or in electronic format***, and ***█***, where necessary, orally using interpretation services. ***In the case of minors, the information shall be provided in a child-friendly and age-appropriate manner and with the involvement of the representative or person referred to in Article 13(2) and (3). The screening authorities may make the necessary arrangements for cultural mediation services to be available to facilitate access to the procedure for international protection.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

4. Member States may authorise relevant and competent national, international and non-governmental organisations and bodies to provide third-country nationals with information referred to in this Article during the screening according to national law.

Article 12

Preliminary health checks and vulnerabilities

1. Third-country nationals subjected to the screening referred to in Articles 5 ***and 7*** shall be subject to a preliminary ***health check to be carried out by qualified*** medical ***personnel*** with a view to identifying any needs for ***health*** care or isolation on public health grounds. ***Qualified medical personnel may decide***, based on the ***medical*** circumstances concerning the general state of ***a*** individual third-country ***national, that no further health check during the screening is necessary. Third-country nationals subject to the screening referred to in Articles 5 and 7 shall have access to emergency health care and essential treatment of illness.***

2. *Without prejudice to the obligations on Member States laid down in Article 24 of Regulation (EU) 2024/...⁺, for third-country nationals that have made applications for international protection the health check referred to in paragraph 1 of this Article may form part of the medical examination referred to in Article 24 of that Regulation.*
3. *Third-country nationals subjected to the screening referred to in Articles 5 and 7 shall be subject to a preliminary vulnerability check by specialised personnel of the screening authorities trained for that purpose, with a view to identifying whether a third-country national might be a stateless person, vulnerable or a victim of torture or other inhuman or degrading treatment, or have special needs within the meaning of Directive 2008/115/EC, Article 25 of Directive (EU) 2024/...⁺⁺ and Article 20 of Regulation (EU) 2024/...⁺. For the purpose of that vulnerability check, the screening authorities may be assisted by non-governmental organisations and, where relevant, by qualified medical personnel.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

4. Where there are indications of vulnerabilities or special reception or procedural needs, the third-country national concerned shall receive timely and adequate support ***in adequate facilities*** in view of their physical and mental health. In the case of minors, support shall be given ***in a child-friendly and age-appropriate manner*** by personnel trained and qualified to deal with minors, and in cooperation with national child protection authorities.

5. ***Without prejudice to the assessment of special reception needs required under Directive (EU) 2024/...⁺, the assessment of special procedural needs required under Regulation (EU) 2024/...⁺⁺ and the vulnerability check required under Directive 2008/115/EC, the preliminary vulnerability check referred to in paragraphs 3 and 4 of this Article may form part of the vulnerability and special procedural assessments laid down in that Regulation and those Directives.***

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224(COD)).

Article 13 Guarantees for minors

- 1. During the screening, the best interests of the child shall always be a primary consideration in accordance with Article 24(2) of the Charter.**
- 2. During the screening, the minor shall be accompanied by, where present, an adult family member.**
- 3. Member States shall, as soon as possible, take measures to ensure that a representative or, where a representative has not been appointed, a person trained to safeguard the best interests and general wellbeing of the minor accompanies and assists the unaccompanied minor during the screening in a child-friendly and age-appropriate manner and in a language that he or she understands. That person shall be the person designated to provisionally act as a representative under Directive (EU) 2024/...⁺ where that person has been designated under that Directive.**

The representative shall have the necessary skills and expertise, including regarding the treatment and specific needs of minors. The representative shall act in order to safeguard the best interests and general well-being of the minor and so that the unaccompanied minor can benefit from the rights and comply with the obligations under this Regulation.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

4. *The person in charge of accompanying and assisting an unaccompanied minor in accordance with paragraph 3 shall not be a person responsible for any elements of the screening, shall act independently and shall not receive orders either from persons responsible for the screening or from the screening authorities. Such persons shall perform their duties in accordance with the principle of the best interests of the child and shall have the necessary expertise and training to that end. In order to ensure the well-being and social development of the minor, that person shall be changed only when necessary.*
5. *Member States shall place a representative or person as referred to in paragraph 3 in charge of a proportionate and limited number of unaccompanied minors and, under normal circumstances, of no more than thirty unaccompanied minors at one time, to ensure that that representative or person is able to perform his or her tasks effectively.*
6. *The fact that a representative has not been appointed or a person provisionally acting as a representative has not been designated under Directive (EU) 2024/...⁺ shall not prevent an unaccompanied minor from exercising the right to apply for international protection.*

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

Article 14

Identification *or verification of identity*

1. To the extent it has not yet occurred during *the application* of Article 8 of Regulation (EU) 2016/399, the identity of third-country nationals subjected to the screening pursuant to Article 5 or 7 *of this Regulation* shall be verified *or established*, by using, *where applicable*, the following ■

- (a) identity, travel or other documents;
- (b) data *or information* provided by or obtained from the third-country national concerned; and
- (c) biometric data.

2. For the purpose of the identification **and verification of identity** referred to in paragraph 1 **of this Article**, the **screening** authorities shall , **using the data or information referred to in that paragraph**, query the Common Identity Repository established by Regulations (EU) 2019/817 and (EU) 2019/818 (CIR) **pursuant to** ■ **Article 20a** of Regulation (EU) 2019/817 **and pursuant to Article 20a of Regulation (EU) 2019/818, search the Schengen Information System** established by Regulations (EU) 2018/1860, (EU) 2018/1861 and (EU) 2018/1862 **(SIS) and, where relevant, search the national databases applicable in accordance with national law**. The biometric data of a third-country national **subject to the screening shall be taken once for the purpose of both the identification or verification of identity of that person and registration in Eurodac of that person in accordance with Articles 15(1)(b), 22, 23 and 24 of Regulation (EU) 2024/...⁺ as applicable**.

3. **The query of the CIR provided for in paragraph 2 of this Article shall be launched using the ESP in accordance with Chapter II of Regulation (EU) 2019/817 and Chapter II of Regulation (EU) 2019/818.**

Where it is technically impossible to use the ESP to query one or more EU information systems or the CIR, the first subparagraph of this paragraph shall not apply and the screening authorities shall access the EU information systems or the CIR directly.

This paragraph is without prejudice to access by screening authorities to SIS, for which the use of the ESP shall remain optional.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

4. Where the biometric data of the third-country national cannot be used or where the query using those data referred to in paragraph 2 fails **or returns no hits**, the query ■ shall be carried out using the identity data of the third-country national, in combination with any identity, travel or other document data, or with **any of** the ■ data **or information referred to in paragraph 1, point (b)**.
5. ***Searches in SIS with biometric data shall be carried out in accordance with Article 33 of Regulation (EU) 2018/1861 and Article 43 of Regulation (EU) 2018/1862.***
6. The checks, where possible, shall also include the verification of at least one of the biometric identifiers integrated into any identity, travel or other document.

Article 15 Security check

1. Third-country nationals subjected to the screening pursuant to Article 5 or 7 shall undergo **a security** check to verify **whether** they **might pose** a threat to **internal security**. That security check may cover both the third-country nationals and **the objects** in their possession. The law of the Member State concerned shall **apply to** any searches carried out.

2. ***For the purpose of conducting the security check referred to in paragraph 1 of this Article, and to*** the extent that it has not been already done during the checks referred to in Article 8(3) of Regulation (EU) 2016/399, the ***relevant Union databases, in particular SIS***, the Entry/Exit System established by Regulation (EU) 2017/2226 (EES), the European Travel Information and Authorisation System established by Regulation (EU) 2018/1240 (ETIAS), including the ETIAS watchlist referred to in Article 34 of Regulation (EU) 2018/1240, the Visa Information System established by Decision 2004/512/EC (VIS) and the centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons established by Regulation (EU) 2019/816 (ECRIS-TCN) ***,*** the Europol data processed for the purpose referred to in Article 18(2), point (a), of Regulation (EU) 2016/794, and the Interpol ***databases shall be consulted as provided for in Article 16 of this Regulation. Relevant national databases may also be consulted for that purpose.***

3. As regards the consultation of the EES, ETIAS, ***with the exception of the ETIAS watchlist*** referred to in Article 34 of Regulation (EU) 2018/1240, and VIS pursuant to paragraph 2 of ***this Article***, the retrieved data shall be limited to indicating refusals of entry, refusals, ***annulment or revocation*** of a travel authorisation, or decisions to refuse, annul or revoke a visa, a long-stay visa or a residence permit ***respectively***, which are based on security grounds.

In the event of a hit in SIS, the screening authority carrying out the search shall have access to the data contained in the alert.

4. ***As regards the consultation of ECRIS-TCN, the data retrieved shall be limited to convictions related to terrorist offences and other forms of serious criminal offences referred to in Article 5(1), point (c), of Regulation (EU) 2019/816.***
5. ***If necessary, the*** Commission shall adopt implementing acts setting out the detailed procedure and specifications for retrieving data. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).

Article 16

Arrangements for **identification and** security checks

1. The queries provided for in Article 14(2) and in Article 15(2) may be launched using, for queries related to EU information systems, **Europol data, Interpol Databases**, the ESP in accordance with Chapter II of Regulation (EU) 2019/817 and with Chapter II of Regulation (EU) 2019/818¹.
2. Where a **hit** is obtained following a query as provided for in Article 15(2) against data in one of the EU information systems, the **screening authorities** shall have access to consult **data** corresponding to that **hit** in the respective EU information **systems subject to the conditions laid down in the legal acts governing such access**.
3. **When a hit is obtained following a search in SIS, the screening authorities shall carry out the procedures set out in Regulations (EU) 2018/1860, (EU) 2018/1861 or (EU) 2018/1862, including the consultation of the alert issuing Member State through the SIRENE Bureaux referred to in Article 7(2) of Regulation (EU) 2018/1861 and in Article 7(2) of Regulation (EU) 2018/1862.**

4. *Where the personal data of a third-country national correspond to a person whose data is recorded in ECRIS-TCN and flagged in accordance with Article 5(1), point (c), of Regulation (EU) 2019/816, the data may only be used for the purpose of the security check referred to in Article 15 of this Regulation and for the purpose of consultation of the national criminal records which shall be in accordance with Article 7c of that Regulation. National criminal records shall be consulted prior to the delivery of an opinion pursuant to Article 7c of that Regulation.*
5. Where a query as provided for in Article 15(2) reports a match against Europol data, ***an automated notification, containing the data used for the query, shall be sent to Europol in accordance with Regulation (EU) 2016/794 in order for Europol to take, if needed, any appropriate follow-up action, using the communication channels provided for in that Regulation.***

6. ***Queries of Interpol databases as provided for in Article 15(2) of this Regulation shall be performed in accordance with Articles 9(5) and 72(1) of Regulation (EU) 2019/817. Where it is not possible to perform such queries in a way that no information is revealed to the owner of the Interpol alert, the screening shall not include the query of the Interpol databases.***
7. ***When a hit is obtained in the ETIAS watchlist referred to in Article 34 of Regulation (EU) 2018/1240, Article 35a of that Regulation shall apply.***
8. ***If necessary, the*** Commission shall adopt implementing acts to specify the procedure for cooperation between the authorities responsible for carrying out the screening, Interpol National Central Bureaux ***and*** Europol national units **■** , respectively, to determine the ***threat*** to internal security. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).

Article 17

Screening form

1. **The** screening ■ authorities shall, with regard to the persons referred to in Articles 5 and 7, ■ complete **a** form ■ containing **the following**:

- (a) name, date and place of birth and **gender**;
- (b) ■ indication of nationalities **or statelessness**, countries of residence prior to arrival and languages spoken;
-
- (c) **the reason for which the screening was performed**;
- (d) **information on the preliminary health check carried out in accordance with Article 12(1), including where, based on the circumstances concerning the general state of each individual third-country national, no further health check was necessary**;

- (e) relevant information on the preliminary vulnerability check carried out in accordance with Article 12(3), in particular any vulnerability or special reception or procedural needs identified;*
- (f) information as to whether the third-country national concerned has made an application for international protection;*
- (g) information provided by the third-country national concerned as to whether he or she has family members located on the territory of any Member State;*
- (h) whether the consultation of relevant databases in accordance with Article 15 resulted in a hit;*
- (i) whether the third-country national concerned has complied with his or her obligation to cooperate in accordance with Article 9.*

2. *Where available, the form referred to in paragraph 1 shall include:*
- (a) the reason for irregular arrival or entry;*
 - (b) information on routes travelled, including the point of departure, places of previous residence, third countries of transit, third countries where international protection may have been sought or granted, and intended destination within the Union;*
 - (c) travel or identity documents carried by the third-country nationals;*
 - (d) any comments and other relevant information, including any related information in cases of suspected smuggling or trafficking in human beings.*
3. *The information in the form referred to in paragraph 1 shall be recorded in such a way that it is amenable to administrative and judicial review during any ensuing asylum or return procedure.*

It shall be specified whether the information referred to in paragraph 1, points (a) and (b), is confirmed by the screening authorities or declared by the person concerned.

Information contained in the form shall be made available either on paper or in electronic format to the person concerned. Information referred to in point (h) of paragraph 1 of this Article shall be redacted. Before the form is transmitted to the relevant authorities as referred to in Article 18(1), (2), (3) and (4), the person subject to the screening shall have the possibility to indicate that the information contained in the form is incorrect. The screening authorities shall record any such indication under the relevant information as referred to in this Article.

Article 18

Completion of the screening

1. *Once the screening is completed or, at the latest, when the time limits set in Article 8 of this Regulation expire, third-country nationals referred to in Article 5(1) of this Regulation who **■** have not **made an application** for international protection **shall be referred to the authorities competent for applying procedures respecting Directive 2008/115/EC, without prejudice to the application of Article 6(5) of Regulation (EU) 2016/399.***

■

The form referred to in Article 17 shall be transmitted to the relevant authorities to whom the third-country national is being referred.

2. Third-country nationals ***referred to in Articles 5 and 7*** who ***have*** made an application for international protection shall be referred to the authorities ***competent for registering the application for international protection***.
3. Where the third-country national is to be relocated ***in accordance with*** Article 67 of Regulation (EU) 2024/...⁺ ***or with any other existing mechanism for solidarity***, the third-country national concerned shall be referred to the relevant authorities of the Member States concerned together with the form referred to in Article 17 of this Regulation.
4. The third-country nationals referred to in Article 7 of this Regulation who ■ have not ***made an application*** for international protection ***shall continue to be subject to return procedures respecting Directive 2008/115/EC***.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

5. Where ■ third-country nationals referred to in Article ■ 5(1) **and (2)** and in Article 7 of **this Regulation** are referred to the appropriate procedure regarding **international protection, to a procedure respecting Directive 2008/115/EC or to the relevant authorities of another Member State concerning third-country nationals to be relocated**, the screening ends. Where not all the checks have been completed within the deadlines referred to in Article **8 of this Regulation**, the screening shall nevertheless end with regard to that person, who shall be referred to the appropriate procedure.

6. **Where, in accordance with national criminal law, a third-country national referred to in Article 5 or 7 of this Regulation is subject to national criminal law procedures, or to an extradition procedure, Member States may decide not to apply the screening. If the screening had already started, the form referred to in Article 17 of this Regulation shall be sent, with an indication of circumstances that ended the screening, to the authorities competent for the procedures respecting Directive 2008/115/EC, or, if the third-country national has made an application for international protection, the authorities competent under national law for registering applications for international protection.**

7. ***The personal data stored pursuant to this Regulation shall be deleted in accordance with the timelines set out in Regulation (EU) 2024/...⁺.***

Article 19

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 ***of Regulation (EU) No 182/2011 shall apply. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act, and Article 5(4), third subparagraph,*** of Regulation (EU) No 182/2011 shall apply.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

Article 20

Amendments to Regulation (EC) No 767/2008 Article 6 of Regulation (EC) No

767/2008 is amended as follows:

(1) paragraph 2 is replaced by the following:

“2. Access to VIS for ■ consulting the data shall be reserved exclusively for the duly **authorised** staff of ■ :

- (a) *the national authorities of each Member State and of the Union bodies which are competent for the purposes laid down in Articles 15 to 22, Articles 22g to 22m, and Article 45e of this Regulation;*
- (b) *the ETIAS Central Unit and the ETIAS National Units, designated pursuant to Articles 7 and 8 of Regulation (EU) 2018/1240, for the purposes laid down in Articles 18c and 18d of this Regulation and for the purposes of Regulation (EU) 2018/1240;*

(c) *the screening authorities as defined in Article 2, point (10), of Regulation (EU) 2024/... of the European Parliament and of the Council^{*,+}, for the purposes laid down in Articles 15 and 16 of that Regulation;*

(d) *the national authorities of each Member State and of the Union bodies which are competent for the purposes laid down in Articles 20, 20a and 21 of Regulation (EU) 2019/817.*

Such access shall be limited according to the extent that the data are required for the performance of their tasks for those purposes, and proportionate to the objectives pursued.

** Regulation (EU) 2024/... of the European Parliament and of the Council of ... introducing the screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L, ..., ELI:...)." ;*

(2) *the following paragraph is inserted:*

"2a. The screening authorities as defined in Article 2, point (10), of Regulation (EU) 2024/...^{++,} shall also have access to VIS for consulting the data in order to perform a security check in accordance with Article 15(2) of that Regulation.

A search in accordance with this paragraph shall be performed by using the data referred to in Article 14(1) of Regulation (EU) 2024/...⁺⁺ and VIS shall return a hit where a decision to refuse, annul or revoke a visa, long-stay visa or residence permit based on the grounds provided for in Article 12(2)(a)(i),(v) and (vi) of this Regulation is recorded in a matching file.

Where a hit is obtained, the screening authorities shall have access to all relevant data in the file."

⁺ OJ: Please insert in the text the number of this Regulation and insert the number, date and OJ reference of this Regulation in the footnote.

⁺⁺ OJ: Please insert in the text the number of this Regulation.

Article 21

Amendments to Regulation (EU) 2017/2226 Regulation (EU) 2017/2226 is

amended as follows:

(1) **in** Article 6(1), the following point is **added**:

“(I) support the objectives of the screening established by Regulation (EU) 2024/... **of the European Parliament and of the Council**⁺, in particular for the checks provided under **Articles 14 to 16** thereof.

* **Regulation (EU) 2024/... of the European Parliament and of the Council of ... introducing the screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L, ..., ELI:...).**”;

(2) Article 9 is amended as follows:

■

(a) **the following paragraph is inserted:**

“2b. **The duly authorised staff of the screening authorities as defined in Article 2, point (10), of Regulation (EU) 2024/...⁺⁺ shall have access to the EES to consult EES data.**”;

⁺ OJ: Please insert in the text the number of this Regulation and insert the number, date and OJ reference of this Regulation in the footnote.

⁺⁺ OJ: Please insert in the text the number of this Regulation.

(b) paragraph 4 is replaced by the following:

“4. Access to the EES data stored in the CIR shall be reserved exclusively for the duly **authorised** staff of the national authorities of each Member State and for the duly **authorised** staff of the Union agencies that are competent for the purposes laid down in Articles 20, 20a and 21 of **Regulation (EU) 2019/817 and in** Articles 20, 20a and 21 of **Regulation (EU) 2019/818 of the European Parliament and of the Council***. Such access shall be limited according to the extent that the data are required for the performance of their tasks for those purposes, and proportionate to the objectives pursued.

* **Regulation (EU) 2019/818 of the European Parliament and of the Council** of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).”;

(3) **the following Article is inserted:**

“Article 24a

Access to data for the security check for the purposes of the screening

The screening authorities as defined in Article 2, point (10), of Regulation (EU) 2024/...⁺ shall have access to the EES to consult the data in order to perform a security check in accordance with Article 15(2) of that Regulation.

A search in accordance with this Article shall be performed by using the data referred to in Article 14(1) of Regulation (EU) 2024/...⁺ and the EES shall return a hit where a refusal of entry record based on the grounds provided for in points B, D, H, I and J of Part B of Annex V to Regulation (EU) 2016/399 is linked to a matching individual file.

Where a hit is obtained, the screening authorities shall have access to all relevant data in the file.

⁺ OJ: Please insert in the text the number of this Regulation.

If the individual file does not include any biometric data, the screening authorities may proceed to access the biometric data of the person concerned and verify correspondence in VIS in accordance with Article 6 of Regulation (EC) No 767/2008.”;

(4) in Article 46(1), point (a) is replaced by the following:

“(a) the purpose of the access referred to in Article 9(2), (2a) and (2b).”.

Article 22

Amendments to Regulation (EU) 2018/1240 Regulation (EU) 2018/1240 is

amended as follows:

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(1) in Article 4, the following point is inserted:

“(eb) support the purposes of Regulation (EU) 2024/... of the European Parliament and of the Council⁺;

**** Regulation (EU) 2024/... of the European Parliament and of the Council of ... introducing the screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L, ..., ELI:...).***”;

(2) in Article 8(2), the following point is added:

“(i) providing opinions in accordance with Article 35a.”;

⁺ OJ: Please insert in the text the number of this Regulation and insert the number, date and OJ reference of this Regulation in the footnote.

(3) *Article 13 is amended as follows:*

(a) *paragraph 4a is replaced by the following:*

“4a. Access to the ETIAS identity data and travel document data stored in the CIR shall also be reserved exclusively for the duly authorised staff of the national authorities of each Member State and for the duly authorised staff of the Union agencies that are competent for the purposes laid down in Articles 20, 20a and 21 of Regulation (EU) 2019/817. Such access shall be limited according to the extent that the data are required for the performance of their tasks for those purposes, and proportionate to the objectives pursued.”;

(b) *the following paragraph is inserted:*

“4b. The screening authorities as defined in Article 2, point (10), of Regulation (EU) 2024/... of the European Parliament and of the Council⁺ (the ‘screening authorities’) shall also have access to ETIAS to consult the data in order to perform the checks in accordance with Article 15(2) of that Regulation.

⁺ OJ: Please insert in the text the number of this Regulation and insert the number, date and OJ reference of this Regulation in the footnote.

A search in accordance with this paragraph shall be performed by using the data referred to in Article 14(1), points (a) and (b), of Regulation (EU) 2024/...⁺ and ETIAS shall return a hit where a decision refusing, annulling or revoking a travel authorisation based on Article 28(7) or on Article 37(1), points (a), (b) and (e), of this Regulation is included in a matching application file.

Where a hit is obtained, the screening authorities shall have access to all relevant data in the file.

If the search carried in accordance with this paragraph indicates that there is a correspondence between the data used for the search and the data recorded in the ETIAS watchlist referred to in Article 34, the ETIAS National Unit or Europol having entered the data in the ETIAS watchlist shall be notified of the correspondence and shall be responsible for accessing the data in the ETIAS watchlist and for providing an opinion in accordance with Article 35a.

**** Regulation (EU) 2024/... of the European Parliament and of the Council of ... introducing the screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L, ..., ELI:...)." ;***

⁺ OJ: Please insert in the text the number of this Regulation.

(c) **paragraph** 5 is replaced by the following:

“5. Each Member State shall designate the competent national authorities referred to in paragraphs 1, 2, **4** and **4a** of this Article, and the **screening** authorities referred to in paragraph **4b** of this Article, and shall communicate a list of those authorities to eu-LISA without delay, in accordance with Article 87(2) of this Regulation. That list shall specify for which purpose the duly authorised staff of each authority shall have access to the data in the ETIAS Information System in accordance with paragraphs 1, 2, **4** and **4a** of this Article.”;

(4) *the following Article is inserted:*

“Article 35a

Tasks of the ETIAS National Unit and Europol regarding the ETIAS watchlist for the purpose of the screening

1. In cases referred to in Article 13(4b), fourth subparagraph, the ETIAS Central System shall send an automated notification to either the ETIAS National Unit or to Europol, depending on which of them entered the data into the ETIAS watchlist. Where the ETIAS National unit or Europol, as appropriate, considers that the third-country national undergoing the screening might pose a threat to internal security, it shall immediately notify the respective screening authorities and provide a reasoned opinion to the Member State performing the screening, within two days of the receipt of the notification, in the following manner:

(a) *the ETIAS National Units shall inform the screening authorities through a secure communication mechanism, to be set up by eu-LISA, between the ETIAS National Units on the one part and the screening authorities on the other;*

(b) *Europol shall inform the screening authorities using the communication channels provided for in Regulation (EU) 2016/794; if no opinion is provided, it shall be considered that there is no security risk.*

2. *The automated notification referred to in paragraph 1 of this Article shall contain the data referred to in Article 15(2) of Regulation (EU) 2024/...⁺ used for the query.”;*

(5) *in Article 69(1), the following point is inserted:*

“(ea) where relevant, a reference to queries entered in the ETIAS Central System for the purposes of Articles 14 and 15 Regulation (EU) 2024/...⁺, the hits triggered and the results of this query;”.

⁺ OJ: Please insert in the text the number of this Regulation.

Article 23

Amendments to Regulation (EU) 2019/817 Regulation (EU) 2019/817 is amended

as follows:

(1) in Article 7, paragraph 2 is replaced by the following:

“The Member State authorities and Union agencies referred to in paragraph 1 of this Article shall use the ESP to search data related to persons or their travel documents in the central systems of the EES, VIS and ETIAS in accordance with their access rights as referred to in the legal instruments governing those EU information systems and in national law. They shall also use the ESP to query the CIR in accordance with their access rights under this Regulation for the purposes referred to in Articles 20, 20a, 21 and 22.”;

(2) Article 17 is amended as follows:

“(a) paragraph 1 is replaced by the following:

“A common identity repository (CIR), creating an individual file for each person that is registered in the EES, VIS, ETIAS, Eurodac or ECRIS-TCN containing the data referred to in Article 18, is established for the purpose of facilitating and assisting in the correct identification of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in accordance with **Articles** 20 and 20a, of supporting the functioning of the MID in accordance with Article 21 and of facilitating and streamlining access by designated authorities and Europol to the EES, VIS, ETIAS and Eurodac, where necessary for the prevention, detection or investigation of terrorist offences or other serious criminal offences in accordance with Article 22.”;

(b) paragraph 4 is replaced by the following:

“Where it is technically impossible because of a failure of the CIR to query the CIR for the purpose of identifying a person pursuant to Article 20 or for the purpose of identification or verification of identity of a person pursuant to Article 20a, for the detection of multiple identities pursuant to Article 21 or for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences pursuant to Article 22, the CIR users shall be notified by eu-LISA in an automated manner.”;

(3) in Article 18, paragraph 3 is replaced by the following:

“The authorities accessing the CIR shall do so in accordance with their access rights under the legal instruments governing the EU information systems, and under national law and in accordance with their access rights under this Regulation for the purposes referred to in Articles 20, 20a, 21 and 22.”;

(4) **the** following Article is inserted:

“Article 20a

Access to the common identity repository for **identification or verification of identity** according to Regulation (EU) 2024/... **of the European Parliament and of the Council**^{*+}

1. Queries of the CIR shall be carried out by the **screening authorities as defined in Article 2, point (10), of Regulation (EU) 2024/...⁺⁺ (the ‘screening authorities’)** solely for the purpose of identification or **verification of identity** of a person according to Article 14 of that Regulation, provided that the **process** was initiated in the presence of that person.

2. Where the query indicates that data on that person are stored in the CIR, the **screening** authorities shall have access to consult the data referred to in Article 18(1) **of this Regulation** as well as to the data referred to in Article 18(1) of Regulation (EU) 2019/818.

* **Regulation (EU) 2024/... of the European Parliament and of the Council of ... introducing the screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L, ..., ELI:...).**”;

⁺ OJ: Please insert in the text the number of this Regulation and insert the number, date and OJ reference of this Regulation in the footnote.

⁺⁺ OJ: Please insert in the text the number of this Regulation.

(5) *Article 24 is amended as follows:*

(a) *paragraph 1 is replaced by the following:*

“1. Without prejudice to Article 46 of Regulation (EU) 2017/2226, Article 34 of Regulation (EC) No 767/2008 and Article 69 of Regulation (EU) 2018/1240, eu-LISA shall keep logs of all data processing operations in the CIR in accordance with paragraphs 2, 2a, 3 and 4 of this Article.”;

(b) *the following paragraph is inserted:*

“2a. eu-LISA shall keep logs of all data processing operations pursuant to Article 20a in the CIR. Those logs shall include the following:

(a) the Member State launching the query;

(b) the purpose of access of the user querying via the CIR;

- (c) *the date and time of the query;*
- (d) *the type of data used to launch the query;*
- (e) *the results of the query.”;*

(c) *in paragraph 5, the first subparagraph is replaced by the following:*

“ *Each Member State shall keep logs of queries that its authorities and the staff of those authorities duly authorised to use the CIR make pursuant to Articles 20, 20a, 21 and 22. Each Union agency shall keep logs of queries that its duly authorised staff make pursuant to Articles 21 and 22.”.*

Article 24 Evaluation

By ... [four years from the entry into **force of this Regulation**], the Commission shall report on the implementation of the measures set out in this Regulation. ■

By ... [seven years from the date of entry into *force* of this Regulation], and every five years thereafter, the Commission shall carry out an evaluation of this Regulation. The Commission shall present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. Member States shall provide the Commission all information necessary for the preparation of that report, by ... [six years and six months from the date of entry into force of this Regulation], and every five years thereafter.

Article 25 Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from ... [24 months from the entry into force of this Regulation].

The provisions laid down in Articles 14 to 16 related to queries to EU information systems, the CIR and the ESP shall start to apply only once the individual relevant information systems, the CIR and ESP enter into operation.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament
The President

For the Council
The President

**Brussels, 18 April 2024 (OR.
en)**

**Interinstitutional File:
2020/0279(COD)**

8590/24

**CODEC 1019
ASILE 54
MIGR 159
CADREFIN 68
PE 84**

INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL on asylum and migration management and amending Council Directive
(EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]
- Outcome of the European Parliament's first reading (Brussels, 10 to 11 April
2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 473) to the abovementioned proposal for a Regulation, for which Tomas TOBÉ (EPP, SE) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. In addition, the ID political group tabled 18 amendments (amendments number 474 to 492).

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 10 April 2024, the plenary adopted the compromise amendment (amendment number 473) to the abovementioned proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)0179

Asylum and migration management

European Parliament legislative resolution of 10 April 2024 on the proposal for a regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] (COM(2020)0610 – C9-0309/2020 – 2020/0279(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0610),
- having regard to Article 294(2) and Article 78(2), point (e), and Article 79(2), points (a), (b) and (c), of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0309/2020),
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Italian Senate, the Hungarian Parliament and the Slovak Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Economic and Social Committee of 25 February 2021¹,
- having regard to the opinion of the Committee of the Regions of 19 March 2021²,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 8 February 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

¹ OJ C 155, 30.4.2021, p. 58.

² OJ C 175, 7.5.2021, p. 32.

- having regard to Rules 59 and 40 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0152/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to the Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Regulation (EU) 2024/... of the European Parliament and of the Council on asylum and migration management, amending  Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2), point (e), and Article 79(2), points (a), (b) and (c), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 155, 30.4.2021, p. 58.

² OJ C 175, 7.5.2021, p. 32.

³ Position of the European Parliament of 10 April 2024.

Whereas:

- (1) The Union, in constituting an area of freedom, security and justice, should ensure the absence of internal border controls for persons and frame a common policy on asylum, immigration and management of the external borders of Member States, based on solidarity ***and fair sharing of responsibility*** between Member States, which is fair towards third-country nationals ***and stateless persons and in compliance with international and Union law, including fundamental rights.***
- (2) In order to reinforce mutual trust between Member States, it is necessary to have a comprehensive approach to asylum and migration management which brings together ***internal and external components.*** The effectiveness of such an approach depends on all components being ■ addressed ***jointly and implemented consistently*** and in an integrated manner.

- (3) This Regulation should contribute to such comprehensive approach by setting out a common framework for the actions of the Union and of the Member States, ***each within their respective competences***, in the field of asylum and ***relevant*** migration management policies, by ***upholding and*** elaborating on the principle of solidarity and fair sharing of responsibility, ***including the financial implications of that principle, between the Member States, which governs the policies in the area of asylum and migration*** in accordance with Article 80 of the Treaty on the Functioning of the European Union (TFEU). ***The principle of solidarity and fair sharing of responsibility should be the premise on the basis of which the Member States collectively share the responsibility to manage migration, in particular in the area governed by the Common European Asylum System.***

- (4) Member States should take all necessary measures, *inter alia*, to provide access to international protection and adequate reception conditions to those in need, to ***promote legal pathways***, to enable the effective application of the rules on determining the Member State responsible for examining an application for international protection, to ***effectively manage the return of*** third-country nationals ***who do not or no longer fulfil the conditions for residence in the territory of the Member States***, to prevent the irregular migration and unauthorised movements ***of third-country nationals and stateless persons between Member States, to combat migrant smuggling and trafficking in human beings, including reducing the vulnerabilities caused by*** them, and to provide support to other Member States in the form of solidarity contributions, as their contribution to the comprehensive approach.

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- (5) *To strengthen cooperation with third countries on asylum and migration, including readmission and addressing the root causes and drivers of irregular migration and forced displacement, it is necessary to promote and build tailor-made and mutually beneficial partnerships with those countries. Such partnerships should provide a framework for better coordination of the relevant Union policies and tools with third countries, and be based on human rights, rule of law and the respect of the Union's common values. As regards the external components of the comprehensive approach, nothing in this Regulation affects the pre-existing division of competences between the Member States and the Union, or between the institutions of the Union. Those competences will continue to be exercised with full respect for the procedural rules of the Treaties and in line with the case law of the Court of Justice of the European Union, in particular as regards non-binding instruments of the Union.*

- (6) The common framework is needed in order to effectively address the increasing phenomenon of mixed arrivals of persons in need of international protection and of those who are not, and in recognition that the ***responsibility for*** irregular arrivals of migrants ***and asylum seekers*** in the Union should not have to be assumed by individual Member States alone, but by the Union as a whole. ■ The scope of this Regulation should also include ■ admitted persons ■ .
- (7) In order to ■ ensure the coherence and effectiveness of the actions and measures taken by the Union and its Member States, acting within their respective competences, ■ ***there is a need for integrated policy-making and a comprehensive approach*** in the field of asylum and migration management, including both its internal and external components. ***The Union and Member States should ensure, each within their respective competences, and in compliance with the applicable Union law and international obligations, the coherence and implementation of asylum and migration management policies.***

- (8) ***In order to ensure that their asylum, reception and migration systems are well prepared and that each part of those systems has sufficient capacity, Member States should have the necessary human, material and financial resources and infrastructure to effectively implement asylum and migration management policies, and allocate the necessary staff to their competent authorities for the implementation of this Regulation. The Member States should also ensure appropriate coordination between the relevant national authorities as well as with the national authorities of the other Member States.***

- (9) Taking a strategic approach, **Member States** should **have national strategies to ensure their capacity to effectively implement their** asylum and migration management systems, **in full compliance with their obligations under Union and international law. Those strategies** should include **preventive measures to reduce the risk of migratory pressure as well as** information on contingency planning, **including as provided for under Directive (EU) 2024/... of the European Parliament and of the Council⁴⁺, and relevant information as regards** the principles of integrated policy-making and of solidarity and fair sharing of responsibility under this Regulation and legal obligations stemming therefrom at national level. **The Commission and relevant Union bodies, offices and agencies, and in particular the European Union Agency for Asylum (the 'Asylum Agency'), should be able to support the Member States when establishing their national strategies. The consultation of local and regional authorities by Member States, in accordance with national law and as appropriate, could also improve and strengthen national strategies. To ensure that the national strategies are comparable on specific core elements, a common template should be established by the Commission.**

⁴ Directive (EU) 2024/... of the European Parliament and of the Council of ... laying down standards for the reception of applicants for international protection (OJ L, 2024/..., ..., ELI: ...).

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)) and insert the number, date, title, OJ reference and ELI reference of that Directive in the footnote.

- (10) In order to ensure that an effective monitoring system is in place to ensure the application of the Union asylum *acquis*, the results of the monitoring undertaken by the Asylum Agency and ***the European Border and Coast Guard Agency, and other relevant bodies, offices, agencies or organisations, relevant parts*** of the evaluation carried out in accordance with Council Regulation (EU) 2022/922⁵ as well as those carried out in line with Article 10 of Regulation (EU) 2024/... of the European Parliament and of the Council⁶⁺ should also be taken into account in Member States' national strategies. ***Member States could also consider the results of other relevant monitoring mechanisms.***
- (11) ***The Commission should adopt a long-term European Asylum and Migration Management Strategy (the 'Strategy') setting out the strategic approach to ensure a consistent implementation of national strategies at Union level, in accordance with the principles set out in this Regulation and in Union primary law and applicable international law.***

⁵ ***Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013 (OJ L 160, 15.6.2022, p. 1).***

⁶ Regulation (EU) 2024/... of the European Parliament and of the Council of ... introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L, 2024/..., ..., ELI: ...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)) and insert the number, date, title, OJ reference and ELI reference of that Regulation in the footnote.

- (12) **Considering** the importance of ensuring that the Union is prepared and able to adjust to the developing and evolving realities of asylum and migration management, the Commission should annually adopt a *European Annual Asylum and Migration Report (the ‘Report’)*. *The Report should assess the asylum, reception and migratory situation over the previous 12-month period along all migratory routes to and in all Member States, serve as an early warning and awareness tool for the Union in the area of migration and asylum, and provide a strategic situational picture and projections for the coming year. The Report should set out, inter alia, the preparedness of the Union and the Member States to respond and adapt to the evolution of the migratory situation and the results of monitoring by the relevant Union bodies, offices and agencies. The data and information as well as the assessments contained in the report should be taken into account in the decision-making procedures relating to the solidarity mechanism set out in Part IV of this Regulation.*

- (13) *The Report should be prepared in consultation with Member States and relevant Union bodies, offices and agencies. For the purposes of the Report, the Commission should use existing reporting mechanisms, primarily the Integrated Situational Awareness and Analysis, provided that the Integrated Political Crisis Response is activated, and the EU mechanism for preparedness and management of crises related to migration set out in Commission Recommendation (EU) 2020/1366⁷. It is of the utmost importance for ensuring that the Union is prepared and able to adjust to the developing and evolving realities of asylum and migration management, and hence for the successful functioning of the annual asylum and migration cycle and the solidarity mechanism, that the Member States, the Council, the Commission, the European External Action Service and the relevant Union bodies, offices and agencies contribute to such existing reporting mechanisms and ensure the adequate and timely exchange of information and data. Information from other relevant sources, including the European Migration Network, the United Nations High Commissioner for Refugees, and the International Organization for Migration, should also be taken into consideration. The Commission should request additional information from Member States only when that information is not available through those reporting mechanisms and relevant Union bodies, offices and agencies, in order to avoid a duplication of efforts.*

⁷ *Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration (Migration Preparedness and Crisis Blueprint) (OJ L 317, 1.10.2020, p. 26).*

- (14) In order to ensure that the necessary tools are in place to assist Member States in dealing with challenges that can arise due to the presence on their territory of third-country nationals *or stateless persons*, regardless of how they crossed the external borders of Member States, the Report should *be accompanied by a decision determining which* Member States are *under migratory pressure, at risk of migratory pressure during the upcoming year or facing a significant migratory situation (the ‘Decision’)*. Member States *under migratory pressure* should ■ be able to rely on the use of the ■ solidarity *contributions included in the Annual Solidarity Pool*.

- (15) *In order to provide predictability to Member States under migratory pressure and to contributing Member States, the Report and the Decision should be accompanied by a Commission proposal identifying concrete annual solidarity measures, including relocations, financial contributions and, where applicable, alternative solidarity measures, and their numerical scale likely to be needed for the upcoming year at Union level, recognising that the various types of solidarity are of equal value. The types and numerical scale of the measures identified in the Commission proposal should as a minimum correspond to annual minimum thresholds for relocation and financial contributions. Those thresholds should be set out in this Regulation to ensure the predictable planning by contributing Member States and to provide minimum guarantees for the benefitting Member States. Where it is considered necessary, the Commission could identify in its proposal higher annual numbers for relocation or financial contributions. In order to preserve the equal value of solidarity measures, the ratio set out between the annual numbers identified in this Regulation should be maintained. In the same vein, when identifying the annual numbers, the Commission proposal should take into account exceptional situations where there would be no projected need for solidarity for the coming year.*

- (16) *In order to ensure better coordination at Union level and in view of the particular features of the system of solidarity provided for by this Regulation, which is based on pledges made by each Member State, exercising full discretion as to the type of solidarity, in the High-Level EU Solidarity Forum (the ‘High-Level Forum’), the implementing power to establish the Annual Solidarity Pool should be conferred on the Council, acting on a proposal by the Commission. The Council implementing act establishing the Annual Solidarity Pool should identify concrete annual solidarity measures, including relocations, financial contributions and, where applicable, alternative solidarity measures, as well as their numerical scale likely to be needed for the upcoming year at Union level, while recognising that the various types of solidarity are of equal value. The Council implementing act establishing the Annual Solidarity Pool should also include the specific pledges that each Member State has made.*
- (17) *Benefitting Member States should be granted the possibility to implement actions in or in relation to third countries, in accordance with the scope and purpose of this Regulation and of Regulation (EU) 2021/1147 of the European Parliament and of the Council⁸.*

⁸ Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021, p. 1).

(18) Member States and the Commission should ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union (the ‘Charter’) in the implementation of the actions funded by the financial contributions. The enabling conditions laid down in Article 15 of Regulation (EU) 2021/1060 of the European Parliament and of the Council⁹, including the horizontal enabling condition on the ‘Effective application and implementation of the Charter of Fundamental Rights’ should apply to the Member States’ programmes supported by the financial contributions. For the selection of the actions supported by the financial contributions, Member States should apply the provisions laid down in Article 73 of Regulation (EU) 2021/1060, including taking account of the Charter. For the actions funded by the financial contributions, Member States should apply the management and control systems established for their programmes in accordance with Regulation (EU) 2021/1060. Member States should protect the Union budget and should apply financial corrections by cancelling all or part of the support from the financial contributions, where expenditure declared to the Commission is found to be irregular, in line with Regulation (EU) 2021/1060. The Commission may interrupt the payment deadline, suspend all or part of payments, and apply financial corrections in accordance with the provisions laid down in Regulation (EU) 2021/1060.

⁹ **Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).**

- (19) *During the operationalisation of the Annual Solidarity Pool contributing Member States should have the possibility, upon the request of a benefitting Member State, to provide alternative solidarity contributions. Alternative solidarity contributions should have practical and operational value. Where the Commission, following the consultation with the Member State concerned, considers that such measures as indicated by the Member State concerned are needed, such contributions should be identified in the Commission proposal for a Council implementing act establishing the Annual Solidarity Pool. Contributing Member States should be allowed to pledge such contributions, even if they are not identified in the Commission proposal for a Council implementing act establishing the Annual Solidarity Pool, and they should be counted as financial solidarity and their financial value should be assessed and applied in a realistic manner. Where those contributions are not requested by the benefitting Member State in a given year, they should be converted into financial contributions, at the end of the year.*

(20) *In order to facilitate the decision-making process, the Commission proposal for a Council implementing act establishing the Annual Solidarity Pool should not be made public until its adoption by the Council.*

(21) For the effective implementation of the common framework and to identify gaps, address challenges and prevent the building up of █ pressure *on asylum, reception and migration systems*, the Commission should monitor and provide information on the migratory situation through regular reports.

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(22) In order to ensure a fair sharing of responsibility, *solidarity as enshrined in Article 80 TFEU* and a balance of effort between Member States, a *mandatory* solidarity mechanism should be established which *provides* effective *support to Member States under migratory pressure* and ensures █ swift access to *fair and efficient* procedures for granting international protection. Such a mechanism should provide for different types of solidarity measures *of equal value* and should be flexible and able to *swiftly* adapt to the evolving nature of the migratory challenges █ . █ The solidarity response should be designed on a case-by-case basis in order to be tailor-made to the needs of the Member State in question.

- (23) *To ensure the smooth implementation of the solidarity mechanism, an EU Solidarity Coordinator should be appointed by the Commission. The EU Solidarity Coordinator should monitor and coordinate the operational aspects of the solidarity mechanism and should act as a central point of contact. The EU Solidarity Coordinator should facilitate communication between Member States in the implementation of this Regulation. The EU Solidarity Coordinator should, in cooperation with the Asylum Agency, promote coherent working methods for the identification of persons eligible for relocation and their matching with Member States of relocation, in particular to ensure that meaningful links are taken into account. To effectively fulfil the role of the EU Solidarity Coordinator, the office of the EU Solidarity Coordinator should be provided with sufficient staff and resources and the EU Solidarity Coordinator should be able to participate in High-Level Forum meetings.*

- (24) To ensure the ***effective implementation*** of the solidarity mechanism established by this Regulation, ***representatives of the Member States at the ministerial or other senior political level should be convened in a High-Level Forum, which should consider the Report, Decision and Commission proposal for a Council implementing act establishing the Annual Solidarity Pool and take stock of the overall situation and come to a conclusion on the solidarity measures and their levels needed for establishment of the Annual Solidarity Pool and, where needed, other migratory response measures. In order to ensure the smooth functioning and operationalisation of the Annual Solidarity Pool, a Technical-Level EU Solidarity Forum (the ‘Technical-Level Forum’) comprising representatives at a sufficiently senior level, such as high-level officials of the relevant authorities of the Member States, should be convened and chaired by the EU Solidarity Coordinator, on behalf of the Commission. The Asylum Agency and, where appropriate and invited by the EU Solidarity Coordinator, the European Border and Coast Guard Agency and the European Union Agency for Fundamental Rights, should participate in the Technical-Level Forum.***

- (25) *Considering that search and rescue stems from international obligations, Member States confronted with recurring disembarkations arising in the context of search and rescue operations might be among the Member States benefitting from solidarity measures. It should be possible to identify an indicative percentage of the solidarity measures that might be required for the Member States concerned. In addition, Member States should take into account the vulnerabilities of persons arriving from such disembarkations.*
- (26) *In order to provide a timely response to the situation of migratory pressure, the EU Solidarity Coordinator should support the swift relocation of applicants for and beneficiaries of international protection eligible for relocation. The benefitting Member State should draw up a list of eligible persons to be relocated, with the assistance of the Asylum Agency if requested and should be able to use tools developed by the EU Solidarity Coordinator. Persons to be relocated should be given the opportunity to provide information on the existence of meaningful links with specific Member States but should not have the right to choose a specific Member State of relocation.*

- (27) *In order to ensure an adequate solidarity response, and where Member States contributions are insufficient in relation to the needs identified, the Council should be able to reconvene the High-Level Forum to allow the Member States to pledge additional solidarity contributions.*
- (28) When assessing whether a Member State is under migratory pressure, ***at risk of migratory pressure or facing a significant migratory situation***, the Commission, on the basis of a broad ***quantitative and*** qualitative assessment, should take account of a broad range of factors, including the ***relevant recommendations provided by the Asylum Agency and information gathered pursuant to the EU mechanism for preparedness and management of crises related to migration***. Such factors should include: ***the number of applications for international protection, irregular border crossings, unauthorised movements of third-country nationals and stateless persons between the Member States, return decisions issued and enforced, transfer decisions issued and carried out, number of arrivals by sea including through disembarkations following search and rescue operations, vulnerabilities of asylum applicants and the capacity of a Member State in managing its asylum and reception caseload, the specificities stemming from the Member States' geographical location and relations with relevant third countries and possible situations of instrumentalisation of migrants.***

(29) *A mechanism should be set out for the Member States identified in the Decision as being under migratory pressure or those that consider themselves to be under migratory pressure, to make use of the Annual Solidarity Pool. The Member States that have been identified in the Decision as being under pressure should be able to make use of the Annual Solidarity Pool in a simple manner by merely informing the Commission and the Council of their intention to use it, following which the EU Solidarity Coordinator, on behalf of the Commission should convene the Technical-Level Forum. The Member States that consider themselves to be under migratory pressure should, in order to make use of the Pool, provide a duly substantiated reasoning of the existence and extent of the migratory pressure and other relevant information in the form of notification which the Commission should assess expeditiously. Benefitting Member States should use the Annual Solidarity Pool in a reasonable and proportionate manner, taking into account solidarity needs of the other Member States under migratory pressure. The EU Solidarity Coordinator should ensure a balanced distribution of the solidarity contributions available among the benefitting Member States. Where a Member State considers itself to be in a situation of crisis, the procedure in Regulation (EU) 2024/... of the European Parliament and of the Council¹⁰⁺ should apply.*

¹⁰ *Regulation (EU) 2024/... of the European Parliament and of the Council of ... addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 (OJ L, 2024/..., ... ELI: ...).*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 (2020/0277(COD)) and insert the number, date, OJ reference and ELI reference of that Regulation in the footnote.

(30) Where Member States are themselves benefitting Member States they should not be obliged to ***implement their pledged*** contributions to ***the Annual Solidarity Pool***. At the same time, where a Member State ***is facing or considers itself to be facing migratory pressure or a significant migratory situation, which could hinder its ability to implement its pledged contributions*** due to ***challenges that that Member State needs to address***, it should be possible for ***that*** Member State to request a ***full or partial*** deduction of its ***pledged*** contribution ■ .

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- (31) A **reference** key based on the size of the population and of the **GDP** of the Member States should be applied ***in accordance with the mandatory fair share principle*** for the operation of the solidarity mechanism enabling the determination of the overall contribution of each Member State. ***A Member State could, on a voluntary basis, provide an overall contribution beyond its mandatory fair share to assist Member States under migratory pressure. In the operationalisation of the Annual Solidarity Pool, contributing Member States should implement their pledges in proportion to their overall pledge, so that each time solidarity is drawn from the pool, those Member States contribute according to their fair share. In order to safeguard the functioning of this Regulation, the contributing Member States should not be obliged to implement their solidarity pledges towards the benefitting Member State where the Commission has identified systemic shortcomings in that benefitting Member State with regard to the rules set out in Part III of this Regulation that could result in serious negative consequences for the functioning of this Regulation.***

- (32) *In addition to the Annual Solidarity Pool, Member States, in particular when under migratory pressure or facing a significant migratory situation, as well as the Union, have at their disposal the Permanent EU Migration Support Toolbox (the ‘Toolbox’) which includes measures that can assist in responding to the needs of and alleviating pressure on the Member States and which are foreseen in the Union acquis or policy tools. In order to ensure that all relevant tools are used effectively to respond to specific migratory challenges, the Commission should have the possibility to identify the necessary measures from the Toolbox, without prejudice to the relevant Union law where applicable. Member States should endeavour to use components of the Toolbox in conjunction with the Annual Solidarity Pool. However, the use of measures in the Toolbox should not be a precondition for benefitting from solidarity measures.*

(33) Responsibility offsets should be introduced as a secondary level solidarity measure, pursuant to which the responsibility for examining an application is transferred to the contributing Member State, depending on whether or not the relocation pledges reach certain thresholds as set out in this Regulation. In certain circumstances, in order to provide sufficient predictability for the benefitting Member States, the application of responsibility offsets becomes mandatory. Contributions to solidarity through responsibility offsets should be counted as part of the mandatory fair share of the contributing Member State. A system of guarantees should be established, to avoid to the extent possible, incentives for irregular migration into the Union, unauthorised movements of third-country nationals and stateless persons between Member States and to support the smooth functioning of the rules for determining responsibility for examining applications for international protection. Where the application of the responsibility offsets becomes mandatory, a contributing Member State that has pledged relocations and has no applications for international protection for which the benefitting Member State has been determined as responsible to offset remains bound to implement its relocation pledge.

- (34) *While relocation should primarily apply to applicants for international protection, and whereas primary consideration should be given to vulnerable persons, its application should be kept flexible. Given its voluntary nature, contributing and benefitting Member States should have the possibility to express their preferences in terms of persons to be considered. Such preferences should be reasonable in light of the needs identified and the profiles available in the benefitting Member State in order to ensure that the pledged relocations can be effectively implemented.*
- (35) *Upon request, Union bodies, offices and agencies in the field of asylum and border and migration management should be able to provide support to the Member States and the Commission in implementing this Regulation by providing expertise and operational support as provided for in their respective mandates.*

- (36) The Common European Asylum System has been built progressively as a common area of protection based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (the ‘Geneva Convention’), thus ensuring that no person is sent back to persecution, in compliance with the principle of non-refoulement. In this respect, and without the responsibility criteria laid down in this Regulation being affected, Member States, all respecting the principle of non-refoulement, are considered as safe countries for third-country nationals.
- (37) It is appropriate that a clear and workable method for determining the Member State responsible for the examination of an application for international protection is included in the Common European Asylum System as set out by the European Council at its special meeting in Tampere on 15 and 16 October 1999. That method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee ***swift and*** effective access to ***fair and efficient*** procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

- (38) *In order to significantly increase the understanding of the applicable procedures, Member States should, as soon as possible, provide persons subject to this Regulation, in a language that they understand or are reasonably supposed to understand, with all relevant information regarding the application of this Regulation, in particular information relating to the criteria for determining the Member State responsible, the respective procedures as well as information on their rights and obligations under this Regulation, including the consequences of non-compliance. In order to ensure that the best interests of the child are preserved and to guarantee inclusiveness of the minors in the procedures set out in this Regulation, Member States should provide information to minors in a child-friendly manner and taking into account their age and maturity. The Asylum Agency should in this regard develop common information material, as well as specific information for unaccompanied minors and vulnerable applicants, in close cooperation with national authorities.*

- (39) *Providing good quality information and legal support on the procedure to be followed to determine the Member State responsible as well as the rights and obligations of the applicants in that procedure is in the interests of both Member States and applicants. To increase the effectiveness of the procedure for determining the Member State responsible and ensure correct application of the responsibility criteria as set out in this Regulation, legal counselling should be introduced as an integral part of the system for determining the Member State responsible. For that purpose, legal counselling should be made available for the applicants, upon their request, to provide guidance and assistance on the application of the criteria and mechanisms for determining the Member State responsible.*

- (40) This Regulation should **build** on the principles in Regulation (EU) No 604/2013 of the European Parliament and of the Council¹¹ while **addressing the challenges identified and** developing the principle of solidarity and fair sharing of responsibility as part of the common framework, **in line with Article 80 TFEU**. To that end, a new **mandatory** solidarity mechanism should enable a strengthened preparedness of Member States to manage migration, to address situations where Member States are faced with migratory pressure and to facilitate regular solidarity support among Member States. **The effective implementation of such a solidarity mechanism is, together with an effective system for determining the Member State responsible, a key prerequisite to the functioning of the Common European Asylum System as a whole.**

¹¹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

- (41) This Regulation should apply to applicants for subsidiary protection and persons eligible for subsidiary protection in order to ensure equal treatment for all applicants for and beneficiaries of international protection and consistency with the current Union asylum *acquis*, in particular Regulation (EU) 2024/... of the European Parliament and of the Council¹²⁺.

- (42) In order to ensure that ***third-country nationals and stateless persons that are*** resettled or admitted in accordance with Regulation (EU) 2024/... of the European Parliament and of the Council¹³⁺⁺ or granted international protection or humanitarian status under national resettlement ***schemes are taken back to the Member State that admitted or resettled*** them, ***this Regulation should also apply to admitted persons who are present without authorisation on the territory of another Member State.***

¹² Regulation (EU) 2024/... of the European Parliament and of the Council of ... on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, 2024/..., ..., ELI: ...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) and insert the number, date, title, OJ reference and ELI reference of that Regulation in the footnote.

¹³ Regulation (EU) 2024/... of the European Parliament and of the Council of ... establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147 (OJ L, 2024/..., ... ELI: ...).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) and insert the number, date, title, OJ reference and ELI reference of that Regulation in the footnote.

- (43) For reasons of efficiency and legal ***certainty***, it is essential that this Regulation be based on the principle that responsibility is determined only once, unless ***one of the cessation grounds set out in this Regulation applies***.
- (44) Directive (EU) 2024/... ⁺ should apply to ***all procedures involving applicants*** under this Regulation, subject to the limitations in the application of that Directive.
- (45) Regulation (EU) 2024/... of the European Parliament and of the Council¹⁴⁺⁺ should apply in addition and without prejudice to the procedural safeguards under this Regulation, subject to the limitations in the application of that Regulation.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

¹⁴ Regulation (EU) 2024/... of the European Parliament and of the Council of ... establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, 2024/..., ..., ELI: ...).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)) and insert the number, date, title, OJ reference and ELI reference of that Regulation in the footnote.

- (46) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter, the best interests of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development ***in the short, medium and long term***, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability, ***including the appointment of a representative***.

- (47) *To ensure the effective application of the guarantees for minors established in this Regulation, Member States should ensure that staff of the competent authorities who deal with requests concerning unaccompanied minors receive appropriate training, for example in accordance with the relevant Asylum Agency guidelines, in areas such as the rights and individual needs of the minor, early identification of victims of trafficking in human beings or abuse, as well as best practices to prevent disappearance of the minor.*
- (48) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Charter, respect for **private and** family life should be a primary consideration of Member States when applying this Regulation.

(49) Without prejudice to the competence of Member States on the acquisition of nationality and the fact that, under international law, it is for each Member State, having due regard to Union law, to lay down the conditions for the acquisition and loss of nationality, in applying this Regulation, Member States should respect their international obligations towards stateless persons in accordance with international human rights law instruments, including where applicable under the Convention relating to the Status of Stateless Persons, adopted in New York on 28 September 1954. Where appropriate, Member States should endeavour to identify stateless persons and strengthen their protection, thus allowing stateless persons to enjoy core fundamental rights and reducing the risk of discrimination or unequal treatment.

- (50) In order to prevent █ that persons who represent a security risk **are** transferred among the Member States, it is necessary to ensure that the Member State where an application is first registered does not apply the **responsibility** criteria or the benefitting Member State does not apply the relocation procedure where there are reasonable grounds to consider that the person concerned poses a **threat** to **internal** security █ .
- (51) ***In order to ensure that*** applications for international protection of the members of one family ***are examined thoroughly*** by a single Member State █ , that the decisions taken in respect of them are consistent, and that the members of one family are not separated, ***it should be possible to conduct the procedures for determining the Member State responsible for examining those applications together.***

- (52) The ■ definition of family member should reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The definition should therefore include families formed outside the country of origin, but before their arrival on the territory of the Member State.

- (53) In order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent on account of the applicant's pregnancy or maternity, state of health or old age should be a binding responsibility criterion. When the applicant is an unaccompanied minor, the presence on the territory of another Member State of a family member, sibling or relative who can take care of him or her should also become a binding responsibility criterion. In order to discourage unauthorised movements of unaccompanied minors in the absence of such a family member, sibling or relative, which are not in the best interests of the child, the Member State responsible should be the Member State where the unaccompanied minor's application for international protection was first registered, **if it is in the best interests of the child. Where the unaccompanied minor has applied for international protection in several Member States, and a Member State considers that it is not in the best interests of the child to transfer him or her to the Member State responsible on the basis of an individual assessment, that Member State should become responsible for examining the new application.**

- (54) The rules on evidence should allow for a swifter family reunification than under Regulation (EU) No 604/2013. It is therefore necessary to clarify that formal proof, such as original documentary evidence and DNA testing, should not be necessary where the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility for examining an application for international protection. ***Member States' authorities should consider all available information, such as photos, proof of contact and witness statements to make a fair appraisal of the relationship. In order to facilitate the early identification of possible cases that involve family members, the applicant should receive a template developed by the Asylum Agency. Where possible, the applicant should complete the template before the personal interview. Taking into account the importance of the family links within the hierarchy of the responsibility criteria, all cases that involve family members should be prioritised during the relevant procedures set out in this Regulation.***

- (55) Where applicants are in possession of a diploma or other qualification, the Member State where the diploma was issued should be responsible for examining their application ***provided that the application is registered less than six years after the diploma or qualification was issued***, which would ensure a swift examination of the application in the Member State with which the applicant has meaningful links based on such a diploma.
- (56) Considering that a Member State should remain responsible for a person who has irregularly entered its territory, it is also necessary to provide for the situation where the person enters the territory following a search and rescue operation. A derogation from the responsibility criterion should be laid down for the situation where a Member State has relocated persons having crossed the external border of another Member State irregularly or following a search and rescue operation. In such a situation, the Member State of relocation should be ***responsible*** if the person applies for international protection.

- (57) A Member State should be able to derogate from the responsibility criteria ***at its own discretion***, in particular on humanitarian, ***social, cultural*** and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection registered with it or with another Member State, even if such examination is not its responsibility according to the criteria laid down in this Regulation.

- (58) In order to ensure that the procedures set out in this Regulation are respected and to prevent obstacles to the efficient application of this Regulation, in particular in order to avoid absconding ***of third-country nationals and stateless persons*** or their unauthorised movements between Member States, it is necessary to establish clear obligations for the applicant in the context of the procedure, of which he or she should be duly informed in a timely manner. ***Non-compliance with*** such obligations should lead to appropriate and proportionate procedural consequences for the applicant and ***his or her reception conditions. Member States should take into account the individual circumstances of the applicant when assessing his or her compliance with the obligations and cooperation with the competent authorities, in accordance with the rules set out in this Regulation.*** In line with the Charter, the Member State where such an applicant is present should in any case ensure that the immediate material needs of that applicant are covered.

- (59) In order to limit the possibility that the behaviour of applicants could lead to the cessation or shift of responsibility to another Member State, ***the time limits leading to*** cessation or the shift of responsibility where the person concerned leaves the territory of the Member States ■ during ***the*** examination of the application or absconds to evade a transfer to the Member State responsible ■ should be ***extended***. ***In addition***, the shift of responsibility when the time limit for sending a take back notification has not been respected by the notifying Member State should ■ be removed in order to discourage circumvention of the rules and obstruction of procedure. In situations where a person has entered a Member State irregularly without applying for asylum, the period after which the responsibility of that Member State ceases and another Member State where that person subsequently applies becomes responsible should be extended, to further incentivise persons to comply with the rules and apply in the first Member State of entry and hence limit unauthorised movements ***of third-country nationals and stateless persons between Member States*** and increase the overall efficiency of the Common European Asylum System.

- (60) A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection unless the applicant has absconded, has not attended the interview without justified reasons or the information provided by the applicant is sufficient for determining the Member State responsible. ***In order to ensure that all relevant information is gathered from the applicant to correctly determine the Member State responsible, a Member State which omits the interview should give the applicant the opportunity to present all further information, including duly motivated reasons for the authority to consider the need for a personal interview.*** As soon as the application for international protection is registered, the applicant should be informed in particular of the application of this Regulation, of the fact that the determination of the Member State responsible for examining his or her application for international protection is based on objective criteria, of his or her rights and obligations under this Regulation and of the consequences of not complying with the obligations.

- (61) *In order to ensure that the personal interview facilitates as much as possible the determination of the Member State responsible in a swift and efficient manner, the staff interviewing applicants should have received sufficient training, including general knowledge of problems which could adversely affect the applicant's ability to be interviewed, such as indicators showing that the applicant might have been a victim of torture or trafficking in human beings.*
- (62) In order to guarantee *the* effective protection of the *applicants' fundamental rights to respect for private and family life, the rights of the child and the protection against inhuman and degrading treatment because of a transfer, applicants should have a* right to an effective remedy, *limited to those rights*, in accordance, in particular, with Article 47 of the Charter *and the relevant case-law of the Court of Justice of the European Union.*

- (63) In order to facilitate the smooth application of this Regulation, Member States should in all cases indicate the Member State responsible in Eurodac after having concluded the procedures for determining the Member State responsible, including in cases where the responsibility results from the failure to respect the time limits for sending or replying to take charge requests, carrying **out** a transfer, as well as in cases where the Member State of first application becomes responsible or it is impossible to carry out the transfer to the Member State primarily responsible due to **■** a **real risk *that the applicant will be subjected to*** inhuman or degrading treatment ***within the meaning of Article 4 of the Charter as a result of the transfer to that Member State*** and subsequently another Member State is determined as **responsible**.

- (64) In order to ensure the speedy determination of the Member State responsible, the deadlines for making and replying to requests to take charge, for making take back notifications, as well as for making and deciding on appeals, should be streamlined and shortened, ***without prejudice to the fundamental rights of applicants.***

- (65) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality, thereby only being allowed as a measure of last resort. In particular, the detention of applicants must be in accordance with Article 31 of the Geneva Convention. The procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. As regards the general guarantees governing detention, as well as detention conditions, where appropriate, Member States should apply the provisions of Directive (EU) 2024/...⁺ also to persons detained on the basis of this Regulation. ***Minors should, as a rule, not be detained and efforts should be made to place them in accommodation with special provisions for minors. In exceptional circumstances, as a measure of last resort, after it has been established that other less coercive alternative measures cannot be applied effectively, and after detention is assessed to be in the best interests of the child, minors could be detained in the circumstances provided for in Directive (EU) 2024/...⁺.***

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

- (66) Deficiencies in, or the collapse of, asylum systems, often aggravated or contributed to by particular pressures on them, could jeopardise the smooth functioning of the system put in place under this Regulation, which could lead to a risk of violation of the rights of applicants as set out in the Union asylum *acquis* and the Charter, other international human rights and refugee rights.
- (67) ***Sincere cooperation between Member States is essential for the proper functioning of the Common European Asylum System. Such cooperation entails the proper application of, inter alia, the procedural rules laid down in this Regulation, including that all appropriate practical arrangements, necessary to ensure that transfers are actually carried out, are put in place and implemented.***

- (68) In accordance with Commission Regulation (EC) No 1560/2003¹⁵, transfers to the Member State responsible for examining an application for international protection may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers by providing adequate information to the person concerned and should ensure that supervised or escorted transfers are undertaken in a humane manner, in full compliance with fundamental rights and respect for human dignity, as well as the best interests of the child and taking utmost account of developments in the relevant case law, in particular as regards transfers on humanitarian grounds.
- (69) ***Provided it is necessary for the examination of an application for international protection, Member States should be able to share specific information relevant for that purpose without the consent of the applicant where such information is necessary for the competent authorities of the Member State responsible to fulfil their obligations, in particular those stemming from Regulation (EU) 2024/...⁺.***

¹⁵ Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222, 5.9.2003, p. 3).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (70) In order to ensure a clear and efficient relocation procedure, specific rules for benefitting and contributing Member States should be set out. ***Where responsibility is not determined prior to the relocation, the Member State of relocation should become responsible, except for the cases where the family-related criteria apply.*** The rules and safeguards relating to transfers set out in this Regulation should also apply, where relevant, to transfers for the purposes of relocation. ***Such rules should ensure that family unity is preserved and that persons that might pose a threat to internal security are not relocated.***
- (71) ***Where*** Member States **■** undertake relocation as a solidarity ***contribution, appropriate and proportionate*** financial support from the Union budget should be provided. In order to incentivise Member States to give priority to the relocation of unaccompanied minors a higher incentive contribution should be provided in respect of unaccompanied minors.

(72) It should be possible to mobilise the resources of the Asylum, Migration and Integration Fund, as established by Regulation (EU) 2021/1147, and of other relevant Union funds (the ‘Funds’), to provide support for Member States’ efforts in applying this Regulation, in line with the rules governing the use of the Funds and without prejudice to other priorities supported by the Funds. In this context, Member States should be able to make use of the allocations under their respective programmes, including the amounts made available following the mid-term review. It should be possible to make additional support under thematic facilities available, in particular to those Member States which might need to increase their capacities at the external borders or are faced with specific pressures on or needs concerning their asylum and reception systems and their external borders.

- (73) *Regulation (EU) 2021/1147 should be amended to guarantee a full contribution by the Union budget to the total eligible expenditure of solidarity actions, as well as to introduce specific reporting requirements in relation to those actions, as part of the existing reporting obligations on the implementation of the Funds.*
- (74) *When defining the eligibility period for expenditure of solidarity actions, the need to implement solidarity actions in a timely manner should be considered. In addition, due to the solidarity nature of the financial transfers under this Regulation, such transfers should be used in full to fund solidarity actions.*

- (75) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communication between competent departments, reducing time limits for procedures or simplifying the processing of take charge requests or take back notifications, or by establishing procedures for the performance of transfers *and in order to carry them out more efficiently*.
- (76) Continuity between the system for determining the Member State responsible established by Regulation (EU) No 604/2013 and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Regulation (EU) 2024/... of the European Parliament and of the Council¹⁶⁺.

¹⁶ Regulation (EU) 2024/... of the European Parliament and of the Council of ... on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) .../... and (EU) .../... of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ L, 2024/..., ..., ELI: ...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)) and insert the number, date, title, OJ reference and ELI reference of that Regulation in the footnote.

- (77) ***One or more networks*** of competent Member State authorities should be set up and facilitated by the Asylum Agency in order to enhance practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance. ***Those networks should aim to meet regularly to enhance trust-building and a common understanding of any challenges of the implementation of this Regulation in the Member States.***
- (78) The operation of the Eurodac system, as established by Regulation (EU) 2024/... ⁺, should facilitate the application of this Regulation.
- (79) The operation of the Visa Information System (VIS), as established by Regulation (EC) No 767/2008 of the European Parliament and of the Council¹⁷, and in particular the implementation of Articles 21 and 22 thereof, should facilitate the application of this Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

¹⁷ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

- (80) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the European Court of Human Rights.
- (81) Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁸ applies to the processing of personal data by the Member States under this Regulation. Member States should implement appropriate technical and organisational measures to ensure and be able to demonstrate that processing is performed in accordance with that Regulation and the provisions specifying its requirements in this Regulation. In particular those measures should ensure the security of personal data processed under this Regulation and in particular to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed. The competent supervisory authority or authorities of each Member State should monitor the lawfulness of the processing of personal data by the authorities concerned, including of the transmission to the authorities competent for carrying out security checks. ***In particular, data subjects should be notified without undue delay when a personal data breach is likely to result in a high risk to their rights and freedoms under Regulation (EU) 2016/679.***

¹⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (82) *Member States as well as Union bodies, offices and agencies should, when implementing this Regulation, take all proportionate and necessary measures to ensure that personal data is stored in a secure manner.*
- (83) In order to ensure uniform conditions for the implementation of this Regulation, ***certain*** implementing powers should be conferred on the Commission. ***Those*** powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁹, ***with the exception of Commission implementing decisions determining whether a Member State is under migratory pressure, at risk of migratory pressure or facing a significant migratory situation.***

¹⁹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(84) In order to provide for supplementary rules, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the identification of family members, siblings or relatives of an unaccompanied minor; the criteria for establishing the existence of proven family links in respect of unaccompanied minors; the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State; the elements to be taken into account in order to assess the dependency link; the criteria for establishing the existence of proven family links in respect of dependent persons; the criteria for assessing the capacity of the person concerned to take care of the dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time, ***whilst fully respecting*** the best interests of the child as provided for in this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making²⁰. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

²⁰ OJ L 123, 12.5.2016, p. 1.

- (85) A number of substantive changes are to be made to Regulation (EU) No 604/2013. In the interests of clarity, that Regulation should be repealed.
- (86) The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.
- (87) This Regulation respects the fundamental rights and observes the principles which are ***guaranteed*** in ***Union and international law, including*** in the Charter. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the Charter as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. ***Member States*** should therefore ***apply this Regulation*** accordingly, ***in full observance of those fundamental rights***.

- (88) Since the objectives of this Regulation, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection **registered** in one of the Member States by a third-country national or a stateless person, and the establishment of a solidarity mechanism to support Member States in addressing situations of migratory pressure, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (89) *With a view to ensuring the consistent implementation of this Regulation by the time of its application, implementation plans at Union and national levels that identify gaps and operational steps for each Member State should be developed and implemented.*

(90) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that Parts III, V and VII of this Regulation constitute amendments within the meaning of Article 3 of the Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention²¹, Denmark is to notify the Commission of its decision whether or not to implement the content of such amendments at the time of the adoption of the amendments or within 30 days hereafter.

²¹ OJ L 66, 8.3.2006, p. 38.

- (91) ■ In accordance with Articles 1 and 2 *and Article 4a(1)* of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application ■ .
- (92) As regards Iceland and Norway, Parts III, V and VII of this Regulation constitute new legislation in a field which is covered by the subject matter of the Annex to the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway²².

²² OJ L 93, 3.4.2001, p. 40.

- (93) As regards Switzerland, Parts III, V and VII of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland²³.
- (94) As regards Liechtenstein, Parts III, V and VII of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland to which Article 3 of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland²⁴ refers,

HAVE ADOPTED THIS REGULATION:

²³ OJ L 53, 27.2.2008, p. 5.

²⁴ OJ L 160, 18.6.2011, p. 39.

PART I
SUBJECT MATTER AND DEFINITIONS

Article 1 Subject matter

In accordance with the principle of solidarity and fair sharing of responsibility, *as enshrined in Article 80 TFEU*, and with the objective of reinforcing mutual trust, this Regulation:

- (a) sets out a common framework for the management of asylum and migration in the Union, *and for the functioning of the Common European Asylum System*;
- (b) establishes a mechanism for solidarity;
- (c) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.

Article 2 Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘third-country national’ means a person who is not a citizen of the Union within the meaning of Article 20(1) *TFEU* and who is not a person enjoying the right to free movement under Union law as defined in Article 2, point (5), of Regulation (EU) 2016/399 of the European Parliament and of the Council²⁵;
- (2) ‘*stateless person*’ means a person who is not considered to be a national by any State under the operation of its law;
- (3) ‘*application* for international protection’ or ‘application’ means a request ■ for protection from a Member State made ■ by a third-country national or a stateless person , who can be understood *to be seeking* refugee status or subsidiary protection status;

²⁵ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

- (4) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a ***final decision has not yet been taken***;
- (5) ‘examination of an application for international protection’ means examination of the admissibility or the merits of an application for international protection in accordance with Regulations (EU) 2024/...⁺ and (EU) 2024/...⁺⁺, excluding procedures for determining the Member State responsible in accordance with this Regulation;
- (6) ‘withdrawal of an application for international protection’ means either the explicit or implicit withdrawal of an application for international protection in accordance with Regulation (EU) 2024/...⁺;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23

- (7) ‘beneficiary of international protection’ means a third-country national or a stateless person who has been granted international protection as defined in Article 3, point (4), of Regulation (EU) 2024/...⁺;
- (8) ‘family member’ means, insofar as the family already existed before the applicant or the family member arrived on the territory of the Member States, the following members of the applicant’s family who are present on the territory of a Member State:
- (a) the spouse of the applicant or the applicant’s unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals;
 - (b) a minor child of couples referred to in point (a) or of the applicant, provided that that child is unmarried and regardless of whether that child was born in or out of wedlock or adopted as defined under national law;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23

- (c) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present;
- (d) where the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for that beneficiary, whether by law or by the practice of the Member State where the beneficiary is present;

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- (9) ‘relative’ means the applicant’s adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;
- (10) ‘minor’ means a third-country national or a stateless person below the age of 18 years;

- (11) ‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or practice of the Member State concerned, and for as long as that minor is not effectively taken into the care of such an adult, **including** a minor who is left unaccompanied after he or she has entered the territory of the Member States;
- (12) ‘representative’ means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary;
- (13) ‘residence document’ means an authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible according to this Regulation or during the examination of an application for international protection or an application for a residence permit;

(14) ‘visa’ means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States, including:

- (a) an authorisation or decision issued in accordance with Union law or national law required for entry for an intended stay in that Member State of more than 90 days;
- (b) an authorisation or decision issued in accordance with Union law or national law required for entry for transit through or an intended stay in that Member State not exceeding 90 days in any 180-day period;
- (c) an authorisation or decision valid for transit through the international transit areas of one or more airports of the Member States;

- (15) ‘diploma or qualification’ means a diploma or qualification which is obtained ***and attested in a Member State*** after a **■** period of at least ***one academic year of study on the territory of a Member State*** in a recognised state or regional programme of education or vocational training at least equivalent to level 2 of the International Standard Classification of Education, operated by an education establishment ***pursuant to the legislative, regulatory or administrative provisions of that Member State and excluding online training or other forms of distance learning***;
- (16) ‘education establishment’ means ***a*** public or private education or vocational training establishment established in **■** and recognised by ***a Member State*** in accordance with its national law or administrative practice ***on the basis of transparent criteria***;

(17) ‘absconding’ means the action by which **a person concerned** does not remain available to the competent administrative or judicial authorities ■ such as by:

- (a) leaving the territory of a Member State without permission from the competent authorities for reasons which are not beyond the **person's control**;
- (b) **failing to notify absence from a particular accommodation centre, or assigned area of residence, where so required by a Member State; or**
- (c) **failing to present him- or herself to the competent authorities, where so required by those authorities;**

(18) ‘risk of absconding’ means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria defined by national law, to believe that **a person concerned** who is subject to **procedures set out in this Regulation** might abscond;

(19) ‘benefitting Member State’ means a Member State benefitting from solidarity **contributions** as set out in ■ Part IV of this Regulation;

- (20) ‘contributing Member State’ means a Member State that ***provides*** or is obliged to ***provide*** solidarity ***contributions*** to a benefitting Member State ***as*** set out in **■** Part IV of this Regulation;

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- (21) ***‘transfer’ means the implementation of a decision taken pursuant to Article 42;***
- (22) ‘relocation’ means the transfer of ***an applicant or a beneficiary of international protection*** from the territory of a benefitting Member State to the territory of a contributing Member State;
- (23) ‘search and rescue operations’ means operations of search and rescue as referred to in the 1979 International Convention on Maritime Search and Rescue adopted in Hamburg on 27 April 1979;

- (24) ‘migratory pressure’ means a situation ***brought about by arrivals by land, sea or air or applications of third-country nationals or stateless persons, that are of such a scale that they create disproportionate obligations on a Member State, taking into account the overall situation in the Union, even on a well-prepared asylum, reception and migration system and require immediate action, in particular solidarity contributions pursuant to Part IV of this Regulation; taking into account the specificities of the geographical location of a Member State, ‘migratory pressure’ covers situations*** where there is a large number of arrivals of third-country nationals or stateless persons **■** or a risk of such arrivals, including where such arrivals stem from ***recurring disembarkations*** following search and rescue operations, ***or from unauthorised movements of third-country nationals or stateless persons between the Member States;***
- (25) ‘***significant migratory situation***’ means a situation different from migratory pressure where the cumulative effect of current and previous annual arrivals of third-country nationals or stateless persons leads a well-prepared asylum, reception and migration system to reach the limits of its capacity;

(26) *‘reception conditions’ means reception conditions as defined in Article 2, point (6), of Directive (EU) 2024/...⁺;*

(27) *‘admitted person’ means a person whom a Member State has accepted for admission pursuant to Regulation (EU) 2024/...⁺⁺ or under a national resettlement scheme outside the framework of that Regulation;*

(28) *‘EU Solidarity Coordinator’ means the person appointed by the Commission pursuant to and with the mandate defined in Article 15 of this Regulation.*

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⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)).

PART II
COMMON FRAMEWORK FOR ASYLUM AND MIGRATION MANAGEMENT

CHAPTER I
THE COMPREHENSIVE APPROACH

Article 3

Comprehensive approach to asylum and migration management

1. The ***common actions taken by the*** Union and the Member States **■** in the field of asylum and migration management, ***within their respective competences, shall be based on the principle of solidarity and fair sharing of responsibility as enshrined in Article 80 TFEU*** on the basis of a comprehensive approach, ***and be guided by the principle of integrated policy-making, in compliance with international and Union law, including fundamental rights.***

With the overall aim of effectively managing asylum and migration within the framework of the applicable Union law, those actions shall have the following objectives:

- (a) ***to ensure consistency between asylum and migration management policies in managing migration flows to the Union;***
- (b) ***to address the relevant migratory routes, and unauthorised movements between the Member States.***

2. *The Commission, the Council and the Member States shall ensure the consistent implementation of asylum and migration management policies, including both the internal and external components of those policies, in consultation with institutions and bodies, offices and agencies responsible for external policies.*

Article 4

Internal components of the comprehensive approach

With a view to achieving the objectives set out in Article 3 of this Regulation, the internal components of the comprehensive approach shall consist of the following elements:

- (a) close cooperation and mutual partnership among Union institutions, bodies, offices and agencies, Member States and international organisations;*
- (b) effective management of the external borders of Member States, based on the European integrated border management as set out in Article 3 of Regulation (EU) 2019/1896 of the European Parliament and of the Council²⁶;*

²⁶ *Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).*

- (c) *full respect for the obligations laid down in international and Union law with regard to persons rescued at sea;*
- (d) *swift and effective access to a fair and efficient procedure for international protection on the territory of the Member States, including at the external borders of Member States, in the territorial sea or in the transit zones of the Member States and recognition of third-country nationals or stateless persons as refugees or beneficiaries of subsidiary protection, in accordance with Regulation (EU) 2024/...⁺ and Regulation (EU) 2024/...⁺⁺;*
- (e) *determination of the Member State responsible for the examination of an application for international protection;*
- (f) *effective measures to reduce incentives for and to prevent unauthorised movements of third-country nationals and stateless persons between Member States;*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (g) access for applicants to adequate reception conditions, in accordance with Directive (EU) 2024/...⁺;**
- (h) effective management of the return of illegally staying third-country nationals in accordance with Directive 2008/115/EC of the European Parliament and of the Council²⁷;**
- (i) effective measures to provide incentives and support for the integration of beneficiaries of international protection in the Member States;**
- (j) measures aimed at fighting exploitation and reducing illegal employment in line with Directive 2009/52/EC of the European Parliament and the Council²⁸;**
- (k) where applicable, deployment and use of the operational tools set up at Union level, including by the European Border and Coast Guard Agency and the European Union Agency for Asylum (the 'Asylum Agency'), and the Union information systems operated by the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA).**

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

²⁷ **Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).**

²⁸ **Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).**

Article 5

External components of the comprehensive approach

With a view to achieving the objectives set out in Article 3, the Union and the Member States shall, within their respective competences, promote and build tailor-made and mutually beneficial partnerships, in full compliance with international and Union law and on the basis of full respect for human rights, and foster close cooperation with relevant third countries at bilateral, regional, multilateral and international levels, including to:

- (a) promote legal migration and legal pathways for third-country nationals in need of international protection and for those otherwise admitted to reside legally in the Member States;***
- (b) support partners hosting large numbers of migrants and refugees in need of protection and build their operational capacities in migration, asylum and border management in full respect of human rights;***

- (c) *prevent irregular migration and combat migrant smuggling and trafficking in human beings, including reducing the vulnerabilities caused by them, while ensuring the right to apply for international protection;*
- (d) *address the root causes and drivers of irregular migration and forced displacement;*
- (e) *enhance effective return, readmission and reintegration;*
- (f) *ensure full implementation of the common visa policy.*

Article 6

Principle of solidarity and fair sharing of responsibility

1. In implementing their obligations under this Regulation, the **Union and the** Member States shall observe the principle of solidarity and fair sharing of responsibility **as enshrined in Article 80 TFEU**, and shall take into account their shared interest in the effective functioning of the Union's asylum and migration management policies.
2. **In fulfilling their obligations under this Regulation**, Member States shall **cooperate closely and shall:**
 - (a) establish and maintain national asylum and migration management systems that provide **effective** access to international protection procedures, grant international protection to applicants who are in need, and **■** ensure the **effective and dignified** return of third-country nationals who are illegally staying, **in accordance with Directive 2008/115/EC, and provide and invest in the adequate reception of applicants for international protection, in accordance with Directive (EU) 2024/...⁺**;

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)) and insert the number, date, title, OJ reference and ELI reference of that Directive in the footnote.

- (b) *ensure that necessary resources and sufficient competent personnel are allocated for the implementation of this Regulation and, where Member States consider it necessary or where applicable, request support from relevant Union bodies, offices and agencies for that purpose;*
- (c) take all measures necessary and proportionate, *in full compliance with fundamental rights*, to ■ prevent *and reduce* irregular migration to the territories of the Member States, ■ including to *prevent and combat* migrant smuggling *and trafficking in human beings and to protect the rights of smuggled migrants and trafficked human beings*;
- (d) correctly and expeditiously apply the rules on the determination of the Member State responsible for examining an application for international protection and, where necessary, carry out the transfer to the Member State responsible pursuant to Chapters I–VI of Part III *and Chapter I of Part IV*;
- (e) provide *effective* support to other Member States in the form of solidarity contributions on the basis of needs set out in *Part II or IV*;

- (f) take **effective** measures to **reduce incentives for and to** prevent ■ unauthorised movements **of third-country nationals and stateless persons** between **the** Member States.

3. **To support Member States in fulfilling their obligations, the Permanent EU Migration Support Toolbox shall include at least:**

- (a) **operational and technical assistance by the relevant Union bodies, offices and agencies in accordance with their mandates, in particular by the Asylum Agency in accordance with Regulation (EU) 2021/2303 of the European Parliament and of the Council²⁹, the European Border and Coast Guard Agency in accordance with Regulation (EU) 2019/1896 and the European Union Agency for Law Enforcement Cooperation (Europol) in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council³⁰.**
- (b) **support provided by the Union funds for the implementation of the common framework set out in this Part in accordance with Regulation (EU) 2021/1147 and, where relevant, Regulation (EU) 2021/1148 of the European Parliament and of the Council³¹;**

²⁹ Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1).

³⁰ **Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).**

³¹ **Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (OJ L 251, 15.7.2021, p. 48).**

- (c) *derogations in the Union acquis providing Member States with the necessary tools to react to specific migratory challenges as referred to in Regulations (EU) 2024/...⁺ and (EU) 2024/...⁺⁺ and Regulation (EU) 2024/... of the European Parliament and of the Council³²⁺⁺⁺;*
- (d) *activation of the Union Civil Protection Mechanism in accordance with Regulation (EU) 2021/836 of the European Parliament and of the Council³³;*
- (e) *measures to facilitate return and reintegration activities, including through cooperation with third countries, and in full compliance with fundamental rights;*
- (f) *strengthened actions and cross-sectoral activities in the external dimension of migration;*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 (2020/0277(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

³² Regulation (EU) 2024/... of the European Parliament and of the Council of ... establishing a return border procedure, and amending Regulation (EU) 2021/1148 (OJ L, 2024/..., ..., ELI: ...).

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B(COD)) and insert the number, date, OJ reference and ELI reference of that Regulation in the footnote.

³³ ***Regulation (EU) 2021/836 of the European Parliament and of the Council of 20 May 2021 amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism (OJ L 185, 26.5.2021, p. 1).***

- (g) enhanced diplomatic and political outreach;*
- (h) coordinated communication strategies;*
- (i) supporting effective and human rights-based migration policies in third countries;*
- (j) promoting legal migration and well-managed mobility, including by strengthening bilateral, regional and international partnerships on migration, forced displacement, legal pathways and mobility partnerships.*

Article 7

Strategic approach to managing asylum and migration at national level

1. Member States shall have national strategies in place ***that establish a strategic approach to ensure they have the capacity to effectively implement their*** asylum and migration management system, ***in full compliance with their obligations under Union and international law, taking into account their specific situation, in particular their geographical location.***

When establishing their national strategies, Member States may consult the Commission and relevant Union bodies, offices and agencies, in particular the Asylum Agency, as well as local and regional authorities, as appropriate and in accordance with national law. Those strategies shall include at least:

(a) **preventive measures to reduce the risk of migratory pressure and** contingency planning **■** , taking into account the contingency planning pursuant to Regulations (EU) 2019/1896 and (EU) **2021/2303 ■** and Directive **(EU) 2024/...**⁺ and the reports of the Commission issued **pursuant to Recommendation (EU) 2020/1366**

■ ;

(b) information on how the principles set out in this Part are implemented by Member States and on how legal obligations stemming therefrom are fulfilled at national level **■** ;

(c) **information on how** the results of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, and the evaluation carried out in accordance with **■** Regulation **(EU) 2022/922** as well as **of the monitoring** carried out in **accordance** with Article 10 of Regulation (EU) 2024/...⁺⁺ **have been** taken into account **■** .

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⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

2. *The national strategies shall take into account other relevant strategies and existing support measures, in particular support measures under Regulations (EU) 2021/1147 and (EU) 2021/2303, and be consistent with and complementary to the national strategies for European integrated border management established in accordance with Article 8(6) of Regulation (EU) 2019/1896.*
3. *Member States shall transmit their national asylum and migration management strategies to the Commission six months before the adoption of the Strategy referred to in Article 8.*
4. *Financial and operational support by the Union, including operational support from its bodies, offices and agencies, for the fulfilment of the obligations shall be provided in accordance with Regulations (EU) 2019/1986, (EU) 2021/1147, (EU) 2021/2303 and, where relevant, (EU) 2021/1148.*

5. The Commission shall monitor and provide information on the migratory situation through regular reports based on [] data and information provided by [] the European External Action Service, the Asylum Agency, the European Border and Coast Guard Agency, Europol and the European Union Agency for Fundamental Rights and in particular the information gathered pursuant to Recommendation (EU) 2020/1366 and within the framework of the EU Migration Preparedness and Crisis Management Mechanism Network **and, where necessary, information provided by Member States.**

6. ***The Commission shall, by means of implementing acts, establish a template to be used by Member States to ensure that their national strategies are comparable on specific core elements, such as contingency planning. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2).***

Article 8

A long-term European Asylum and Migration Management Strategy

- 1. The Commission, after consulting the Member States, taking into account relevant reports and analyses from Union bodies, offices and agencies and building upon the national strategies referred to in Article 7, shall draw up a five-year European Asylum and Migration Management Strategy (the ‘Strategy’) setting out the strategic approach to ensure the consistent implementation of national strategies. The Commission shall transmit the Strategy to the European Parliament and the Council. The Strategy shall not be legally binding.***
- 2. The first Strategy shall be adopted by ... [18 months from the entry into force of this Regulation] and every five years thereafter.***

3. *The Strategy shall include the components listed in Articles 4 and 5, give a prominent role to the case-law of the Court of Justice of the European Union and the European Court of Human Rights and also take into account:*
- (a) *the implementation of the national asylum and migration management strategies of the Member States, referred to in Article 7, and their compliance with Union and international law;*
 - (b) *relevant information gathered by the Commission pursuant to Recommendation (EU) 2020/1366;*
 - (c) *information collected by the Commission and the Asylum Agency on the implementation of the Union asylum acquis;*

- (d) *information gathered from the European External Action Service and relevant Union bodies, offices and agencies, in particular reports by the Asylum Agency, the European Border and Coast Guard Agency and the European Union Agency for Fundamental Rights;*
- (e) *any other relevant information, including from Member States, monitoring authorities, international organisations, and other relevant bodies, offices, agencies or organisations.*

CHAPTER II
THE ANNUAL MIGRATION MANAGEMENT CYCLE

Article 9

The European Annual Asylum and Migration Report

- 1. The Commission shall adopt a European Annual Asylum and Migration Report on an annual basis assessing the asylum, reception and migratory situation over the previous 12-month period and any possible developments, and providing a strategic situational picture of the area of migration and asylum that also serves as an early warning and awareness tool for the Union (the ‘Report’).***
- 2. The Report shall be based on relevant quantitative and qualitative data and information provided by the Member States, the European External Action Service, the Asylum Agency, the European Border and Coast Guard Agency, Europol and the European Union Agency for Fundamental Rights. It may also take into account information provided by other relevant bodies, offices, agencies or organisations.***

3. The Report shall contain the following elements:

- (a) an assessment of the overall situation, covering all migratory routes to the Union and in all the Member States, in particular:**
 - (i) the number of applications for international protection and the nationalities of the applicants;**
 - (ii) the number of identified unaccompanied minors and where available, persons with special reception or procedural needs;**
 - (iii) the number of third-country nationals or stateless persons who have been granted international protection, in accordance with Regulation (EU) 2024/...⁺;**
 - (iv) the number of first instance and final asylum decisions;**

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (v) *the reception capacity of the Member States;*
- (vi) *the number of third-country nationals who have been detected by Member States authorities while not fulfilling or no longer fulfilling the conditions for entry, stay or residence in the Member State, including overstayers as defined in Article 3(1), point (19), of Regulation (EU) 2017/2226 of the European Parliament and of the Council³⁴;*
- (vii) *the number of return decisions issued by the Member States and the number of third-country nationals who left the territory of the Member States in accordance with a return decision that complies with Directive 2008/115/EC;*
- (viii) *the number of third-country nationals or stateless persons admitted by the Member States through Union and national resettlement or humanitarian admission schemes;*

³⁴ ***Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).***

- (ix) the number of third-country nationals subject to the border procedure provided for in Regulations (EU) 2024/...⁺ and (EU) 2024/...⁺⁺ as well as their nationalities;**
- (x) the number of incoming and outgoing take charge requests or take back notifications in accordance with Articles 39 and 41;**
- (xi) the number of transfer decisions and the numbers of transfers carried out in accordance with this Regulation;**
- (xii) the number and nationality of third-country nationals disembarked following search and rescue operations, and the number of applications for international protection lodged by those third-country nationals;**
- (xiii) the Member States which experienced recurring arrivals by sea, in particular through disembarkations following search and rescue operations;**

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B(COD)).

- (xiv) *the number of third-country nationals or stateless persons refused entry in accordance with Article 14 of Regulation (EU) 2016/399;*
- (xv) *the number of third-country nationals or stateless persons enjoying temporary protection in accordance with Council Directive 2001/55/EC³⁵;*
- (xvi) *the number of persons apprehended in connection with an irregular crossing of an external land, sea or air border and, provided that the data is available and verifiable, the number of attempted irregular border crossings;*
- (xvii) *the support provided by Union bodies, offices and agencies to the Member States;*
- (b) *a projection for the coming year, including the number of anticipated arrivals by sea, based on the overall migratory situation in the previous year and considering the current situation, while also reflecting previous pressure;*

³⁵ *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).*

- (c) information about the level of preparedness in the Union and in the Member States and the possible impact of the anticipated situations;*
- (d) information on the capacity of the Member States, in particular on the reception capacity;*
- (e) the result of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, and the evaluation carried out in accordance with Regulation (EU) 2022/922 as well as the monitoring carried out in accordance with Article 10 of Regulation (EU) 2024/...⁺, as referred to in Article 7(1), second subparagraph, point (c), of this Regulation;*
- (f) an assessment of whether solidarity measures and measures under the Permanent EU Migration Toolbox are needed to support the Member State or Member States concerned.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

4. *The Commission shall adopt the Report by 15 October each year and transmit it to the European Parliament and to the Council.*
5. *The Report shall provide the basis for decisions at Union level on the measures needed for the management of migratory situations.*
6. *The first Report shall be issued by 15 October ... [the year after the year of the entry into force of this Regulation].*
7. *For the purposes of the Report, the Member States, the Asylum Agency, the European Border and Coast Guard Agency, Europol and the European Union Agency for Fundamental Rights shall provide the information referred to in Article 10 by 1 June each year.*

8. *The Commission shall convene a meeting of the EU mechanism for preparedness and management of crisis related to migration during the first half of July each year to present the initial assessment of the situation and exchange information with members of that mechanism. The composition and mode of operation of the EU mechanism for preparedness and management of crisis related to migration shall be as set out in Recommendation (EU) 2020/1366 in its original version.*
9. *The Member States and the relevant Union bodies, offices and agencies shall provide the Commission with updated information by 1 September each year.*
10. *The Commission shall convene a meeting of the EU mechanism for preparedness and management of crisis related to migration by 30 September each year to present the consolidated assessment of the situation. The composition and mode of operation of the EU mechanism for preparedness and management of crisis related to migration shall be as set out in Recommendation (EU) 2020/1366 in its original version.*

Article 10

Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure or significant migratory situation

- 1. When the Commission assesses the overall migratory situation, or whether a Member State is under migratory pressure, at risk of migratory pressure or confronted with a significant migratory situation, it shall use the Report referred to in Article 9 and take into account any further information pursuant to Article 9(3), point (a).***
- 2. The Commission shall also take into account the following:***
 - (a) the information presented by the Member State concerned, including the estimation of its needs and capacity and its preparedness measures and any additional relevant information provided in the national strategy referred to in Article 7;***

- (b) *the level of cooperation on migration as well as in the area of return and readmission, including by taking into account the annual report in accordance with Article 25a of Regulation (EC) No 810/2009 of the European Parliament and of the Council³⁶, with third countries of origin and transit, first countries of asylum, and safe third countries as defined in Regulation (EU) 2024/...⁺;*
- (c) *the geopolitical situation in relevant third countries as well as the root causes of migration and possible situations of instrumentalisation of migrants and possible developments in the area of irregular arrivals through external borders of Member States that might affect migratory movements;*
- (d) *the relevant recommendations provided for in Article 20 of Regulation (EU) 2022/922, Article 15 of Regulation (EU) 2021/2303 and Article 32(7) of Regulation (EU) 2019/1896;*

³⁶ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (e) *information gathered pursuant to Recommendation (EU) 2020/1366;*
- (f) *the Integrated Situational Awareness and Analysis reports under Council Implementing Decision (EU) 2018/1993³⁷, provided that the Integrated Political Crisis Response is activated or the Migration Situational Awareness and Analysis report issued under the first stage of the EU mechanism for preparedness and management of crises related to migration, when the Integrated Political Crisis Response is not activated;*
- (g) *information from the visa liberalisation reporting process and dialogues with third countries;*
- (h) *quarterly bulletins on migration, and other reports, of the European Union Agency for Fundamental Rights;*

³⁷ ***Council Implementing Decision (EU) 2018/1993 of 11 December 2018 on the EU Integrated Political Crisis Response Arrangements (OJ L 320, 17.12.2018, p. 28).***

- (i) the support provided by Union bodies, offices and agencies to the Member States;*
 - (j) relevant parts of the vulnerability assessment report referred to in Article 32 of Regulation (EU) 2019/1896;*
 - (k) scale and trends of unauthorised movements of third-country nationals or stateless persons between Member States building on the available information from the relevant Union bodies, offices and agencies and data analysis from relevant information systems.*
- 3. *In addition, in order to assess whether a Member State is facing a significant migratory situation, the Commission shall take into account the cumulative effect of current and previous annual arrivals of third-country nationals or stateless persons.***

Article 11

Commission implementing decision on determining Member States under migratory pressure, at risk of migratory pressure or facing a significant migratory situation

- 1. Together with the Report referred to in Article 9, the Commission shall adopt an implementing decision determining whether a particular Member State is under migratory pressure, at risk of migratory pressure during the upcoming year, or is facing a significant migratory situation.***

For that purpose, the Commission shall consult the Member States concerned. The Commission may set a time limit for such consultations.

- 2. For the purposes of paragraph 1, the Commission shall use the information gathered pursuant to Article 10, taking into account all elements of the Report referred to in Article 9, all migratory routes, including the specificities of the structural phenomenon of disembarkations after search and rescue operations and unauthorised movements of third country-nationals and stateless persons between the Member States, as well as previous pressure on the Member State concerned and the current situation.***

3. *Where during the past 12 months a Member State has faced large number of arrivals due to recurring disembarkations following search and rescue operations, the Commission shall consider that Member State to be under migratory pressure provided those arrivals are of such a scale that they create disproportionate obligations on even the well-prepared asylum, reception and migration system of the Member State concerned..*
4. *The Commission shall adopt its implementing decision by 15 October each year and transmit it to the European Parliament and to the Council.*

Article 12

Commission proposal for a Council implementing act establishing the Annual Solidarity Pool

- 1. Each year, on the basis of and together with the Report referred to in Article 9, the Commission shall submit a proposal for a Council implementing act establishing the Annual Solidarity Pool necessary to address the migratory situation in the upcoming year in a balanced and effective manner. That proposal shall reflect the annual projected solidarity needs of the Member States under migratory pressure.***
- 2. The Commission proposal referred to in paragraph 1 shall identify the total annual numbers of required relocations and financial contributions for the Annual Solidarity Pool at Union level, which shall be at least:***
 - (a) 30 000 for relocations;***
 - (b) EUR 600 million for financial contributions.***

The Commission proposal referred to in paragraph 1 of this Article shall also set out annual indicative contributions for each Member State by applying the reference key set out in Article 66 with a view to facilitating the exercise to pledge its solidarity contributions (the ‘pledging exercise’) pursuant to Article 13.

3. *When identifying the level of the Union-wide responsibility to be shared by all Member States and the consequent level of solidarity, the Commission shall take into account relevant qualitative and quantitative criteria, including, for the relevant year, the overall number of arrivals, the average recognition rates as well as the average return rates. The Commission shall also take into account that the Member States which will become benefitting Member States pursuant to Article 58(1) are not obliged to implement their pledged solidarity contributions.*

The Commission may identify a higher number for relocations and financial contributions than those provided for in paragraph 2 of this Article and may identify other forms of solidarity as set out in Article 56(2), point (c), depending on the need for such measures arising from the specific challenges in the area of migration in the Member State concerned. In order to preserve the equal value of the different types of solidarity measures, the ratio between the numbers set out in paragraph 2, points (a) and (b), of this Article shall be maintained.

- 4. Notwithstanding paragraph 2 of this Article, in exceptional situations, where the information provided by the Member States and the relevant Union bodies, offices and agencies pursuant to Article 9(2), or the consultations carried out by the Commission pursuant to Article 11(1) do not indicate a need for solidarity measures for the upcoming year, the Commission proposal referred to in paragraph 1 of this Article shall take this duly into account.*
- 5. Where the Commission has identified in an implementing decision as referred to in Article 11 that one or more Member States are under migratory pressure as a result of large numbers of arrivals stemming from recurring disembarkations following search and rescue operations, taking into account the specificities of the Member States concerned, the Commission shall set out the indicative percentage of the Annual Solidarity Pool to be made available to those Member States.*

6. *The Commission shall adopt the proposal referred to in paragraph 1 of this Article by 15 October each year and transmit it to the Council. The Commission shall simultaneously transmit that proposal to the European Parliament. Until the adoption of the Council implementing act referred to in Article 57, the Commission proposal referred to in paragraph 1 of this Article shall not be made public. It shall be classified “RESTREINT UE/EU RESTRICTED” and shall be handled as such in accordance with Council Decision 2013/488/EU on the security rules for protecting EU classified information³⁸.*

³⁸ *Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).*

Article 13

The High-Level EU Solidarity Forum

- 1. In order to ensure the effective implementation of Part IV of this Regulation, a High-Level EU Solidarity Forum (the ‘High-Level Forum’) shall be established, consisting of the representatives of the Member States and chaired by the Member State holding the Presidency of the Council. Member States shall be represented at the level of responsibility and decision-making power that is appropriate in order to carry out the tasks conferred on the High-Level Forum.***

Third countries that have concluded with the Union an agreement on the criteria and mechanisms for establishing the State responsible for examining an application for international protection lodged in a Member State or in that third country may, for the purpose of contributing to solidarity on an ad hoc basis be invited to participate in the High-Level Forum as appropriate.

2. *The Council shall convene the High-Level Forum within 15 days following the adoption of the Report referred to in Article 9, the decision referred to in Article 11 and the Commission proposal referred to in Article 12.*
3. *In the meeting referred to in paragraph 2, the High-Level Forum shall consider the Report referred to in Article 9, the decision referred to in Article 11 and the Commission proposal referred to in Article 12 and examine the overall situation. It shall also come to a conclusion on the solidarity measures and the level of contribution needed pursuant to the procedure set out in Article 57 and, where deemed necessary, on other migratory response measures in the areas of responsibility, preparedness and contingency, as well as on the external dimension of migration. During that High-Level Forum meeting, Member States shall pledge their solidarity contributions for the creation of the Annual Solidarity Pool pursuant to Article 57.*

4. *Where the Council, at the initiative of a Member State or upon invitation from the Commission, considers that the solidarity contributions to the Annual Solidarity Pool are insufficient in relation to the needs identified, including where significant deductions have been granted in accordance with Articles 61 and 62, or one or more Member States under migratory pressure have higher needs than anticipated, or the overall situation requires additional solidarity support, the Council shall by simple majority reconvene the High-Level Forum to request Member States to provide additional solidarity contributions. Any pledging exercise shall follow the procedure set out in Article 57.*

Article 14

The Technical-Level EU Solidarity Forum

- 1. In order to ensure the smooth functioning of Part IV of this Regulation, a Technical-Level EU Solidarity Forum (the ‘Technical-Level Forum’) shall be established and the EU Solidarity Coordinator shall, on behalf of the Commission, convene and chair it.***
- 2. The Technical-Level Forum shall comprise representatives of the relevant authorities of the Member States at a level sufficiently senior to carry out the tasks conferred on it.***
- 3. Third countries that have concluded with the Union an agreement on the criteria and mechanisms for establishing the State responsible for examining an application for international protection lodged in a Member State or in that third country may, for the purpose of contributing to solidarity on an ad hoc basis be invited to participate in the Technical-Level Forum as appropriate.***

4. *The Asylum Agency shall participate in the Technical-Level Forum. The European Border and Coast Guard Agency and the European Union Agency for Fundamental Rights shall, where appropriate and when invited by the EU Solidarity Coordinator, participate in the Technical-Level Forum. United Nations agencies may, depending on their involvement in the solidarity mechanism, also be invited to participate.*
5. *Following the adoption of the Council implementing act referred to in Article 57, the EU Solidarity Coordinator shall convene a first meeting of the Technical-Level Forum. Following that first meeting, the Technical-Level Forum shall meet on a regular basis and as frequently as necessary, in particular pursuant to Articles 58(3) and 59(6), in order to operationalise the solidarity mechanism between the Member States and address the solidarity needs with the contributions identified.*

Article 15
The EU Solidarity Coordinator

- 1. The Commission shall appoint an EU Solidarity Coordinator to coordinate at technical level the implementation of the solidarity mechanism in accordance with Part IV of this Regulation.**
- 2. The EU Solidarity Coordinator shall:**
 - (a) support the relocation activities from the benefitting Member State to the contributing Member State;**
 - (b) coordinate and support communication between the Member States, bodies, offices, agencies and entities that are involved in the implementation of the solidarity mechanism;**
 - (c) keep an overview of the needs of the benefitting Member States and the contributions of the contributing Member States and follow up on the ongoing implementation of solidarity measures;**

- (d) *organise, at regular intervals, meetings between the authorities of the Member States to ensure the effective and efficient operationalisation of the Annual Solidarity Pool, in order to facilitate the best interaction and cooperation among Member States;*
- (e) *promote best practices in the implementation of the solidarity mechanism;*
- (f) *convene and chair the Technical-Level Forum;*
- (g) *carry out the tasks referred to in Article 7 of Regulation (EU) 2024/...⁺.*

3. *For the purposes of paragraph 2, the EU Solidarity Coordinator shall be assisted by an office and provided with the necessary financial and human resources to effectively carry out its tasks. The EU Solidarity Coordinator shall coordinate closely with the Asylum Agency, including in relation to the practical details of relocation under this Regulation.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 (2020/0277(COD)).

4. *The Report referred to in Article 9 shall present the state of implementation and functioning of the solidarity mechanism.*
5. *Member States shall provide the EU Solidarity Coordinator with the necessary data and information for the EU Solidarity Coordinator to effectively carry out its tasks.*

PART III
CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE
RESPONSIBLE

CHAPTER I
GENERAL PRINCIPLES AND SAFEGUARDS

Article 16

Access to the procedure for examining an application for international protection

1. Member States shall examine an application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State ■ which shall be the Member State responsible on the basis of the criteria set out in Chapter II *or the clauses set out in Chapter III* of this Part.

2. ***Without prejudice to the rules set out in Part IV of this Regulation,*** where no Member State ■ can be determined ***responsible for examining the application for international protection*** on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was registered shall be responsible for examining it.
3. Where it is impossible for a Member State to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that ■ ***the applicant, because of the transfer to that Member State, would face a real risk of violation of the applicant's fundamental rights that amounts to*** inhuman or degrading treatment within the meaning of Article 4 of the Charter, the determining Member State shall continue to examine the criteria set out in Chapter II ***or the clauses set out in Chapter III*** of this Part in order to establish whether another Member State can be designated as responsible.

Where a Member State cannot carry out the transfer pursuant to the first subparagraph of this paragraph to any Member State designated on the basis of the criteria set out in Chapter II **or the clauses set out in Chapter III** of this Part or to the first Member State with which the application was registered, **and cannot establish whether another Member State can be designated as responsible**, that Member State shall become the Member State responsible **for examining the application for international protection**.

4. If a security check provided for in Article 15 of Regulation (EU)2024/...⁺ has not been carried out **pursuant to that Regulation**, the first Member State in which the application for international protection was registered shall examine whether there are reasonable grounds to consider that the applicant poses a **threat to internal** security ■ as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of this Part.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

If a security check provided for in Article 15 of Regulation (EU) 2024/...⁺ has been carried out, but the first Member State in which the application for international protection was registered has justified reasons to examine whether there are reasonable grounds to consider that the applicant poses a *threat* to *internal* security█ , that Member State shall carry out the examination as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of this Part.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

Where the security check carried out in accordance with Article 15 of Regulation (EU) 2024/...⁺ or in accordance with the first and second subparagraphs of this paragraph shows that there are reasonable grounds to consider that the applicant poses a threat to *internal* security █, the Member State carrying out the security check █ shall be the Member State responsible, *and Article 39 of this Regulation shall not apply.*

- 5. Each Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Regulation (EU) 2024/...⁺⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

Article 17

Obligations of the applicant *and cooperation with the competent authorities*

1. An application for international protection shall be made and registered in the Member State of first entry.
2. By way of derogation from paragraph 1, where a third-country national or stateless person is in possession of a valid residence document or a valid visa, the application for international protection shall be made and registered in the Member State that issued the residence document or visa.

Where a third-country national or stateless person is in possession of a residence document or visa which *has* expired or *was annulled, withdrawn or revoked*, the application for international protection shall be made and registered in the Member State where he or she is present.

3. The applicant shall fully cooperate with the competent authorities of the Member States in ***collecting the biometric data in accordance with Regulation (EU) 2024/...⁺ and in*** matters covered by this Regulation, in particular by submitting ***and disclosing***, as soon as possible and at the latest during the interview referred to in Article 22 of this Regulation, all the elements and information available to him or her ***that are*** relevant for determining the Member State responsible, ***including by submitting his or her identity documents if the applicant is in possession of such documents***. Where the applicant is not in a position at the time of the interview to submit evidence to substantiate the elements and information provided, ***or to complete the template referred to in Article 22(1) of this Regulation***, the competent authority ***shall*** set a ***reasonable*** time limit for submitting such evidence, ***taking into account the individual circumstances of the case***, within the period referred to in Article 39(1) of this Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

4. The applicant shall be required to be present in:
- (a) the Member State referred to in paragraphs 1 and 2 pending the determination of the Member State responsible and, where applicable, the implementation of the transfer procedure;
 - (b) the Member State responsible;
 - (c) the Member State of relocation following a transfer pursuant to Article 67(11).
5. Where a transfer decision is notified to the applicant in accordance with Article 42(2) and Article 67(10), the applicant shall ***cooperate with the competent authorities and*** comply with that decision.

Article 18 Consequences of non-compliance

1. ***Provided that the applicant has been informed of his or her obligations and the consequences of non-compliance therewith in accordance with Article 11(1), point (b), of Regulation (EU) 2024/...⁺ or Article 5(1) and 21 of Directive (EU) 2024/...⁺⁺, the applicant shall not be entitled to the reception conditions set out in Articles 17 to 20 of that Directive in any Member State other than the one in which he or she is required to be present pursuant to Article 17(4) of this Regulation from the moment he or she has been notified of a decision to transfer him or her to the Member State responsible*** ■ .

The first subparagraph shall be without prejudice to the need to ensure a standard of living in accordance with Union law, including the Charter, and international obligations.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

2. Elements and information relevant for determining the Member State responsible submitted after expiry of the time limit ■ shall ■ be taken into account ***only if they provide evidence that is decisive for the correct application of this Regulation, in particular regarding unaccompanied minors and family reunification.***
3. ***Paragraph 1 shall not apply where the applicant is not in the Member State where he or she is required to be present and the competent authorities of the Member State in which the applicant is present have reasonable grounds to believe that the applicant might have been subjected to any of the offences referred to in Articles 2 and 3 of Directive 2011/36/EU of the European Parliament and of the Council³⁹.***
4. ***When applying this Article, Member States shall take into account the individual circumstances of the applicant, including any real risk of violations of fundamental rights in the Member State where the applicant is required to be present. Any measures taken by the Member States shall be proportionate.***

³⁹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

Article 19 Right to information

1. As soon as possible and ***in any event by the date*** when an application for international protection is registered in a Member State, the competent authority of that Member State shall ***provide*** the applicant ***with information*** on the application of this Regulation, ***on his or her rights pursuant to this Regulation***, and on the obligations set out in Article 17 as well as the consequences of non-compliance set out in Article 18. ***That information shall include*** in particular information on:
 - (a) ***the objectives of this Regulation;***
 - (b) ***the cooperation expected of the applicant with the competent authorities as set out in Article 17;***
 - (c) the fact that the right to apply for international protection does not encompass a choice by the applicant ***as to which*** Member State ***is*** responsible for examining the application for international protection or as to which Member State ***is*** the Member State of relocation;

- (d) **■** the consequences of making another application in a different Member State as well as the consequences of leaving the Member State where the applicant is required to be present pursuant to Article 17(4) and in particular that the applicant shall only be entitled to the reception conditions as set out in Article 18(1);
- (e) the criteria and procedure for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and the duration of the procedure;
- (f) *the provisions relating to family reunification and, in that regard, the applicable definition of family members and relatives, the right to request and receive the template referred to in Article 22(1), including information on persons and entities that are able to provide assistance in completing the template, as well as information on national, international or other relevant organisations that are able to facilitate the identification and tracing of family members;*

- (g) ***the right to and the aim of the personal interview in accordance with Article 22, the procedure and the obligation to submit, orally or through the provision of documents or other information, including where applicable through the template referred to in Article 22(1), as soon as possible in the procedure, any relevant information that could help to establish the presence of family members, relatives or any other family relations in the Member States, including information on the means by which the applicant can submit such information, as well as any assistance that the Member State can offer with regard to the tracing of family members or relatives;***
- (h) the obligation for the applicant to disclose, as soon as possible in the procedure, any relevant information that could help to establish any prior residence documents, visas or educational diplomas;
- (i) ***the opportunity to present duly motivated reasons to the competent authorities in order for them to consider applying Article 35(1);***

- (j) ***the obligation for the applicant to submit his or her identity documents where the applicant is in possession of such documents and to cooperate with the competent authorities in collecting the biometric data in accordance with Regulation (EU) 2024/...⁺;***
- (k) ***the existence of the right to an effective remedy before a court or tribunal in order to challenge a transfer decision within the time limit set out in Article 43(2) and of the fact that the scope of such challenge is limited as laid down in Article 43(1);***
- (l) ***the right to be granted legal counselling free of charge on matters relating to the application of the criteria set out in Chapter II or the clauses set out in Chapter III of this Part at all stages of the procedure for determining the Member State responsible, as set out in Article 21;***
- (m) ***in the event of an appeal or review,*** the right to be granted, on request, legal assistance free of charge where the person concerned cannot afford the costs involved;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

- (n) *the fact that absconding will lead to an extension of the time limit in accordance with Article 46;*
- (o) *the fact* that the competent authorities of Member States and the Asylum Agency will process personal data of the applicant including for the exchange of his or her data for the sole purpose of implementing their obligations under this Regulation *and in full compliance with the requirements to protect natural persons with regard to the processing of personal data in accordance with Union and national law;*
- (p) the categories of personal data concerned;
- (q) **■** the right of access to data relating to *the applicant* and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article 52 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data, and of the contact details of the data protection officer;

- (r) in the case of an unaccompanied minor, the ***guarantees and rights applicable to the applicant in that regard***, the role and responsibilities of the representative and the procedure to file complaints against a representative in confidence and safety and in a manner that fully respects the child's right to be heard;
- (s) ***the fact that where the circumstantial evidence is not coherent, verifiable and sufficiently detailed to establish responsibility, the Member State may request a DNA or blood test to prove the existence of family links, or an assessment of the age of the applicant;***
- (t) where applicable, the relocation procedure set out in Articles 67 and 68.

2. ***The applicant shall have the possibility to request information regarding the progress of the procedure and the competent authorities shall inform the applicant about that possibility. Where the applicant is a minor, the minor and the parent or representative shall have the possibility to request such information.***

Article 20 Accessibility of information

1. The information referred to in **Article 19** shall be provided in writing ***in a concise, transparent, intelligible and easily accessible form, using clear and plain language and*** in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common information material drawn up pursuant to paragraph ***2 of this Article*** for that purpose. ***The common information material shall also be available online, on an open and easily accessible platform for applicants for international protection.***

Where necessary for the applicant's proper understanding, the information shall also be provided orally, where appropriate in connection with the personal interview referred to in Article 22. ***For that purpose, the applicant shall have the opportunity to ask questions to clarify the information provided. Member States may use the support of multimedia equipment.***

2. The Asylum Agency shall, in close cooperation with the responsible national **authorities**, draw up common information material, as well as ■ specific **information** for unaccompanied minors **and vulnerable applicants, where necessary for applicants with specific reception or procedural needs**, containing at least the information referred to in **Article 19**. That common information material shall also include information regarding the application of Regulation (EU) 2024/...⁺ and, in particular, the purpose for which the data of an applicant may be processed within Eurodac.

The common information material shall be drawn up in such a manner as to enable Member States to complete it with additional Member State-specific information.

3. ***Where the applicant is a minor, the information referred to in Article 19 shall be provided in a child-friendly manner by appropriately trained staff and in the presence of the applicant's representative.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

Article 21

Right to legal counselling

- 1. *Applicants shall have the right to consult, in an effective manner, a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to the application of the criteria set out in Chapter II or the clauses set out in Chapter III of this Part at all stages of the procedure for determining the Member State responsible provided for in this Regulation.***
- 2. *Without prejudice to the applicant's right to choose his or her own legal adviser or other counsellor at his or her own cost, an applicant may request free legal counselling in the procedure for determining the Member State responsible.***
- 3. *Free legal counselling shall be provided by legal advisers or other counsellors admitted or permitted under national law to counsel, assist or represent applicants or by non-governmental organisations accredited under national law to provide legal services or representation to applicants.***

For the purposes of the first subparagraph, effective access to free legal counselling may be assured by entrusting a person with the provision of legal counselling in the administrative stage of the procedure to several applicants at the same time.

4. *Member States may organise the provision of legal counselling in accordance with their national systems.*
5. *Member States shall lay down specific procedural rules concerning the arrangements for filing and processing requests for the provision of free legal counselling as provided for in this Article.*
6. *For the purposes of the procedure for determining the Member State responsible, the free legal counselling shall include the provision of:*
 - (a) *guidance on and explanations of the criteria and procedures for determining the Member State responsible, including information on rights and obligations during all stages of that procedure;*

(b) guidance on and assistance in providing information that could help determine the Member State responsible in accordance with the criteria set out in Chapter II of this Part;

(c) guidance and assistance on the template referred to in Article 22(1).

7. Without prejudice to paragraph 1, the provision of free legal counselling in the procedure for determining the Member State responsible may be excluded where the applicant is already assisted and represented by a legal adviser.

8. For the purpose of implementing this Article, Member States may request the assistance of the Asylum Agency. In addition, financial support may be provided through Union funds to the Member States, in accordance with the legal acts applicable to such funding.

Article 22 Personal interview

1. In order to facilitate the procedure for determining the Member State responsible, the **competent authorities of the** determining Member State **referred to in Article 38(1)** shall conduct a personal interview with the applicant **for the purpose of applying Article 39.**

The interview shall also enable the applicant to properly understand the information

received in accordance with Article 19.

The competent authorities shall collect information on the specific applicant's situation by proactively asking questions that would help determine the Member State responsible for the purpose of applying Article 39.

Where there are indications that the applicant has family members or relatives in a Member State, the applicant shall receive a template, to be developed by the Asylum Agency. The applicant shall fill that template with the information available to him or her in order to facilitate the application of Article 39. Where possible, the applicant shall complete that template before the personal interview set out in this Article.

The Asylum Agency shall develop the template referred to in the third subparagraph of this paragraph by ... [10 months from entry into force of this Regulation]. The Asylum Agency shall also develop guidelines for the identification and tracing of family members to support the application of Articles 25–28 and 34 by the requesting and the requested Member State in accordance with Articles 39 and 40.

The applicant shall have the opportunity to present duly motivated reasons to the competent authorities in order for them to consider applying Article 35(1).

2. The personal interview may be omitted where:
 - (a) the applicant has absconded;
 - (b) the applicant has not attended the personal interview and has not provided justified reasons for his or her absence;

- (c) the applicant, after having received the information referred to in Article 19, has already provided the information relevant to determine the Member State responsible by other means.

For the purposes of the first subparagraph, point (c), of this paragraph, the Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible within the period referred to in Article 39(1), ***including duly motivated reasons for the authority to consider the need for a personal interview.***

3. The personal interview shall take place in a timely manner and, in any event, before any take charge request is made pursuant to Article 39.

4. The personal interview shall be conducted in ***the*** language ***preferred by*** the applicant ***unless there is another language*** which he or she ***understands and in which he or she*** is able to communicate ***clearly***. Interviews of unaccompanied ***and, where applicable, accompanied*** minors shall be conducted ***by a person who has the necessary knowledge of the rights and special needs of minors***, in a ***child-sensitive and context-appropriate*** manner, ***taking into consideration the age and maturity of the minor***, in the presence of the representative and, where applicable, the minor's legal adviser. Where necessary, ***an interpreter*** ***who is able to ensure appropriate communication between the applicant and the person conducting the personal interview shall be provided. The presence of a cultural mediator may be provided during the personal interview. Where requested by the applicant and where possible, the person conducting the interview and, where applicable, the interpreter shall be of the sex that the applicant prefers.***

5. ***Where duly justified by the circumstances, Member States may conduct the personal interview by video conference. In such a case, the Member State shall ensure the necessary arrangements for the appropriate facilities, procedural and technical standards, legal assistance and interpretation, taking into account guidance from Asylum Agency.***
6. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a person qualified under national law. Applicants who are identified as being in need of special procedural guarantees pursuant to Regulation (EU) 2024/...⁺, shall be provided with adequate support in order to create the conditions necessary for effectively presenting all elements allowing for the determination of the Member State responsible. ***Staff interviewing applicants shall also have acquired general knowledge of factors which could adversely affect the applicant's ability to be interviewed, such as indications that the person has been tortured in the past or has been a victim of trafficking in human beings.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

7. The Member State conducting the personal interview shall ***make an audio recording of the interview and*** make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. ***The applicant shall be informed in advance of the fact that such a recording is being made and the purpose thereof. Where there is doubt as to the statements made by the applicant during the personal interview, the audio recording shall prevail.*** The summary may take the form of either a report or a standard form. The Member State shall ensure that the applicant or the legal adviser or other counsellor, ***admitted or permitted as such under national law***, who is legally representing the applicant has timely access to the summary, ***as soon as possible after the interview and in any event before the competent authorities take a decision on the Member State responsible. The applicant shall be given the opportunity to make comments or provide clarification orally or in writing with regard to any incorrect translations or misunderstandings or other factual mistakes appearing in the written summary at the end of the personal interview or within a specified time limit.***

Article 23 Guarantees for minors

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation. ***Procedures including minors shall be treated with priority.***
2. Each Member State where an unaccompanied minor is present shall ensure that he or she is represented and assisted by a representative with respect to the relevant procedures provided for in this Regulation. The representative shall have the ***resources***, qualifications, training, ***expertise*** and ***independence*** to ensure that the best interests of the child are taken into consideration during the procedures carried out under this Regulation. ***The*** representative shall have access to the content of the relevant documents in the applicant's file including the specific information material for unaccompanied minors, ***and shall keep the unaccompanied minor informed about the progress of the procedures under this Regulation.***

Where an application is made by a person who claims to be a minor, or in relation to whom there are objective grounds to believe that he or she is a minor, and who is unaccompanied, the competent authorities shall:

- (a) designate as soon as possible and in any event in a timely manner, and for the purpose of assisting the minor in the procedure for determining the Member State responsible, a person with the necessary skills and expertise to provisionally assist the minor in order to safeguard his or her best interests and general well-being which enables the minor to benefit from the rights under this Regulation and, if applicable, act as a representative until a representative has been appointed;*
- (b) appoint a representative as soon as possible and no later than fifteen working days from the date on which the application is made.*

In the case of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations, the time limit for designating a representative pursuant to the second subparagraph, point (b), may be extended by ten working days.

Where the competent authority concludes that an applicant who claims to be a minor is without any doubt above the age of eighteen years, it shall not be required to designate a representative in accordance with this paragraph.

The duties of the representative or the person referred to in the second subparagraph, point (a), shall cease where the competent authorities, following the age assessment referred to in Article 25(1) of Regulation (EU) 2024/...⁺, do not assume that the applicant is a minor or consider that the applicant is not a minor, or where the applicant is no longer an unaccompanied minor.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out its duties in respect of the minor. The first subparagraph shall apply to that person.

The representative provided for in the first subparagraph may be the same person or organisation as provided for in Article 23 of Regulation (EU) 2024/...⁺.

3. **■ *The Member States shall involve the representative of an unaccompanied minor throughout the entire procedure for determining the Member State responsible under this Regulation.*** The representative shall assist the unaccompanied minor in providing information relevant to the assessment of the best interests of the child in accordance with paragraph 4, including the exercise of the right to be heard, and shall support his or her engagement with other actors, such as family tracing organisations, where appropriate for that purpose, ***with due regard to confidentiality obligations towards the minor.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

4. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:
- (a) family reunification possibilities;
 - (b) the minor's well-being and social development ***in the short, medium and long term, including situations of additional vulnerabilities such as trauma, specific health needs or disability***, taking into particular consideration the minor's ***ethnic, religious, cultural and linguistic*** background, ***and having regard to the need for stability and continuity in the social and educational care***;
 - (c) safety and security considerations, in particular where there is a risk of the minor being a victim of any form of violence or exploitation, including trafficking in human beings;
 - (d) the views of the minor, in accordance with his or her age and maturity;

(e) where the applicant is an unaccompanied minor, the information provided by the representative in the Member State where the unaccompanied minor is present;

(f) **any other reasons relevant to the assessment of the best interests of the child.**

5. Before transferring an unaccompanied minor, **the transferring Member State shall notify the** Member State responsible or **the** Member State of relocation, **which** shall **confirm** that **all appropriate** measures referred to in Articles 16 and 27 of Directive (EU) 2024/...⁺ **and** Article 23 of Regulation (EU) 2024/...⁺⁺ **will be taken** without delay, **including the appointment of a representative in the Member State responsible or the Member State of relocation.** Any decision to transfer an unaccompanied minor shall be preceded by an **individual** assessment of the best interests of the child. The assessment shall be based on the **relevant** factors listed in paragraph 4 of this Article and the conclusions of the assessment of those factors shall be clearly stated in the transfer decision. The assessment shall be done **without delay** by **appropriately trained** staff with the **necessary** qualifications and expertise to ensure that the best interests of the child are taken into consideration.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-COS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

6. For the purpose of applying Article 25, the Member State where the unaccompanied minor's application for international protection was ***first*** registered shall ***immediately*** take appropriate action to identify any family members, siblings or relatives of the unaccompanied minor on the territory of Member States, while protecting the best interests of the child.

To that end, that Member State may request the assistance of international or other relevant organisations, and may facilitate the minor's access to the tracing services of such organisations.

The staff of the competent authorities referred to in Article 52 who deal with requests concerning unaccompanied minors shall ■ receive ■ appropriate training concerning the specific needs of minors ***relevant for the application of this Regulation.***

7. With a view to facilitating the appropriate action to identify the family members or relatives of an unaccompanied minor living in the territory of another Member State pursuant to paragraph 6 of this Article, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2).

CHAPTER II

CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Article 24 Hierarchy of criteria

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.
2. The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation when the application for international protection was first registered with a Member State.

Article 25 Unaccompanied minors

1. Where the applicant is an unaccompanied minor, only the criteria set out in this Article shall apply. Those criteria shall apply in the order in which they are set out in paragraphs 2 to 5.
2. The Member State responsible shall be the Member State where a family member **or a sibling** of the unaccompanied minor is legally present, unless it is demonstrated that it is not in the best interests of the child. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present, ***unless it is demonstrated that it is not in the best interests of the child.***

3. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, on the basis of an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, unless it is demonstrated that it is not in the best interests of the child.
4. Where family members, **siblings** or relatives as referred to in paragraphs 2 and 3 ■ are staying in more than one Member State, the Member State responsible shall be determined on the basis of what is in the best interests of the child.
5. In the absence of a family member, **sibling** or relative as referred to in paragraphs 2 and 3, the Member State responsible shall be that where the unaccompanied minor's application for international protection was first registered, **if** it is ■ in the best interests of the child.

6. The Commission is empowered to adopt delegated acts in accordance with Article 78 concerning:
- (a) the identification of family members, **siblings** or relatives of unaccompanied minors;
 - (b) the criteria for establishing the existence of proven family links;
 - (c) the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor are staying in more than one Member State.

In exercising its power to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 23(4).

7. The Commission shall, by means of implementing acts, establish uniform methods for the consultation and the exchange of information between Member States for the purposes of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2).

Article 26

Family members who ***legally reside in a Member State***

1. Where the applicant has a family member who has been allowed to reside as a beneficiary of international protection in a Member State ***or who resides in a Member State on the basis of a long-term residence permit in accordance with Council Directive 2003/109/EC⁴⁰ or long-term residence permit granted in accordance with national law, where that Directive does not apply in the Member State concerned***, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned have expressed their desire to that effect in writing.
2. ***Where the family member had previously been allowed to reside as a beneficiary of international protection, but has later become a citizen of a Member State, that Member State shall be responsible for examining the application, provided that the persons concerned have expressed their desire to that effect in writing.***
3. ***Paragraphs 1 and 2 shall also apply to children born after the family member arrived on the territory of the Member States.***

⁴⁰ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

Article 27

Family members who are applicants for international protection

Where the applicant has a family member ■ whose application for international protection in *a* Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned have expressed their desire to that effect in writing.

Article 28 Family procedure

Where ■ applications for international protection *by several family members or minor unmarried siblings are registered* in the same Member State simultaneously or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to those persons being separated, the Member State responsible for examining their applications shall be determined in the following order:

- (a) the Member State which the criteria indicate is responsible for taking charge of the largest number of them;

- (b) the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

Article 29

Issue of residence documents or visas

1. Where the applicant **holds** a valid residence document, the Member State that issued that document shall be responsible for examining the application for international protection.
2. Where the applicant **holds** a valid visa, the Member State that issued that visa shall be responsible for examining the application for international protection, unless that visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009. In such a case, the represented Member State shall be responsible for examining the application for international protection.

3. Where the applicant ***holds*** more than one valid residence document or visa issued by different Member States, the Member State responsible for examining the application for international protection shall be determined in the following order:
- (a) the Member State that issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State that issued the residence document having the latest expiry date;
 - (b) where the various visas are of the same type, the Member State that issued the visa having the latest expiry date;

- (c) where the visas are of different types, the Member State that issued the visa having the longest period of validity or, where the periods of validity are identical, the Member State that issued the visa having the latest expiry date.
4. Where the applicant **holds** one or more residence documents ■ the validity of which has expired **or which were annulled, revoked or withdrawn** less than three years before the application was registered, **or one or more visas the validity of which has expired or which were annulled, revoked or withdrawn less than 18 months** before the application was registered, paragraphs 1, 2 and 3 shall apply.
5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on the submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued that residence document or visa. However, the Member State that issued the residence document or visa shall not be responsible if it can establish that fraud was committed after the document or visa was issued.

Article 30

Diplomas or other qualifications

1. Where the applicant is in possession of a diploma or qualification issued by an education establishment established in a Member State ■ , that Member State shall be responsible for examining the application for international protection, ***provided that the application is registered less than six years after the diploma or qualification was issued.***
2. Where the applicant is in possession of more than one diploma or qualification issued by education establishments in different Member States, the responsibility for examining the application for international protection shall be assumed by the Member State which issued the diploma or qualification following the longest period of study or, where the periods of study are identical, by the Member State in which the most recent diploma or qualification was obtained.

Article 31 Visa-waived entry

- 1. *If a third-country national or a stateless person enters the territory of the Member States through a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection.***
- 2. *Paragraph 1 shall not apply if the application for international protection of the third-country national or the stateless person is registered in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In that case, that other Member State shall be responsible for examining the application for international protection.***

Article 32

Application in an international transit area of an airport

Where the application for international protection is made in the international transit area of an airport of a Member State, that Member State shall be responsible for examining the application.

Article 33 Entry

1. Where it is established, on the basis of proof or circumstantial evidence as described in the lists referred to in Article 40(4) of this Regulation, including the data referred to in Regulation (EU) 2024/...⁺, that an applicant has irregularly crossed the border into a Member State by land, sea or air from a third country, the first Member State that the applicant enters shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than **20 months** after the date on which that border crossing took place.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

2. ***Notwithstanding the first*** paragraph of this Article, where ***it is established, on the basis of proof or circumstantial evidence as described in the lists referred to in Article 40(4) of this Regulation, including the data referred to in Regulation (EU) 2024/...⁺, that an applicant has been disembarked on the territory of a Member State following a search and rescue operation, that Member State shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than 12 months after the date on which that disembarkation took place.***
3. Paragraphs 1 and 2 of this Article shall not apply if it can be established, on the basis of proof or circumstantial evidence as described in the lists referred to in Article 40(4) of this Regulation, including the data referred to in Regulation (EU) 2024/...⁺, that the applicant was relocated to another Member State pursuant to Article 67 of this Regulation after having crossed the border. In that case, that other Member State shall be responsible for examining the application for international protection.



⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

CHAPTER III
DEPENDENT PERSONS AND DISCRETIONARY CLAUSES

Article 34 Dependent persons

1. Where, on account of pregnancy, having a new-born child, serious ***mental or physical*** illness, severe disability, severe ***psychological*** trauma or old age, an applicant is dependent on the assistance of his or her child, ***sibling*** or parent legally resident in one of the Member States, or his or her child, ***sibling*** or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, ***sibling*** or parent, provided that family ties existed before the applicant arrived on the territory of the Member States, that the child, ***sibling*** or parent or the applicant is able to take care of the dependent person and that, ***having been informed of this possibility***, the persons concerned expressed their desire to that effect in writing.

Where there are indications that a child, **sibling** or parent is legally resident on the territory of the Member State where the dependent person is present, that Member State shall verify whether the child, **sibling** or parent can take care of the dependent person, before making a take charge request pursuant to Article 39.

2. Where the child, **sibling** or parent referred to in paragraph 1 is legally resident in a Member State other than the one where the applicant is present, the Member State responsible shall be the Member State where that child, **sibling** or parent is legally resident, unless the applicant's health prevents him or her from travelling to that Member State for a significant period of time. In such a case, the Member State responsible shall be the Member State where the applicant is present. That Member State shall not be subject to the obligation to bring the child, **sibling** or parent of the applicant to its territory.

3. The Commission is empowered to adopt delegated acts in accordance with Article 78 concerning:
 - (a) the elements to be taken into account in order to assess the dependency link;
 - (b) the criteria for establishing the existence of proven family links;
 - (c) the criteria for assessing the capacity of the person concerned to take care of the dependent person;
 - (d) the elements to be taken into account in order to assess the inability of the person concerned to travel for a significant period of time.
4. The Commission shall, by means of implementing acts, establish uniform methods for the consultation and exchange of information between Member States for the purposes of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2).

Article 35 Discretionary clauses

1. By way of derogation from Article 16(1), a Member State may decide to examine an application for international protection by a third-country national or a stateless person registered with it, even if such examination is not its responsibility according to the criteria laid down in this Regulation.
2. The Member State in which an application for international protection is registered and which is carrying out the procedure for determining the Member State responsible, or the Member State responsible, may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on ***meaningful links regarding family, social*** or cultural considerations, even where that other Member State is not responsible according to the criteria laid down in Articles 25 to 28 and 34. The persons concerned shall express their consent to that effect in writing.

The take charge request shall contain all the material in the possession of the requesting Member State necessary to allow the requested Member State to assess the situation.

The requested Member State shall carry out any necessary checks to examine the humanitarian grounds referred to in the request, and shall reply to the requesting Member State within two months of receipt of the request using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. A refusal of the request shall state the reasons on which the refusal is based.

CHAPTER IV
OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

Article 36

Obligations of the Member State responsible

1. The Member State responsible under this Regulation shall be obliged to:
 - (a) take charge, under the conditions laid down in Articles 39, 40 and 46, of an applicant whose application was registered in a different Member State;
 - (b) take back, under the conditions laid down in Articles 41 and 46 of this Regulation, an applicant or a third-country national or a stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 16(1) of Regulation (EU) 2024/...⁺;

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⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

(c) take back, under the conditions laid down in Articles 41 and 46 of this Regulation, an admitted person who has made an application for international protection or who is irregularly staying in a Member State other than the Member State which accepted to admit him or her in accordance with Regulation (EU) 2024/...⁺, or which granted international protection or humanitarian status under a national resettlement scheme.

2. For the purposes of this Regulation, it shall not be possible to separate the situation of a minor who is accompanying the applicant and meets the definition of family member from that of his or her family member and the minor shall be taken charge of or taken back by the Member State responsible for examining the application for international protection of that family member, ***without the need for a written consent by the person concerned***, even if the minor is not individually an applicant, unless it is demonstrated that this is not in the best interests of the child. The same shall apply to children born after the arrival of the applicant on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)).

Notwithstanding the requirement for written consent provided for in Article 26, where a new procedure for taking charge of a minor is initiated with regard to a Member State which is indicated as the Member State responsible pursuant to Article 26, no written consent shall be required by the persons concerned, unless it is demonstrated that the transfer to the Member State responsible is not in the best interests of the child.

3. In the situations referred to in paragraph 1, points (a) and (b), of this Article the Member State responsible shall examine or complete the examination of the application for international protection in accordance with Regulation (EU) 2024/...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

Article 37 Cessation of responsibilities

1. Where a Member State issues a residence document to the applicant, decides to apply Article 35, ***considers that it is not in the best interests of the child to transfer an unaccompanied minor to the Member State responsible***, or does not transfer the person concerned to the Member State responsible within the time limits set out in Article 46, that Member State shall become the Member State responsible and the obligations laid down in Article 36 shall be transferred to that Member State. Where applicable, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State that has been requested to take charge of the applicant or that has received a take back notification, using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

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The Member State that becomes responsible pursuant to the first subparagraph of this paragraph shall indicate that it has become the Member State responsible pursuant to Article 16(3) of Regulation (EU) 2024/...⁺.

2. ***Following an examination of an application in the border procedure pursuant to Regulation (EU) 2024/...⁺⁺, the obligations laid down in Article 36(1) of this Regulation shall cease 15 months after a decision rejecting an application as inadmissible, unfounded or manifestly unfounded with regard to refugee status or subsidiary protection status or a decision declaring an application as implicitly or explicitly withdrawn has become final.***

An application registered after the period referred to in the first subparagraph shall be regarded as a new application for the purposes of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

3. *Notwithstanding the first subparagraph of paragraph 2 of this Article, where the person applies for international protection in another Member State within the period of 15 months referred to in that subparagraph and a take back procedure is pending at the date of expiration of that period of 15 months, responsibility shall not cease until that take back procedure is completed or the time limits for the transferring Member State to carry out the transfer in accordance with Article 46 have expired.*
4. *The obligations laid down in Article 36(1) of this Regulation shall cease where the Member State responsible establishes, on the basis of data recorded and stored in accordance with Regulation (EU) 2017/2226 or other evidence, that the person concerned has left the territory of the Member States for at least nine months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.*

An application registered after the period of absence referred to in the first subparagraph shall be regarded as a new application for the purposes of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.

5. The obligation laid down in Article 36(1), point (b), of this Regulation to take back a third-country national or a stateless person shall cease where it is established, on the basis of the update of the data set referred to in Article 16(2), point (d), of Regulation (EU) 2024/...⁺, that the person concerned has left the territory of the Member States, on either a compulsory or a voluntary basis, in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.

An application registered after an effective removal **or voluntary return** has taken place shall be regarded as a new application for the purposes of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

CHAPTER V PROCEDURES

SECTION I

START OF THE PROCEDURE

Article 38

Start of the procedure

1. The Member State where an application for international protection is first registered pursuant to Regulation (EU) 2024/...⁺ or, where applicable, the Member State of relocation shall start the procedure for determining the Member State responsible without delay.
2. If the applicant **absconds**, the Member State where an application is first registered or, where applicable, the Member State of relocation shall continue the procedure for determining the Member State responsible.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

3. The Member State which has conducted the procedure for determining the Member State responsible, or which has become responsible pursuant to Article 16(4) of this Regulation, shall without delay indicate in Eurodac pursuant to Article 16(1) of Regulation (EU) 2024/...⁺:
- (a) its responsibility pursuant to Article 16(2);
 - (b) *its responsibility pursuant to Article 16(3);***
 - (c) its responsibility pursuant to Article 16(4);
 - (d) its responsibility due to its failure to comply with the time limits laid down in Article 39;
 - (e) the responsibility of the Member State which has accepted a request to take charge of the applicant pursuant to Article 40.
 - (f) *its responsibility pursuant to Article 68(3).***

Until such information has been added, the procedures in paragraph 4 of this Article shall apply.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

4. An applicant who is present in another Member State without a residence document, or who in that Member State makes an application for international protection during the procedure for determining the Member State responsible, shall be taken back by the **determining** Member State ■ under the conditions laid down in Articles 41 and 46,.

That obligation shall cease where the determining Member State establishes that the applicant has obtained a residence document from another Member State.

5. An applicant who is present in a Member State without a residence document, or who in that Member State makes an application for international protection, after another Member State has confirmed that the person concerned is to be relocated pursuant to Article 67(9), and before the transfer has been carried out to the Member State of relocation pursuant to Article 67(11), shall be taken back by that Member State under the conditions laid down in Articles 41 and 46. ***That obligation shall cease where the Member State of relocation establishes that the applicant has obtained a residence document from another Member State.***

SECTION II

PROCEDURES FOR TAKE CHARGE REQUESTS

Article 39 Submitting a take charge request

1. If **the** Member State ***referred to in Article 38(1)*** considers that another Member State is responsible for examining the application, it shall, ***immediately*** and in any event within two months of the date on which the application was registered, request that other Member State to take charge of the applicant. ***Member States shall prioritise requests made on the basis of Articles 25 to 28 and 34.***

Notwithstanding the first subparagraph of this paragraph, in the case of a Eurodac hit with data recorded pursuant to Articles 22 and 24 of Regulation (EU) 2024/...⁺ or of a VIS hit with data recorded pursuant to Article 21 of Regulation (EC) No 767/2008, the request to take charge shall be sent within one month of receiving such hit.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State where the application was registered.

Where the applicant is an unaccompanied minor, the determining Member State ***shall, at any time before a first decision regarding the substance is taken***, where it considers that it is in the best interests of the child, continue the procedure for determining the Member State responsible and request another Member State to take charge of the applicant, ***in particular if the request is based on Article 26, 27 or 34***, notwithstanding the expiry of the time limits laid down in the first and second subparagraphs of this paragraph.

2. The requesting Member State may request an urgent reply where the application for international protection was registered after a decision to refuse entry or a return decision was issued.

The request shall state the reasons that warrant an urgent reply and the period within which a reply is requested. That period shall be at least one week.

3. ***The take charge request shall include full and detailed reasons, based on all the circumstances of the case including the relevant elements from the applicant's statement, relating to the relevant criteria set out in Chapter II and, where applicable, the template referred to in Article 22(1). It shall be submitted using a standard form and include proof or circumstantial evidence as described in the lists referred to in Article 40(4 or any other documentation or information relevant for justifying the request, enabling the authorities of the requested Member State to check whether that Member State is responsible on the basis of the criteria laid down in this Regulation.***

The Commission shall, by means of implementing acts, establish uniform methods for the preparation and submission of take charge requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2).

Article 40

Replying to a take charge request

1. The requested Member State shall carry out the necessary checks, and shall reply to the request to take charge of an applicant ***without delay and in any event within one month of receipt of the request. Member States shall prioritise requests made on the basis of Articles 25 to 28 and 34. To that end, the requested Member State may request assistance from national, international or other relevant organisations to verify the relevant elements of proof and circumstantial evidence submitted by the requesting Member State, in particular for the identification and tracing of family members.***
2. Notwithstanding paragraph 1, in the case of a Eurodac hit with data recorded pursuant to Articles 22 and 24 of Regulation (EU) 2024/...⁺ or of a VIS hit with data recorded pursuant to Article 21(2) of Regulation (EC) No 767/2008, the requested Member State shall reply to the request within two weeks of receipt of the request.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

3. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.
4. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in the second and third subparagraphs of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2).

For the purposes of the first subparagraph, proof refers to formal proof which determines responsibility pursuant to this Regulation, provided that it is not refuted by proof to the contrary. The Member States shall provide the **Commission** with models of the different types of administrative documents, in accordance with the typology established in the list of formal proof.

For the purposes of the first subparagraph, circumstantial evidence refers to indicative elements which while being refutable may be sufficient according to the evidentiary value attributed to them. The evidentiary value of circumstantial evidence shall, in relation to the responsibility for examining the application for international protection, be assessed on a case-by-case basis.

5. The requirement of proof ***and circumstantial evidence*** shall not exceed what is necessary for the proper application of this Regulation.
6. The requested Member State shall acknowledge its responsibility provided that the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

Where the request is made on the basis of Articles 25 to 28 and 34, and the requested Member State does not consider that the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility, it shall set out the reasons in the reply referred to in paragraph 8 of this Article.

7. Where the requesting Member State has asked for an urgent reply pursuant to Article 39(2), the requested Member State shall reply within the period requested or, failing that, within two weeks of receipt of the request.
8. Where the requested Member State does not object to the request within the one-month period set out in paragraph 1 of this Article ■ , or where applicable within the two-week period set out in paragraphs 2 and 7 of this Article, ***by a reply which sets out substantiated reasons, based on all the circumstances of the case relating to the relevant criteria set out in Chapter II, that lack of objection*** shall be tantamount to accepting the request, and shall entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival. ***The substantiated reasons shall be supported by proof and circumstantial evidence where available.***

The Commission shall, by means of implementing acts, draw up a standard form for replies setting out substantiated reasons pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 77(2).

SECTION III
PROCEDURES FOR TAKE BACK NOTIFICATIONS

Article 41

Submitting a take back notification

1. In a situation referred to in Article 36(1), point (b) **■** or (c), the Member State where the person is present shall make a take back notification ***immediately*** and in any event within two weeks after receiving the Eurodac hit. ***Failure to make the take back notification within that time limit shall not affect the obligation of the Member State responsible to take back the person concerned.***
2. A take back notification shall be made using a standard form and shall include proof or circumstantial evidence as described in the lists referred to in Article 40(4) or relevant elements from the statements of the person concerned.

3. The notified Member State shall confirm receipt of the notification to the Member State which made the notification within **two weeks**, unless the notified Member State demonstrates within that time limit that ***it is not responsible*** pursuant to Article 37 ***or that the take back notification is based on an incorrect indication of the Member State responsible pursuant to Regulation (EU) 2024/...***⁺.
4. Failure to act within the **two-week** period set out in paragraph 3 shall be tantamount to confirming the receipt of the notification.
5. The Commission shall, by means of implementing acts, establish uniform **methods** for the preparation and submission of take back notifications. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

SECTION IV PROCEDURAL SAFEGUARDS

Article 42 Notification of a transfer decision

1. The determining Member State whose take charge request as regards the applicant referred to in Article 36(1), point (a), has been accepted or that made a take back notification as regards persons referred to in Article 36(1), point (b) ■ and (c), shall take a transfer decision within **two weeks** of the acceptance or **confirmation**.
2. Where the requested **or notified** Member State accepts to take charge of an applicant or **confirms** to take back a person referred to in Article 36(1), point (b) ■ or (c), the **transferring** Member State shall notify the person concerned of the decision to transfer him or her to the Member State responsible in writing, **in plain language and** without delay as well as, where applicable, of the fact that it will not examine his or her application for international protection, **the time limits for carrying out the transfer and the obligation to comply with the decision pursuant to Article 17(5)**.

3. **Where** a legal adviser or other counsellor, **admitted or permitted as such under national law, is legally** representing the person concerned, Member States may ■ notify the decision referred to in paragraph 1 to such legal adviser or counsellor instead of to the person concerned and, where applicable, communicate the decision to the person concerned.
4. The decision referred to in paragraph 1 of this Article shall **also include** information on the legal remedies available **pursuant to Article 43**, including on the right to apply for suspensive effect, and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned is required to appear, if that person is travelling to the Member State responsible by his or her own means.

Member States shall ensure that information on persons or entities that are able to provide legal assistance to the person concerned is communicated to the person concerned together with the decision referred to in paragraph 1, unless that information has ■ already **been** communicated.

5. Where the person concerned is not **legally** represented by a legal adviser or other counsellor, **admitted or permitted as such under national law**, Member States shall provide him or her with information on the main elements of the decision, which shall include information on the legal remedies available and the time limits applicable for seeking such remedies, in a language that the person concerned understands or is reasonably supposed to understand.

Article 43 Remedies

1. The applicant or another person as referred to in Article 36(1), points (b) ■ and (c), shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision ■ before a court or tribunal.

The scope of such remedy shall be limited to an assessment of:

- (a) whether the transfer would, **for the person concerned**, result in a real risk of inhuman or degrading treatment ■ within the meaning of Article 4 of the Charter;

(b) *whether there are circumstances subsequent to the transfer decision that are decisive for the correct application of this Regulation;*

(c) whether Articles 25 to 28 and 34 have been infringed, in the case of persons taken charge of pursuant to Article 36(1), point (a).

2. Member States shall provide for a period of *at least one week but no more than three* weeks after the notification of a transfer decision within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

3. The person concerned shall have the right to request, within a reasonable period of time from the notification of the transfer decision ***but in any event no longer than the period provided for by Member States pursuant to paragraph 2***, a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. ***Member States may provide in national law that the request to suspend the implementation of the transfer decision must be lodged together with the appeal pursuant to paragraph 1.*** Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within one month of the date when the competent court or tribunal received that request.

Where the person concerned has not exercised his or her right to request suspensive effect, the appeal against, or review of, the transfer decision shall not suspend the implementation of the transfer decision.

A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.

If suspensive effect is granted, the court or tribunal shall endeavour to decide on the substance of the appeal or review within one month of the decision to grant suspensive effect.

4. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.
5. Member States shall ensure that legal assistance ***and representation in the appeal procedure*** are granted on request free of charge where the person concerned cannot afford the costs involved. Member States may provide that, as regards fees and other costs, the treatment of persons subject to this Regulation shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance ***and representation***.

Member States may provide that free legal assistance and representation is not to be granted where the appeal or review is considered by the competent authority or a court or tribunal to have no tangible prospect of success, provided that access to legal assistance ***and representation*** is not thereby arbitrarily restricted.

Where a decision not to grant free legal assistance and representation pursuant to the second subparagraph is taken by an authority other than a court or tribunal, Member States shall provide for an effective remedy before a court or tribunal to challenge that decision. Where the decision is challenged, the remedy shall be an integral part of the remedy referred to in paragraph 1.

Member States shall ensure that legal assistance and representation are not arbitrarily restricted and that effective access to justice for the person concerned is not hindered.

Legal assistance shall include at least the preparation of the required procedural documents. ***Legal representation shall include at least the*** representation before a court or tribunal and may be restricted to legal advisers or counsellors specifically designated by national law to provide ***legal*** assistance and representation.

Procedures for access to legal assistance ***and representation*** shall be laid down in national law.

SECTION V
DETENTION FOR THE PURPOSES OF TRANSFER

Article 44 Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.
2. Where there is a risk of absconding ***or where the protection of national security or public order so requires***, Member States may detain the person concerned in order to ensure transfer procedures in accordance with this Regulation, on the basis of an individual assessment ***of the person's circumstances***, and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively **■** .
3. Detention shall be as short as possible and for no longer than the time reasonably necessary to complete the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

4. *As regards the detention conditions and the guarantees applicable to applicants detained pursuant to this Article, Articles 11, 12 and 13 of Directive (EU) 2024/...⁺ shall apply.*
5. *Detention pursuant to this Article shall be ordered in writing by administrative or judicial authorities. The detention order shall state the reasons in fact and in law on which it is based. Where detention is ordered by an administrative authority, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted ex-officio or at the request of the applicant, or both.*

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

Article 45

Time limits for detained applicants

1. ***By way of derogation from Articles 39 and 41, where a person is detained pursuant to Article 44, the period for submitting a take charge request or a take back notification shall not exceed two weeks from the registration of the application *for international protection* or two weeks from receiving the Eurodac hit where no new application has been registered in the notifying Member State.***

Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge request or a take back notification shall not exceed one week from the date on which the person was placed in detention.

2. ***By way of derogation from Article 40(1), the requested Member State shall reply as soon as possible, and in any event within one week of receipt of the request. Failure to reply within the one-week period shall be tantamount to accepting the take charge request and shall entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.***

3. **By way of derogation from Article 46**, where a person is detained **■**, the transfer of that person from the **transferring** Member State to the Member State responsible shall be carried out as soon as practically possible, and within **five** weeks of:
- (a) the date on which the request **to take charge** was accepted or the take back notification was confirmed; or
 - (b) the date when the appeal or review no longer has suspensive effect in accordance with Article 43(3).
4. Where the **transferring** Member State fails to comply with the time limits for submitting a take charge request or take back notification or to take a transfer decision within the time limit laid down in Article 42(1) or where the transfer does not take place within the period of **five** weeks referred to in **paragraph 3** of this **Article**, the person shall no longer be detained. Articles 39, 41 and 46 shall continue to apply accordingly.
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SECTION VI TRANSFERS

Article 46

Detailed rules and time limits

1. The transfer of an applicant or of another person as referred to in Article 36(1), points (b) and (c), from the **transferring** Member State to the Member State responsible shall be carried out in accordance with the national law of the **transferring** Member State, after consultation between the Member States concerned, as soon as practically possible and within six months of the acceptance of the take charge request, of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision with suspensive effect in accordance with Article 43(3). ■

Member States shall prioritise transfers of applicants following the acceptance of requests made on the basis of Articles 25 to 28 and 34.

Where the transfer is carried out for the purposes of relocation, the transfer shall take place within the time limit set out in Article 67(11).

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and ***in compliance with and*** with full respect for human dignity and other fundamental rights.

If necessary, the ***transferring*** Member State shall supply the ***person concerned*** with a laissez passer. The Commission shall, by means of implementing acts, establish the design of the laissez passer. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2).

The Member State responsible shall inform the ***transferring*** Member State, as appropriate, of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

2. Where the transfer does not take place within the time limit set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the ***transferring Member State. That time limit may be extended up to a maximum of one year if the transfer could not be carried out due to the imprisonment of the person concerned or up to a maximum of three years from when the requesting Member State informed the Member State responsible that the person concerned, or a family member to be transferred together with the person concerned, has absconded, is physically resisting the transfer, is intentionally making himself or herself unfit for the transfer, or is not complying with medical requirements for the transfer.***

Where the person concerned ***becomes available to the authorities again*** and the ***time remaining from the period referred to*** in paragraph 1 ***is less than three months***, the transferring Member State shall ***have a period of three months*** to carry out the transfer ***.***

3. Where a person has been transferred erroneously or a decision to transfer is overturned on appeal or review after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.
4. The Commission shall, by means of implementing acts, establish uniform **methods** for the consultation and exchange of information between Member States for the purposes of this Article, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2).

Article 47 Costs of transfer

1. In accordance with Article **20** of Regulation (EU) **2021/1147**, a contribution shall be paid to the Member State carrying out the transfer of an applicant or another person as referred to in Article 36(1), point (b) or (c), of this Regulation pursuant to Article 46 of this Regulation.
2. Where the person concerned is to be transferred back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal or review after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.
3. Persons transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.

Article 48

Exchange of relevant information before a transfer is carried out

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 36(1), point (b) or (c), shall communicate to the Member State responsible personal data concerning the person to be transferred that are adequate, relevant and limited to what is necessary for the sole purposes of ensuring that the competent authorities, in accordance with national law of the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, to ensure continuity in the protection and rights afforded by this Regulation and by other applicable legal instruments in the field of asylum. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities have sufficient time to take the necessary measures.

2. The transferring Member State shall transmit to the Member State responsible any information that is essential in order to safeguard the rights and any immediate special needs of the person to be transferred, and in particular:
- (a) information on any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care required ***and, where necessary, any arrangements needed to protect the best interests of the child;***
 - (b) contact details of family members, relatives or any other family relations in the receiving Member State, where applicable;
 - (c) in the case of minors, information on ***the assessment of the best interests of the child and on*** their education;

- (d) **where applicable**, an assessment of the age of an applicant;
- (e) **where applicable**, the screening **form pursuant to** Article 17 of Regulation (EU) 2024/...⁺, **including any evidence referred to on the form**;
- (f) **any other relevant information**.

3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 52 of this Regulation using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. The information exchanged shall be used only for the purposes set out in paragraph 1 of this Article and shall not be further processed.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)) and insert the number, date, title, OJ reference and ELI reference of that Regulation in the footnote.

4. With a view to facilitating the exchange of information between Member States, the Commission shall, by means of implementing acts, draw up a standard form for the transfer of the data required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 77(2).
5. Article 51(8) and (9) shall apply to the exchange of information pursuant to this Article.

Article 49

Exchange of security-relevant information before a transfer is carried out

For the purpose of applying Article 41, where the transferring Member State is in possession of information that indicates that there are reasonable grounds to consider the applicant or another person as referred to in Article 36(1), point (b) **■** or (c), a danger to national security or public order in a Member State, ***the competent authorities of*** that Member State shall ***indicate the existence of*** such information to the Member State responsible. ***The information shall be shared between the law enforcement authorities or other competent authorities of those Member States through the appropriate channels for such information exchange.***

Article 50

Exchange of health data before a transfer is carried out

1. For the sole purpose of the provision of medical care or treatment, in particular concerning **vulnerable persons, including** disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence, the transferring Member State shall, in so far as it is available to its competent authority in accordance with national law, transmit to the Member State responsible information on any special needs of the person to be transferred, which in specific cases can include information on that person's physical or mental health. That information shall be transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care required.

The Commission shall, by means of implementing acts, draw up the common health certificate referred to in the first subparagraph. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 77(2).

2. The transferring Member State shall transmit the information referred to in paragraph 1 to the Member State responsible only after having obtained the explicit consent of the applicant or of his or her representative or when such transmission is necessary to protect public health or public security, or, where the person concerned is physically or legally incapable of giving his or her consent, to protect the vital interests of the person concerned or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.
3. The processing of personal health data referred to in paragraph 1 shall be carried out only by a health professional who is subject, under national law, to the obligation of professional secrecy or by another person subject to an equivalent obligation of professional secrecy.

4. The exchange of information under this Article shall take place only between health professionals or other persons referred to in paragraph 3. The information exchanged shall be used only for the purposes set out in paragraph 1 and shall not be further processed.
5. The Commission shall, by means of implementing acts, establish uniform methods and practical arrangements for exchanging the information referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 77(2).
6. Article 51(8) and (9) shall apply to the exchange of information pursuant to this Article.

CHAPTER VI ADMINISTRATIVE COOPERATION

Article 51 Information sharing

1. Each Member State shall communicate to any Member State that so requests personal data concerning a person covered by the scope of this Regulation that are adequate, relevant and limited to what is necessary for the purpose of:
 - (a) determining the Member State responsible;
 - (b) examining the application for international protection;
 - (c) implementing any other obligation arising under this Regulation;
 - (d) *implementing a return decision.***

2. The information referred to in paragraph 1 shall include only:

- (a) the personal details of the person concerned, and, where appropriate, of his or her family members, relatives or any other family relations, namely full name and where appropriate, former names, nicknames or pseudonyms, current and former nationality, date and place of birth;
- (b) information on identity and travel **documents, including information on** references, validity, date of issue, issuing authority and place of issue;
- (c) any other information necessary for establishing the identity of the person concerned, including biometric data taken of the applicant by the Member State concerned, in particular for the purposes of Article 67(8) of this Regulation, in accordance with Regulation (EU) 2024/...⁺;
- (d) information on places of residence and routes travelled;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

- (e) information on residence documents or visas issued by a Member State;
- (f) information on the place where the application was **registered**;
- (g) information on the date on which any previous application for international protection was **registered**, the date on which the current application was registered, the stage reached in the proceedings and the decision taken, if any.

3. Provided that it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to inform it about the grounds on which the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. ***Where the Member State responsible applies Article 55 of Regulation (EU) 2024/...⁺, that Member State may also request information enabling its competent authorities to establish whether new elements have arisen or have been presented by the applicant.*** The requested Member State may refuse to respond to the request, if the communication of such information is likely to harm its essential interests or the protection of the liberties and fundamental rights of the person concerned or of others. ***The applicant shall be informed by the requesting Member State in advance about the specific information requested and the reason for that request.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

4. Any request for information shall be sent only in the context of an individual application for international protection or transfer for the purposes of relocation. That request shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence it is based, including relevant information from reliable sources on the ways and means by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. Such relevant information from reliable sources shall not in itself be sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to an individual applicant..

5. The requested Member State shall be obliged to reply within three weeks. Any delays in the reply shall be duly justified. Failure to reply within three weeks shall not relieve the requested Member State of the obligation to reply. If that requested Member State withholds information which shows that it is responsible, that Member State may not invoke the expiry of the time limits provided for in Article 39 as a reason for refusing to comply with a request to take charge. In that case, the time limits provided for in Article 39 for submitting a request to take charge shall be extended by a period of time equivalent to the delay in the reply by the requested Member State.

6. The exchange of information shall be carried out at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission in accordance with Article 52(1).
7. The information exchanged may be used only for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:
 - (a) determining the Member State responsible;
 - (b) examining the application for international protection;
 - (c) implementing any other obligation arising under this Regulation.

8. The Member State which forwards the information shall ensure that the information is accurate and up-to-date. If it transpires that the Member State has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.
9. In each Member State concerned, a record shall be kept, in the individual file for the person concerned or in a register, of the transmission and receipt of information exchanged.

Article 52

Competent authorities and resources

1. Each Member State shall notify the Commission without delay of the competent authorities responsible for fulfilling the obligations under this Regulation, and any amendments thereto. Member States shall ensure that those authorities have the necessary **human, material and financial** resources for carrying out their tasks ***relating to the application of the procedures for determining the Member State responsible for examining an application for international protection in a rapid and efficient manner***, and in particular for ***safeguarding procedural and fundamental rights, ensuring a swift procedure for reuniting family members and relatives present in different Member States***, replying within the prescribed time limits to requests for information, take charge requests and take back notifications and, where applicable, complying with their obligations under Part IV.

2. The Commission shall publish a consolidated list of the authorities referred to in paragraph 1 in the *Official Journal of the European Union*. Where there are changes to that list, the Commission shall publish an updated consolidated list once a year.
3. Member States shall ensure that the staff of the authorities referred to in paragraph 1 receive the necessary training with respect to the application of this Regulation.
4. The Commission shall, by means of implementing acts, establish secure electronic communication channels between the authorities referred to in paragraph 1 and between those authorities and the Asylum Agency for transmitting information, biometric data taken in accordance with Regulation (EU) 2024/...⁺, requests, notifications, replies and any other written correspondence and for ensuring that senders automatically receive electronic proof of delivery. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

Article 53 Administrative arrangements

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details for the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:
 - (a) exchanges of liaison officers;
 - (b) the simplification of the procedures and the shortening of the time limits relating to transmission and the examination of take charge requests or take back notifications;
 - (c) solidarity contributions made pursuant to Part IV.

2. Member States may also maintain the administrative arrangements concluded under Council Regulation (EC) No 343/2003⁴¹ and Regulation (EU) No 604/2013. To the extent that such arrangements are not compatible with this Regulation, the Member States concerned shall amend those arrangements in such a way as to eliminate any incompatibilities.
3. Before concluding or amending any arrangement as referred to in paragraph 1, point (b), the Member States concerned shall consult the Commission as to the compatibility of the arrangement with this Regulation.
4. Where the Commission considers the arrangements referred to in paragraph 1, point (b), to be incompatible with this Regulation, it shall, within a reasonable period, notify the Member States concerned. The Member States concerned shall take all appropriate steps to amend the arrangement concerned within a reasonable time in such a way as to eliminate any such incompatibilities.
5. Member States shall notify the Commission of all arrangements referred to in paragraph 1, and of any denunciation thereof, or amendment thereto.

⁴¹ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50, 25.2.2003, p. 1).

Article 54

Network of responsible units

The Asylum Agency shall set up and facilitate the activities of one or more **networks** of the competent authorities referred to in Article 52(1), with a view to enhancing practical cooperation, **including transfers**, and information sharing on all matters related to the **full** application of this Regulation, including the development of practical tools, **best practices** and guidance.

The European Border and Coast Guard Agency and other relevant Union bodies, offices and agencies may be represented in such networks when necessary.

CHAPTER VII CONCILIATION

Article 55 Conciliation

1. In order to facilitate the proper functioning of the mechanisms set up under this Regulation and resolve difficulties in the application thereof, where two or more Member States encounter difficulties in their cooperation under this Regulation or in its application between them, the Member States concerned shall, upon request by one or more of them, hold consultations without delay with a view to finding appropriate solutions within a reasonable time, in accordance with the principle of sincere cooperation as enshrined in Article 4(3) TEU.

Where appropriate, information about the difficulties encountered and the solution found may be shared with the Commission and with the other Member States within the committee referred to in Article 77.

2. Where no solution is found under paragraph 1 or where the difficulties persist, one or more of the Member States concerned may request the Commission to hold consultations with the Member States concerned with a view to finding appropriate solutions. The Commission shall hold such consultations without delay. The Member States concerned shall actively participate in the consultations. The Member States and the Commission shall take all appropriate measures to promptly resolve the matter. The Commission may adopt recommendations addressed to the Member States concerned indicating the measures to be taken and the appropriate deadlines.

Where appropriate, information about the difficulties encountered, the recommendations made and the solution found may be shared with the other Member States within the committee referred to in Article 77.

The procedure set out in this Article shall not affect the time limits set out in this Regulation in individual cases.

3. This Article shall be without prejudice to the powers of the Commission to oversee the application of Union law under Articles 258 and 260 TFEU. It shall also be without prejudice to the possibility for the Member States concerned to submit their dispute to the Court of Justice of the European Union in accordance with Article 273 TFEU or to the possibility for any Member State to bring the matter before the Court in accordance with Article 259 TFEU.

PART IV SOLIDARITY

CHAPTER I SOLIDARITY MECHANISM

Article 56 *Annual Solidarity Pool*

1. ***The Annual Solidarity Pool, which shall include the contributions set out in the Council implementing act referred to in Article 57 as pledged by the Member States during the meeting of the High-Level Forum, shall serve as the main solidarity response tool for Member States under migratory pressure on the basis of the needs identified in the Commission proposal referred to in Article 12.***
2. ***The Annual Solidarity Pool shall consist of the following types of solidarity measures, which shall be considered of equal value:***
 - (a) relocation, ***in accordance with Articles 67 and 68:***
 - (i) of applicants ■ for international protection ■ ;

■

- (ii) *where bilaterally agreed by the contributing and benefitting Member State concerned*, of beneficiaries of international protection who have been granted international protection less than three years prior to *the* adoption of *the Council* implementing act *referred to in Article 57*;
- (b) *financial contributions provided by Member States primarily aiming at actions in Member States related to the area of migration, reception, asylum, pre-departure reintegration, border management and operational support, which may also provide support for actions in or in relation to third countries that might have a direct impact on the migratory flows at the external borders of Member States or improve the asylum, reception and migration system of the third country concerned, including assisted voluntary return and reintegration programmes, in accordance with Article 64*;

- (c) *alternative solidarity measures in the field of migration, reception, asylum, return and reintegration and border management, focusing on operational support, capacity building, services, staff support, facilities and technical equipment in accordance with Article 65.*

Actions in or in relation to third countries referred to in the first subparagraph, point (b), of this paragraph shall be implemented by benefitting Member States in accordance with the scope and objectives of this Regulation and of Regulation (EU) 2021/1147.

- 3. *Financial contributions referred to in paragraph 2, point (b), for projects in third countries shall, in particular, focus on:*

- (a) *enhancing the capacity of asylum and reception in third countries, including by strengthening, human and institutional expertise and capacity;*

- (b) *promoting legal migration and well-managed mobility, including by strengthening bilateral, regional and international partnerships on migration, forced displacement, legal pathways and mobility partnerships;*
- (c) *supporting the assisted voluntary return and sustainable reintegration programmes of returning migrants and their families;*
- (d) *reducing the vulnerabilities caused by migrant smuggling and trafficking in human beings as well as anti-smuggling programmes and anti-trafficking programmes;*
- (e) *supporting effective and human rights-based migration policies.*

Article 57

Council implementing act establishing the Annual Solidarity Pool

- 1. On the basis of the Commission proposal referred to in Article 12 and in accordance with the pledging exercise carried out in the High-Level Forum referred to in Article 13, the Council shall adopt, on an annual basis, before the end of each calendar year, an implementing act establishing the Annual Solidarity Pool, including, the reference number of required relocations and financial contributions for the Annual Solidarity Pool at Union level and the specific pledges that each Member State has made for each type of solidarity contribution referred to in Article 56(2) during the High-Level Forum meeting referred to in Article 13. The Council shall adopt the implementing act referred to in this paragraph by qualified majority. The Council may amend the Commission proposal referred to in Article 12 by qualified majority.***

2. *The Council implementing act referred to in paragraph 1 of this Article shall, where necessary also set out the indicative percentage of the Annual Solidarity Pool that may be made available to Member States under migratory pressure as a result of large number of arrivals stemming from recurring disembarkations following search and rescue operations, taking into account the geographical specificities of the Member States concerned. It may also identify other forms of solidarity as set out in Article 56(2), point (c), depending on the needs for such measures arising from the specific challenges in the area of migration in the Member States concerned.*
3. *During the High-Level Forum meeting referred to in Article 13, Member States shall come to a conclusion regarding an overall reference number for each solidarity measure in the Annual Solidarity Pool, based on the Commission proposal referred to in Article 12. During that meeting, the Member States shall also pledge their contributions to the Annual Solidarity Pool, in accordance with paragraph 4 of this Article and the mandatory fair share calculated according to the reference key set out in Article 66.*

4. *In implementing paragraph 3 of this Article, Member States shall have full discretion in choosing between the types of solidarity measures listed in Article 56(2), or a combination thereof. Member States pledging alternative solidarity measures shall indicate the financial value of such measures, based on objective criteria. Where the alternative solidarity measures are not identified in the Commission proposal referred to in Article 12, Member States may still pledge such measures. Where such measures are not requested by the benefitting Member States in a given year, they shall be converted into financial contributions.*

Article 58

Information regarding the intention to use the Annual Solidarity Pool by a Member State identified in the Commission decision as being under migratory pressure

- 1. A Member State that has been identified in a decision as referred to in Article 11 as being under migratory pressure shall, after the adoption of the Council implementing act referred to in Article 57, inform the Commission and the Council where it intends to make use of the Annual Solidarity Pool. The Commission shall inform the European Parliament thereof.***
- 2. The Member State concerned shall include information on the type and level of solidarity measures referred to in Article 56(2) needed to address the situation, including where relevant any use made of the components of the Permanent EU Migration Support Toolbox. Where that Member State intends to make use of financial contributions, it shall also identify the Union spending programmes concerned.***
- 3. Following the receipt of the information referred to in paragraph 2, the Member State concerned shall have access to the Annual Solidarity Pool in accordance with Article 60. The EU Solidarity Coordinator shall without delay and in any event within 10 days of receiving the information convene the Technical-Level Forum to operationalise the solidarity measures.***

Article 59

Notification of the need to use the Annual Solidarity Pool by a Member State that considers itself to be under migratory pressure

- 1. Where a Member State has not been identified in a decision as referred to in Article 11 as being under migratory pressure but considers itself to be under migratory pressure, it shall notify the Commission of its need to make use of the Annual Solidarity Pool and inform the Council thereof. The Commission shall inform the European Parliament thereof.***
- 2. The notification referred to in paragraph 1 shall include:***
 - (a) a duly substantiated reasoning on the existence and extent of the migratory pressure in the notifying Member State, including updated data on the indicators referred to in Article 9(3), point (a);***

- (b) information on the type and level of solidarity measures as referred to in Article 56 needed to address the situation, including where relevant any use made of the components of the Permanent EU Migration Support Toolbox and, where the Member State concerned intends to make use of financial contributions, the identification of the Union spending programmes concerned;*
- (c) a description of how the use of the Annual Solidarity Pool could stabilise the situation;*
- (d) how the Member State concerned intends to address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience.*

3. The Asylum Agency, the European Border and Coast Guard Agency and the European Union Agency for Fundamental Rights as well as the Member State concerned, shall, where requested by the Commission, assist the Commission in drawing up an assessment of the migratory pressure.

4. *The Commission shall expeditiously assess the notification, taking into account the information set out in Articles 9 and 10, whether the notifying Member State was identified as being at risk of migratory pressure in the decision referred to in Article 11, the overall situation in the Union, the situation in the notifying Member State during the preceding 12 months, and the needs expressed by the notifying Member State, and adopt a decision whether to consider the Member State as being under migratory pressure. Where the Commission decides that that Member State is under migratory pressure, the Member State concerned shall become a benefitting Member State, unless it is denied access to benefit from the Annual Solidarity Pool in accordance with paragraph 6 of this Article.*
5. *The Commission shall transmit its decision to the Member State concerned, the European Parliament and the Council without delay.*

6. *Where the Commission decision establishes that the notifying Member State is under migratory pressure, the EU Solidarity Coordinator shall convene the Technical-Level Forum without delay and within two weeks of the transmission of the Commission decision to the Member State concerned, the European Parliament and the Council, to operationalise the solidarity measures. The EU Solidarity Coordinator shall convene the Technical- Level Forum unless the Commission considers, or the Council decides by way of an implementing act adopted within two weeks of the transmission of the Commission decision to the Member State concerned, the European Parliament and the Council, that there is insufficient capacity in the Annual Solidarity Pool for the Member State concerned to be allowed to benefit from the Annual Solidarity Pool or that there are other objective reasons for not allowing that Member State to benefit from the Annual Solidarity Pool.*

7. *Where the Council decides that there is insufficient capacity in the Annual Solidarity Pool, Article 13(4) shall apply and the High-Level Forum shall be convened no later than one week after the Commission decision.*

In the case of a Commission decision rejecting a request by a Member State to be considered to be under migratory pressure, the notifying Member State may submit a new notification to the Commission and the Council with additional relevant information.

Article 60

Operationalisation and coordination of solidarity contributions

- 1. In the Technical-Level Forum, Member States shall cooperate among themselves and with the Commission to ensure an effective and efficient operationalisation of the solidarity contributions in the Annual Solidarity Pool for the year concerned, in a balanced and timely manner, in light of the needs identified and assessed and the solidarity contributions available.***
- 2. The EU Solidarity Coordinator, taking into account developments in the migratory situation, shall coordinate the operationalisation of the solidarity contributions to ensure a balanced distribution of the solidarity contributions available among the benefitting Member States.***

3. *With the exception of the implementation of financial contributions, in operationalising the solidarity measures identified, Member States shall implement their pledged solidarity contributions referred to in Article 56 for a given year before the end of that year, without prejudice to Article 65(3) and Article 67(12).*

Contributing Member States shall implement their pledges in proportion to their overall pledge to the Annual Solidarity Pool for a given year before the end of the year.

Member States which have been granted a full deduction of solidarity contributions in accordance with Article 61 or 62 or are themselves benefitting Member States pursuant to Article 58(1) and Article 59(4) are not obliged to implement their pledged solidarity contributions referred to in Article 56(2) for a given year.

Contributing Member States shall not be required to implement their pledges made pursuant to Article 56(2) or to apply responsibility offsets pursuant to Article 63 towards a benefitting Member State, where the Commission has identified, in a decision as referred to in Article 11 or Article 59(4), systemic shortcomings in that benefitting Member State with regard to the rules set out in Part III of this Regulation that could result in serious negative consequences for the functioning of this Regulation.

- 4. During the first meeting of the Technical-Level Forum in the annual cycle, contributing and benefitting Member States may express reasonable preferences, in light of the needs identified, for the profiles of available relocation candidates and a potential planning for the implementation of their solidarity contributions, taking into account the need for urgent actions for the benefitting Member States.*

The EU Solidarity Coordinator shall facilitate interaction and cooperation between the Member States on those aspects.

When implementing relocations, Member States shall give primary consideration to the relocation of vulnerable persons.

5. *The Union bodies, offices and agencies competent in the field of asylum and border and migration management shall, when requested and within their respective mandates, provide support to the Member States and the Commission, with a view to ensuring the proper implementation and functioning of this Part. Such support may take the form of analyses, expertise and operational support. The EU Solidarity Coordinator shall coordinate any assistance by experts or teams deployed by the Asylum Agency, the European Border and Coast Guard Agency or any other Union body, office or agency, in relation to the operationalisation of the solidarity contributions.*
6. *Each year in January from ... [the first year after the date of application of this Regulation] and onwards, Member States shall confirm to the EU Solidarity Coordinator the levels of each solidarity measure implemented during the preceding year.*

Article 61

Deduction of solidarity contributions in cases of migratory pressure

- 1. A Member State that is identified in a decision as referred to in Article 11 as being under migratory pressure or that considers itself to be under migratory pressure and which has not made use of the Annual Solidarity Pool in accordance with Article 58 or notified the need to use the Annual Solidarity Pool in accordance with Article 59, may, at any time, request a partial or full deduction of its pledged contributions set out in the Council implementing act referred to in Article 57.**

The Member State concerned shall submit its request to the Commission. For information purposes, the Member State concerned shall transmit its request to the Council.

- 2. Where the requesting Member State referred to in paragraph 1 of this Article is a Member State that is not identified in a decision as referred to in Article 11 as being under migratory pressure, but considers itself to be under migratory pressure, that Member State shall include in its request:**

- (a) a description of how the full or partial deduction of its pledged contributions could help stabilising the situation;*
- (b) whether the pledged contribution could be replaced with a different type of solidarity contribution;*
- (c) how that Member State will address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience;*
- (d) a duly substantiated reasoning on the existence and extent of the migratory pressure in the requesting Member State.*

When assessing such a request, the Commission shall also take into account the information set out in Articles 9 and 10.

3. *The Commission shall inform the Council of its assessment of the request within four weeks following the receipt of the request submitted in accordance with this Article. The Commission shall also inform the European Parliament of that assessment.*
4. *Following the receipt of the Commission's assessment, the Council shall adopt an implementing act to determine whether the Member State is authorised to derogate from the Council implementing act referred to in Article 57.*

Article 62

Deduction of solidarity contributions in significant migratory situations

1. *A Member State that is identified in a decision as referred to in Article 11 as facing a significant migratory situation or considers itself to be facing a significant migratory situation, may at any time request a partial or full deduction of its pledged contributions set out in the Council implementing act referred to in Article 57.*

The Member State concerned shall submit its request to the Commission. For information purposes, the Member State concerned shall transmit its request to the Council.

2. *Where the requesting Member State is identified in a decision as referred to in Article 11 as facing a significant migratory situation, the request shall include:*

- (a) a description of how the full or partial deduction of its pledged contributions could help stabilising the situation;*
- (b) whether the pledged contribution could be replaced with a different type of solidarity contribution;*
- (c) how that Member State will address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience;*
- (d) a duly substantiated reasoning pertaining to the area of the asylum, reception and migration system in which the capacity has been reached, and how reaching the limits of the capacity of that Member State in the specific area affects its capacity to fulfil its pledge.*

3. *Where the requesting Member State is not identified in a decision as referred to in Article 11 as facing a significant migratory situation, but considers itself as facing a significant migratory situation, the request shall in addition to the information referred to in paragraph 2 of this Article include also a duly substantiated reasoning on the significance of the migratory situation in the requesting Member State. When assessing such a request, the Commission shall also take into account the information set out in Articles 9 and 10 and whether the Member State was identified as being at risk of migratory pressure in a decision as referred to in Article 11.*
4. *The Commission shall inform the Council of its assessment of the request within four weeks following the receipt of the request submitted in accordance with this Article. The Commission shall also inform the European Parliament of that assessment.*
5. *Following the receipt of the Commission's assessment, the Council shall adopt an implementing act to determine whether the Member State is authorised to derogate from the Council implementing act referred to in Article 57.*

Article 63 Responsibility offsets

- 1. Where the relocation pledges to the Annual Solidarity Pool set out in the Council implementing act referred to in Article 57 are equal to or above 50 % of the number indicated in the Commission proposal referred to in Article 12, a benefitting Member State may request the other Member States to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 69.**
- 2. A contributing Member State may indicate to benefitting Member States its willingness to take responsibility for examining applications for international protection for which a benefitting Member State has been determined as responsible instead of relocations:**
 - (a) where the threshold set out in paragraph 1 has been reached; or**
 - (b) where the contributing Member State has pledged 50 % or more of its mandatory fair share to the Annual Solidarity Pool set out in the Council implementing act referred to in Article 57 as relocations.**

Where a contributing Member State has indicated such willingness and the benefitting Member State agrees, the benefitting Member State shall apply the procedure set out in Article 69.

3. The contributing Member States shall take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the higher of the two numbers referred to in points (a) and (b) of this paragraph where, following the meeting of the High-Level Forum convened in accordance with Article 13(4), the relocation pledges to the Annual Solidarity Pool set out in the Council implementing act referred to in Article 57 are:

- (a) below the number referred to in Article 12(2), point (a); or*
- (b) below 60 % of the reference number used to calculate each Member State's mandatory fair share for relocation for the purpose of establishing the Annual Solidarity Pool in accordance with Article 57.*

4. *Paragraph 3 of this Article also applies where the pledges to be implemented during a given year fall below the higher of the two numbers referred to in points (a) or (b) of that paragraph as a result of full or partial deductions granted in accordance with Articles 61 or 62 or because benefitting Member States as referred to in Articles 58(1) and 59(4) are not obliged to implement their pledged solidarity contributions for a given year.*
5. *A contributing Member State which has not implemented its pledges or accepted relocations pursuant to Article 67(9) equal to its pledged relocations as referred to in Article 57(3) by the end of the given year shall, at the request of the benefitting Member State, take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the number of relocations pledged in accordance with Article 57(3) as soon as possible after the end of a given year.*

6. *The contributing Member State shall identify the individual applications for which it takes responsibility pursuant to paragraphs 2 and 3 of this Article, and shall inform the benefitting Member State, using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.*

The contributing Member State shall become the Member State responsible for the identified applications and shall indicate its responsibility pursuant to Article 16(3) of Regulation (EU) 2024/...⁺.

7. *Member States shall not be obliged to take responsibility pursuant to the first subparagraph of paragraph 6 of this Article beyond their fair share calculated according to the reference key set out in Article 66.*
8. *This Article shall only apply where:*
- (a) *the applicant is not an unaccompanied minor;*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

- (b) the benefitting Member State was determined as responsible on the basis of the criteria set out in Articles 29–33;*
- (c) the transfer time limit set out in Article 39(1) has not yet expired;*
- (d) the applicant has not absconded from the contributing Member State;*
- (e) the person concerned is not a beneficiary of international protection;*
- (f) the person concerned is not an admitted person.*

9. *The contributing Member State may apply this Article to third-country nationals or stateless persons whose applications have been finally rejected in the benefitting Member State. Articles 55 and 56 of Regulation 2024/...⁺ shall apply.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

Article 64 Financial contributions

- 1. Financial contributions shall consist of transfers of amounts from the contributing Member States to the Union budget and shall constitute external assigned revenue in accordance with Article 21(5) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁴². Financial contributions shall be used for the purpose of implementing the actions of the Annual Solidarity Pool referred to in Article 56(2), point (b) of this Regulation.**
- 2. Benefitting Member States shall identify actions which may be funded by the financial contributions referred to in paragraph 1 of this Article and submit them to the Technical-Level Forum. The Commission shall liaise closely with benefitting Member States with a view to ensuring that those actions correspond to the objectives set out in Article 56(2), point (b), and Article 56(3). The EU Solidarity Coordinator shall maintain an inventory of the actions and make it available through the Technical-Level Forum.**

⁴² Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

3. *The Commission shall adopt an implementing act concerning rules on the operation of the financial contributions. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 77(2).*
4. *Where the amount referred to in Article 57(1) of this Regulation is not fully allocated, the remaining amount may be added to the amount referred to in Article 10(2), point (b), of Regulation (EU) 2021/1147.*
5. *Member States shall report to the Commission and to the Technical-Level Forum on the progress in the implementation of actions financed by financial contributions pursuant to this Article.*
6. *The Commission shall include in its Report referred to in Article 9 information on the implementation of actions financed by financial contributions pursuant to this Article, including on issues that might affect the implementation and any measure taken to address them.*

Article 65 Alternative solidarity measures

- 1. Contributions in the form of alternative solidarity measures shall be based on a specific request of the benefitting Member State. Such contributions shall be counted as financial solidarity, and their concrete value shall be established, jointly, in a realistic manner, by the contributing and the benefitting Member States concerned and communicated to the EU Solidarity Coordinator before those contributions are implemented.**
- 2. Member States shall provide alternative solidarity measures only in addition to, and without duplicating, those provided by operations of Union bodies, offices and agencies or by Union funding in the field of asylum and migration management in the benefitting Member States. Member States shall only provide alternative solidarity measures in addition to what they are required to contribute through Union bodies, offices and agencies.**
- 3. The benefitting and the contributing Member States shall finalise the implementation of agreed alternative solidarity measures even if the relevant implementing acts have expired.**

Article 66 Reference key

The share of solidarity contributions to be provided by each Member State referred to in Article 57(2) shall be calculated in accordance with the formula set out in Annex I **I** and shall be based on the following criteria for each Member State, according to the latest available Eurostat data:

- (a) the size of the population (50 % weighting);
- (b) the total GDP (50 % weighting).

I

CHAPTER II PROCEDURAL REQUIREMENTS

Article 67 Procedure before relocation

1. The procedure set out in this Article shall apply to ***the relocation of persons referred to in Article 56(2), point (a).***
2. Before applying the procedure set out in this Article, the benefitting Member State shall ensure that there are no reasonable grounds to consider ***that*** the person concerned ***poses a threat*** to ***internal*** security **■** . If there are reasonable grounds to consider ***that*** the person ***poses a threat*** to ***internal*** security, ***before or during the procedure set out in this Article, including where a threat to internal security has been determined in accordance with Article 15 of Regulation (EU) 2024/...⁺, the benefitting Member State shall not apply or shall immediately terminate*** the procedure set out in this Article. ***The benefitting Member State shall ■ exclude the person concerned from any future relocation or transfer to any Member State ■ . Where the person concerned is an applicant for ■ international protection, the benefitting Member State shall be the Member State responsible in accordance with Article 16(4) of this Regulation.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)) and insert the number, date, title, OJ reference and ELI reference of that Regulation in the footnote.

3. *Where relocation is to be carried out, the benefitting Member State shall identify the persons who could be relocated. Upon request of the benefitting Member State, the Asylum Agency shall support the benefitting Member State in the identification of persons to be relocated and in their matching with Member States of relocation in accordance with Article 2(1), point (k), of Regulation (EU) 2021/2303.*

*The Member State shall take into account, where applicable, the existence of meaningful links **such as those based on family or cultural considerations**, between the person concerned and the Member State of relocation. For that purpose, the benefitting Member State shall give the persons to be relocated the opportunity to provide information on the existence of meaningful links with specific Member States and to present relevant information and documentation to determine those links. That opportunity shall not imply a right to choose a specific Member State of relocation pursuant to this Article.*

4. *For the purpose of identifying persons to be relocated and matching them with the Member States of relocation, benefitting Member States may use tools developed by the EU Solidarity Coordinator.*

Applicants who do not have meaningful links to any Member State shall be fairly shared among the remaining Member States of relocation.

Where the identified person to be relocated is a beneficiary for international protection, the person concerned shall be relocated only after that person **has** consented to **the** relocation in writing.

5. Where relocation is to be carried out **■**, the benefitting Member State shall **inform** the **persons** referred to in **paragraph 1 of this Article of the procedure set out in this Article and Article 68, as well as, where applicable, of the obligations set out in Article 17(3), (4) and (5) and the consequences of non-compliance set out in Article 18.**

The first subparagraph of this paragraph shall not apply to applicants for whom the benefitting Member State can be determined as the Member State responsible pursuant to the criteria set out in Articles 25 to **28** and 34, with the exception of Article 25(5). Such applicants shall not be eligible for relocation.

6. ***Member States shall ensure that family members are relocated to the territory of the same Member State.***

7. ***In the cases referred to in paragraphs 2 and 3, the benefitting Member State shall*** ■ ***transmit to the Member State of relocation*** ■ ***as quickly as possible*** ***all*** relevant information and documents on the person concerned ***by using a standard form, in order, inter alia, to enable the authorities of the Member State of relocation to check whether there are grounds to consider that the person concerned poses a threat to internal security.***

8. The Member State of relocation ■ shall examine the information transmitted by the benefitting Member State pursuant to paragraph 7, and verify that there are no reasonable grounds to consider that the person concerned ***poses a threat to internal security. The Member State of relocation may choose to verify that information via a personal interview with the person concerned. The person concerned shall be duly informed about the nature and the purpose of such interview. The personal interview shall take place within the time limits provided for in paragraph 9.***
9. Where there are no reasonable grounds to consider that the person concerned ***poses a threat to internal security*** ■ , the Member State of relocation ■ shall confirm that it will relocate the person concerned within one week ***of receipt of the relevant information from the benefitting Member State.***

Where the checks confirm that there are reasonable grounds to consider that the person concerned **poses** a **threat** to **internal** security █, the Member State of relocation █ shall inform **the benefitting Member State**, within one week **of receipt of the relevant information from that** Member State of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place.

In exceptional cases, where it can be demonstrated that the examination of the information is particularly complex or that a large number of cases need checking at the same time, the Member State of relocation █ may give its reply after the one-week time limit mentioned in the first and second subparagraphs, but in any event within two weeks. In such situations, the Member State of relocation █ shall communicate its decision to postpone a reply to the benefitting Member State within the original one-week time limit.

Failure to act within the one-week period mentioned in the first and second subparagraphs or the two-week period mentioned in the third subparagraph shall be tantamount to confirming the receipt of the information, and entail the obligation to relocate the person concerned, including the obligation to provide for proper arrangements for arrival.

10. The benefitting Member State shall take a transfer decision within one week of the confirmation by the Member State of relocation. It shall notify the person concerned in writing without delay of the decision to transfer him or her to that Member State ***at the latest two days before the transfer in the case of applicants and one week before the transfer in the case of beneficiaries.***

Where the person to be relocated is an applicant, he or she shall comply with the relocation decision.

11. The transfer of the person concerned from the benefitting Member State to the Member State of relocation ■ shall be carried out in accordance with the national law of the benefitting Member State, after consultation between the Member States concerned, as soon as practically possible, and within 4 weeks of the confirmation by the Member State of relocation ■ or of the final decision on an appeal or review of a transfer decision with suspensive effect in accordance with Article 43(3).
12. ***The benefitting Member States and the Member States of relocation shall continue the process of relocation even after the timeframe for the implementation or the validity of Council implementing acts referred to in Articles 57, 61 and 62 has expired.***
13. Article 42(3), (4) and (5), Articles 43 and 44, Article 46(1) and (3), Article 47(2) and (3), and Articles 48 and 50 shall apply *mutatis mutandis* to the ■ relocation ***procedure***.

The benefitting Member State carrying out the transfer of a beneficiary of international protection shall transmit to the Member State of relocation all the information referred to in Article 51(2), information on the grounds on which the beneficiary based his or her application, and the grounds for any decisions taken concerning the beneficiary.

14. The Commission shall, by means of implementing acts, establish uniform methods for the preparation and submission of information and documents for the purposes of relocation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2). ***In the preparation of those implementing acts, the Commission may consult the Asylum Agency.***

Article 68 Procedure after relocation

1. The Member State of relocation ■ shall inform the benefitting Member State, ***the Asylum Agency and the EU Solidarity Coordinator*** of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

2. Where the Member State of relocation has relocated an applicant for whom the Member State responsible has not yet been determined, the Member State of relocation shall apply the procedures set out in Part III, with the exception of Article 16(2), Article 17(1) and (2), Article 25(5), **Article 29**, **Article 30** and Article 33(1) and (2).

Where no Member State responsible can be determined under the first subparagraph of this paragraph, the Member State of relocation shall be responsible for examining the application for international protection.

The Member State of relocation shall indicate its responsibility in Eurodac pursuant to Article 16(1) of Regulation (EU) 2024/...⁺.

3. Where **an applicant**, for whom the benefitting Member State was previously determined as responsible on other grounds than the criteria referred to in Article 67(5), **second** subparagraph, has **been** relocated, the responsibility for examining the application for international protection shall be transferred to the Member State of relocation ■ .

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24

Responsibility for examining any further representations or any subsequent application of the person concerned in accordance with Articles 55 and 56 of Regulation (EU) 2024/...⁺ shall also be transferred to the Member State of relocation.

The Member State of relocation shall indicate its responsibility in Eurodac pursuant to Article 16(3) of Regulation (EU) 2024/...⁺⁺.

4. Where █ a beneficiary for international protection *has been relocated*, the Member State of relocation █ shall automatically grant international protection status respecting the status granted by the benefitting Member State.

█

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24

Article 69

Procedure for responsibility offsets under Article 63(1) and (2)

- 1. Where a benefitting Member State requests another Member State to take responsibility for examining a number of applications for international protection pursuant to Article 63(1) and (2), it shall transmit its request to the contributing Member State and include the number of applications for international protection to be taken responsibility for instead of relocations.***
- 2. The contributing Member State shall reply to the request within 30 days of receipt of that request.***

The contributing Member State may decide to accept to take responsibility for examining a lower number of applications for international protection than requested by the benefitting Member State.

3. *The Member State which has accepted a request pursuant to paragraph 2 of this Article shall identify the individual applications for international protection for which it takes responsibility and shall indicate its responsibility pursuant to Article 16(3) of Regulation (EU) 2024/...⁺.*

Article 70 Other obligations

Member States shall keep the Commission, *in particular the EU Solidarity Coordinator*, informed on the implementation of solidarity measures, including measures of cooperation with a third country.

■

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

CHAPTER III
FINANCIAL SUPPORT PROVIDED BY THE UNION

Article 71 Financial support

In accordance with the principle of solidarity and fair sharing of responsibility, funding support following relocation pursuant to Chapters I and II of this Part shall be implemented in accordance with Article **20** of Regulation (EU) **2021/1147**.

Article 72

Data security and data protection

1. ***This Regulation is without prejudice to Union law on the protection of personal data, in particular Regulations (EU) 2016/679 and (EU) 2018/1725 of the European Parliament and of the Council⁴³ and Directive (EU) 2016/680 of the European Parliament and of the Council⁴⁴.***
2. Member States shall have in place appropriate technical and organisational measures to ensure the security of personal data processed under this Regulation and in particular to prevent the unlawful or unauthorised access to, or disclosure, alteration or loss of, personal data processed.

⁴³ ***Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).***

⁴⁴ ***Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).***

3. The competent supervisory authority or authorities of each Member State shall monitor ***independently*** the lawfulness of the processing of personal data by the authorities referred to in Article 52 of the Member State concerned, ***in accordance with national law***.



Article 73 Confidentiality

Member States shall ensure that the authorities referred to in Article 52 are bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Article 74 Penalties

Member States shall lay down the rules on penalties, including administrative or criminal penalties in accordance with national law, applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 75 Calculation of time limits

Any period of time prescribed in this Regulation shall be calculated as follows:

- (a) a period expressed in days, weeks or months shall be calculated from the time an event occurs or an action takes place; the day on which that event occurs or that action takes place shall not itself be counted as falling within the period in question;

- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week, or falls on the same date of the month, respectively as the day on which the event or action from which the period is to be calculated occurred or took place;
- (c) where, in a period expressed in months, the day on which it should expire does not occur in the last month of the period, the period shall end at midnight of the last day of that last month;
- (d) time limits shall include Saturdays, Sundays and official holidays in the Member State concerned; where a time limit ends on a Saturday, Sunday or official holiday, the next working day shall be counted as the last day of the time limit.

Article 76 Territorial scope

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

Article 77 Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

Article 78 Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 25(6) and Article 34(3) shall be conferred on the Commission for a period of five years from ... [the date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 25(6) and Article 34(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 25(6) or Article 34(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **four** months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 79 Monitoring and evaluation

By ... [the first day of the **forty-third** month following the entry into force of this Regulation] and from then on annually, the Commission shall review the functioning of the measures set out in

■ Part IV of this Regulation **and report on the implementation of the measures set out in this Regulation. The report shall be communicated to the European Parliament and to the Council.**

On a regular basis and as a minimum every three years, the Commission shall review the relevance of the numbers set out in Article 12(2), points (a) and (b), and the overall functioning of Part III of this Regulation, including whether the definition of family members and the length of the time limits set out in that Part should be modified, against the overall migratory situation.

By ... [the first day of the **eighty-fifth** month following the entry into force of this Regulation], and every five years thereafter, the Commission shall carry out an evaluation of this Regulation, **with particular regard to the principle of solidarity and fair sharing of responsibility as enshrined in Article 80 TFEU**. The Commission shall present reports on the main findings of that evaluation to the European Parliament, the Council and the European Economic and Social Committee. Member States shall provide the Commission all information necessary for the preparation of the reports, at the latest six months before the time limit for the Commission to present each report expires.

Article 80 Statistics

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council⁴⁵, Member States shall communicate to the Commission (Eurostat) statistics concerning the application of this Regulation and of Regulation (EC) No 1560/2003.

⁴⁵ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).



Article 81

Amendments to Regulation (EU) **2021/1147**

Regulation (EU) **2021/1147** is amended as follows:

(1) Article 2 *is amended as follows:*

(a) points (1) and (2) are replaced by the following:

“(1) ‘applicant for international protection’ means an applicant as defined in point (4) of Article 2 of Regulation (EU) 2024/... of the European Parliament and of the Council⁺;

(2) ‘beneficiary of international protection’ means a beneficiary of international protection as defined in point (7) of Article 2 of Regulation (EU) 2024/...⁺⁺;

** Regulation (EU) 2024/... of the European Parliament and of the Council of ... on asylum and migration management and amending Regulations (EU) 2021/1147 and (EU) 2021/1160 and repealing Regulation (EU) No 604/2013 (OJ L ..., ..., ELI: <http://data.europa.eu/eli/reg/...>).”;*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) and insert the number, date, title, OJ reference and ELI reference of that Regulation in the footnote.

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS

(b) point (4) is replaced by the following:

“(4) ‘family member’ means a family member as defined in point (8) of Article 2 of Regulation (EU) 2024/...⁺”;

(c) points (11) and (12) are replaced by the following:

“(11) ‘third-country national’ means a third-country national as defined in point (1) of Article 2 of Regulation (EU) 2024/...⁺”;

“(12) ‘unaccompanied minor’ means an unaccompanied minor as defined in point (11) of Article 2 of Regulation (EU) 2024/...⁺”;

(d) the following point is added:

“(15) ‘solidarity action’ means an action, the scope of which is set out in point (b) of Article 56(2) of Regulation (EU) 2024/...⁺, funded through financial contributions provided by Member States, as referred to in of Article 64(1) of that Regulation.”;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

(2) *in Article 15 the following paragraph is inserted:*

“6a. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for solidarity actions.”;

(3) *Article 20 is replaced by the following:*

“Article 20

Resources for the transfer of applicants for international protection or of beneficiaries of international protection

1. A Member **State** shall receive, in addition to *its allocations under* point (a) of Article 13(1) *of this Regulation*, an amount of:

- (a) EUR 10 000 ■ per applicant for *international protection for* whom that Member State becomes responsible as a result of relocation in accordance with Articles 67 and 68 *of* Regulation (EU) 2024/...⁺;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (b) EUR 10 000 per beneficiary of international protection relocated to that Member State in accordance with Articles 67 and 68 of Regulation (EU) 2024/...⁺.

The amounts referred to in points (a) and (b) of the first subparagraph shall be increased to EUR 12 000 for each applicant for international protection or beneficiary of international protection, respectively, who is an unaccompanied minor relocated to that Member State in accordance with Articles 67 and 68 of Regulation (EU) 2024/...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

2. *The Member State covering the cost of transfers referred to in paragraph 1 shall receive a contribution of EUR 500 for each applicant for international protection or beneficiary of international protection transferred to another Member State* ■ .
3. *The Member State covering the costs of transfers referred to in point (a), (b) or (c) of Article 36(1) of Regulation (EU) 2024/...⁺, and carried out in accordance with Article 46 of that Regulation, shall receive a contribution of EUR 500* ■ *for each* ■ *applicant for international protection transferred to another Member State.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

4. ***The*** amounts referred to in paragraphs 1 to 3 ***of this Article shall be allocated to the Member State's programme***, provided that the person in respect of whom the ***amount*** is allocated was ***effectively transferred to that Member State or was registered as an applicant in the Member State responsible in accordance with Regulation (EU) 2024/...⁺, as applicable. Those amounts shall not be used for other actions in the Member State's programme except in duly justified circumstances, as approved by the Commission through the amendment of that programme.***
5. The amounts referred to in this Article shall take the form of financing not linked to costs in accordance with Article 125 of the Financial Regulation.
6. ***For the purposes of control and audit***, Member States shall ***retain*** the information necessary to allow the proper identification of the persons transferred and of the date of their transfer .

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

7. **To** take ■ account **of** current ■ inflation **rates**, relevant developments in the field of **relocation** and **other** factors which **might** optimise the use of the financial incentive brought by **the amounts referred to in paragraphs 1, 2 and 3 of this Article, the Commission is empowered to adopt delegated acts in accordance with Article 37 to adjust, if deemed appropriate, and within the limits of available resources, those amounts.**”;

(4) in Article 35(2) the following point is inserted:

“(ha) the implementation of solidarity actions, including a breakdown of the financial contributions by action and a description of the main results achieved as a result of the funding;”;

(5) in Annex II, point 4, the following point is added:

“(c) supporting solidarity actions, in line with the scope of support set out in Annex III.”;

(6) in Annex VI, Table 1, point IV, the following code is added:

“007 Solidarity Actions”;

(7) in Annex VI, Table 3, the following codes are added:

“006 Resettlement and humanitarian admissions

007 International protection (transfers in)

008 International protection (transfers out)

009 Solidarity Actions”.

Article 82

Amendments to Regulation (EU) 2021/1060 Regulation (EU) 2021/1060 is

amended as follows:

(1) in Article 36, the following paragraph is inserted:

“3a. By way of derogation from paragraph 3 of this Article, no Union contribution for technical assistance shall be made to the support of solidarity actions, as defined in point (15) of Article 2 of the AMIF Regulation and point (11) of Article 2 of the BMVI Regulation.”;

(2) Article 63 is amended as follows:

(a) in paragraph (6), the following subparagraph is added:

“The first subparagraph of this paragraph shall not apply to support for solidarity actions, as defined in point (15) of Article 2 of the AMIF Regulation and point (11) of Article 2 of the BMVI Regulation.”;

(b) in paragraph (7), the following subparagraph is added:

“Where a programme is amended to introduce financial support for solidarity actions, as defined in point (15) of Article 2 of the AMIF Regulation and point (11) of Article 2 of the BMVI Regulation, the programme may provide that the eligibility of expenditure relating to such amendment starts from ... [the date of entry into force of this amending Regulation].”.

PART VII
TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

Article 83

Repeal of Regulation (EU) No 604/2013

Regulation (EU) No 604/2013 is repealed ***with effect from ...*** [the first day of the ***twenty-fifth*** month following the entry into force of this Regulation].

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Regulation (EC) No 1560/2003 shall remain in force unless and until it is amended by implementing acts adopted pursuant to this Regulation.

Article 84 Transitional measures

1. Where an application has been registered after ■ ... [the first day of the **twenty-fifth** month following the entry into force of this Regulation], any events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date.
2. *The Member State responsible for the examination of an application for international protection registered before ... [the first day of the twenty-fifth month following the entry into force of this Regulation] shall be determined in accordance with the criteria set out in Regulation (EU) No 604/2013.*

3. *By ... [three months after the entry into force of this Regulation], the Commission, in close cooperation with the relevant Union bodies, offices and agencies and Member States, shall present a common implementation plan to the Council to ensure that Member States are adequately prepared to implement this Regulation by ... [the first day of the **twenty-fifth** month following the entry into force of this Regulation], **assessing gaps and operational steps required, and inform the European Parliament thereof.***

*On the basis of that common implementation plan, by ... [six months after the entry into force of this Regulation], each Member State shall, with the support of the Commission and relevant Union bodies, offices and agencies, establish a national implementation plan setting out the actions and the timeline for their implementation. Each Member State shall complete the implementation of its plan by ... [the first day of the **twenty-fifth** month following the entry into force of this Regulation].*

For the purpose of implementing this Article, Member States may use the support of the relevant Union bodies, offices and agencies, and Union funds may provide financial support to the Member States, in accordance with the legal acts governing those bodies, offices, agencies and funds.

The Commission shall closely monitor the implementation of the national implementation plans referred to in the second subparagraph.

The Commission shall, within the first two Reports referred to in Article 9, provide a state of play of the implementation of the common implementation plan and national implementation plans referred to in this paragraph.

Pending the reports mentioned in the fifth subparagraph of this paragraph, the Commission shall inform the European Parliament and the Council of the state of play of implementation of the common implementation plan and national implementation plans referred to in this paragraph every six months.

Article 85

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply ■ from ... [the first day of the **twenty-fifth** month following the entry into force of this Regulation]. ■

However, Articles 7 to 15, Article 22(1), fourth subparagraph, Article 23(7), Article 25(6) and (7), Article 34(3) and (4), Article 39(3), second subparagraph, Article 40(4), Article 40(8), second subparagraph, Article 41(5), Article 46(1), fifth subparagraph, Article 46(4), Article 48(4), Article 50(1), second subparagraph, Article 50(5), Article 52(4), Articles 56 and 57, Article 64(3), Article 67(14) and Articles 78 and 84 shall apply from ... [the date of entry into force of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ...

For the European Parliament
The President

For the Council
The President

■ Annex I ■

Formula for the reference key pursuant to Article 66:

$$\text{Population effect}_{MS} = \frac{\sum_{i=1}^n \text{Population}_{MS}}{\sum \text{Population}_{MS}}$$

$$\text{GDP effect}_{MS} = \frac{\sum_{i=1}^n \text{GDP}_{MS}}{\sum \text{GDP}_{MS}}$$

$$\text{Share}_{MS} = 50\% \text{ Population effect}_{MS} + 50\% \text{ GDP effect}_{MS}$$

n: the overall number of *MS*

Annex II

Correlation table

Regulation (EU) No 604/2013	This Regulation
Article 1	Article 1
Article 2, point (a)	Article 2, point (1)
Article 2, point (b)	Article 2, point (3)
Article 2, point (c)	Article 2, point (4)
Article 2, point (d)	Article 2, point (5)
Article 2, point (e)	Article 2, point (6)
Article 2, point (f)	Article 2, point (7)
Article 2, point (g)	Article 2, point (8)
Article 2, point (h)	Article 2, point (9)
Article 2, point (i)	Article 2, point (10)
Article 2, point (j)	Article 2, point (11)
Article 2, point (k)	Article 2, point (12)
Article 2, point (l)	Article 2, point (13)
Article 2, point (m)	Article 2, point (14)
Article 2, point (n)	Article 2, point (18)
Article 3	Article 16
Article 4	Article 19

Article 5	Article 22
Article 6	Article 23
Article 7	Article 24
Article 8	Article 25
Article 9	Article 26
Article 10	Article 27
Article 11	Article 28
Article 12	Article 29
Article 14	Article 31
Article 15	Article 32
Article 13	Article 33
Article 16	Article 34
Article 17	Article 35
Article 18	Article 36
Article 19	Article 37
Article 20	Article 38
Article 21	Article 39
Article 22	Article 40
Article 23	Article 41
Article 24	Article 41
Article 25	Article 41

Article 26	Article 42
Article 27	Article 43
Article 28	Article 44
Article 29	Article 46
Article 30	Article 47
Article 31	Article 48
Article 32	Article 50
Article 34	Article 51
Article 35	Article 52
Article 36	Article 53
Article 37	Article 55

**Brussels, 18 April 2024 (OR.
en)**

**Interinstitutional File:
2016/0224/A(COD)**

8581/24

**CODEC 1014
ASILE 50
JAI 583
MIGR 157
FRONT 110
PE 81**

INFORMATION NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: 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

- Outcome of the European Parliament's first reading (Brussels, 10 to 11 April 2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 346) to the abovementioned proposal for a Regulation, for which Laura Ferrara (NI, IT) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. In addition, the ID political group tabled 19 amendments (amendments number 326 to 345).

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 10 April 2024, the plenary adopted the compromise amendment (amendment number 346) to the abovementioned proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)0177

Common procedure for international protection in the Union

European Parliament legislative resolution of 10 April 2024 on the proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (COM(2016)0467/COM(2020)0611 – C8-0321/2016 – 2016/0224A(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0467) and the amended proposal (COM(2020)0611),
- having regard to Article 294(2) and Articles 78(2)(d) and 79(2)(c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0321/2016),
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to Article 294(3) and Article 78(2)(d) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Czech Senate, the Italian Senate and the Romanian Chamber of Deputies asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinions of the European Economic and Social Committee of 14 December 2016¹ and of 25 February 2021²,
- having regard to the opinions of the Committee of the Regions of 8 February 2017³ and of 19 March 2021⁴,

¹ OJ C 75, 10.3.2017, p. 97.

² OJ C 155, 30.4.2021, p. 64.

³ OJ C 207, 30.6.2017, p. 67.

⁴ OJ C 175, 7.5.2021, p. 32.

- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 8 February 2024 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to the decision by the Conference of Presidents of 21 February 2024 to authorise the Committee on Civil Liberties, Justice and Home Affairs to split the legislative procedure and to proceed with the tabling of two separate consolidated texts for consideration in plenary;
 - having regard to Rules 59 and 40 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0171/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Regulation (EU) 2024/... of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinions of the European Economic and Social Committee¹,

Having regard to the opinions of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 75, 10.3.2017, p. 97 and OJ C 155, 30.4.2021, p. 64.

² OJ C 207, 30.6.2017, p. 67 and OJ C 175, 7.5.2021, p. 32.

³ Position of the European Parliament of 10 April 2024.

Whereas:

- (1) The objective of this Regulation is to streamline, simplify and harmonise the procedural arrangements of the Member States by establishing a common procedure for international protection in the Union. To meet that objective, a number of substantive changes are made to Directive 2013/32/EU of the European Parliament and of the Council⁴ and that Directive should be repealed and replaced by a Regulation. References to the repealed Directive should be construed as references to this Regulation.
- (2) A common policy on asylum ■ based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (the ‘Geneva Convention’), is a constituent part of the European Union’s objective of establishing progressively an area of freedom, security and justice open to ***third-country nationals and stateless persons who*** seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

⁴ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

(3) The Common European Asylum System (**CEAS**) is based on common standards for asylum procedures, recognition and protection offered at Union level and reception conditions and **establishes** a system for determining the Member State responsible for examining an application for international protection. Notwithstanding **the** progress that has been **made** in the **■** development of the **CEAS**, there are still notable disparities between the Member States **as regards** the procedures used, the recognition rates, the type of protection granted, the level of material reception conditions and benefits given to applicants and beneficiaries of international protection. **Those disparities** are important drivers of secondary movements and undermine the objective of ensuring that in the **CEAS** all applicants are equally treated wherever they apply for international protection in the Union.

(4) In its communication of 6 April 2016 *‘Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe’*”, the Commission set out **priority areas** where the CEAS should be **structurally** improved, namely **the establishment of** a sustainable and fair system for determining the Member State responsible for **examining an application for international protection, the reinforcement of** the Eurodac system, **the achievement of** greater convergence in the ■ asylum system, **the prevention of** secondary movements within the Union and **an enhanced** mandate for the European Union Agency for Asylum established by Regulation (EU) 2021/2303 of the European Parliament and of the Council⁵ (the ‘Asylum Agency’). That communication is **in** line with calls by the European Council on 18-19 February 2016 to make progress towards reforming the **Union's** existing framework so as to ensure a humane, **fair** and efficient asylum policy. **That communication** also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its resolution of 12 April 2016 on the *‘The situation in the Mediterranean and the need for a holistic EU approach to migration’*.

⁵ Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1).

(5) For a well-functioning **CEAS**, substantial progress should be made regarding the convergence of national asylum systems. The current disparate asylum procedures in all Member States should be replaced with a common procedure for granting and withdrawing international protection applicable across all Member States pursuant to Regulation (EU) .../... of the European Parliament and of the Council⁶⁺, ensuring the timeliness and effectiveness of the procedure. Applications **for international protection** made by third- country nationals and stateless persons should be examined in a procedure which is governed by the same rules, regardless of the Member State where the application is lodged to ensure equity in the treatment of applications for international protection, clarity and legal certainty for the individual applicant.

(6) ***This harmonisation and convergence of national asylum systems should be achieved without preventing Member States from introducing or retaining more favourable provisions where provided for by this Regulation.***

⁶ Regulation (EU) .../... of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, ..., ELI:...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

(7) A common procedure for granting and withdrawing international protection should limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, by **streamlining procedures** and by clarifying the rights and obligations of applicants **as well as** the consequences of non-compliance with those obligations, and create equivalent conditions for the application of Regulation (EU) .../...⁺ in Member States. **■**

(8) This Regulation should apply to all applications for international protection made in the territory of the Member States, including those made at the external border, on the territorial sea or in the transit zones of Member States, and to the withdrawal of international protection. Persons seeking international protection who are present on the territorial sea of a Member State should be disembarked on land and have their applications examined in accordance with this Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

(9) This Regulation should apply to applications for international protection in a procedure where it is examined whether the applicants qualify as beneficiaries of international protection in accordance with Regulation (EU) .../...⁺. In addition to the international protection, the Member States may also grant other national humanitarian statuses under their national law to those who do not qualify for the refugee status or subsidiary protection status. In order to streamline the procedures in Member States, the Member States should have the possibility to apply this Regulation also to applications for any kind of such other protection.

(10) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

(11) ***It should be possible to mobilise the*** resources of the Asylum, Migration and Integration Fund, ***as established by the Regulation (EU) 2021/1147*** of the European Parliament and of the Council⁷, ***and other relevant Union funds (the “Funds”)*** to provide ■ support ***for*** Member States' efforts in applying this Regulation, in ***line with the rules governing the use of the relevant Funds and without prejudice to other priorities supported by the Funds. In this context, Member States should be able to make use of the allocations under their respective programmes, including the amounts made available following the mid-term review. In particular, actions undertaken by Member States for putting in*** place adequate capacity for carrying out the border procedure can be supported financially by the Funds made available under the 2021-2027 multiannual financial framework. ***It should be possible to make additional support under the thematic facilities available, in particular to those Member States which might need to increase their capacities at the external borders or are faced with specific ■ pressures on or needs concerning their asylum and reception systems and their external borders.***

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

(12) The Asylum Agency should provide Member States with the necessary operational and technical assistance in the application of this Regulation, in particular by providing experts to assist national authorities to receive **and** register **applications for international protection and to assist the determining authority in the performance of its tasks including as regards the examination of** applications for international protection and by providing updated information **and analysis** on third countries, including country of origin information and guidance on the situation in specific countries of origin. When applying this Regulation, Member States should take into account operational standards, indicators, guidelines and best practices developed by the Asylum Agency.

(13) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to the procedure, the opportunity to cooperate **fully** and properly communicate with the **competent** authorities so as, **in particular**, to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure.

(14) The applicant should be provided with an effective opportunity to present all **■** elements **available to him** or her **which substantiate the application or are relevant for the procedures in accordance with this Regulation to the competent authorities**. For this reason, the applicant should, subject to limited exceptions, enjoy the right to be heard through a personal interview on the admissibility or on the merits of his or her application, as appropriate. **If the applicant is unfit to attend his or her personal interview, the authorities could ask for a medical certification to be provided by the applicant**. For the right to a personal interview to be effective, the applicant should be assisted by an interpreter **where necessary to ensure appropriate communication** and be given the opportunity to provide his or her explanations concerning **■** his or her application in a comprehensive manner. The applicant should be given sufficient time to prepare and consult with his or her legal adviser or **other** counsellor **admitted or permitted as such under national law to provide legal advice(the ‘legal adviser’) or a person entrusted with providing legal counselling**. **During the interview, the applicant should be allowed to** be assisted by the legal adviser **■**. The personal interview should be conducted under conditions which ensure appropriate **privacy and** confidentiality and by adequately trained and competent staff, including where necessary, **■** experts deployed by the Asylum Agency **or staff from authorities of other Member States**.

Where the interview on the merits is omitted with a view to ensuring swift access to international protection, this should be without prejudice to the obligation to examine whether the applicant fulfils the conditions set out in Regulation (EU) .../...⁺ to be granted refugee status before examining whether the applicant fulfils the conditions to be granted subsidiary protection. Given that the personal interview is an essential part of the examination of the application, the interview should be recorded and the applicants, **their representatives** and their legal advisers should be given access to the **report or transcripts** of that interview as **soon as possible after** it takes place **and in any case in due time** before the determining authority takes a decision ■ .

(15) *The personal interview is an essential part of an effective and fair asylum procedure. In order to ensure an optimal environment for communication, in-person interviews should be given preference, with the conduct of remote interviews by video conference remaining the exception. Apart from public health considerations, there may be legitimate grounds for the determining authority to have recourse to remote interviews by video conference, for example where vulnerabilities preclude the possibility of travel of an asylum applicant or make it difficult due to health or family reasons, to conduct interviews with applicants in detention, in overseas territories or in situations where the remote participation of an interpreter with specialised interpretation skills is required.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

In the event of remote interviewing, the determining authority should be required to apply all procedural safeguards as when in-person interviews are held, ensuring privacy and confidentiality, and giving due consideration to data protection. The suitability of the use of the remote interviewing by video conference should be assessed individually before the interview, as remote interviews may not be suitable for all asylum applicants due to their young age, the existence of visual or hearing impairments, or the state of their mental health, with particular regard to certain vulnerable groups, such as victims of torture or traumatised applicants. The best interests of the child should be a primary consideration. Special concern should be given to potential technological difficulties which may have disruptive effects on the interview, result in an incomplete or unintelligible record of the interview or affect the storage and retrieval of the recording.

(16) It is in the interests of both Member States and applicants ***that applicants receive at a very early stage comprehensive information on the procedure to be followed and on their rights and obligations. In addition, it is essential*** to ensure a correct recognition of international protection needs already at the stage of the administrative procedure by providing good quality information and legal support which leads to more efficient and better quality decision-making. For that purpose, access to legal ***counselling***, assistance and representation should be an integral part of the common procedure for international protection. ***Applicants should, as soon as possible after an application for international protection has been registered, upon their request, be provided with free legal counselling during the administrative procedure. Furthermore,*** to ensure the effective protection of the applicant's rights, particularly the right of defence and the principle of fairness, ■ applicants should, upon their request and subject to conditions set out in this Regulation ■ be provided with free legal assistance and representation ■ in the appeal procedure. ***It should also be possible for Member States to provide for*** free legal assistance and representation ***during the administrative procedure in accordance with*** national law.

- (17) Certain applicants may be in need of special procedural guarantees due, *inter alia*, to their age, gender, sexual orientation, gender identity, disability, serious ***physical or mental*** illness ***or*** disorders, ***including when these are*** a consequence of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence. It is necessary to ■ assess whether ***any*** individual applicant is in need of special procedural guarantees ■ .
- (18) ***The relevant*** staff of the ***competent*** authorities ***of Member States as well as the medical practitioner or psychologist assessing the need for special procedural guarantees*** should be adequately trained to detect signs of vulnerability ***of applicants who may need special procedural guarantees and address those needs when identified.***
- (19) ***This Regulation is without prejudice to the possibility for the Commission, in accordance with Article 13 of Regulation (EU) 2021/2303, to request the Asylum Agency to develop operational standards, indicators, guidelines and best practices related to the implementation of Union law on asylum.***

(20) Applicants who are identified as being in need of special procedural guarantees should be provided with adequate support ■ in order to create the conditions necessary for **the genuine and** effective access to procedures ■ . Where it is not possible to provide adequate support in the framework of an accelerated examination procedure or of a border procedure, an applicant in need of special procedural guarantees should be exempted from those procedures. ■

(21) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak **freely** about their past experiences, **including** in cases involving ■ persecution **based on gender, gender identity or sexual orientation**. For this purpose, **applicants** should be given an effective opportunity to be interviewed separately from their spouse, partner or other family members. Where **requested by the applicant and** possible, **the interviewers and** interpreters **should be of** the **sex** that the applicant **prefers**. The complexity of gender-related claims should be properly taken into account in **all** procedures ■ .

(22) *Where it is necessary and duly justified for the examination of an application for international protection, the competent authorities should be able to require that the applicant be searched or that his or her items be searched* ■ *. Those items may include electronic devices such as laptops, tablet computers or mobile phones. Any such search should be carried out in a way that respects fundamental rights and the principle of proportionality.*

(23) The best interests of the child should be a primary consideration of Member States when applying this Regulation, in accordance with Article 24 of the Charter of Fundamental Rights of the European Union (the ‘Charter’) and the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the minor’s well-being and social development, including his or her background. In view of Article 12 of the United Nations Convention on the Rights of the Child concerning the child’s right to be heard, the determining authority *should* provide a minor *with* the *possibility* of a personal interview, unless this is ■ not in the ■ best interests *of the child. The determining authority should organise a personal interview for a minor taking into account in particular his or her age and maturity.*

(24) Without prejudice to the competence of Member States on the acquisition of nationality and the fact that, under international law, it is for each Member State, having due regard to Union law, to lay down the conditions for the acquisition and loss of nationality, in applying this Regulation, Member States should respect their international obligations towards stateless persons, in accordance with international human rights law instruments, including where applicable under the Convention relating to the Status of Stateless Persons, adopted in New York on 28 September 1954. Where appropriate, Member States should endeavour to identify stateless persons and strengthen their protection, thus allowing stateless persons to enjoy core fundamental rights and reducing the risk of discrimination or unequal treatment.

(25) Where, following a thorough assessment by the competent national authorities, it is concluded that the applicant constitutes a danger to national security or public order, especially in relation to serious crimes or terrorism, a Member State should have the possibility to make an exception to the right of the applicant to remain on its territory during the administrative procedure, provided that applying such an exception does not result in the applicant being removed to a third country in violation of the principle of non-refoulement.

(26) The common procedure streamlines the time limits for an individual to accede to the procedure and for the examination of the application by the determining authority ■. **Since** a disproportionate number of ■ applications ***made within the same period of time*** may risk delaying access to the procedure and the examination of the applications, a measure of flexibility to exceptionally extend those time limits may at times be needed. However, to ensure an effective process, extending those time limits should be a measure of last resort considering that Member States should regularly review their needs to maintain an efficient asylum system, including by preparing contingency plans where necessary, and considering that the Asylum Agency should provide Member States with the necessary operational and technical assistance. Where Member States foresee that they would not be able to meet the set time limits, they should request assistance from the Asylum Agency. Where no such request is made, and because of the disproportionate pressure the asylum system in a Member State becomes ineffective ***for*** the functioning of ***the CEAS***, the Asylum Agency should be able, on the basis of ***a Council*** implementing ***act following a proposal by*** the Commission, to take measures in support of that Member State.

(27) Access to the common procedure should be based on a three-step approach consisting of the making, registering and lodging of an application. Making an application is the first step that triggers the application of this Regulation. A third-country national or stateless person is considered to have made an application when expressing a wish to receive international protection from a Member State. ***Where the application is received by an authority which is not responsible for registering applications, Member States should, in accordance with their internal procedures and organisation, apply this Regulation so that the effective access to the procedure can be ensured. It should be possible to express the wish to receive international protection from a Member State*** in any form, and the individual applicant need not necessarily use specific words such as ‘international protection’, ‘asylum’ or ‘subsidiary protection’. The defining element should be the expression by the third-country national or the stateless person of a fear of persecution or serious harm upon return to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence. Where there is doubt as to whether a certain declaration may be construed as an application for international protection, the third-country national or stateless person should be expressly asked whether he or she wishes to receive international protection. The applicant should benefit from the rights under this Regulation and Directive (EU) .../... of the European Parliament and of the Council⁸ as soon as he or she makes an application.

⁸ Directive (EU) .../... of the European Parliament and of the Council of ... laying down standards for the reception of applicants for international protection (recast) (OJ L, ..., ELI: ...).

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.

(28) An application should be registered ***promptly after*** it is made. At that stage, the competent authorities responsible for ■ registering applications ***or experts deployed by the Asylum Agency assisting them with that task*** should register the application together with the personal details of the ■ applicant. Those authorities ***or experts*** should inform the applicant of his or her rights and obligations, as well as the consequences for the applicant in the event of non-compliance with those obligations. ***Organisations working with the competent authorities and assisting them should also be able to provide this information. The*** applicant should be given a document ***indicating*** that an application has been made ***and registered***. The time limit for lodging an application starts to run from the moment an application is registered.

(29) The lodging of the application is the act that formalises the application for international protection. The applicant should be given the necessary information as to how and where to lodge his or her application and he or she should be given an effective opportunity to do so. At this stage he or she is required to submit ***as soon as possible*** all the elements ***and documents*** at his or her disposal needed to substantiate and complete the application, ***unless otherwise provided for in this Regulation***. The time limit for the administrative procedure starts to run from the moment an application is lodged. ***Shortly after the application is lodged***, the applicant should be given a document which ***includes*** his or her status as an applicant ■ .

(30) *It is particularly important to ensure that minors are provided with information in a child-friendly manner.*

(31) The applicant should be informed properly of his or her rights and obligations in a timely manner and in a language that he or she understands or is reasonably supposed to understand, ***in writing and if necessary orally***. Having regard to the fact that where, for instance, the applicant refuses to cooperate with the national authorities by, ***in particular***, not providing the elements necessary for the examination of the application ***or*** by not providing his or her fingerprints or facial image, ***the*** application ***is*** rejected ***or declared*** as ***implicitly withdrawn***, it is necessary that the applicant ***has been*** informed of the consequences for not complying with those obligations.

(32) To be able to fulfil their obligations ■ , the staff of the authorities ***applying this Regulation*** should have ***the*** appropriate knowledge and should receive ■ training in the field of international protection, including with the support of the Asylum Agency. They should also be given the appropriate means, ***including sufficient competent staff***, and ***guidance*** to effectively perform their tasks. ***For that purpose, each Member State should regularly assess the needs of the determining authority and the other competent authorities to ensure that they are always in a position to deal with applications for international protection in an effective manner, particularly where there is a disproportionate number of applications within the same period of time.***

(33) ***For the purposes of effective*** access to the ***examination*** procedure at border crossing points and in detention facilities, information should be made available on the possibility to make an application for international protection. Basic communication necessary to enable the competent authorities to understand if persons declare their wish to ***make an application for*** international protection should be ensured through interpretation arrangements.

(34) This Regulation should provide for the possibility that applicants lodge an application on behalf of ■ adults ***requiring assistance to exercise legal capacity***, and of minors ***where under national law they do not have the legal capacity to lodge an application in their own name***. The joint examination of those applications should be allowed. ■

(35) To ensure that unaccompanied minors have effective access to the procedure ***and are able to benefit from the rights and comply with the obligations under this Regulation, Regulation (EU) .../...⁹⁺, Directive (EU) .../...⁺⁺ and Regulation (EU) .../...¹⁰⁺⁺⁺***, they should **█** be appointed a ***representative, including where the applicant is found to be an unaccompanied minor at any moment during the asylum procedure***. The ***representative*** should **█** assist and guide the minor through the procedure with a view to safeguarding the best interests of the child ***and should, in particular, assist with the lodging of the application and the personal interview***. Where necessary, the ***representative*** should ***lodge the application on behalf of the minor. A person should be designated to assist unaccompanied minors until a representative is appointed, including, where applicable, in relation to the age-assessment procedure and the procedures provided for under Regulation (EU) .../...⁺⁺⁺⁺ and Regulation (EU) .../...⁺⁺⁺⁺⁺***. In order to provide effective support to the unaccompanied minors, ***representatives or a person suitable to provisionally act as a representative*** should **█** be placed in charge of a ***proportionate and limited*** number of unaccompanied minors, ***and under normal circumstances of no more***

⁹ Regulation (EU) .../... of the European Parliament and of the Council of ... on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, ..., ELI:...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

¹⁰ Regulation (EU) 2024/... of the European Parliament and of the Council of ... on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) .../...and (EU) .../... of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ L, 2024/..., ..., ELI: ...).

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

⁺⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

than 30 unaccompanied minors, at the same time. Member States should appoint *administrative or judicial authorities or other* entities responsible for the supervision *on a regular basis of such representatives* in the performance of their tasks.

An unaccompanied minor should ***have the right to*** lodge an application in his or her own name ***if he*** or ***she has legal capacity in accordance with national law***. In order to safeguard the rights and procedural guarantees of an unaccompanied minor ***who does not have legal capacity in accordance with national law***, the application ■ should be ***lodged by the representative as soon as possible taking into account the best interests*** of the ***child***. The fact that an unaccompanied minor ***lodges*** an application in his or her own name should not preclude him or her from being assigned a ***representative***.

(36) ***In order to ensure that the processing of applications for international protection are carried out with due regard to the rights of the child, specific child-sensitive procedural safeguards and special reception conditions are to be provided to minors. Where, following statements by an applicant, there are grounds for doubting as to whether or not an applicant is a minor, it should be possible for the determining authority to carry out an age assessment of the person concerned. Doubts regarding the age of an applicant may arise when the applicant claims to be a minor but also when they claim to be an adult. Given the particular vulnerability of unaccompanied minors, who are likely to lack identification or other documents, it is particularly critical to ensure strong safeguards to ensure that such applicants are not subject to incorrect or unreasonable age-assessment procedures.***

(37) *In all cases, age assessments should be carried out in a manner that gives primary consideration to the best interests of the child throughout the procedure. An age assessment should be carried out in two steps. A first step should comprise a multi-disciplinary assessment, which could include a psycho-social assessment and other non- medical methods, such as an interview, visual assessment based on physical appearance or assessment of documentation. Such an assessment should be carried out by professionals with expertise in age estimation and child development, such as social workers, psychologists or paediatricians, in order to assess various factors, such as physical, psychological, developmental, environmental and cultural factors. If the result of the multidisciplinary age assessment is inconclusive, it should be possible, as a second step, for the determining authority to request a medical examination, as a measure of last resort, and with full respect for the individual's dignity. Where different procedures may be followed, a medical examination should prioritise the least invasive procedures before proceeding to more invasive ones taking into account guidance from the Asylum Agency where relevant. If, following the age assessment, the results remain inconclusive, the determining authority should assume that the applicant is a minor.*

(38) In order to guarantee the rights of the applicants, decisions on all applications for international protection should be taken on the basis of the facts, objectively, impartially and on an individual basis after a thorough examination which takes into account all the elements provided by the applicant and the individual circumstances of the applicant. To ensure a rigorous examination of an application, the determining authority should take into account relevant, **precise** and up-to-date information relating to the situation **prevailing** in the country of origin of the applicant **at the time of taking a decision on the application. That information may be** obtained from the Asylum Agency and other sources such as the United Nations High Commissioner for Refugees. The determining authority should, **where available**, also take into account **the** common analysis **on the situation in specific countries** of origin **and the guidance notes** developed by the Asylum Agency. Any postponement of concluding the procedure should fully comply with the obligations of the Member States under Regulation (EU) .../...⁺ and with the right to good administration, without prejudice to the efficiency and fairness of the procedure under this Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

(39) In order to guarantee the rights of the applicant, a decision concerning his or her application should be given in writing. Where the decision does not grant international protection, the applicant should be given reasons in fact and in law, information on the consequences of the decision and the modalities for challenging it.

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

(41) ***In the case of an extradition, surrender or transfer from an international criminal court or tribunal to a third country or another Member State, the relevant competent authority could take into account elements considered upon deciding on the extradition, surrender or transfer which may be relevant for an assessment of the risk of direct or indirect refoulement.***

(42) It is necessary that decisions on applications for international protection be taken by authorities whose staff have ■ appropriate knowledge and have received *adequate* training, *including the relevant training of the Asylum Agency, in the relevant standards applicable* in the field of *asylum and refugee law*, and that they perform their activities with due respect for the applicable ethical principles. That should apply to the staff of authorities from other Member States and experts deployed by the Asylum Agency to assist the determining authority of a Member State in the examination of applications for international protection.

(43) Without prejudice to carrying out an adequate and complete examination of an application for international protection, it is in the interests of both Member States and applicants for a decision to be taken as soon as possible. Maximum time limits for the duration of the administrative procedure ■ should be established to streamline the procedure for international protection. In this way, applicants should be able to receive a decision on their application within the least amount of time possible in all Member States thereby ensuring a speedy and efficient procedure.

(44) In order to shorten the overall duration of the procedure in certain cases, Member States should have the flexibility, in accordance with their national needs, to prioritise the examination of any application by examining it before other, previously made applications. ***The prioritisation of examination of applications should be done*** without derogating from normally applicable ***procedures, in particular the admissibility procedure or the accelerated examination procedure***, time limits, principles and guarantees. ■ ***The requirement, under this Regulation, to examine certain applications in accordance with the accelerated or the border procedure should therefore be without prejudice to the flexibility of Member States to decide whether or not to prioritise such applications. In certain circumstances, in particular when families with minors are subject to the border procedure, Member States should prioritise the examination of their application.***

(45) *Member States should have the possibility to reject an application as inadmissible for instance when a country which is not a Member State is considered to be a first country of asylum or a safe third country for the applicant or when an international court or tribunal has provided safe relocation to the applicant to a Member State or third country or when it is made only after seven working days from the date on which the applicant receives the return decision provided that he or she had been informed about the consequences of not making an application within that time limit and that no new relevant elements have arisen. Given that the CEAS is based on mutual trust and a presumption of compliance with fundamental rights, including the rights based on the Geneva Convention and on the European Convention of Human Rights, the fact that another Member State has already granted international protection is, as a rule, a reason for rejecting an application by the same applicant as inadmissible. Therefore, Member States should have the possibility to reject an application as inadmissible where an applicant has already been granted international protection in another Member State.* In addition, an application should be considered to be inadmissible when it is a subsequent **application** without new relevant elements ■ .

(46) *For the application of the concepts of first country of asylum and safe third country, it is essential that the third country in relation to which the concepts are applied is a party to and complies with the Geneva Convention, unless that third country otherwise provides for effective protection in law and in practice in accordance with basic human rights standards such as access to means of subsistence sufficient to maintain an adequate standard of living with regard to the overall situation of that hosting third country, access to healthcare and essential treatment of illnesses and to education under the conditions generally provided for in that third country. Such effective protection should remain available until a durable solution can be found. It should be possible to designate a third country as safe third country with exceptions for specific parts of its territory or clearly identifiable categories of persons.*

(47) *Member States should have the possibility to apply the concept of first country of asylum as a ground for inadmissibility where the applicant enjoyed effective protection and can still avail himself or herself of that protection in a third country, where his or her life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion, where he or she is neither subject to persecution nor faces a real risk of serious harm as defined in Regulation (EU) .../...⁺ and where the applicant is protected against refoulement and against removal in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (48) *Member States should have the possibility to apply the concept of safe third country as a ground for inadmissibility where the possibility exists for the applicant to request and, if the conditions are fulfilled, to receive effective protection in a third country, where his or her life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion, where he or she is neither subject to persecution nor faces a real risk of serious harm as defined in Regulation (EU) .../...⁺ and where he or she is protected against refoulement and against removal in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law. Nonetheless, the determining authorities of the Member States should retain the right to assess the merits of an application even if the conditions for regarding it as inadmissible are met, in particular when they are compelled to do so pursuant to their national obligations. A Member State should be able to apply the concept of safe third country only where there is a connection between the applicant and the third country on the basis of which it would be reasonable for the applicant to go to that country. The connection between the applicant and the safe third country could be considered established in particular where members of the applicant's family are present in that country or where the applicant has settled or stayed in that country.*
- (49) *The presumption of safety regarding third countries with which agreements of the kind referred to in this Regulation have been concluded does not apply in the event that such agreements are suspended in accordance with Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (50) *The concepts of first country of asylum and safe third country should not be applied in respect of an applicant who applies and is entitled to benefit, in the Member State that examines the application, from the rights set out in Council Directive 2003/86/EC¹¹ or Directive 2004/38/EC of the European Parliament and of the Council¹² as family member of a third-country national or of a Union citizen.*
- (51) *When assessing whether the criteria for effective protection as set out in this Regulation are met by a third country, access to means of subsistence sufficient to maintain an adequate standard of living should be understood as including access to food, clothing, housing or shelter and the right to engage in gainful employment, for example through access to the labour market, under conditions not less favourable than those for non- nationals of the third country generally in the same circumstances.*
- (52) *In order for Member States to be able to reject an application as inadmissible on the basis of the concepts of first country of asylum or safe third country, an individual assessment of the particular circumstances of the applicant should be carried out, including of any elements submitted by the applicant explaining why those concepts would not be applicable to him or her. Where the applicant is an unaccompanied minor, the competent authority should take into account the best interests of the child, in particular concerning the availability of sustainable appropriate care and custodial arrangements.*

¹¹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

¹² Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

(53) *An application should not be rejected as inadmissible on the basis of the concepts of first country of asylum or safe third country where it is already clear at the stage of the admissibility examination that the third country concerned will not admit or readmit the applicant. Furthermore, if the applicant is eventually not admitted or readmitted to the third country after the application has been rejected as inadmissible, the applicant should again have access to the procedure for international protection in accordance with this Regulation.*

(54) An application for international protection should be examined on its merits to determine whether an applicant qualifies for international protection in accordance with Regulation (EU) .../...⁺. There need not be an examination on the merits where an application **is rejected** as inadmissible in accordance with this Regulation, where **another Member State is responsible in accordance with Regulation (EU) .../...⁺⁺ or where an application is declared as implicitly or explicitly withdrawn.**

(55) The examination of an application should be accelerated and completed within a maximum of **three** months in **a limited number of cases** including where an applicant comes from a safe country of origin or an applicant is making an application merely to delay or frustrate the enforcement of a removal decision, or where there are serious national security or public **order** concerns **■**. **Member States should be able to apply an** accelerated examination procedure to unaccompanied minors only within the limited circumstances set out in this Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

(56) In the interest of swift and fair procedures for all applicants, whilst also ensuring that the stay of applicants who do not qualify for international protection in the Union is not unduly prolonged, including those who are nationals of third countries exempt from the requirement to be in a possession of a visa pursuant to Regulation (EU) 2018/1806, Member States should accelerate the examination of applications of applicants who are nationals or, in the case of stateless persons, formerly habitual residents of a third country for which the share of decisions granting international protection is **20% or lower** ■ of the total number of decisions for that third country, ***taking into account, inter alia, the significant differences between first instance and final decisions.*** Where a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data and taking into account the guidance note pursuant to Article **11** of Regulation **(EU) 2021/2303**, or where the applicant belongs to a specific category of persons for whom the low recognition rate cannot be considered to be representative of their protection needs due to a specific persecution ground, examination of the application should not be accelerated. Cases where a third country may be considered to be a safe country of origin or a safe third country for the applicant within the meaning of this Regulation should remain applicable as a separate ground for respectively the accelerated examination procedure or the ***admissibility*** procedure.

(57) Many applications for international protection are made at the external border or in a transit zone of a Member State, ***including*** by persons apprehended in connection with ***an irregular crossing of the external border, that is to say at the very time of the irregular crossing of the external border or near that external border after it has been crossed,*** or by persons disembarked following a search and rescue operation. In order to conduct identification, security and health screening at the external border and to direct the third- country nationals and stateless persons concerned to the relevant procedures, a screening is necessary. After the screening, third-country nationals and stateless persons should be channelled to the appropriate asylum or return procedure, or refused entry. A pre-entry phase consisting of screening and border procedures for asylum and return should therefore be established. There should be seamless and efficient links between all stages of the relevant procedures for all irregular arrivals.

(58) The purpose of the border procedure for asylum and return should be to quickly assess **in principle** at the external borders whether applications are unfounded or inadmissible and to swiftly return those with no right to stay, **in a manner that fully respects the principle of non-refoulement**, while ensuring that those with well-founded claims are channelled into the regular procedure and provided quick access to international protection. Member States should therefore be able to require applicants for international protection to **reside** at **or in proximity of** the external border or in a transit zone **as a general rule, or in other designated locations within their territory**, in order to assess the admissibility of applications. In well-defined circumstances, Member States should be able to provide for the examination of the merits of an application and, in the event of rejection of the application, for the return of the third-country nationals and stateless persons concerned. **In order to carry out the asylum border procedure, and the return border procedure established by Regulation of the European Parliament and of the Council (EU) ...¹³⁺, Member States should take the measures necessary to establish an adequate capacity, in terms of reception and human resources, particularly qualified and well-trained staff, required to examine at any given moment an identified number of applications and to enforce return decisions.**

¹³ Regulation (EU) .../... of the European Parliament and of the Council establishing a return border procedure, and amending Regulation (EU) 2021/1148 (OJ L, ..., ELI:...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

(59) *In order to ensure uniform conditions for the implementation of this Regulation as regards to the calculation of the numbers corresponding to the adequate capacity of each Member State and the maximum number of applications a Member State is required to examine in the border procedure per year, implementing powers should be conferred on the Commission. The adequate capacity of a Member State should be established through a formula based on aggregating irregular border crossings, as reported by Member States to the European Border and Coast Guard Agency established by Regulation (EU) 2019/1896 of the European Parliament and of the Council¹⁴ ('Frontex'), which also includes arrivals following search and rescue operations, and refusals of entry at the external border, as per Eurostat data, calculated over a three- year period. When the implementing act is adopted in accordance with this Regulation, its adoption should be aligned with the adoption of the European Annual Asylum and Migration Report under Regulation (EU) .../...⁺, which assesses the situation along all migratory routes and in all Member States. As an additional element of stability and predictability, the maximum number of applications a Member State should be required to examine in the border procedure per year should be set, amounting to four times that Member State's adequate capacity. The extent of the obligation of the Member State to set up the adequate capacity should take appropriate account of Member States' concerns regarding national security and public order. Only applications subject to the border procedure should be calculated towards reaching the adequate capacity.*

¹⁴ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

(60) Member **States** should assess applications in a border procedure where the applicant is a danger to national security or public order, where the applicant, ***after having been provided with the full opportunity to show good cause, is considered to have intentionally*** misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity or nationality that could have had a negative impact on the decision and where it is likely that the application is unfounded because the applicant is of a nationality for whom ***the proportion of*** decisions granting international protection is ***20% or lower*** ■ of the total number of decisions for that third country. ***In order to ensure uniform conditions for the implementation of Article 50, third paragraph, of this Regulation, implementing powers should be conferred on the Commission.*** In other cases, such as when the applicant is from a safe country of origin or a safe third country, the use of the border procedure should be optional for the Member States.

(61) ***Pursuant to Chapter IV of Directive (EU) .../...⁺, Member States providing reception facilities for carrying out the asylum border procedure are under an obligation to take into account the special situation and needs of vulnerable persons, including minors, persons with a disability and elderly people. Consequently, such persons should only be admitted to a border procedure in the event that the conditions of reception within that procedure comply with the requirements set out in Chapter IV of that Directive.*** Furthermore, in the event that reception conditions available as part of a border procedure cease to comply with the requirements and standards laid down in Chapter IV of that Directive, the border procedure should cease to apply to the persons concerned.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

(62) There may also be circumstances where, irrespective of the facilities available, the specific situation or special needs of applicants would in any event preclude them from being admitted or from remaining in a border procedure. In this context, a border procedure should not be applied, or should cease to apply, where necessary support cannot be provided to applicants in need of special procedural guarantees or where justified on health grounds, including reasons pertaining to a person's mental health. Equally, having regard to the importance of the rights of the child and the need to take into account the best interests of the child, unaccompanied minors should not, as a rule, be subject to the border procedure unless there are reasonable grounds to consider the minor represents a danger to the national security or public order of the Member State or the applicant had been forcibly expelled for serious reasons of national security or public order under national law.

(63) A border procedure should also not be applied, or should cease to apply, where it results in the detention of applicants in circumstances where the conditions for detaining persons and the guarantees applicable to detention as laid down in Directive (EU) .../...⁺ are not met.

(64) Given that the purpose of the border procedure is, inter alia, to allow for the expeditious assessment of applications that are likely to be inadmissible or unfounded, with a view to enabling the swift return of those with no right to stay, that procedure should not be applied or should cease to apply where 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.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

(65) When applying the border procedure for the examination of an application for international protection, Member States should ensure that the necessary arrangements are made to accommodate the applicants at or ***in proximity of*** the external border or transit zones ***as a general rule***, in accordance with Directive (EU) .../...⁺. Member States may ***examine*** the applications at a different location at the external border than that where the asylum application is made by transferring applicants to a specific location at or in ■ proximity of the external border of ***the Member State concerned, or in other designated locations within its territory*** where appropriate facilities exist. Member States should retain discretion in deciding at which specific locations ■ such facilities should be set up. However, Member States should seek to limit the need for transferring applicants for this purpose, and therefore aim at setting up such facilities with sufficient capacity at border crossing points, or sections of the external border, where the majority of the number of applications for international protection are made, also taking into account the length of the external border and the number of border crossing points or transit zones. They should notify the Commission of the specific locations ■ at which the border procedures will be carried out ■ .

(66) ***Given that certain facilities might be at locations with difficult accessibility, Member States should ensure adequate access for staff working in such facilities.***

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

(67) *The best interests of the child should be a primary consideration for Member States when applying the provisions of this Regulation that possibly affect minors. In this context, and given the special reception needs of minors, where the border procedure is applied and the number of applicants at a given moment exceeds the number which corresponds to the adequate capacity of a Member State, that Member State should not give priority to minors and their family members when determining whom to subject to a border procedure, unless they are considered, on serious grounds, to pose a danger to the national security and public order of a Member State. Where they are subject to the border procedure, the examination of applications of minors and their family members should be given priority. Reception facilities for minors and their family members should be suited to their needs, in full respect of Directive (EU) .../...⁺. Given that protecting children is of primary importance, where the information obtained through the monitoring done pursuant to Regulation (EU) 2021/2303 indicates failure by a Member State to comply with the reception requirements for minors and their family members, the Commission should recommend that the application of the border procedure to families with minors be suspended, and the Member State concerned should inform the Commission of the measures taken to address any shortcomings contained in the recommendation of the Commission. The recommendation should be made public.*

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

(68) The duration of the border procedure for **the** examination of applications for international protection should be as short as possible while at the same time guaranteeing a complete and fair examination of the claims. It should in any event not exceed 12 weeks, **including the determination of the Member State responsible. Member States should be able to extend this deadline to 16 weeks where the person is transferred pursuant to Regulation (EU) .../...⁺**. This deadline should be understood as a stand-alone deadline for the asylum border procedure, **from the registration of the application until the applicant does not have the right to remain and is not allowed to remain**. Within this period, Member States are entitled to set the deadline in national law both for the administrative and for the **various subsequent procedural steps**, but should set them in a way so as to ensure that the examination procedure is concluded and that subsequently, if relevant, the decision on the **request to remain and, if applicable, the decision on appeal are** issued within **12 weeks or, if applicable, 16 weeks**. After that period, if the Member State nevertheless failed to take the relevant decisions, the applicant should **be** authorised to enter the territory of the Member State, **subject to limited exceptions, in order for the appropriate procedure to continue**. Entry into the territory **is not** authorised where the applicant has no right to remain, where he or she has not requested to be allowed to remain for the purposes of an appeal procedure, or where a court or tribunal has decided that he or she should not be allowed to remain pending the outcome of an appeal procedure.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

In such cases, to ensure continuity between the asylum procedure and the return procedure, the return procedure **is also** carried out in the context of a border return procedure **provided for in Regulation (EU) .../...**⁺ for a period not exceeding 12 weeks.

(69) While the border procedure for the examination of an application for international protection can be applied without recourse to detention, Member States should nevertheless be able to apply the grounds for detention during the border procedure in accordance with the provisions of the Directive (EU) .../...⁺⁺ in order to decide on the right of the applicant to enter the territory. If detention is used during such procedure, the provisions on detention of that Directive should apply, including the guarantees for detained applicants, **conditions of detention, judicial control**, and the fact that an individual assessment of each case is necessary. **As a rule, minors should not be detained. Only in exceptional circumstances, as a measure of last resort and after it has been established that other less coercive alternative measures cannot be applied effectively, inter alia non-custodial community-based placements, and after detention is assessed to be in their best interests in accordance with the Directive (EU) .../...⁺⁺, should it be possible to detain minors.**

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23

(70) When an application is rejected in the context of the border procedure, the applicant, third-country national or stateless person concerned should be immediately subject to a return decision or, where the relevant conditions set out in Regulation (EU) 2016/399 of the European Parliament and of the Council¹⁵ are met, to a refusal of entry. To guarantee the equal treatment of all third-country nationals and stateless persons whose application has been rejected in the context of the border procedure, where a Member State has decided not to apply the provisions of Directive 2008/115/EC of the European Parliament and of the Council¹⁶ pursuant to the relevant derogation set out therein to third-country nationals and stateless persons and does not issue a return decision to the third-country national concerned, the treatment and level of protection of the applicant, third-country national or stateless person concerned should be in accordance with the provision of Directive 2008/115/EC on more favourable provisions with regard to third-country nationals excluded from the scope of that Directive and be equivalent to those applicable to persons subject to a return decision.

¹⁵ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77 23.3.2016, p. 1).

¹⁶ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-

country nationals (OJ L 348 24.12.2008, p.

(71) The border procedure should be carried out in full compliance with the Charter and Union law. Each Member State should in that context provide for a monitoring of fundamental rights mechanism in relation to the border procedure that meets the criteria set out in Regulation (EU) .../... of the European Parliament and of the Council ¹⁷⁺.

(72) Within their respective mandates, Union agencies, and in particular the Asylum Agency, should be able to provide support to the Member States and the Commission, at their request, with a view to ensuring the proper implementation and functioning of this Regulation, including the provisions of this Regulation related to the accelerated and border procedures. Union agencies, and in particular the Asylum Agency, can propose specific support to a Member State.

¹⁷ Regulation (EU) .../... of the European Parliament and of the Council introducing the screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L, ..., ELI:...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)) and insert the number, date, title and OJ reference of that

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(73) It should be possible for a Member State to which an applicant is ***transferred*** in accordance with Regulation (EU) .../...⁺ to examine the application in a border procedure provided that the applicant has not yet been authorised to enter the territory of the Member States concerned and the conditions for the application of such a procedure ***are met in*** the Member State from which the applicant was ***transferred and by the Member State to which the applicant was transferred***.

(74) The notion of public order can, *inter alia*, cover a conviction for having committed a serious crime.

(75) As long as an applicant can show good cause, the lack of documents on entry or the use of forged documents should not *per se* entail an automatic recourse to an accelerated examination procedure or a border procedure.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

(76) Where an applicant ■ does not comply with **certain** obligations arising from this Regulation, Regulation (EU) .../...⁺ or Directive (EU) .../...⁺⁺ ■, the application should not be further examined and it should **in principle** be rejected **or declared** as **implicitly** withdrawn ■, and any **new** application in the Member States by the same applicant ■ after that decision should be considered to be a subsequent application. **Where a person made a subsequent application in another Member State and is transferred to the Member State responsible pursuant to Regulation (EU) .../...⁺, the responsible Member State** should not be **obliged** to **examine** the **application made in the other Member State**.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

(77) Where an applicant makes a subsequent application without presenting new **elements** which significantly increase his or her likelihood of qualifying as a beneficiary of international protection or which relate to the reasons for which the previous application was rejected as inadmissible, that subsequent application should not be subject to a new full examination procedure. In those cases, following a preliminary examination, applications should be **rejected** as inadmissible in accordance with the *res judicata* principle. The preliminary examination **should** be carried out on the basis of written submissions **or** a personal interview. **The** personal interview may, **in particular**, be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to new elements. In the case of subsequent applications, exceptions may be made to the individual's right to remain on the territory of a Member State.

(78) An applicant who lodges a subsequent application at the last minute merely in order to delay or frustrate his or her removal should not be authorised to remain pending the finalisation of the decision declaring the application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented and there is no risk of refoulement ■ . The determining authority **should** issue a decision under national law confirming that these criteria are fulfilled in order for the applicant not to be authorised to remain.

(79) A key consideration as to whether an application for international protection is well-founded is the safety of the applicant in his or her country of origin. Having regard to the fact that Regulation (EU) .../...⁺ aims to achieve a high level of convergence on the qualification of third-country nationals and stateless persons as beneficiaries of international protection, this Regulation establishes common criteria for designating third countries as safe countries of origin ■ , in view of the need to strengthen the application of the safe country of origin concept as an essential tool to support the swift **examination** of applications that are likely to be unfounded ■ .

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

(80) ***It should be possible to designate a third country as safe country of origin with exceptions for specific parts of its territory or clearly identifiable categories of persons. In addition, the fact that a third country is included in a list of safe countries of origin cannot establish an absolute guarantee of safety for nationals of that country, even for those who do not belong to a category of persons for which such an exception is made, and therefore does not dispense with the need to conduct an appropriate individual examination of the application for international protection. By its very nature, the assessment underlying the designation can only take into account the general, civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in that country. For this reason, it should be possible to apply the concept of a safe country of origin only where the applicant cannot provide elements justifying why the concept of safe country of origin is not applicable to him or her, in the framework of an individual assessment.***

■

(81) The **designation** of safe countries of origin and ■ safe third countries **at Union level** should address some of the existing divergences between Member States' national lists of safe countries. While Member States should retain the right to apply or introduce legislation that allows for the national designation of third countries other than those designated as safe third countries ■ **or** safe countries of origin **at Union level**, ■ such common designation or list should ensure that the **concepts are** applied by all Member States in a uniform manner in relation to applicants whose countries of origin are **designated or for whom there is** a safe third country. This should facilitate convergence in the application of procedures and thereby also deter secondary movements of applicants for international protection. ■

(82) The Commission, assisted by the Asylum Agency, should ▯ review the situation in third countries designated as safe third countries **or** safe countries of origin **at Union level**.

Where there is a **significant** change for the worse in the situation of such a third country **and following a substantiated assessment**, the Commission should be able to suspend the designation of that third country as safe third country **or safe** country ▯ of origin **at Union level** for a limited period of time by means of a delegated act. The Commission should also be able to extend the suspension of the designation of a third country as a safe third country **or a** safe country of origin **at Union level** for a period of six months, with a possibility to renew that extension once. In order to address **significant** changes for the worse in a third country designated as a safe third country **or safe country** of origin **at Union level**, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of suspending the designation of that third country as safe third country **or safe** country ▯ of origin **at Union level** for a period of six months where the Commission considers, on the basis of a substantiated assessment, that the conditions set by this Regulation are no longer met, and to extend the suspension of the designation of a third country as a safe third country **or a** safe country of origin **at Union level** for a period of six months, with a possibility to renew that extension once. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making¹⁸. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

¹⁸ OJ L 123, 12.5.2016, p. 1, ELI: http://data.europa.eu/eli/agree_interinstitut/2016/512/oj.

(83) ***The Commission should continuously review the situation in that third country taking into account inter alia information provided by the Member States and the Asylum Agency regarding subsequent changes in the situation of that third country.*** Moreover, in this case, the Commission should propose an amendment ***in accordance with the ordinary legislative procedure*** to remove that third country's ***designation as a safe country at Union level*** within 3 months of the adoption of delegated act suspending that third country. For the purposes of the substantiated assessment, the Commission should take into consideration a range of sources of information at its disposal, in particular its annual progress reports for third countries designated as candidate countries by the European Council, regular reports from the European External Action Service and the information from Member States, the Asylum Agency, the United Nations High Commissioner for Refugees, the Council of Europe and other relevant international organisations.

(84) When the period of validity of the delegated act and its extensions expires, without a new delegated act being adopted, the designation of the third country as safe third country ***or safe country of origin at Union level*** should no longer be suspended. This should be without prejudice to any proposed amendment for the removal of the third country from the ***designation***.

(85) The Commission, with the assistance of the Asylum Agency, should ■ review the situation in third countries that have been removed from the **designation as** safe countries of origin or safe third countries **at Union level**, including where a Member State notifies the Commission that it considers, on the basis of a substantiated assessment, that, following changes in the situation of that third country, it fulfils again the conditions set out in this Regulation for being designated as safe. In such a case, Member States could only designate that third country as a safe country of origin or a safe third country at the national level as long as the Commission does not raise objections to that designation **within a period of two years after the date of removal from the designation of that third country as safe third country or safe country of origin at Union level**. Where the Commission considers that these conditions are fulfilled, it may propose an amendment to the designation of safe third countries **or** safe countries of origin **at Union level** so as to add the third country.

■

(86) With respect to the withdrawal of refugee or subsidiary protection status, ■ Member States should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and that they are given the opportunity to submit their point of view, within a reasonable time, by means of a written statement and in a personal interview, before the authorities can take a reasoned decision to withdraw their status.

(87) Decisions taken on an application for international protection ***rejecting it as inadmissible, as unfounded or manifestly unfounded in relation to refugee or subsidiary protection status, or as implicitly withdrawn, as well as*** decisions ***to withdraw*** refugee or subsidiary protection status should be subject to an effective remedy before a court or tribunal in compliance with all requirements and conditions laid down in Article 47 of the Charter. To ensure the effectiveness of the procedure, the applicant should lodge his or her appeal within a set time limit. For the applicant to be able to meet those time limits and with a view to ensuring effective access to judicial review, he or she should be **■** entitled to free legal assistance and representation. ***This should be without prejudice to the possibility for applicants or beneficiaries of international protection to benefit from other remedies of general application provided for at national level which are not specific to the procedure for granting or withdrawing international protection.***

(88) ***In some Member States, legal procedural provisions require there to be a second level of appeal beyond that which is required in accordance with this Regulation. In the light of the principles of proportionality and subsidiarity, and having due regard to the procedural autonomy of the Member States, as well as the objectives of this Regulation, it is appropriate to provide for a flexible definition of what constitutes a final decision by means of referring to national law, it being understood that Member States should as a minimum provide for the remedies laid down in Chapter V of this Regulation before a decision becomes final in accordance with national law. Where a subsequent application has been made before the decision on a previous application becomes final, it should be considered to be a further representation and examined in the framework of the ongoing administrative or appeal procedure as appropriate.***

- (89) *The notion of court or tribunal is a concept governed by Union law, as interpreted by the Court of Justice of the European Union. That notion, among other elements, can only mean an authority acting as a third party in relation to the authority which adopted the decision forming the subject-matter of the proceedings. That authority should perform judicial functions and it is not decisive whether that authority is recognised as a court or tribunal under national law. This regulation should not affect Member States' competence to organise their national court system and determine the number of instances of appeal. Where national law provides for the possibility to lodge further appeals against a first appeal or subsequent appeals decision, the procedure and the suspensive effect of such appeals should be regulated in national law, in accordance with Union law and international obligations.*
- (90) *For the purposes of the appeal procedure, Member States could provide that hearings before a court or tribunal of first instance could be held via video conference, provided that the necessary arrangements are in place.*
- (91) For an applicant to be able to exercise his or her right to an effective remedy against a decision rejecting an application for international protection, all effects of the return decision should be automatically suspended for as long as the applicant has the right to remain or has been allowed to remain on the territory of a Member State. ■

(92) Applicants should, in principle, have the right to remain on the territory of a Member State until the time limit for lodging an appeal before a court or tribunal of first instance expires, and, where such a right is exercised within the set time limit, pending the outcome of the appeal. It is only in the limited cases set out in this Regulation, where applications are likely to be unfounded, ***and without prejudice to the principle of non-refoulement***, that the applicant should not have an automatic right to remain for the purposes of the appeal.

(93) In cases where the applicant has no automatic right to remain for the purposes of the appeal, a court or tribunal should still be able to allow the applicant to remain on the territory of the Member State pending the outcome of the appeal, upon the applicant's request or acting of its own motion. In such cases, applicants should have a right to remain until the time limit for requesting a court or tribunal to be allowed to remain has expired and, where the applicant has presented such a request within the set time- limit, pending the decision of the competent court or tribunal. In order to discourage abusive or last minute subsequent applications, Member States should be able to provide in national law that applicants should have no right to remain during that period in the case of rejected subsequent applications, with a view to preventing further unfounded subsequent applications. In the context of the procedure for determining whether or not the applicant should be allowed to remain pending the appeal, the applicant's rights of defence should be adequately guaranteed by providing him or her with the necessary interpretation and legal assistance. Furthermore, the competent court or tribunal should be able to examine the decision refusing to grant international protection in terms of facts and points of law.

(94) In order to ensure effective returns, applicants should not have a right to remain on the Member State's territory at the stage of a second or further level of appeal before a court or tribunal against a negative decision on the application for international protection, without prejudice to the possibility for a court or tribunal to allow the applicant to remain. ■

(95) To ensure the consistency of the legal review carried out by a court or tribunal on a decision rejecting an application for international protection and the accompanying return decision, and with a view to accelerating the examination of the case and reducing the burden on the competent judicial authorities, such decisions should, ***if taken as part of the related decision on the application for international protection or decision to withdraw international protection***, be subject to common proceedings before the same court or tribunal.

(96) In order to ensure fairness and objectivity in the management of applications and effectiveness in the common procedure for international protection, time limits should be set for the administrative procedure.

(97) In accordance with Article 72 TFEU, this Regulation does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

- (98) Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁹ applies to the processing of personal data by the Member States carried out in application of this Regulation.
- (99) Any processing of personal **data** by the Asylum Agency within the framework of this Regulation should be conducted in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council²⁰, as well as Regulation (EU) **2021/2303** and it should, in particular, respect the principles of necessity and proportionality.

¹⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

²⁰ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

(100) Any personal data collected upon registration or lodging of an application for international protection and during the personal interview should be considered to be part of the applicant's file and it should be kept for a **sufficient** number of years since third-country nationals or stateless persons who request international protection in one Member State may try to request international protection in another Member State or may submit further subsequent applications in the same or another Member State for years to come. Given that most third-country nationals or stateless persons who have stayed in the Union for several years will have obtained a settled status or even citizenship of a Member State after a period of ten years from when they are granted international protection, that period should be considered a necessary period for the storage of personal details, including fingerprints and facial images.

- (101) This Regulation does not deal with procedures between Member States governed by Regulation (EU) .../...⁺, *including as regards appeals in the context of those procedures*.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

(102) This Regulation should apply to applicants to whom Regulation (EU) .../...⁺ applies, in addition and without prejudice to the provisions of that Regulation.

(103) *With a view to ensuring the consistent implementation of this Regulation by the time of its entry into application, implementation plans at Union and national levels that identify gaps and operational steps for each Member States should be developed and implemented.*

(104) The application of this Regulation should be evaluated at regular intervals.

(105) Since the objective of this Regulation, namely to establish a common procedure for granting and withdrawing international protection, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

(106) ■ In accordance with Articles 1 and 2 **and Article 4a(1)** of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, ■ **Ireland** is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. ■

(107) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(108) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter. In particular, this Regulation seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 8, 18, 19, 21, 23, 24, and 47 of the Charter,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1 Subject matter

This Regulation establishes a common procedure for granting and withdrawing international protection pursuant to Regulation (EU) .../...⁺.

Article 2 Scope

1. This Regulation applies to all applications for international protection made in the territory of the Member States, including at the external border, on the territorial sea or in the transit zones of the Member States, and to the withdrawal of international protection.
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.
3. Member States may decide to apply this Regulation to applications for protection to which Regulation (EU) .../...⁺ does not apply.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

Article 3 Definitions

■ For the purposes of this Regulation, ■ the following definitions apply:

(1) *‘refugee’ means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person who, being outside of the country of former habitual residence for the same reasons as mentioned, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 of Regulation (EU) .../...⁺ does not apply;*

(2) *‘person eligible for subsidiary protection’ means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that that person, if returned to his or her country of origin or, in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 of Regulation (EU) .../...⁺, and to whom Article 17(1) and (2) of that Regulation does not apply, and is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country;*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

- (3) *‘refugee status’ means the recognition by a Member State of a third-country national or a stateless person as a refugee in accordance with Regulation (EU) .../...⁺;*
- (4) *‘subsidiary protection status’ means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection in accordance with Regulation (EU) .../...⁺;*
- (5) *‘international protection’ means refugee status or subsidiary protection status;*
- (6) *‘minor’ means a third-country national or stateless person below the age of 18 years;*
- (7) *‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or practice of the Member State concerned, and for as long as that minor is not effectively taken into the care of such an adult, including a minor who is left unaccompanied after he or she has entered the territory of the Member States;*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

(8) *‘final decision’ means a decision on whether or not a third-country national or stateless person is granted refugee status or subsidiary protection status pursuant to Regulation (EU) .../...⁺, including a decision rejecting the application as inadmissible or a decision rejecting an application as implicitly or explicitly withdrawn, which is no longer subject to a remedy under the framework of Chapter V of this Regulation or has become final in accordance with national law, irrespective of whether the applicant has the right to remain in accordance with this Regulation;*

(9) *‘examination of an application for international protection’ means an examination of the admissibility or the merits of an application for international protection in accordance with this Regulation and Regulation (EU) .../...⁺;*

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⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

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- (10) *‘biometric data’ means biometric data as defined in Article 2, point (s), of Regulation (EU) .../...⁺;*
- (11) *‘adequate capacity’ means the capacity required at any given moment to carry out the asylum border procedure, and the return border procedure established pursuant to Regulation (EU) .../...⁺⁺ or, where applicable, an equivalent return border procedure established under national law;*
- (12) ‘application for international protection’ or ‘application’ means a request for protection from a Member State made by a third-country national or a stateless person who can be understood **to be seeking** refugee status or subsidiary protection status;
- (13) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been **taken**;
- (14) ‘applicant in need of special procedural guarantees’ means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Regulation is limited due to individual circumstances, **such as specific vulnerabilities**;

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⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 17/24 (2016/0224B(COD)).

- (15) *‘stateless person’ means a person who is not considered to be a national by any State under the operation of its law;*
- (16) *‘determining authority’ means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection **and** competent to take decisions **under the administrative procedure**;*
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- (17) *‘withdrawal of international protection’ means a decision by **a** determining authority **or a competent court or tribunal** to revoke **or** end ■ , **including by refusing** to renew, international protection, **in accordance with Regulation (EU) .../...⁺**;*
- (18) *‘remain in the Member State’ means to remain on the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined;*
- (19) *‘subsequent application’ means a further application for international protection made in any Member State after a final decision has been taken on a previous application, including cases in which the application has been rejected as explicitly **or implicitly** withdrawn ■ ;*
- (20) *‘Member State responsible’ means the Member State responsible for the examination of an application in accordance with Regulation (EU) .../...⁺⁺.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

Article 4

Competent authorities

1. Each Member State shall designate **in accordance with national law** a determining authority **to carry out the tasks conferred on it pursuant to this Regulation and Regulation (EU) .../...⁺, in particular:**
 - (a) receiving ■ and examining applications for international protection;
 - (b) taking decisions on applications for international protection;
 - (c) taking decisions on **the withdrawal of international protection**.

The determining authority shall be the only authority, during the administrative procedure, with the power to decide on the admissibility and the merits of an application for international protection.

2. **Without prejudice to paragraph 1, Member States shall entrust other relevant national authorities with the task of receiving ■ applications for international protection as well as informing applicants as to where and how to lodge an application in accordance with Article 28. Those other national authorities shall, at least, include the police ■, immigration authorities ■, border guards and the authorities responsible for detention facilities or reception facilities.**

3. **Each Member State shall designate a competent authority to register applications for international protection. Member States may entrust the determining authority or other relevant authorities with the task of registering applications for international protection.**

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

4. *Where an application is received by an authority without the power to register it, that authority shall promptly inform the authority responsible for registering applications and that application shall be registered in accordance with Article 27. The authority responsible for receiving the application shall also inform the applicant for international protection which authority is responsible for registering the application.*

5. *For the purposes of paragraphs 2 and 3, by ... [the date of application of this Regulation], each Member State shall notify the Commission of the authorities it has designated to carry out the tasks referred to in those paragraphs, specifying the tasks assigned to them. Any changes in the identification of these authorities shall be notified to the Commission immediately.*

6. *Member States may provide that an authority other than the determining authority is to be responsible for the procedure for determining the Member State responsible in accordance with Regulation (EU) .../...⁺.*

7. *Each Member State shall provide the determining authority and the other competent authorities designated pursuant to this Article with appropriate means, including sufficient competent staff to carry out their tasks under this Regulation.*

8. *Member States shall ensure that the staff of the competent authorities applying this Regulation have the appropriate knowledge and have received training, including the relevant training under Article 8 of Regulation (EU) 2021/2303, and guidance to fulfil their obligations when applying this Regulation.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

Article 5

Assistance to competent authorities

Without prejudice to Article 4(7) and (8), at the request of the Member State, competent authorities identified under Article 4 may, for the purpose of receiving and registering applications for international protection and of facilitating the examination of applications, including with regard to the personal interview, be assisted by:

- (a) experts deployed by the European Union Agency for Asylum (the ‘Asylum Agency’) in accordance with Regulation (EU) 2021/2303, and***
- (b) the competent authorities of another Member State that have been entrusted by that Member State with the task of receiving, registering or examining applications for international protection.***

Competent authorities designated pursuant to Article 4 may assist the authorities of another Member State only for the tasks with which they have been entrusted by their Member State.

The competence to decide on individual applications for international protection shall remain solely with the determining authority of the Member State responsible.

Article 6

The role of the United Nations High Commissioner for Refugees

1. Member States shall allow the United Nations High Commissioner for Refugees to:
 - (a) have access to applicants, including those in reception centres, in detention, at the border and in transit zones;
 - (b) have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, subject to the consent of the applicant;
 - (c) present its views, in the exercise of its supervisory responsibilities under Article 35 of the Convention of 28 July 1951 Relating to the Status of Refugees, as supplemented by the New York Protocol of 31 January 1967 (the ‘Geneva Convention’), to any competent authorities regarding individual applications for international protection at any stage of the procedure.
2. Paragraph 1 shall also apply to an organisation which is working on the territory of the Member State concerned on behalf of the United Nations High Commissioner for Refugees pursuant to an agreement with that Member State.

Article 7

Confidentiality principle

1. The authorities applying this Regulation shall ***be bound by the principle of confidentiality in relation to any personal information they acquire in the performance of their duties, including any exchange of information in accordance with Union or national law which is relevant for the application of this Regulation between authorities of the Member States.***
2. Throughout the procedure for international protection and after a final decision on the application has been taken, the authorities shall not:
 - (a) disclose information regarding the individual application for international protection or the fact that an application has been made, to the alleged actors of persecution or serious harm;
 - (b) obtain any information from the alleged actors of persecution or serious harm in a manner that would result in such actors being informed of the fact that an application has been made by the applicant in question .

CHAPTER II
BASIC PRINCIPLES AND GUARANTEES

SECTION I
RIGHTS AND OBLIGATIONS OF APPLICANTS

■ Article 8

General guarantees for applicants

1. During the administrative procedure referred to in Chapter III applicants shall enjoy the guarantees set out in paragraphs 2 to 6 of this Article.
2. The determining authority *or, where applicable, other competent authorities or organisations tasked by Member States for that purpose* shall inform applicants, in a language which they understand or are reasonably *supposed* to understand, of the following:
 - (a) the right to lodge an individual application;
 - (b) *the time limits and stages of* the procedure to be followed;
 - (c) their rights and obligations during the procedure, including *those under* Regulation (EU) .../...⁺, *and* the ■ consequences of not complying with *those* obligations, *in particular as regards the explicit or implicit withdrawal of an application*;

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⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (d) *the right to free legal counselling for the lodging of the individual application and to legal assistance and representation at all stages of the procedure pursuant to Section III of this Chapter and in accordance with Articles 15, 16, 17, 18 and 19;*
- (e) *the means by which they can fulfil the obligation to submit the elements as referred to in Article 4 of Regulation (EU) .../...⁺;*

- (f) **■** *the decision of the determining authority **in accordance with Article 36.***

*All the information referred to in **this** paragraph shall be provided **as soon as possible** to enable applicants to exercise the rights guaranteed in this Regulation and to enable them to adequately comply with the obligations set out in Article 9. **The information referred to in the first subparagraph, points (a) to (e), of this paragraph shall be provided to the applicant at the latest when the application for international protection is registered. That information shall be provided by means of the leaflet referred to in paragraph 7, either physically or electronically, and, if necessary, orally. Information shall be provided to minors in a child-friendly manner and with the involvement of the representative or the person referred to in Article 23(2), point (a), of this Regulation.***

The applicant shall be given the opportunity to confirm that he or she has received the information. Such confirmation shall be documented in the applicant's file. If the applicant refuses to confirm that he or she has received the information, a note of that fact shall be entered in his or her file.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

3. ***During the administrative procedure***, applicants ***shall be provided*** with the services of an interpreter for ***the purpose of registering and lodging an application and, where applicable, for the personal interview***, whenever appropriate communication cannot be ***otherwise*** ensured ■ . The interpretation services shall be paid for from public funds.
4. The ***competent authorities*** shall provide applicants ***as soon as possible and before the deadline for lodging an application in accordance with Article 28(1)***, with the opportunity to communicate with ***the*** United Nations High Commissioner for Refugees or with any other organisation providing legal advice or other counselling to applicants in accordance with national law.
5. The determining authority shall ensure that applicants and, where applicable, their ***representatives or*** legal advisers or other counsellors ***admitted or permitted as such under national law to provide legal advice (‘legal advisers’)*** have access to the information referred to in Article 34(2), points ***(b) and (c)***, that is required for the examination of applications and to the information provided by the experts referred to in Article 34(3), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application.
6. The determining authority shall give applicants notice ***in writing as soon as possible*** of the decision taken on their application. Where a ***representative or*** legal adviser ■ legally represents the applicant, the determining authority may give notice of the decision to that representative or legal adviser instead of to ***the applicant***.

7. *The Asylum Agency shall, in close cooperation with the Commission and each Member State, draw up leaflets containing the information required by this Article. Those leaflets shall be drawn up in such a manner so as to enable Member States to complete them with additional information specific to the Member State concerned and shall take into account the specificities of vulnerable applicants such as minors or disabled persons.*

Article 9

Obligations of applicants

1. *The applicant shall make his or her application in the Member State provided for in Article 17(1) and (2) of Regulation (EU) .../...⁺.*
2. *The applicant shall fully cooperate with the competent authorities referred to in Article 4 in matters covered by this Regulation, in particular by*
 - (a) *providing the data referred to in Article 27(1), points (a),(b) and (d);*
 - (b) *providing an explanation where he or she is not in possession of an identity or travel document;*
 - (c) *providing information on any changes as regards his or her place of residence, address, telephone number or email address;*
 - (d) *providing biometric data;*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (e) lodging his or her application in accordance with Article 28 and remaining available throughout the procedure;*
- (f) handing over as soon as possible documents in his or her possession relevant to the examination of the application;*
- (g) attending the personal interview, without prejudice to Article 13;*
- (h) remaining on the territory of the Member State where he or she is required to be present, in accordance with Article 17(4) of Regulation (EU) .../...⁺.*

Where the competent authorities decide to retain any document as referred to in point (f) of the first subparagraph, they shall ensure that the applicant immediately receives copies of the originals. In the event of a transfer pursuant to Article 46 of Regulation (EU) .../...⁺, competent authorities shall hand back such documents to the applicant at the time of the transfer.

3. The applicant shall accept any communication from the competent authorities at the most recent place of residence or address, by the telephone number or email address indicated by himself or herself to the competent authorities, in particular when he or she lodges an application in accordance with Article 28.

Member States shall establish in national law the method of communication and the moment that the communication is considered to have been received by the applicant.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

4. *The applicant shall comply with obligations to report to the competent authorities at a specified time or at reasonable intervals or to remain in a designated geographical area on its territory in accordance with Directive (EU) .../...⁺, as imposed by the Member State in which he or she is required to be present in accordance with Regulation (EU) .../...⁺⁺.*

5. *Without prejudice to any search carried out for security reasons, where it is necessary and duly justified for the examination of an application, the competent authorities may require that the applicant be searched or that his or her items be searched in accordance with national law. The competent authority shall provide the applicant with the reasons for the search and include them in the applicant's file. Any search of the applicant's person under this Regulation shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity.*

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24

Article 10

Right to remain *during* the *administrative procedure*

1. Applicants shall have the right to remain ***on the territory of*** the Member State ***in which they are required to be present in accordance with Article 17(4) of Regulation (EU) .../...***⁺ until the determining authority has taken a decision ***on the application in*** the administrative procedure provided for in Chapter III.
2. The right to remain shall not constitute an entitlement to a residence permit and it shall not give the applicant the right to travel to the territory of other Member States without a travel document as provided for in Article 6(3) of Directive (EU) .../...⁺⁺.
3. The ■ applicant ***shall not have the*** right to remain on ***the territory of the Member State concerned*** during ***the*** administrative procedure where ***the person is subject to a surrender to another Member State pursuant to obligations in accordance with a European arrest warrant*** issued in accordance with Council Framework Decision 2002/584/JHA²¹.
4. ***Member States may provide for an exception to the applicant's right to remain on their territory during the administrative procedure where that applicant:***
 - (a) makes a subsequent application in accordance with Article 55 and ■ the conditions laid down in Article 56 ***have been fulfilled***;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

²¹ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1)

(b) is **or will be extradited**, surrendered or **transferred to another Member State**, a third country, **the International Criminal Court** or **another international court or tribunal for the purpose of conducting a criminal prosecution** or **for the execution of a custodial sentence or a detention order**;

(c) **is a danger to public order or national security, without prejudice to Article 12 and 17 of the Regulation (EU) .../...⁺, provided that applying such an exception does not result in the applicant being removed to a third country in violation of the principle of non-refoulement.**

5. A Member State may extradite, **surrender or transfer** an applicant to a third country **or an international court or tribunal** as referred to in paragraph 4, point (b), only where the **competent** authority **considers** that such **a** decision to extradite, surrender or transfer will not result in direct or indirect *refoulement* in breach of the obligations of that Member State under international and Union law.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

SECTION II PERSONAL INTERVIEWS

Article 11 Admissibility interview

1. ***Without prejudice to Article 38(1) and Article 55(4), before*** a decision is taken by the determining authority on the ***inadmissibility*** of an application ***in accordance with Article 38***, the applicant shall be given the opportunity of a personal interview on ***admissibility*** (the ‘admissibility interview’) ■ .

2. In the admissibility interview, the applicant shall be given an opportunity to provide ■ reasons as to why the ***inadmissibility*** grounds provided for in Article 38 would not be applicable to ***him*** or her ■ .

Article 12

Substantive interview

1. Before a decision is taken by the determining authority on the merits of an application for international protection, the applicant shall be given the opportunity of a personal interview on the substance of his or her application (the ‘substantive interview’). ***The substantive interview may be conducted at the same time as the admissibility interview provided the applicant has been informed of such a possibility in advance and has been able to consult with his or her legal adviser in accordance with Article 15 or with a person entrusted with providing legal counselling in accordance with Article 16.***

2. In the substantive interview, the applicant shall be given **the** opportunity to present the elements needed to substantiate his or her application in accordance with Regulation (EU) .../...⁺, and he or she shall provide **the** elements **referred to in Article 4(2) of that Regulation** as completely as possible. The applicant shall be given the opportunity to provide an explanation regarding elements which might be missing or any inconsistencies or contradictions in **his or her** statements.

I

Article 13

Requirements for personal interviews

1. Personal interviews as provided for in Articles 11 and 12 shall be conducted in accordance with the conditions established in this Regulation.
2. ***Where an application for international protection is lodged in accordance with Article 31, the adult responsible referred to in that provision shall be given the opportunity of a personal interview pursuant to Articles 11 and 12. The applicant shall also be given the opportunity to participate in that interview provided that paragraph 11, point (c), of this Article does not apply.***
3. The personal interviews shall be conducted under conditions which ensure appropriate **privacy and** confidentiality and which allow applicants to present the grounds for their applications in a comprehensive manner.
4. ***The presence of the applicant's legal adviser at the personal interview, where the applicant has decided to avail himself or herself of legal assistance in accordance with Section III of this Chapter shall be ensured.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

5. *An interpreter who is able to ensure appropriate communication between the applicant and the person conducting the interview shall be provided for the personal interviews.*

The presence of a cultural mediator may be provided during the personal interviews.

Member States shall give preference to interpreters and cultural mediators that have received training, such as training referred to in Article 8(4), point (m), of Regulation (EU) 2021/2303.

Member States shall ensure that interpreters and cultural mediators are made aware of the key concepts and terminology relevant to the assessment of applications for international protection, for example through a standard leaflet or a guide.

Communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly.

6. Personal interviews shall be conducted by the staff of the determining authority ■ .

Where ■ **there is** a disproportionate number of third-country nationals or stateless persons **who** make **an application within the same period of time, making it unfeasible** to conduct timely personal interviews of each applicant, the determining authority may be assisted **temporarily** by the staff of **other** authorities of **that** Member **State who shall receive in advance the relevant training which shall include the elements listed in Article 8 of Regulation (EU) 2021/2303 to conduct such interviews or** by the Asylum Agency **in accordance with** ■ Article 5. ■

■

7. The person conducting the interview shall:

(a) be competent to take account of the personal and general circumstances surrounding the application, including **the situation prevailing in the applicant's country of origin**, and the applicant's cultural origin, age, gender, **gender identity**, sexual orientation, ■ vulnerability **and special procedural needs**;

(b) **not wear a military or law enforcement uniform.**

8. Staff interviewing applicants, including experts deployed by the Asylum Agency, shall have:

(a) acquired general knowledge of **factors** which could adversely affect the applicant's ability to be interviewed, such as indications that the person may have been tortured in the past **or a victim of trafficking in human beings**;

(b) received, ■ in advance, training that includes **relevant** elements **from those** listed in Article 8(4) of Regulation (EU) 2021/2303 ■ .

9. ■ Where requested by the applicant **and where possible**, the determining authority shall ensure that the interviewers and interpreters are of the ■ sex **that** the applicant **prefers**, **unless it has** reasons to **consider** that such a request **does** not **relate** to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner.

■

10. *By way of derogation, the determining authority may hold the personal interview by video conference where duly justified by the circumstances.*

In such a case, the determining authority shall ensure the necessary arrangements for the appropriate facilities, procedural and technical standards, legal assistance and interpretation taking into account guidance from the Asylum Agency.

11. *The admissibility interview or the substantive interview, as applicable, may be omitted where:*

- (a) *the determining authority is able to take a positive decision with regard to the refugee status or the subsidiary protection status on the basis of the evidence available, provided that the subsidiary protection status offers the same rights and benefits as refugee status under Union and national law;***
- (b) *the determining authority considers that the application is not inadmissible on the basis of the evidence available;***
- (c) *the determining authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control;***
- (d) *in the case of a subsequent application, the preliminary examination referred to in Article 55(4) is carried out on the basis of a written statement;***
- (e) *the determining authority considers the application inadmissible pursuant to Article 38(1), point (c).***

The omission of a personal interview pursuant to point (c) of the first subparagraph shall not adversely affect the decision of the determining authority. Where the personal interview is omitted pursuant to that point, the determining authority shall give the applicant an effective opportunity to submit further information in writing.

When in doubt as to the fitness or ability of the applicant to be interviewed, the determining authority shall consult a medical professional to establish whether the applicant is temporarily unfit or unable to be interviewed or whether his or her situation is of an enduring nature. Where, following consultation of that medical professional, it is clear that the condition making the applicant unfit or unable to be interviewed is of a temporary nature, the determining authority shall postpone the personal interview until such time as the applicant is fit or able to be interviewed.

Where the applicant is unable to attend the personal interview owing to specific circumstances beyond his or her control, the determining authority shall reschedule the personal interview

12. *Applicants shall be present at the personal interview and shall be required to respond in person to the questions asked.*

13. *An applicant shall be allowed to be assisted by a legal adviser in the personal interview, including when it is held by video conference.*

The absence of the legal adviser shall not prevent the determining authority from conducting the interview.

Member States may stipulate in national law that, where a legal adviser participates in the personal interview, the legal adviser may only intervene at the end of the personal interview.

14. *Without prejudice to Articles 11(1) and 12(1) and provided that sufficient efforts have been made to ensure that the applicant has been afforded the opportunity of a personal interview, the absence of a personal interview shall not prevent the determining authority from taking a decision on the application for international protection.*

Article 14

Report and recording of personal interviews

1. The determining authority or any other authority or experts assisting it ***in accordance with Article 5 and Article 13(6) with*** conducting the personal interviews shall make a thorough and factual report containing all ***the main*** elements ■ of ***the*** personal interview, ***or a transcript of the interview or a transcript of the recording of such an interview, to be included in the applicant's file.***
2. The personal interviews shall be recorded using audio ■ means of recording. The applicant shall be informed in advance of ***the fact that*** such ***a*** recording ***is being made and the purpose thereof. Particular attention shall be paid to the requirements of applicants in need of special procedural guarantees. The determining authority shall include the recording in the applicant's file.***
3. The applicant shall be given the opportunity to make comments or provide clarification orally or in writing with regard to any incorrect translations or misunderstandings ***or other factual mistakes*** appearing in the report, ***the transcript of the interview*** or ■ the transcript ***of the recording***, at the end of the personal interview or within a specified time limit before the determining authority takes a decision. To that end, the applicant shall be informed of the entire content of the report, ***of the transcript of the interview*** or ■ of the transcript ***of the recording***, with the assistance of an interpreter, where necessary. ■

4. ***The applicant shall be requested to confirm that the content of the report or the transcript of the interview correctly reflects the personal interview. Where the applicant refuses to confirm the content, the reasons for that refusal shall be entered in the applicant's file.***

That refusal shall not prevent the determining authority from taking a decision on the application. ***Where there is doubt as to the statements made by the applicant during the personal interview, the audio recording shall prevail.***

5. ***The applicant does not have to be requested to make comments or to provide clarifications on the report or the transcript of the interview, nor to confirm that the content of the report or the transcript of the interview correctly reflects the interview where:***

- (a) under national law, the recording or a transcript thereof may be admitted as evidence in the appeal procedure, or***
- (b) it is clear to the determining authority that the applicant will be granted refugee status or subsidiary protection status provided that the subsidiary protection status offers the same rights and benefits as refugee status under Union and national law.***

6. Applicants ***and, where they have been appointed, their representatives*** and their legal advisers ■ shall have access to the ***report or transcripts referred to in paragraph 1 as soon as possible after the interview and in any case in due time*** before the determining authority takes a decision,.

■
Access to the recording shall also be provided in the appeal procedure.

SECTION III

PROVISION OF LEGAL COUNSELLING AND LEGAL ASSISTANCE AND REPRESENTATION

Article 15

Right to ***legal counselling and*** legal assistance and representation

1. Applicants shall have the right to consult, in an effective manner, a legal adviser or other counsellor ■ on matters relating to their applications at all stages of the procedure.
2. Without prejudice to the applicant's right to choose his or her own legal adviser or other counsellor at his or her own cost, an applicant may request ***free legal counselling in the administrative procedure provided for in Chapter III, in accordance with Article 16, and*** free legal assistance and representation ***in the appeal procedure provided for in Chapter V, in accordance with Article 17.***

The applicant shall be informed ***as soon as possible and at the latest when registering the application in accordance with Article 27*** of his or her right to request free legal ***counselling or free legal*** assistance and representation ■ .

3. ***Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law.***
4. ***Member States may organise the provision of legal counselling and legal assistance and representation in accordance with their national systems.***

Article 16

Free legal *counselling in the administrative procedure*

1. Member States shall █, at the request of the applicant, provide free legal *counselling* in the administrative procedure provided for in Chapter III.

For the purposes of the first subparagraph, effective access to free legal counselling may be assured by entrusting a person with the provision of legal counselling in the administrative stage of the procedure to several applicants at the same time.

2. For the purposes of the administrative procedure, free legal *counselling* shall █ include *the provision of:*

- (a) *guidance on and an explanation of the administrative procedure including information on rights and obligations during that procedure;*

- (b) assistance *on* the *lodging* of the application *and guidance on:*

- (i) *the different procedures under which the application may be examined and the reasons for the application of those procedures,*

- (ii) *the rules related to the admissibility of an application,*

- (iii) *legal issues arising in the course of the procedure, including* information *on* how to challenge *a* decision *rejecting an application in accordance with Articles 67, 68 and 69.*

█

3. ***Without prejudice to paragraph 1, the provision of free legal counselling in the administrative procedure may be excluded where:***
- (a) the application is a first subsequent application considered to have 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;***
 - (b) the application is a second or further subsequent application;***
 - (c) the applicant is already assisted and represented by a legal adviser.***
4. ***For the purpose of implementing this Article, Member States may request the assistance of the Asylum Agency. In addition, financial support may be provided through Union funds to the Member States, in accordance with the legal acts governing such funds.***

Article 17

Free legal assistance and representation in the **appeal** procedure ■

1. **In** the appeal procedure, **Member States shall, at the request of the applicant, ensure that he or she is provided with** free legal assistance and representation. ■ Such free legal assistance and representation shall include the preparation of the ■ procedural documents **required under national law**, the preparation of the appeal and, **in the event of a hearing**, participation in **that** hearing before a court or tribunal ■ .
2. The provision of free legal assistance and representation in the appeal procedure may be excluded **by the Member States** where:
 - (a) the applicant, **who shall disclose his or her financial situation, is considered to have sufficient resources to afford legal assistance and representation at his or her own cost**;
 - (b) **it is considered that the appeal has no** tangible prospect of success **or is abusive**;
 - (c) the appeal or review is at a second level of appeal or higher as provided for under national law, including re-hearings or reviews of appeal;
 - (d) **the applicant is already assisted or represented by a legal adviser**.

3. Where a decision not to grant free legal assistance and representation is taken by an authority which is not a court or tribunal on the grounds that the appeal is considered to have no tangible prospect of success **or to be abusive**, the applicant shall have the right to an effective remedy before a court or tribunal against that decision. For that purpose, the applicant shall be entitled to request free legal assistance and representation.

Article 18

Scope of legal **counselling and legal** assistance and representation

1. A legal adviser ■ who **legally** represents an applicant under the terms of national law shall be granted access to the information in the applicant's file on the basis of which a decision is or shall be **taken**.
2. **Access** to the information **or to the sources** in the applicant's file **may be denied in accordance with national law** where the disclosure of information or sources would jeopardise national security, the security of the organisations or persons providing the information or the security of the persons to whom the information relates or where the investigative interests relating to the examination of applications for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised **or where the information or sources are classified under national law**. In those cases, the determining authority shall:
 - (a) make access to such information or sources available to the courts or tribunals in the appeal procedure; and

- (b) ensure that the applicant's right of defence is respected.

As regards point (b) of the first subparagraph, **Member States** shall **■** grant access to information or sources to a legal adviser **who legally represents the applicant and** who has undergone a security check, in so far as the information is relevant for examining the application or for taking a decision to withdraw international protection.

3. The applicant's legal adviser or **the person entrusted with providing legal counselling**, who **counsels**, assists or represents an applicant shall have access to closed areas, such as detention facilities and transit zones, for the purpose of **counselling, assisting or representing** that applicant, in accordance with Directive (EU) .../... ⁺.

■

Article 19

Conditions for the provision of free legal **counselling**, assistance and representation

1. Free legal **counselling**, assistance and representation shall be provided by legal advisers or other counsellors, **admitted or** permitted under national law to **counsel**, assist or represent the applicants or by non-governmental organisations accredited under national law to provide **legal** services or representation **to applicants**.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

2. Member States shall lay down specific procedural rules concerning the arrangements for filing and processing requests for the provision of free legal **counselling**, assistance and representation in relation to applications for international protection or they shall apply the existing rules for domestic claims of a similar nature, provided that those rules **are not more restrictive or** do not render access to free legal **counselling or free legal** assistance and representation impossible or excessively difficult.

3. ***Member States shall lay down specific rules concerning the exclusion of the provision of free legal counselling, assistance and representation in accordance with Article 16(3) and Article 17(2), respectively.***

4. Member States may also impose monetary limits or time limits on the provision of free legal **counselling**, assistance and representation, provided that such limits **are not arbitrary and** do not **unduly** restrict access to free legal **counselling**, assistance and representation. As regards fees and other costs, the treatment of applicants shall not be less favourable than the treatment generally given to their nationals in matters pertaining to legal assistance.

5. Member States may request **from the applicant the** total or partial reimbursement of **the** costs **incurred in relation to the provision of legal assistance and representation where** the applicant's financial situation considerably improves **in the course of the procedure** or where the decision to **provide free legal assistance and representation** was taken on the basis of false information supplied by the applicant. **For that purpose, applicants shall immediately inform the competent authorities of any significant change in their financial situation.**

SECTION IV SPECIAL GUARANTEES

Article 20

*Assessment of the need for special procedural **guarantees***

1. The **competent authorities** shall **individually** assess whether the ■ applicant is in need of special procedural guarantees, with the assistance of an interpreter, where needed. That assessment may be integrated into existing national procedures or into the assessment referred to in Article 25 of Directive (EU) .../... ⁺ ■ **and** need not take the form of an administrative procedure. ***Where required by national law, the assessment may be made available, and the results of the assessment may be transmitted, to the determining authority, subject to the applicant's consent.***
2. ***The assessment referred to in paragraph 1 shall be initiated*** as early as possible after an application is made ***by identifying whether an applicant presents first indications that he or she might require special procedural guarantees. That identification shall be based on visible signs, the applicant's statements or behaviour, or any relevant documents. In the case of minors, statements of the parents, of the adult responsible for him or her whether by the law or practice of the Member State concerned or of the representative of the applicant shall also be taken into account. The competent authorities shall, when registering the application, include information on any such first indications in the applicant's file, and they shall make that information available to the determining authority.***

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

3. *The assessment referred to in paragraph 1 shall be continued after the application is lodged, taking into account any information in the applicant's file.*

The assessment referred to in paragraph 1 shall be concluded as soon as possible and, in any event, within 30 days. It shall be reviewed in the event of any relevant changes in the applicant's circumstances or where the need for special procedural guarantees becomes apparent after the assessment has been completed.

4. *The competent authority may refer the applicant, subject to his or her prior consent, to the appropriate medical practitioner or psychologist or to another professional for advice on the applicant's need for special procedural guarantees, prioritising cases where there are indications that applicants might have been victims of torture, rape or another serious form of psychological, physical, sexual or gender-based violence and that that could adversely affect their ability to participate effectively in the procedure. Where the applicant consents to be referred in accordance with this subparagraph, such consent shall be deemed to include consent to the transmission of the results of the referral to the competent authority.*

The advice provided pursuant to the first subparagraph shall be taken into account by the determining authority when deciding on the type of special procedural guarantees which can be provided to the applicant.

Where applicable and without prejudice to the medical examination, the assessment referred to in paragraph 1 may be integrated with the medical examinations referred to in Articles 24 and 25.

5. *The relevant staff of the competent authorities and any medical practitioner, psychologist or other professional giving advice on the need for special procedural guarantees shall receive training to enable them to detect signs of vulnerability on the part of an applicant who might need special procedural guarantees and address those needs when identified.*

Article 21

Applicants in need of special procedural guarantees

1. Where applicants have been identified as ***being*** in need of special procedural guarantees, they shall be provided with ***the necessary*** support allowing them to benefit from the rights and comply with the obligations under this Regulation throughout the duration of the procedure for international protection.

2. Where ***the determining authority, including on the basis of the assessment of another relevant national authority, considers*** that ***the necessary*** support referred to in paragraph 1 of this Article cannot be provided within the framework of the accelerated examination procedure referred to in Article 42 or the border procedure referred to in Article 43, ***paying*** particular ***attention to victims*** of torture, rape or other serious forms of psychological, physical, sexual violence or gender-based violence, the determining authority shall not apply or shall cease to apply those procedures to the applicant.

Article 22

Guarantees for minors

1. The best interests of the child shall be a primary consideration for ***the competent authorities*** when applying this Regulation.
2. ***The determining authority shall assess the best interests of the child in accordance with Article 26 of Directive (EU) .../...⁺.***
3. The determining authority shall give a minor the opportunity of a personal interview, including where an application is made on his or her own behalf in accordance with Article 32[■] and Article 33(1), unless this is [■] not in the best interests of the child. In that case, the determining authority shall give reasons for the decision not to give a minor the opportunity of a personal interview.

The personal interview ***of a minor*** shall be conducted by a person who has the necessary knowledge of the rights and special needs of minors. ***It*** shall be conducted in a child-sensitive and context-appropriate manner, ***taking into consideration the age and maturity of the child.***

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

4. *Where a minor is accompanied, the personal interview shall be conducted in the presence of an adult responsible for him or her whether by the law or practice of the Member State concerned and, where one has been appointed, of a legal adviser. Member States may also, where necessary and when it is in the best interests of the child, conduct the personal interview with that minor in the presence of a person with necessary skills and expertise. On justified grounds and only where it is in the best interests of the child, the determining authority may interview the minor without the presence of an adult responsible, provided that it ensures that the minor is assisted during the interview by a person with necessary skills and expertise in order to safeguard his or her best interests.*

5. The decision on the application of a minor shall be prepared by **the relevant** staff of the determining authority. Those relevant staff **shall** have the necessary knowledge **and have received the appropriate training on** the rights and special needs of minors.

Article 23

Special guarantees for unaccompanied minors

1. *The competent authorities shall ensure that unaccompanied minors are represented and assisted in such a way so as to enable them to benefit from the rights and comply with the obligations under this Regulation, Regulation (EU) .../...⁺, Directive (EU) .../...⁺⁺ and Regulation (EU) .../...⁺⁺⁺.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

2. *Where an application is made by a person who claims to be a minor, or in relation to whom there are objective grounds to believe that he or she is a minor, who is unaccompanied, the competent authorities shall:*

(a) designate as soon as possible and in any case in a timely manner for the purposes of paragraph 6 and, where applicable, paragraph 7, a person with the necessary skills and expertise to provisionally assist the minor in order to safeguard his or her best interests and general well-being which enables the minor to benefit from the rights under this Regulation and, where applicable, act as a representative until a representative has been appointed;

(b) appoint a representative as soon as possible and no later than 15 working days from **■** *the date on which **the** application is made.*

The representative and the person referred to in the first subparagraph, point (a), of this paragraph may be the same as that provided for in Article 27 of Directive (EU) .../...⁺. He or she shall meet with the unaccompanied minor and take into account the minor's own views about his or her needs in accordance with the age and maturity of the minor.

Where the competent authority has concluded that an applicant who claims to be a minor is without any doubt above the age of 18 years, it need not appoint a representative in accordance with this paragraph.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

The duties of the representative or the person referred to in the first subparagraph, point (a), of this paragraph shall cease where the competent authorities, following the age assessment referred to in Article 25(1), do not assume that the applicant is a minor or consider that the applicant is not a minor or where the applicant is no longer an unaccompanied minor.

3. *In the event of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations, the time limit for appointing a representative as referred to paragraph 2, first subparagraph, point (b), may be extended by ten working days, without prejudice to paragraph 2, third subparagraph.*

4. Where an organisation is *designated under paragraph 2*, it shall appoint a *natural* person to carry out *the tasks referred to in this Article in respect of* the unaccompanied minor.

5. *The competent authority shall immediately inform:*

(a) *the unaccompanied minor, in a child-friendly manner and in a language he or she can understand, of the designation of the person referred to in paragraph 2, first subparagraph, point (a), and of his or her representative and about how to lodge a complaint against the person referred to in paragraph 2, first subparagraph, point (a) or (b), in confidence and safety.*

(b) *the determining authority and the competent authority for registering the application, where applicable, that a representative has been appointed for the unaccompanied minor; and*

(c) *the person referred to in paragraph 2, first subparagraph, point (a), and the representative of the relevant facts, procedural steps and time limits pertaining to the application of the unaccompanied minor.*

■ The *representative and the person referred to in paragraph 2, first subparagraph, point (a)*, shall have access to ■ the *content of the relevant documents in the minor's file including the specific information material for unaccompanied minors.*

6. *The person referred to in paragraph 2, first subparagraph, point (a), shall meet with the unaccompanied minor and carry out, inter alia, the following tasks, where appropriate together with the legal adviser:*

(a) *provide the unaccompanied minor with relevant information in relation to the procedures provided for in this Regulation ■ ;*

■

(b) *where applicable, assist the unaccompanied minor in relation to the age-assessment procedure referred to in Article 25;*

(c) where applicable, provide the unaccompanied minor with the relevant information and assist him or her in relation to the procedures provided for in Regulations (EU) .../...⁺ and (EU) .../...⁺⁺.

7. For as long as a representative has not been appointed, Member States may authorise the person referred to in paragraph 2, first subparagraph, point (a), to assist the minor with the registration and lodging of the application or lodge the application on behalf of the minor in accordance with Article 33.

8. The representative shall meet with the unaccompanied minor and shall carry out, inter alia, the following tasks, where appropriate together with the legal adviser:

(a) where applicable, provide the unaccompanied minor with relevant information in relation to the procedures provided for in this Regulation;

(b) where applicable, assist with the age-assessment procedure referred to in Article 25;

(c) where applicable, assist with the registration of the application;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

- (d) *where applicable, assist with the lodging of the application or lodge the application on behalf of the unaccompanied minor in accordance with Article 33;*
- (e) *where applicable, assist with the preparation of and be present for the personal interview and inform the unaccompanied minor █ about the purpose and possible consequences of the personal interview and █ about how to prepare █ for that interview;*
- (f) *where applicable, provide the unaccompanied minor with the relevant information and assist the unaccompanied minor in relation to the procedures provided for in Regulations (EU) .../...⁺ and (EU) .../...⁺⁺.*

In the personal interview, the representative and the legal adviser shall have an opportunity to ask questions or make comments █ within the framework set by the person conducting the interview.

The determining authority may require that the unaccompanied minor be present at the personal interview, even if the *representative or legal adviser* is present.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

9. *The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary qualifications, training and expertise. Representatives shall receive regular training for the performance of their tasks and shall not have a criminal record, in particular as regards any child-related crimes or offences.*

The representative shall be changed only if the competent authorities consider that the tasks of that representative or person have not been performed adequately.

Organisations or natural persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be appointed as representative

10. *The competent authorities shall place a natural person acting as representative or a person suitable to provisionally act as a representative in charge of a proportionate and limited number of unaccompanied minors, and under normal circumstances, of no more than 30 unaccompanied minors at the same time, in order to ensure that he or she is able to perform his or her tasks effectively.*

In the event of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations, the number of unaccompanied minors per representative may be increased up to a maximum of 50 unaccompanied minors.

Member States shall ensure that there are administrative or judicial authorities or other entities responsible to supervise, on a regular basis, the proper performance of tasks by the representatives and persons designated under paragraph 2, first subparagraph, point (a), including by reviewing the criminal records of those appointed representatives and designated persons at regular intervals in order to identify potential incompatibilities with their role. Those administrative or judicial authorities or other entities shall review complaints lodged by unaccompanied minors against appointed representatives or persons designated under paragraph 2, first subparagraph, point (a).

SECTION V

MEDICAL EXAMINATION **AND AGE ASSESSMENT**

Article 24

Medical examination

1. Where the determining authority deems it relevant for the **examination** of an application for international protection, **it shall**, subject to the applicant's consent, **request** a medical examination of the applicant concerning signs and symptoms that might indicate past persecution or serious harm **and be informed of results thereof**.
2. ***In the case of a minor, the medical examination shall only be carried out where the parent, the adult responsible for him or her whether by the law or practice of the Member State concerned, the representative or the person referred to in Article 23(2), point (a), and, where provided for by national law, the applicant, consent.***

The medical examination shall be **free of charge for the applicant and** be paid for from public funds.

Where applicable, the health and vulnerability checks referred to in Article 12 of Regulation (EU) .../...⁺ may be taken into account for the medical examination referred to in this Article.

3. Where no medical examination is carried out in accordance with paragraph 1, the determining authority shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs and symptoms that might indicate past persecution or serious harm.
4. The results of the medical examinations referred to in paragraphs 1 or 3 shall be submitted to the determining authority ***and to the applicant*** as soon as possible and shall be assessed by the determining authority along with the other elements of the application.
5. ***The medical examination shall be the least invasive possible and be performed only by qualified medical professionals. It shall be performed in a way that respects the individual's dignity.***
6. An applicant's refusal to undergo a medical examination ***or a decision to undergo a medical examination on his or her own initiative, where such an examination does not take place within a suitable timeframe taking into account the availability of appointments for medical examinations in the Member State responsible,*** shall not prevent the determining authority from taking a decision on the application for international protection.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

Article 25

Age assessment of minors

1. *Where, as a result of statements by the applicant, available documentary evidence or other relevant indications, there are doubts as to whether or not an applicant is a minor, the determining authority may undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the applicant's age within the framework of the examination of an application. The assessment of the age shall not be based solely on the applicant's physical appearance or behaviour. For the purposes of the age assessment, documents that are available shall be considered genuine, unless there is evidence to the contrary, and statements by minors shall be taken into consideration.*
2. *Where there are still doubts as to the age of an applicant following the multi-disciplinary assessment, medical examinations may be used as a measure of last resort to determine the applicant's age [] within the framework of the examination of an application []. Where the result of the **age assessment referred to in this paragraph** is not conclusive with regard to the applicant's age or includes an age-range below 18 years, Member States shall assume that the applicant is a minor.*

[]

3. Any medical examination carried out for the purposes set out in paragraph 2 shall **be the least invasive possible and** be performed with full respect for the individual's dignity **■**. **They** shall be carried out by **■** medical professionals **with experience and expertise in age estimation**.

Where this paragraph applies, the results from the medical examination and the multi- disciplinary assessment shall be analysed together, thereby allowing for the most reliable result possible.

4. Where medical examinations are used to **assess** the age of **an applicant**, the **competent** authority shall ensure that **applicants, their parents, the adult responsible for him or her whether by the law or practice of the Member State concerned, their representatives or the person referred to in Article 23(2), point (a)**, are informed, prior to the examination of their application for international protection, and in a language that they understand **and in a child-friendly and age appropriate manner**, of the possibility that their age **might** be **assessed** by means of a medical examination. That shall include information on the method of examination, on possible consequences which the result of the medical examination might have for the examination of the application, and on the possibility and consequences of a refusal on **the** part **■** of the applicant to undergo the medical examination. **All documents relating to the medical examination shall be included in the applicant's file.**

5. *A medical examination to assess the age of applicants shall only be carried out where the applicants, their parents, the adult responsible referred to in paragraph 4 of this Article, their representative or the person referred to in Article 23(2), point (a), consent after having received the information provided for in paragraph 4 of this Article.*

6. The refusal by the *applicants, their parents, the adult responsible referred to in paragraph 4 of this Article, their representative or the person referred to in Article 23(2), point (a), to have a* medical examination *carried out for the purposes of the age assessment* shall not prevent the determining authority from taking a decision on the application for international protection. *Such refusal may only be considered to be a rebuttable presumption that the applicant is not a minor.*

7. A Member State **may** recognise age-assessment decisions taken by other Member States **where** the age **assessments were** carried out in **compliance** with **Union** law.

CHAPTER III ADMINISTRATIVE PROCEDURE

SECTION I ACCESS TO THE PROCEDURE

Article 26

Making an application for international protection

1. An application for international protection shall be ***considered to have been*** made when a third-country national or stateless person, ***including an unaccompanied minor***, expresses ***in person to a competent*** authority ***as*** referred to in Article 4(1) and (2) ***a wish to receive international protection from a Member State***.

Where **■** officials ***from the competent authority*** have doubts as to whether a certain declaration is to be construed as an application ***for international protection***, they shall ask the person expressly whether he or she wishes to receive international protection.

2. ***The authorities responsible for the reception facilities in accordance with the Directive (EU) .../...⁺ shall, where relevant, be informed that an application has been made. For third-country nationals subject to the screening referred to in Article 5(1) of Regulation (EU) .../...⁺⁺, Member States may choose to apply this paragraph after the screening has ended.***

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

Article 27

Registering applications for international protection

1. ***Without prejudice to the obligations to collect and transmit data in accordance with Article 15(1) Regulation (EU) .../...⁺, the authorities competent for [] registering applications, the authorities of another Member State referred to in Article 5(1), point (b) of this Regulation or the experts deployed by the Asylum Agency which assist them with that task shall register an application promptly and, in any event, no later than **five** days from when it is made. For that purpose, they shall register [] the following information, which may come from the screening form referred to in Article 17 of the Regulation (EU) .../...⁺⁺:***

(a) the applicant's name, date **and place** of birth, gender, ***nationalities or the fact that the applicant is stateless, family members as defined in Article 2, point (8), of Regulation (EU) .../...⁺⁺⁺ and, in the case of minors, siblings or relatives as defined in Article 2, point (9), of that Regulation present in a Member State, where applicable, and other personal details of the applicant relevant for the procedure for international protection and for the determination of the Member State responsible;***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

(b) ***where available, the type [redacted], number and period of validity of any identity or travel document of the applicant and the country that issued that document and other documents provided by the applicant which the competent authority deems relevant for the purposes of identifying him or her, for the procedure for international protection and for the determination of the Member State responsible***

(c) the date of the application, the place where the application ***was*** made and the authority ***to*** which the application ***was*** made;

(d) ***the applicant's location or the applicant's place of residence or address and, where available, a telephone number and an e-mail address where the applicant can be reached.***

Where the data referred to in points (a) and (b) of the first subparagraph have already been obtained by the Member States before the application is made, they shall not to be requested again.

2. ***Where an individual claims not to have a nationality, that fact shall be clearly registered pending the determination of whether the individual is stateless.***

3. *Where an application is made to an authority entrusted with the task of receiving applications for international protection which is not responsible for registering applications, that authority shall promptly and at the latest within three working days from when the application was made inform the authority responsible for registering applications. The authority responsible for registering applications shall register the application as soon as possible and no later than five days from when it has received the information.*
4. Where the information is collected by the determining authority or by another authority assisting it for the purpose of examining the application, additional data necessary for the examination of the application may also be collected at the time of registration.
5. Where **there is** a disproportionate number of third-country nationals or stateless persons **who make an application within the same period of time, making it unfeasible** to register applications within **the deadlines provided for in paragraphs 1 and 3**, the application **shall be registered no later than 15** days from when it was made.
6. *Without prejudice to the right of the applicant to present new elements in support of the application, in the case of a subsequent application, where the information referred to in paragraph 1, points (a), (b) and (d), and paragraph 2 is already available to the competent authority, it may not have to collect such data.*

7. For third-country nationals subject to the screening referred to in Article 5(1) of Regulation (EU) .../...⁺, paragraphs 1 to 6 of this Article shall apply only after the screening has ended.

Article 28

Lodging an application for international protection

1. The applicant shall lodge the application ***with the competent authority of the Member State where the application is made as soon as possible and no later than 21 days from*** when the application is registered, ***unless paragraph 6 of this Article applies***, provided that he or she is given an effective opportunity to do so ***in accordance with this Article. Where the application is not lodged with the determining authority, the competent authority shall promptly inform the determining authority that an application has been lodged.***
2. ***Following a transfer in accordance with Article 46 of Regulation (EU) .../...⁺, the applicant shall lodge the application with the competent authorities of the Member State responsible as soon as possible and no later than 21 days from when the applicant identifies himself or herself to the competent authorities of the Member State responsible.***
3. ***The application shall be lodged in person at a designated date and place and, where communicated, time. The competent authorities shall communicate that date and place to the applicant. The competent authorities may communicate a time to the applicant.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

Member States may provide in national law that an application is deemed to be lodged in person when the competent authority verifies that the applicant is physically present on the territory of the Member State at the time of registration or lodging of an application.

4. *By way of derogation from paragraph 3, Member States may provide in national law for the possibility for the applicant to lodge an application by means of a form, including where he or she is unable to appear in person owing to enduring serious circumstances beyond his or her control, such as imprisonment or long-term hospitalisation. The application shall be considered to have been lodged provided that the applicant submits the form within the time limit set out in paragraph 1 and provided that the competent authority concludes that the conditions under this paragraph have been met. In such cases, the time limit for the examination of the application shall start to run from the date on which the competent authority receives the form.*

5. *For the purposes of the first subparagraph of paragraph 3, where a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it unfeasible to give each applicant an appointment within the time limit set in paragraph 1, the applicant shall be given an appointment to lodge his or her application at a date no later than two months from [] when the application is registered.*

6. When lodging an application, applicants are required to submit ***as soon as possible*** all the elements ***and documents at their disposal*** referred to in Article 4(2) of Regulation (EU) .../...⁺ needed for substantiating their application. ***After*** the lodging of their application, ***in particular at their personal interview***, applicants shall be ***allowed*** to submit any additional elements relevant for its examination, until a decision under the administrative procedure is taken on their application■ .

Member States may set a deadline within that timeframe for submitting those additional elements with which the applicant shall endeavour to comply.

■

7. ***Member States may organise the access to the procedure in such a way that making, registering or lodging take place at the same time. In such cases, Member States shall ensure that all applicants enjoy the guarantees provided for in Article 8(2) to (6). Where making, registering or lodging take place at the same time, applicants shall be allowed to submit all the elements and documents at their disposal referred to in Article 4(2) of Regulation (EU) .../...⁺ needed for substantiating their application during their personal interview.***

In addition, applicants shall be allowed to submit any additional elements relevant for the examination of their application, until a decision under the administrative procedure is taken on their application. Member States may set a deadline within that timeframe for submitting those additional elements with which the applicant shall endeavour to comply.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

Article 29

Documents provided to the applicant

1. The **competent** authorities of the Member State where an application for international protection is made shall, upon registration of the application, provide the applicant with a document ■ in **his or her own name indicating** that an application has been made and **registered. That document shall be valid until the document referred to in paragraph 4 has been issued.**

Following a transfer in accordance with Article 46 of Regulation (EU) .../...⁺, the competent authorities of the Member State responsible shall, when the applicant identifies himself or herself to them, provide the applicant with a document in his or her name indicating that an application has been made and registered and that the person has been transferred. That document shall remain valid until the document referred to in paragraph 4 has been issued.

2. **The document referred to in paragraph 1 does not have to be provided if it is possible to issue the document referred to in paragraph 4 by the time of registration.**

3. **The document referred to in paragraph 1 shall be withdrawn when the document referred to in paragraph 4 is issued.**

4. The **competent** authorities of the Member State where the application is lodged **in accordance with Article 28(1) and (2) shall, as soon as possible after** the lodging of the application, **issue** a document **including** at least the **following elements, to be updated as necessary** ■ :

(a) **the applicant's name, date and place of birth, gender and nationalities or, if applicable, an indication of statelessness,** a facial image of the applicant **and** the applicant's signature ■ ;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (b) █ the issuing authority, date and place of issue and period of validity of the document;
- (c) █ the status of the individual as an applicant;
- (d) a statement that the applicant has the right to remain on the territory of that Member State ***for the purpose of having the application examined*** and an indication of whether the applicant is free to move within all or part of the territory of that Member State;
- (e) a statement that the document is not a █ travel document and █ that the applicant is not allowed to travel without authorisation to █ other Member States █ .

█

5. ***It shall not be necessary to issue any of the documents referred to in this Article where and for as long as the applicant is in detention or imprisonment.***

Upon release from detention or imprisonment, the applicant shall be provided with the document referred to in paragraph 1 or 4. Where █ the applicant is provided with the document referred to in paragraph 1 upon release, the applicant shall receive the document referred to in paragraph 4 █ as soon as possible.

6. ***In the case of accompanied minors, the documents referred to in this Article issued to one of the parents of the applicant or the adult responsible for him or her whether by the law or practice of the Member State concerned may also cover the minor, if appropriate.***

7. *The documents referred to in this Article need not be proof of identity but shall be considered to be sufficient means for applicants to identify themselves to national authorities and to access their rights for the duration of the procedure for international protection.*

8. *The documents referred to in paragraphs 1 and 4 shall state the date of registration of the application* ■ .

9. The document referred to in paragraph 4 shall be valid for **up to 12 months or until the applicant is transferred to another Member State in accordance with Regulation (EU) .../...**⁺. *Where that document is issued by the Member State responsible, the validity* of the document shall be renewed **so as to cover** the period during which the applicant has a right to remain on **its** territory ■ . The period of validity **of** the document does not constitute a right to remain where that right was terminated or suspended **in accordance with this Regulation.**

■

Article 30

Access to the procedure in detention facilities and at border crossing points

1. Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may **wish to make an application for** international protection, the **competent** authorities under Article 4 shall **provide** them **with information on** the possibility to **do so.**

■

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

2. ***Where an applicant makes an application in a detention facility, in prison or at a border crossing point, including transit zones, at external borders, the competent*** authorities under Article 4 shall make ■ arrangements for interpretation services to ***the extent necessary*** to facilitate access to the procedure for international protection.
3. Organisations and persons ***permitted under national law to provide*** advice and counselling shall have effective access to ***applicants*** held in detention facilities or present at border crossing points, including transit zones, at external borders. ***Such access may be subject to a prior agreement with the competent authorities.***

Member States may impose limits on access ■ as referred to in the first subparagraph, by virtue of national law, ***where*** they are ***objectively*** necessary for the security, public order or administrative management of a border crossing point, ***including transit zones***, or detention facility, provided that access is not severely restricted or rendered impossible.

Article 31

Applications on behalf of adults requiring assistance to exercise legal capacity

1. *In the case of an adult requiring assistance to exercise legal capacity in accordance with national law (the ‘dependent adult’), an adult responsible for him or her whether by law or by practice of the Member State concerned may make and lodge an application on the behalf of the dependent adult.*
2. *The dependent adult shall be present for the lodging of the application, except where there are justified reasons for which he or she is unable or unfit to be present or, where such a possibility is provided for in national law, the application is lodged by means of a form.*

Article 32

*Applications on behalf of **accompanied** minors*

1. *An accompanied minor shall have the right to lodge an application in his or her own name where he or she has legal capacity in accordance with the national law of the Member State concerned. Where the accompanied minor does not have legal capacity in accordance with the national law of the Member State concerned, a parent or another adult, such as a legal caregiver or child protection services, responsible for the minor, whether by the law or practice of the Member State concerned, shall lodge the application on the minor’s behalf.*

2. In the case of an accompanied minor ***who does not have legal capacity in accordance with the national law of the Member State concerned and who is present at the moment the parent or another adult responsible for him or her whether by the law or practice of the Member State concerned makes or lodges the application for international protection on the territory of the same Member State, in particular if such minor does not have any other legal means of staying on the territory of that same Member State, the making and*** lodging of an application by ***a parent or another*** adult responsible for him or her ***whether by the law or practice of the Member State concerned*** ■ shall ■ also be considered to be the ***making and*** lodging of an application for international protection on behalf of the minor.

Member States may decide to apply the first subparagraph also in the case of an accompanied minor who is born or who is present during the administrative procedure.

3. ***Where the parent or adult responsible for the accompanied minor referred to in paragraph 2 lodges the application on behalf of the minor, the minor shall be present for the lodging of the application, except where there are justified reasons for which the minor is unable or unfit to be present or, where such a possibility is provided for in national law, the application on behalf of the minor is lodged by means of a form.***

■

Article 33

Applications of unaccompanied minors

1. An unaccompanied minor shall ***have the right to*** lodge an application in his or her own name if he or she has legal capacity ■ in accordance with the national law of the Member State concerned. ***To that effect***, the unaccompanied minor ***shall be informed of the age of legal capacity in the Member State responsible for examining his or her application for international protection. Where the unaccompanied minor does not have legal capacity in accordance with the national law of the Member State concerned a representative or a person as referred to in Article 23(2), point (a), shall lodge the application*** on his or her behalf. ■

The first subparagraph of this paragraph shall apply without prejudice to unaccompanied minors' right to legal counselling and to legal assistance and representation in accordance with Articles 15 and 16.

2. In the case of an unaccompanied minor ***who does not have legal capacity in accordance with the national law of the Member State concerned***, the application ***shall be lodged within the time limit set out in Article 28(1), taking into account the best interests of the child.***

3. *Where the representative of an unaccompanied minor or a person as referred to in Article 23(2), point (a), lodges the application on behalf of the minor, the minor shall be present for the lodging of the application, except where there are justified reasons for which the minor is unable or unfit to be present or, where such a possibility is provided for in national law, the application is lodged by means of a form.*

SECTION II EXAMINATION PROCEDURE

Article 34

Examination of applications

1. *The determining authority* shall examine ***and take decisions on*** applications for international protection in accordance with the basic principles and guarantees set out in Chapter II.
2. The determining authority shall take decisions on applications for international protection after an appropriate examination as to the admissibility or merits of an application. The determining authority shall examine applications objectively, impartially and on an individual basis. For the purpose of examining ***an*** application, ***the determining authority*** shall take the following into account:
 - (a) the relevant statements and documentation presented by the applicant ***in accordance with Article 4(1) and (2) of Regulation .../...⁺***;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

(b) ■ relevant, ***precise*** and up-to-date information relating to the situation prevailing in the country of origin of the applicant at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied, ■ obtained from ***relevant and available national, Union*** and ■ international ***sources, including children's rights organisations and, where available***, the common analysis ***on the situation in specific countries*** of origin ***and the guidance notes*** referred to in Article ***11*** of Regulation (EU) ***2021/2303***;

(c) ***where applying the concepts of first country of asylum or safe third country, relevant, precise and up-to-date information relating to the situation prevailing in the third country being considered as a first country of asylum or a safe third country at the time of taking a decision on the application, including information and analysis on safe third countries referred to in Article 12 of Regulation (EU) 2021/2303;***

- (d) the individual position and personal circumstances of the applicant, including factors such as the applicant's background, **age**, gender, **gender identity and** sexual orientation **■**, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
- (e) whether the activities that the applicant was engaged in since leaving the country of origin were carried out by the applicant for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm, **as referred to in Article 5 of Regulation .../...⁺**, if returned to that country;
- (f) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship;
- (g) ***provided that the State or agents of the State are not the actors of persecution or serious harm, whether the internal protection alternative referred to in Article 8 of Regulation .../...⁺ applies.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

3. The staff examining applications and taking decisions shall have ***the appropriate*** knowledge ***and shall have received training, including the relevant training under Article 8 of Regulation (EU) 2021/2303,*** in the relevant standards applicable in the field of asylum and refugee law. They shall have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, ***mental health***, and child-related or gender issues. Where necessary, they may submit queries to the Asylum Agency in accordance with Article ***10(2)***, point (b), of Regulation (EU) ***2021/2303***.

4. Documents ***assessed by the determining authority as*** relevant for the examination of applications ■ shall be translated, where necessary, for such examination.

The translation of those relevant documents or parts thereof may be provided by other entities and paid for from public funds in accordance with the national law of the Member State concerned. The applicant may, at his or her own cost, ensure the translation of other documents. For subsequent applications, the applicant may be made responsible for the translation of documents.

5. ***The determining authority may prioritise the*** examination of an application for international protection ■ in particular where:

(a) it considers that the application is likely to be well-founded;

(b) the applicant has special reception needs within the meaning of [Article 24 of Directive (EU) .../...⁺ or is in need of special procedural guarantees **as referred to in Articles 20 to 23 of this Regulation**, in particular where he or she is an unaccompanied minor;

(c) **there are reasonable grounds to consider the applicant as a danger to the national security or public order of the Member State;**

(d) **the application is a subsequent application;**

(e) **the applicant has been subject to a decision in accordance with Article 23(2), point (e), of Directive (EU) .../...⁺, has been involved in causing public nuisance or has engaged in criminal behaviour.**

Article 35

Duration of the examination procedure

1. The examination to determine **whether** an application **is inadmissible** in accordance with Article 38 (1), **points (a), (b), (c) and (d), and Article 38(2) shall be concluded as soon as possible and no later than** ■ **two months** from the date **on which** the application is lodged.

In the case referred to in Article 38(1), point (e), the determining authority shall conclude the examination within ten working days ■ .

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

The application shall not be deemed to be admissible solely by reason of the fact that no decision on inadmissibility is taken within the time limits set out in this paragraph and in paragraph 2.

2. *The determining authority may extend the time limits provided for in the first subparagraph of paragraph 1 by no more than two months where:*
 - (a) *a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it unfeasible to conclude the admissibility procedure within the set time limits;*
 - (b) *complex issues of fact or law are involved;*
 - (c) *the delay can be attributed clearly and solely to the failure of the applicant to comply with his or her obligations under Article 9.*
3. *The determining authority shall conclude the accelerated examination procedure as soon as possible and no later than three months from the date on which the application is lodged.*

4. The determining authority shall ensure that an examination procedure on the merits, ***provided that it is not an accelerated examination procedure***, is concluded as soon as possible and no later than six months from the date ***on which*** the application is lodged, without prejudice to an adequate and complete examination.

5. The determining authority may extend the time limit of six months referred to in paragraph 4 by a period of not more than ***six*** months where:

(a) a disproportionate number of third-country nationals or stateless persons ***make an application*** for international protection ***within the same period of time***, making it ***unfeasible*** to conclude the procedure within the six-month time limit;

(b) complex issues of fact or law are involved;

(c) ***the delay can be attributed clearly and solely to the failure of the applicant to comply with his or her obligations under Article 9.***

6. Where an applicant is subject to ***a*** transfer procedure as laid down in ***Article 46 of*** Regulation (EU) .../...⁺, the time limit referred to in paragraph 4 of this Article shall start to run from the date ***on which*** the ***application*** is ***lodged*** in accordance with ***Article 28(2)***.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

7. The determining authority may postpone concluding the examination procedure where it cannot reasonably be expected to decide within the time limits laid down in paragraph 4 ■ due to an uncertain situation in the country of origin which is expected to be temporary. In such cases, the determining authority shall:

(a) conduct reviews of the situation in that country of origin at least every **four** months;

(b) ***where available, take into account reviews of the situation in that country of origin carried out by the Asylum Agency;***

(c) inform the applicants concerned, ***in a language which they understand or are reasonably supposed to understand and as soon as possible,*** of the reasons for the postponement.

The Member State shall inform the Commission and the Asylum Agency ***as soon as possible*** of the postponement of procedures for that country of origin. In any event, the determining authority shall conclude the examination procedure within **21** months from the lodging of an application.

8. ***Member States shall lay down time limits for the conclusion of the examination procedure in cases where a court or tribunal annuls the decision of the determining authority and refers the case back. Those time limits shall be shorter than the time limits set out in this Article.***

SECTION III
DECISIONS ON APPLICATIONS

Article 36

Decisions *on applications*

1. A decision on an application for international protection shall be given in writing and it shall be notified to the applicant ***as soon as possible in accordance with the national law of the Member State concerned. Where a representative or legal adviser legally represents the applicant, the competent authority may notify the decision to him or her instead of the applicant.***
2. Where an application is rejected as inadmissible, as ***unfounded or as manifestly*** unfounded with regard to refugee status or subsidiary protection status, as explicitly withdrawn or as ***implicitly withdrawn***, the reasons in fact and in law for the rejection shall be stated in the decision.
3. ***The applicant shall be informed, in writing, of the result of the decision and of*** how to challenge a decision ***rejecting an application as inadmissible, as unfounded or as manifestly unfounded with regard to refugee status or subsidiary protection status, or as implicitly withdrawn. That information may be provided as part of the decision on an application for*** international protection. ***Where the applicant is not assisted by a legal adviser, that information shall be provided in a language that the applicant understands or is reasonably supposed to understand.***

4. ***Where the applicant is assisted by a legal adviser who legally represents the applicant, the information referred to in paragraph 3 may be provided solely to that legal adviser without being translated into a language which the applicant understands or is reasonably supposed to understand. In such a case, the fact of whether or not international protection is granted shall be communicated, in writing, for information to the applicant in a language which he or she understands or is reasonably supposed to understand, together with general information on how to challenge the decision.***

5. In the case of applications on behalf of ■ minors or dependent adults and ***where the applications are all based on the exact same grounds as the application of the adult responsible for that minor or dependent adult***, the determining authority may, ***following an individual assessment for each applicant***, take a single decision covering all applicants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise his or her interests, in particular in cases involving ***gender-based violence, trafficking in human beings, and persecution based on gender, sexual orientation, gender identity or age***. In such cases, a separate decision shall be issued ***and notified*** to the person concerned ***in accordance with paragraph 1***.

Article 37

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 2008/115/EC **and that is in accordance with the principle of non-refoulement. Where a return decision or another decision imposing the obligation to return has already been issued prior to the making of an application for international protection, the return decision under this Article is not required.** 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 without undue delay thereafter.**

Article 38

Decision on the admissibility of the application

1. The determining authority **may** assess the admissibility of an application, in accordance with the basic principles and guarantees provided for in Chapter II, and **may be authorised under national law to** reject an application as inadmissible where any of the following grounds applies:
 - (a) a country which is not a Member State is considered to be a first country of asylum for the applicant pursuant to Article 58, unless it is clear that the applicant will not be admitted or readmitted to that country;

- (b) a country which is not a Member State is considered to be a safe third country for the applicant pursuant to Article 59, unless it is clear that the applicant will not be admitted or readmitted to that country;
- (c) *a Member State other than the Member State examining the application has granted the applicant international protection;*
- (d) *an international criminal court or tribunal has provided safe relocation for the applicant to a Member State or third country, or is unequivocally undertaking actions to that extent, unless new relevant circumstances have arisen which have not been taken into account by the court or tribunal or where there was no legal possibility to raise circumstances relevant to internationally recognised human rights standards before that international criminal court or tribunal;*
- (e) *the applicant concerned was issued with a return decision in accordance with Article 6 of Directive 2008/115/EC and made his or her application only after seven working days from the date on which the applicant received that return decision, provided that he or she had been informed of the consequences of not making an application within that time limit and that no new relevant elements have arisen since the end of that period.*

2. ***The determining authority shall reject an application as inadmissible where the application is a subsequent application ■ where no new relevant elements as referred to in Article 55(3) and (5) relating to the examination of whether the applicant qualifies as a beneficiary of international protection in accordance with Regulation (EU) .../...⁺ or relating to the inadmissibility ground previously applied, have arisen or have been presented by the applicant ■ .***

■

Article 39

Decision on the merits of an application

1. ***An application shall not be examined on the merits where:***
 - (a) ***another Member State is responsible in accordance with Regulation (EU) .../...⁺⁺;***
 - (b) ***an application is rejected as inadmissible in accordance with Article 38 or;***
 - (c) ***an application is explicitly or implicitly withdrawn, without prejudice to Article 40(2) and Article 41(5).***
2. When examining an application on the merits, the determining authority shall take a decision on whether the applicant qualifies as a refugee and, if not, it shall determine whether the applicant is eligible for subsidiary protection in accordance with Regulation (EU) .../...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

3. The determining authority shall reject an application as unfounded where it has established that the applicant does not qualify for international protection pursuant to Regulation (EU) .../...⁺.

4. The determining authority ***may be authorised under national law to*** declare an unfounded application to be manifestly unfounded ***if, at the time of the conclusion of examination, any of the circumstances*** referred to in Article 42(1) ■ and (3) ***apply***.

Article 40

Explicit withdrawal of applications

1. An applicant may, of his or her own motion and at any time during the procedure, withdraw his or her application. ***The application shall be withdrawn in writing by the applicant in person or delivered by his or her legal adviser legally representing the applicant in accordance with national law.***

2. ***The competent authorities shall, at the time of the withdrawal of the application, inform the applicant in accordance with Article 8(2), point (c), of all procedural consequences of such a withdrawal in a language he or she understands or is reasonably supposed to understand.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

3. ***Where the explicit withdrawal takes place before a competent authority other than the determining authority, that authority shall inform the determining authority of such withdrawal. The determining authority shall adopt a decision declaring that the application has been explicitly withdrawn. That decision shall be final and shall not be subject to an appeal as referred to in Chapter V of this Regulation.***

4. Where, ***at the stage that the*** application is explicitly withdrawn by the applicant ■ , the determining authority has ■ already found that the applicant does not qualify for international protection pursuant to Regulation (EU) .../...⁺, ***it may still take a decision to reject the application as unfounded or manifestly unfounded.***

Article 41

Implicit withdrawal of applications

1. ***An application shall be declared as implicitly withdrawn*** where:
 - (a) the applicant, ***without good cause***, has not lodged his ■ or her application in accordance with Article 28, despite having had an effective opportunity to do so;
 - (b) ■ the applicant ***refuses to cooperate by not providing the information*** referred to in Article 27(1), ***points (a) and (b), or by not providing his or her biometric data;***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (c) the applicant refuses to ***provide his or her address, where he or she has one, unless housing is provided by the competent authorities;***
 - (d) the applicant has, ***without justified cause***, not ***attended*** a personal interview although he ***or she*** was required to do so pursuant to ***Article 13*** **■** or, without ***justified cause***, ***refused to respond to questions during the interview to the extent that the outcome of the interview was not sufficient to take a decision on the merits of the application;***
 - (e) the applicant has repeatedly not complied with reporting duties imposed on him or her in accordance with Article 9(4) ***or does not remain available to the competent administrative or judicial authorities, unless he or she can demonstrate that that failure to remain available was owing to specific circumstances beyond his or her control;***
 - (f) ***the applicant has lodged the application in a Member State other than the Member State provided for in Article 17(1) and (2) of Regulation (EU) .../...⁺ and does not remain present in that Member State pending the determination of the Member State responsible or the implementation of the transfer procedure, where applicable.***
2. ***Where the authority that assesses whether the application is implicitly withdrawn is a competent authority other than the determining authority and where that authority considers that the application must be considered as such, that authority shall inform the determining authority accordingly. The determining authority shall adopt a decision declaring that the application has been implicitly withdrawn.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

3. *When the applicant is present, the competent authority shall, at the time of the withdrawal, inform the applicant in accordance with Article 8(2), point (c), of all procedural consequences of such a withdrawal in a language he or she understands or is reasonably supposed to understand.*
4. *The competent authority may suspend the procedure in order to give the applicant the possibility to justify or rectify omissions or actions as set out in paragraph 1 before a decision declaring the application as implicitly withdrawn is made.*
5. *An application may be rejected as unfounded or as manifestly unfounded where the determining authority has, at the stage that the application is implicitly withdrawn, already found that the applicant does not qualify for international protection pursuant to Regulation (EU) .../...⁺.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

SECTION IV SPECIAL PROCEDURES

Article 42

Accelerated examination procedure

1. ***Without prejudice to Article 21(2), the*** determining authority shall, in accordance with the basic principles and guarantees provided for in Chapter II, accelerate the examination on the merits of an application for international protection where:

(a) the applicant, in ***lodging*** his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection in accordance with Regulation (EU) .../...⁺;

(b) the applicant has made clearly inconsistent ***or*** contradictory or clearly false or obviously improbable representations ***or representations*** which contradict ***relevant and available*** country of origin information, thus making his or her claim clearly unconvincing ***as*** to whether he or she qualifies as a beneficiary of international protection in accordance with Regulation (EU) .../...⁺;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

(c) the applicant, ***after having been provided with the full opportunity to show good cause, is considered to have intentionally*** misled the authorities by presenting false information or documents or by withholding relevant information or documents, ***particularly*** with respect to his or her identity or nationality, that could have had a negative impact on the decision ***or there are clear grounds to consider that the applicant has, in bad faith, destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality;***

(d) the applicant ***makes*** an application merely to delay, frustrate ***or prevent*** the enforcement of ***a*** decision ***for*** his or her removal from the territory of a Member State;

(e) a third country may be considered to be a safe country of origin for the applicant within the meaning of this Regulation;

(f) ***there are reasonable grounds to consider*** the applicant ***■*** a danger to the national security or public order of the Member States ***or the applicant had been forcibly expelled for serious reasons of national security or public order under national law;***

■
(g) the application is a subsequent application ***■ which is not inadmissible;***

- (h) *the applicant entered the territory of a Member State unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented himself or herself to the competent authorities or has not made an application for international protection as soon as possible, given the circumstances of his or her entry;*
- (i) *the applicant entered the territory of a Member State lawfully and, without good reason, has not made an application for international protection as soon as possible, given the grounds of his or her application; this point is without prejudice to the need of international protection arising sur place; or*
- (j) 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 ***the determining authority assesses that*** a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or ***that*** the applicant belongs to a category of persons for whom the proportion of 20 % or lower cannot be considered to be representative for their protection needs, ***taking into account, inter alia, the significant differences between first instance and final decisions.***

Where the Asylum Agency has provided a guidance note on a country of origin in accordance with Article 11 of Regulation (EU) 2021/2303 showing that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data, Member States shall use that guidance note as a reference for the application of the first subparagraph, point (j), of this paragraph.

■

2. Where the determining authority considers that the examination of the application involves issues of fact or law that are too complex to be examined under an accelerated examination procedure, it may continue the examination on the merits in accordance with Article 35(4) and Article 39. In that case, ■ the applicant concerned shall be informed of the change in the procedure.

3. The accelerated examination procedure may be applied to unaccompanied minors only where:

- (a) the applicant comes from a third country ***that may be*** considered to be a safe country of origin ***within the meaning of this Regulation***;
- (b) ***there are reasonable grounds to consider*** the applicant ***as*** a danger to the national security or public order of the Member State ■ or the applicant ***had*** been forcibly expelled for serious reasons of ***national*** security or public order under national law;

- (c) *the application is a subsequent application which is not inadmissible;*
- (d) *the applicant, after having been provided with the full opportunity to show good cause, is considered to have intentionally misled the authorities by presenting false information or documents or by withholding relevant information or documents, particularly with respect to his or her identity or nationality, that could have had a negative impact on the decision or there are clear grounds to consider that the applicant has, in bad faith, destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality; or*
- (e) 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 granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20 % or lower, unless *the determining authority assesses* a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or *that* the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered to be representative for their protection needs, *taking into account, inter alia, significant differences between first instance and final decisions.*

Where the Asylum Agency has provided a guidance note on a country of origin in accordance with Article 11 of Regulation (EU) 2021/2303 showing that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data, Member States shall use that guidance note as a reference for the application of the first subparagraph, point (e), of this paragraph.

Article 43

Conditions for applying the asylum border procedure

1. Following the screening **■** carried out in accordance with Regulation (EU) .../...⁺, ***where applicable*** and provided that the applicant has not yet been authorised to enter Member States' territory, a Member State may, ***in accordance with the basic principles and guarantees of Chapter II***, 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 to the territory of a Member State as set out in Article 6 of Regulation (EU) 2016/399. The border procedure may take place:

- (a) following an application made at an external border crossing point or in a transit zone;
- (b) following apprehension in connection with an unauthorised crossing of the external border;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

- (c) following disembarkation in the territory of a Member State after a search and rescue operation;
- (d) following relocation in accordance with Article 67(11) of Regulation (EU) .../...⁺.

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2. Applicants subject to the border procedure shall not be authorised to enter the territory of a Member State, without prejudice to Article 51(2) and Article 53(2). Any measure taken by Member States to prevent unauthorised entry to their territory shall be in accordance with Directive (EU) .../...⁺⁺.

3. By way of derogation from Article 51(2), first subparagraph, last sentence, the applicant shall not be authorised to enter the Member State's territory where:

(a) the applicant has no right to remain on the territory of a Member State in accordance with Article 10(4), point (a) or (c);

(b) the applicant has no right to remain on the territory of a Member State in accordance with Article 68 and has not requested to be allowed to remain for the purposes of an appeal procedure within the applicable time limit;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

(c) the applicant has no right to remain on the territory of a Member State in accordance with Article 68 and a court or tribunal has decided that the applicant is not to be allowed to remain pending the outcome of an appeal procedure.

In the cases referred to in the first subparagraph of this paragraph, where the applicant has been subject to a return decision issued in accordance with the Directive 2008/115/EC or has been refused entry in accordance with Article 14 of Regulation (EU) 2016/399, Article 4 of Regulation (EU) .../...⁺ shall apply.

4. *Without prejudice and complementary to the monitoring mechanism laid down in Article 14 of Regulation (EU) 2021/2303, each Member State shall provide for a monitoring of fundamental rights mechanism in relation to the border procedure that meets the criteria set out in [Article 10 of Regulation (EU) .../...⁺⁺].*

Article 44

Decisions in the framework of the asylum border procedure

1. Where a border procedure is applied, decisions may be taken on the following:
- (a) the inadmissibility of an application in accordance with Article 38;
 - (b) the merits of an application *where any of the circumstances referred to in Article 42(1), points (a) to (g) and (j), and Article 42(3), point (b), apply.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B (COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 20/24 (2020/0278(COD)).

2. *Where the number of applicants exceeds the number referred to in Article 47(1) and for the purpose of determining whom to subject to a border procedure pursuant to Article 42(1), point (c), (f) or (j), or Article 42(3), point (b), priority shall be given to the following categories of applications:*

(a) *applications of certain third-country nationals or, in the case of stateless persons, of former habitual residents in a third country who, in the event of a negative decision, have a higher prospect of being returned, as applicable, to their country of origin, to their country of former habitual residence, to a safe third country or to a first country of asylum, within the meaning of this Regulation;*

(b) *applications of certain third-country nationals or, in the case of stateless persons, of former habitual residents in a third country who are considered, on serious grounds, to pose a danger to the national security or public order of a Member State;*

(c) *without prejudice to point (b), applications of certain third-country nationals or, in the case of stateless persons, of former habitual residents in a third country who are not minors and their family members.*

3. *Where the border procedure is applied to minors and their family members, priority shall be given to the examination of their applications.*

Member States may also give priority to the examination of applications of certain third- country nationals or, in the case of stateless persons, of former habitual residents in a third country who, in the event of a negative decision, have a higher prospect of being returned, as applicable, to their country of origin, to their country of former habitual residence, to a safe third country or to a first country of asylum, within the meaning of this Regulation.

Article 45

Mandatory application of the asylum border procedure

1. A Member State shall examine an application in a border procedure in the cases referred to in **Article 43(1)** where **any of** the circumstances referred to in Article 42(1), point (c), (f) or (j), **apply**.
2. *Where the circumstances referred to in Article 42(1), point (f), apply and without prejudice to Article 54, Member States shall take appropriate measures to maintain as far as possible family unity in the border procedure.*

3. *For the purposes of paragraph 2, in order to maintain family unity, “members of that applicant’s family” shall be understood as meaning, in so far as the family already existed before the applicant arrived on the territory of the Member States, the following members of the applicant’s family who are present on the territory of the same Member State in relation to the application for international protection:*

- (a) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples as equivalent to married couples;*
- (b) the minor children of couples as referred to in point (a) or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;*
- (c) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by the law or practice of the Member State in which the adult is present;*
- (d) where the applicant is a minor and unmarried, the sibling or siblings of the applicant, provided they are unmarried and minors.*

For the purposes of points (b), (c) and (d) of the first subparagraph, on the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage could not be contracted in accordance with the national law of the Member State concerned, in particular having regard to the legal age of marriage.

4. Where, *on the basis of information obtained in the framework of monitoring* carried out *pursuant to Articles 14 and 15* of Regulation (EU) 2021/2303, the Commission *has grounds to consider that a Member State is not complying with the requirements laid down in Article 54(2), it shall recommend, without delay, the suspension of the application of the border procedure to families with minors pursuant to Article 53(2), point (b). The Commission shall make that recommendation public.*

The Member State concerned shall take utmost account of the Commission's recommendation with respect to its obligations under Article 53(2), point (b), and with a view to addressing any shortcomings identified to ensure full compliance with the requirements of Article 54(2). The Member State concerned shall inform the Commission of the measures taken to give effect to the recommendation.

Article 46

The adequate capacity at Union level The adequate capacity at Union level shall be considered to be 30 000.

Article 47

The adequate capacity of a Member State

- 1. The Commission shall, by means of implementing acts, calculate the number that corresponds to the adequate capacity of each Member State by using the formula laid down in paragraph 4.***

Without prejudice to paragraph 3, the Commission shall also, by means of implementing acts, set the maximum number of applications a Member State is required to examine in the border procedure per year. That maximum number shall be two times the number obtained by using the formula laid down in paragraph 4 from ... [the date of application of this Regulation], three times the number obtained by using the formula laid down in paragraph 4 from ... [one year after the date of application of this Regulation] and four times the number obtained by using the formula laid down in paragraph 4 from ... [two years after the date of application of this Regulation].

- 2. Where a Member State's adequate capacity as referred to in the first subparagraph of paragraph 1 is reached, that Member State shall no longer be required to carry out border procedures in the cases referred to in Article 43(1) where the circumstances referred to in Article 42(1), point (j), apply.***

3. *Where a Member State has examined the maximum number of applications referred to in the second subparagraph of paragraph 1, that Member State shall no longer be required to carry out border procedures in the cases referred to in Article 43(1) where the circumstances referred to in Article 42(1), point (c) or (j), apply. The Member State shall nevertheless continue to examine in the border procedure applications of third- country nationals to whom the circumstances referred to in Article 42(1), point (f), and Article 42(3), point (b), apply.*
4. *The number referred to in the first subparagraph of paragraph 1 shall be calculated by multiplying the number set out in Article 46 by the sum of irregular crossings of the external border, arrivals following search and rescue operations and refusals of entry at the external border in the Member State concerned during the previous three years and dividing the result thereby obtained by the sum of irregular crossings of the external border, arrivals following search and rescue operations and refusals of entry at the external border in the Union as a whole during the same period according to the latest available Frontex and Eurostat data.*
5. *The first such implementing act as referred to in paragraph 1 shall be adopted by the Commission on ... [two months from the date of entry into force of this Regulation] and on 15 October every three years thereafter.*

Following the adoption by the Commission of an implementing act as referred to in paragraph 1, each Member State shall ensure, within six months of the adoption of the second and all subsequent such implementing acts, that it has the adequate capacity set out in that implementing act in place. For the purposes of the first such implementing act, Member States shall ensure they have the adequate capacity set out in that implementing act in place before ... [the date of application of this Regulation].

Article 48

Measure applicable where the adequate capacity of a Member State is reached

1. *When the number of applicants that are subject to the asylum border procedure in a Member State at any given moment, in combination with the number of persons subject to a return border procedure established pursuant to Regulation (EU) .../...⁺ or, where applicable, an equivalent return border procedure established under national law, is equal to or exceeds the number set out in respect of that Member State in the Commission implementing act referred to in Article 47(1), first subparagraph, that Member State may notify the Commission of the fact.*
2. *Where a Member State notifies the Commission in accordance with paragraph 1, by way of derogation from Article 45(1), that Member State is not required to examine in a border procedure applications made by applicants as referred to in Article 42(1), point (j), at the moment when the number of applicants that ■ are subject to the border procedure in that Member State is equal to or exceeds the number referred to in Article 47(1), first subparagraph.*
3. *The measure provided for in paragraph 2 shall be applied on an inflow-outflow basis and the Member State concerned shall be required to continue examining in a border procedure applications made by applicants as referred to in Article 42(1), point (j), as soon as the number of applicants that are subject to the border procedure in that Member State at any given moment is lower than the number referred to in Article 47(1), first subparagraph.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B (COD)).

4. *The measure provided for in paragraph 2 may be applied by a Member State for the remainder of the same calendar year starting from the day following the date of the notification under paragraph 1.*

Article 49

Notification by a Member State where the adequate capacity is reached

1. *The notification referred to in Article 48 shall contain the following information:*
- (a) the number of applicants that are subject to the asylum border procedure, a return border procedure established pursuant to Regulation (EU) .../...⁺ or, where applicable, an equivalent return border procedure established under national law in the Member State concerned at the time of the notification;*
 - (b) the measure referred to in Article 48 that the Member State concerned intends to apply or to continue applying;*
 - (c) a substantiated reasoning in support of the intention of the Member State concerned, describing how resorting to the measure in question could help in addressing the situation and, where applicable, other measures that the Member State concerned has adopted or envisages adopting at national level to alleviate the situation, including those referred to in Article 6(3) of Regulation (EU) .../...⁺⁺.*
2. *Member States may notify the Commission in accordance with Article 48 of this Regulation as part of the notification referred to in Articles 58 and 59 of Regulation (EU) .../...⁺⁺, where applicable.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B (COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24

3. *Where a Member State notifies the Commission in accordance with Article 48, the Member State concerned shall inform other Member States accordingly.*
4. *A Member State applying the measure referred to in Article 48 shall inform the Commission on a monthly basis about the following elements:*
 - (a) *the number of applicants that are subject to the border procedure in that Member State at that time;*
 - (b) *the inflow-outflow evolution of the number of persons that are subject to border procedures for each week that month;*
 - (c) *the number of staff responsible for examining applications in the border procedure;*
 - (d) *the average duration of the examination during the administrative stage of the procedure; and*
 - (e) *the average duration of the examination by a court or tribunal of a request to be allowed to remain pending the appeal.*

The Commission shall monitor the application of the measure referred to in Article 48 of this Regulation and to that effect review the information provided by Member States.

The Commission shall, within the report referred to in Article 9 of Regulation [] (EU) [] .../...⁺, provide an assessment of the application of the measure referred to in Article 48 of this Regulation in every Member State.

[]

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24

Article 50

Notification by a Member State where the annual maximum number of applications is reached

Where the number of applications that have been examined in the border procedure in a Member State within one calendar year is equal to or exceeds the maximum number of applications set out in respect of that Member State in the implementing act referred to in Article 47(1), that Member State may notify the Commission accordingly

Where the Member State has notified the Commission in accordance with the first paragraph of this Article, the Commission shall promptly examine the information provided by the Member State concerned in order to verify that the Member State concerned has examined in the border procedure since the beginning of the calendar year a number of applications that is equal to or exceeds the number set out in respect of that Member State in the implementing act referred to in Article 47(1) .

On completion of the verification, the Commission shall authorise, by means of an implementing act, the Member State concerned to not examine in the border procedure applications made by applicants as referred to in Article 42(1), points (c) and (j).

Such an authorisation shall not exempt the Member State from the obligation to examine in the border procedure applications made by applicants as referred to in Article 42(1), point (f), and Article 42(5), point (b).

Article 51 Deadlines

1. 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 **transfer pursuant to** Article 67(11) of Regulation (EU) .../...⁺, five days from when the applicant arrives in the Member State **of relocation** following **such** a transfer **provided that the applicant is given an effective opportunity to do so. Failure to comply with the deadline of five days shall not affect the continued application of the border procedure.**
2. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. **Without prejudice to the third subparagraph of this paragraph, the maximum duration of the border procedure** shall be 12 weeks from when the application is registered **until the applicant no longer has a right to remain and is not allowed to remain.** Following that period, the applicant shall be authorised to enter the Member State's territory except where Article 4 of Regulation (EU) .../...⁺⁺ applies.

Member States shall lay down provisions on the duration of the examination procedure, **by way of derogation from Article 35, of the examination by a court or tribunal of a request to remain lodged in accordance with Article 68(4) and (5) and, where applicable,** of the appeal procedure. The duration laid down shall ensure that **all those procedural steps are finalised** within 12 weeks from when the application is registered.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B (COD)).

The 12-week period may be extended to 16 weeks if the Member State to which the person is transferred pursuant to Article 67(11)] of Regulation EU .../...⁺ is applying the border procedure.

Article 52

Determination of Member State responsible and relocation

1. *Where the conditions for the border procedure apply, Member States shall decide to carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) .../...⁺ at the locations at which the border procedure will be carried out, without prejudice to the deadlines established in Article 51(2) of this Regulation.*

2. *Where the conditions for applying the border procedure are met in the Member State from which the applicant is transferred, a border procedure may be applied by the Member State to which the applicant is transferred in accordance with Article 67(11) of Regulation (EU) .../...⁺, without prejudice to the deadlines established in Article 51(2) of this Regulation.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

Article 53

Exceptions to the asylum border procedure

- 1. The border procedure shall be applied to unaccompanied minors only in the circumstances referred to in Article 42(3), point (b). Where there is doubt as to the applicant's age, the competent authorities shall promptly carry out an age assessment in accordance with Article 25.**
- 2. Member States shall not apply or shall cease to apply the border procedure at any stage of the procedure where:**
 - (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 reception needs, including minors, in accordance with Chapter IV of Directive (EU) .../...⁺, at the locations referred to in Article 54;**
 - (c) the necessary support cannot be provided to applicants in need of special procedural guarantees at the locations referred to in Article 54;**
 - (d) there are relevant medical reasons for not applying the border procedure, including mental health reasons;**

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

- (e) *the guarantees and conditions for detention laid down in Articles 10 to 13 of Directive (EU) .../...⁺ are not met or no longer met and the border procedure cannot be applied to the applicant without the use of detention.*

In the cases set out in the first subparagraph of this paragraph, the competent authority shall authorise the applicant to enter the territory of the Member State and apply the appropriate procedure provided for in Chapter III.

Article 54

Locations for carrying out the asylum border procedure

1. During the examination of applications subject to a border procedure, a **Member State shall require, pursuant to Article 9 of Directive (EU) .../...⁺ and without prejudice to Article 10 thereof**, the applicants **to reside** at or in proximity to the external border or transit zones **as a general rule or in other designated locations within its territory, fully taking into account the specific geographical circumstances of that Member State.**
2. **Without prejudice to Article 47, Member States shall ensure that families with minors reside in reception facilities appropriate to their needs after assessing the best interests of the child, and shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development, in full respect of the requirements of Chapter IV of Directive (EU) .../...⁺.**

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

3. Each Member State shall notify the Commission, [] by ... [two months **before** the date of the application of this Regulation] [] , the locations at which the border procedure will be carried out, [] including when applying **Article 45**. Member States shall ensure that the capacity of those locations is sufficient to **examine** the applications covered by **Article 45**. Any changes in the identification of the locations at which the border procedure is carried out shall be notified to the Commission **within** two months [] of the changes **having taken place**.
4. *The requirement to reside at a particular place in accordance with paragraphs 1, 2 and 3 shall not be regarded as authorisation to enter into and stay on the territory of a Member State.*
5. *Where an applicant subject to the border procedure needs to be transferred to the determining authority or to a competent court or tribunal of first instance for the purposes of such a procedure, or transferred for the purpose of receiving medical treatment, such travel shall not in itself constitute an entry into the territory of a Member State.*

Article 55

Subsequent applications

1. **An application *made where* a final decision *on a previous* application by the same applicant *has not yet been taken shall be considered to be a further representation and not a new application.***

That further representation shall be examined in the Member State responsible in the framework of the ongoing examination in the administrative procedure or in the framework of any ongoing appeal procedure in so far as the competent court or tribunal may take into account the elements underlying the further representation.

2. ***Any further application made* in any Member State *after a final decision has been taken on a previous application by the same applicant* shall be considered ***to be*** a subsequent application ***and shall be examined*** by the Member State responsible.**

3. A subsequent application shall be subject to a preliminary examination in which the determining authority shall establish whether new elements have arisen or have been presented by the applicant ***and*** which :

(a) significantly increase the likelihood of the applicant ***to qualify*** as a beneficiary of international protection in accordance with Regulation (EU) .../...⁺; or

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

(b) relate to ***an inadmissibility ground previously applied, where*** the previous application was rejected as inadmissible.

4. The preliminary examination shall be carried out on the basis of written submissions ***or*** a personal interview in accordance with the basic principles and guarantees provided for in Chapter II. ***In particular, the*** personal interview may be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to new elements as referred to in paragraph 3.

5. ***The elements*** presented by the applicant ***shall be considered to be new only where*** the applicant was unable, through no fault on his or her own part, to present those elements in the context of the earlier application. ***Any elements which could have been presented earlier by the applicant need not be taken into account unless they significantly increase the likelihood of the application not being inadmissible or of the applicant qualifying for international protection or if a previous application was rejected as implicitly withdrawn in accordance with Article 41 without an examination on the merits.***

6. ***Where new elements as referred to in paragraph 3 have been presented by the applicant or have arisen, the application shall be further examined on its merits, unless the application may be considered to be inadmissible on the basis of another ground provided for in Article 38(1).***

7. Where **no** new **elements** as **referred to** in paragraph 3 **have been presented by the applicant or have arisen, the application** shall **be rejected** as inadmissible **pursuant to Article 38(2)** ■ .

Article 56

Exception from the right to remain in subsequent applications

Without prejudice to the principle of *non-refoulement*, Member States may provide for an exception to the right to remain on their territory and derogate from Article 68(5), **point (d)**, **where**:

- (a) ***a first subsequent application has been lodged, merely in order to delay or frustrate the enforcement of a decision which would result in the applicant's imminent removal from that Member State and is not further examined pursuant to Article 55(7); or***
- (b) a second or further subsequent application is made in any Member State following a final decision rejecting a previous subsequent application as inadmissible **or** unfounded or manifestly unfounded.

■

SECTION V
SAFE COUNTRY CONCEPTS

Article 57

The notion of effective protection

1. *A third country that has ratified and respects the Geneva Convention within the limits of the derogations or limitations made by that third country, as permitted under that Convention, shall be considered to ensure effective protection. In the case of geographical limitations made by the third country, the existence of protection for persons who fall outside of the scope of the Geneva Convention shall be assessed in accordance with the criteria set out in paragraph 2.*
2. *In cases other than that referred to in paragraph 1, the third country shall be considered to ensure effective protection only where the following criteria are met as a minimum:*
 - (a) *the persons referred to in paragraph 1 are allowed to remain on the territory of the third country in question,*
 - (b) *the persons referred to in paragraph 1 have access to means of subsistence sufficient to maintain an adequate standard of living with regard to the overall situation of that hosting third country,*
 - (c) *the persons referred to in paragraph 1 have access to healthcare and essential treatment for illnesses under the conditions generally provided for in that third country;*

- (d) *the persons referred to in paragraph 1 have access to education under the conditions generally provided for in that third country; and*
- (e) *effective protection remains available until a durable solution can be found.*

Article 58

The concept of first country of asylum

1. A third country **may only** be considered to be a first country of asylum for **an** applicant **where in** that **country**:

(a) the applicant **■** enjoyed effective protection in accordance with the Geneva Convention, as **referred to in Article 57(1), or enjoyed effective protection as referred to in Article 57(2)**, before travelling to the Union, and he or she can still avail himself or herself of that protection; **■**

■

(b) **the applicant's** life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

(c) **the applicant faces** no **real** risk of serious harm as defined in **Article 15 of Regulation (EU) .../...⁺**;

(d) the **applicant is protected against refoulement** in accordance with the Geneva Convention **and against** removal in violation of the right to **protection** from torture and cruel, inhuman or degrading treatment **or punishment** as laid down in international law **■** .

■

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

2. ***The concept of first country of asylum may only be applied provided that the applicant cannot provide elements justifying why the concept of first country of asylum is not applicable to him or her, in the framework of an individual assessment.***
3. ***A third country may only be considered to be a first country of asylum for an unaccompanied minor where it is not contrary to his or her best interests and*** where the authorities of Member States have first received from the authorities of the third country in question the assurance that the unaccompanied minor will be taken in charge by those authorities and that he or she will immediately benefit from ***effective*** protection ***as defined in Article 57.***
4. Where an application is rejected as inadmissible as a result of the application of the concept of first country of asylum, the determining authority shall:
 - (a) inform the applicant ***in accordance with Article 36;*** and
 - (b) provide him or her with a document informing the authorities of the third country in question, in the language of that country, that the application has not been examined in substance as a consequence of the application of the concept of first country of asylum.

5. Where the third country in question does not **█** readmit the applicant to its territory **or does not reply within a time limit set by the competent authority █**, **the applicant** shall **have** access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and in Section I of Chapter III.

█

Article 59

The concept of safe third country

1. A third country **may only** be designated as a safe third country **where in** that **country**:
- (a) **non-nationals'** life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
 - (b) **non-nationals face** no **real** risk of serious harm as defined in **Article 15 of Regulation (EU) .../...⁺**;
 - (c) **█ non-nationals are protected against refoulement** in accordance with the Geneva Convention **and against** removal in violation of the right to **protection** from torture and cruel, inhuman or degrading treatment **or punishment** as laid down in international law **█** ;
 - (d) the possibility exists to **request and, where conditions are fulfilled**, receive **effective** protection **as defined** in Article 57.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

2. *The designation of a third country as a safe third country both at Union and national level may be made with exceptions for specific parts of its territory or clearly identifiable categories of persons.*

3. The assessment of whether a third country may be designated as a safe third country in accordance with this Regulation shall be based on a range of **relevant and available** sources of information, including ■ information from Member States, the Asylum Agency, the European External Action Service, the United Nations High Commissioner for Refugees, the Council of Europe and other relevant **international** organisations.

4. The concept of safe third country **may** be applied:

- (a) where a third country has been designated as safe third country **at Union or national level** in accordance with **Article 60 or 64**; **or**
- (b) **in relation to a specific applicant** where **the** country **has not been** designated as ■ safe third country at Union **or national** level, **provided that the conditions set out in paragraph 1 are met with regard** to **that** applicant.

■

5. The **concept of** safe third country **may only be applied provided that:**

- (a) **the applicant cannot provide elements justifying why the concept of safe third country is not applicable to him or her, in the framework of an individual assessment;**
- (b) **there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for *him or her* to go to that country** ■ .

■

6. **A third country may only be considered to be a safe third country for an unaccompanied minor where it is not contrary to his or her best interests and where the authorities of Member States have first received from the authorities of the third country in question the assurance that the unaccompanied minor will be taken in charge by those authorities and that he or she will immediately have access to effective protection as defined in Article 57.**

7. **Where the Union and a third country have jointly come to an agreement pursuant to Article 218 TFEU that migrants admitted under that agreement will be protected in accordance with the relevant international standards and in full respect of the principle of non-refoulement, the conditions of this Article regarding safe third-country status may be presumed fulfilled without prejudice to paragraphs 5 and 6.**

8. Where an application is rejected as inadmissible as a result of the application of the concept of safe third country, the determining authority shall:
 - (a) inform the applicant *in accordance with Article 36*; and
 - (b) provide him or her with a document informing the authorities of the third country in question, in the language of that country, that the application has not been examined in substance ■ as a consequence of the application of the concept of safe third country.
9. Where the third country in question does not admit or readmit the applicant to its territory, the *applicant* shall *have* access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and in Section I of Chapter III.

Article 60

Designation of safe third countries at Union level

1. Third countries shall be designated as safe third countries at Union level in accordance with the conditions laid down in Article 59(1).
2. The Commission shall ■ review the situation in third countries that are designated as safe third countries ■ with the assistance of the Asylum Agency and on the basis of the other sources of information referred to in ■ Article 59(3).

3. *The Asylum Agency shall, at the request of the Commission, provide it with information and analysis on specific third countries which could be considered for designation as safe third countries at Union level. The Commission shall promptly consider any request from a Member State to assess whether a third country could be designated as a safe third country at Union level.*

4. The Commission is empowered to adopt delegated acts in accordance with Article 74 concerning the suspension of the designation of a third country as a safe third country at Union level subject to the conditions as set out in Article 63.

Article 61

The concept of safe country of origin

1. A third country may **only** be designated as a safe country of origin in accordance with this Regulation where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is **no** persecution as defined in Article 9 of Regulation (EU) .../...⁺ **and no real risk of serious harm as defined in Article 15 of that Regulation.**

2. *The designation of a third country as a safe country of origin both at Union and national level may be made with exceptions for specific parts of its territory or clearly identifiable categories of persons.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

3. The assessment of whether a third country **is** a safe country of origin in accordance with this Regulation shall be based on a range of **relevant and available** sources of information, including information from Member States, the Asylum Agency, the European External Action Service, the United Nations High Commissioner for Refugees, **and** other relevant **international** organisations, and shall take into account **where available** the common analysis of the country of origin information referred to in Article **11** of Regulation (EU) **2021/2303**.

4. In making the assessment referred to in paragraph 3, account shall be taken, inter alia, of the extent to which protection is provided against persecution or **serious harm** by:

- (a) the relevant laws and regulations of the country and the manner in which they are applied;
- (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant for Civil and Political Rights or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

(c) the absence of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country;

(d) the provision for a system of effective remedies against violations of those rights and freedoms.

5. ***The concept of*** a safe country of origin ***may only be applied provided that:***

- (a) ***the applicant*** has the nationality of that country or he or she is a stateless person and was formerly habitually resident in that country;
- (b) ***the applicant does not belong to a category of persons for which an exception was made when designating the third country as a safe country of origin*** ;
- (c) ***the applicant cannot provide elements justifying why the concept of safe country of origin is not applicable to him or her, in the framework of an individual***

assessment.

Article 62

Designation of safe countries of origin at Union level

1. Third countries **shall be** designated as safe countries of origin at Union level, in accordance with the conditions laid down in Article 61.
2. The Commission shall **■** review the situation in third countries that are **designated as** safe countries of origin , with the assistance of the **Asylum Agency** and on the basis of the other sources of information referred to in Article **61(3)**.
3. ***The Asylum Agency shall, at the request of the Commission, provide it with information and analysis on specific third countries which could be considered for designation as safe countries of origin at Union level. The Commission shall promptly consider any request from a Member State to assess whether a third country could be designated as safe country of origin at Union level.***
4. The Commission is empowered to adopt delegated acts in accordance with Article 74 concerning the suspension of the designation of a third country as a safe country of origin at Union level subject to the conditions as set out in Article 63.

Article 63

Suspension and removal of the designation of a third country as a safe third country **or as a** safe country of origin **at Union level**

1. In the event of **significant** changes in the situation of a third country which is designated as a safe third country **or as a** safe **country** of origin **at Union level**, the Commission shall conduct a substantiated assessment of the fulfilment by that third country of the conditions set out in Article 59 or 61 and, where the Commission considers that those conditions are no longer met, it shall adopt a delegated act in accordance with Article 74 to suspend the designation of that third country as a safe third country **or as a** safe **country** of origin **at Union level** for a period of six months.
2. The Commission shall continuously review the situation in the third country referred to in paragraph 1 taking into account, inter alia, information provided by the Member States **and the Asylum Agency** regarding subsequent changes in the situation of that third country.
3. Where the Commission has adopted a delegated act in accordance with paragraph 1 suspending the designation of a third country as a safe third country **or as a** **safe** country of origin **at Union level**, it shall, within three months of the date of adoption of that delegated act, submit a proposal, in accordance with the ordinary legislative procedure, for amending this Regulation to remove that third country's designation as a safe third country **or** of safe country of origin **at Union level**.

4. Where the Commission has not submitted a proposal as referred to in paragraph 3 within three months of the adoption of the delegated act as referred to in paragraph 1, the delegated act suspending the third country from its designation as a safe third country **or as a safe country** of origin **at Union level** shall cease to have effect. Where the Commission submits such a proposal within three months of the adoption of the delegated act as referred to in paragraph 1, the Commission shall be empowered, on the basis of a **substantiated** assessment, to extend the validity of that delegated act for a period of six months, with a possibility to renew that extension once.

5. ***Without prejudice to paragraph 4, where the proposal submitted by the Commission to remove the designation of a third country as a safe third country or a safe country of origin at Union level is not adopted within 15 months from when the proposal was submitted by the Commission, the suspension of the designation of the third country as a safe third country or as a safe country of origin at Union level shall cease to have effect.***

Article 64

Designation of third countries as safe third country or safe country of origin at national level

1. Member States may retain or introduce legislation that allows for the national designation of safe third countries or safe countries of origin other than those designated at Union level for the purpose of examining applications for international protection.

2. Where the designation of a third country as a safe third country ***or as a safe country of origin*** at Union level ■ has been suspended pursuant to Article 63(1), Member States shall not designate that country as a safe third country or a safe ■ country of origin at national level.

3. Where the designation of a third country as a safe third country ***or as a safe country of origin*** at Union level ■ has been suspended in accordance with the ordinary legislative procedure, a Member State may notify the Commission that it considers that, following changes in the situation of that country, it again fulfils the conditions set out in Article 59(1) and Article 61.

The notification shall include a substantiated assessment of the fulfilment by that country of the conditions set out in Article 59(1) and Article 61, including an explanation of the specific changes in the situation of the third country which make that country fulfil those conditions again.

Following the notification, the Commission shall request the Asylum Agency to provide it with information and analysis on the situation in the third country.

The notifying Member State may only designate that third country as a safe third country or as a safe country of origin at national level provided that the Commission does not object to that designation.

The Commission's right of objection shall be limited to a period of two years after the date on which that third country's designation as a safe third country or a safe country of origin at Union level has been removed. Any objection by the Commission shall be issued within a period of three months after the date of each notification by the Member State and after due review of the situation in that third country, having regard to the conditions set out in Articles 59(1) and 61 of this Regulation.

Where it considers that those conditions are fulfilled, the Commission may submit a proposal, in accordance with the ordinary legislative procedure, for amending this Regulation to designate that third country as a safe third country or as a safe country of origin at Union level.

4. Member States shall notify the Commission and the Asylum Agency of the third countries that are designated as safe third countries or safe countries of origin at national level **by ... [the date of application of this Regulation] and** immediately after **each** designation **or change to designations**. Member States shall inform the Commission and the Asylum Agency once a year of the other safe third countries to which the concept is applied **■** in relation to specific applicants **as referred to in Article 59(4), point (b)**.

CHAPTER IV

PROCEDURES FOR THE WITHDRAWAL OF INTERNATIONAL PROTECTION

Article 65

Withdrawal of international protection

The determining authority or, where provided for by national law, a competent court or tribunal shall start the examination to withdraw international protection from a **third-country national or stateless** person when new elements or findings arise indicating that there are reasons to reconsider **whether he or she qualifies for** international protection, **■** in particular in the instances referred to in Articles **14** and **19** of Regulation (EU) .../...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

Article 66

Procedural rules *for withdrawal of international protection*

1. Where the ***determining authority or, where provided for by national law, a competent court or tribunal starts the examination to withdraw*** international protection from a third-country national or ***a*** stateless person, **■** the person concerned shall enjoy the following guarantees **■** :
 - (a) he or she shall be informed in writing that **■** his or her qualification as a beneficiary of international protection ***is being reconsidered*** and the reasons for such **■** reconsideration;
 - (b) he or she shall be ***informed of the obligation to cooperate with the determining authority and other competent authorities, in particular of the fact that he or she shall be required to make*** a written statement and ***appear for*** a personal interview ***or a hearing and answer questions***;
 - (c) ***he or she shall be informed of the consequences of not cooperating with the determining authority and other competent authorities and that failure to submit the written statement and to attend the personal interview or the hearing without due justification shall not prevent the determining authority or the competent court or tribunal from taking a decision to withdraw international protection; and***

(d) he or she shall be given the opportunity to submit reasons as to why his or her international protection should not be withdrawn by means of a written statement within reasonable time from the date on which he or she receives the information referred to in point (a) and in a personal interview or hearing at a date set by the determining authority or, where provided for by national law, the competent court or tribunal.

2. For the purposes of paragraph 1, *the determining authority or the competent court or tribunal:*
- (a) *shall obtain relevant, precise and up-to-date information from relevant and available national, Union and international sources and, where available, take into account the common analysis on the situation in a specific country of origin and the guidance notes referred to in Article 11 of Regulation (EU) 2021/2303* ; and
 - (b) *shall not obtain any* information from the *alleged* actors of persecution or serious harm in a manner that would result in such actors being informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration .

3. The decision ■ to withdraw international protection shall be given in writing **as soon as possible**. The reasons in fact and in law for the withdrawal shall be stated in the decision and information on the manner **on how** to challenge the decision **and on the relevant time limits** shall be given in writing.
4. Where the determining authority or, where provided for by national law, a competent court or tribunal has taken the decision to withdraw international protection, Articles 6, 17, 18 and 19 shall apply *mutatis mutandis*.
5. *Where the third-country national or stateless person does not cooperate by not submitting a written statement, by not attending the personal interview or the hearing, or by not answering questions without due justification, the absence of the written statement or the personal interview or hearing shall not prevent the determining authority or the competent court or tribunal from taking a decision to withdraw international protection. Such a refusal to cooperate may only be considered to be a rebuttable presumption that the third-country national or stateless person no longer wishes to benefit from international protection.*

6. ***The procedure set out in*** this Article ■ **shall *not apply*** where the ***third-country national or stateless person***:

(a) unequivocally ***renounces*** his or her recognition as ■ beneficiary of international protection

(b) has become a national of ***a*** Member State ■ ; ***or***

(c) ***has subsequently been*** granted international protection ***in another Member State***.

Member States shall conclude the cases covered by this paragraph in accordance with their national law. That conclusion need not take the form of a decision but shall be recorded at least in the applicant's file together with the indication of the legal ground for that conclusion.

CHAPTER V APPEAL PROCEDURE

Article 67

The right to an effective remedy

1. Applicants **and persons subject to withdrawal of international protection** 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 that relate to the appeal procedure**, against **the following**:
 - (a) a decision rejecting an application as inadmissible;
 - (b) **a decision rejecting an application as unfounded or manifestly unfounded in relation to both refugee and subsidiary protection status;**
 - (c) a decision rejecting ■ an application as implicitly withdrawn;
 - (d) a decision withdrawing international protection;
 - (e) a return decision **issued in accordance with Article 37 of this Regulation.**

By way of derogation from the first subparagraph, point (d), of this paragraph, Member States may provide in their national law that the cases referred to in Article 66(6) are not to be subject to an appeal.

Where a return decision is taken as a part of a related decision as referred to in points (a), (b), (c) or (d) of the first subparagraph, the return decision shall be appealed jointly with that related decision, before the same court or tribunal, within the same judicial proceedings and the same time limits. Where a return decision is issued as a separate act pursuant to Article 37, it may be appealed in separate judicial proceedings. The time limits for those separate judicial proceedings shall not exceed the time limits referred to in paragraph 7 of this Article.

2. ***Without prejudice to paragraph 1, 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. ■
3. An effective remedy as referred to in 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) .../...⁺.
4. Applicants, ***persons subject to withdrawal of international protection and persons recognised as eligible for subsidiary protection*** shall be provided with interpretation for the purpose of a hearing before the competent court or tribunal, where such a hearing takes place and appropriate communication cannot otherwise be ensured.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

5. Where the court or tribunal considers it necessary, it shall ensure the translation of relevant documents that have not already been translated in accordance with Article 34(4).

Alternatively, translations of those relevant documents may be provided by other entities and paid for from public funds in accordance with national law.

An applicant, a person subject to withdrawal of international protection and a person recognised as eligible for subsidiary protection may, at his or her own cost, ensure the translation of other documents.

6. Where the documents are not submitted in ***due time, as determined by the court or tribunal, in the event that the translation is to be provided by the applicant, or where documents are not submitted in*** time for the court or tribunal to ensure that they are translated ***in the event that the translation is ensured by the court or tribunal***, the court or tribunal may refuse to take those documents into account **■** .

7. Member States shall lay down the following time limits in their national law for applicants, ***persons subject to withdrawal of international protection and persons recognised as eligible for subsidiary protection*** to lodge appeals against the decisions referred to in paragraph 1:

- (a) ***between a minimum of five days and a maximum of ten days*** in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn, ***as unfounded*** or as ***manifestly*** unfounded if at the time of the decision any of the circumstances referred to in Article 42(1) or (3) apply;
- (b) between a minimum of two weeks and a maximum of ***one month*** in all other cases.

8. The time limits referred to in paragraph 7 shall start to run from the date on which the decision of the determining authority or, in the case of withdrawal of international protection and where provided for by national law, of the competent court or tribunal is notified to the applicant, ***the person subject to withdrawal of international protection, the person recognised as eligible for subsidiary protection*** or to his or her representative or legal adviser ***legally representing the applicant***. The procedure for notification shall be laid down in national law.

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Article 68

Suspensive effect of appeal

1. The effects of a return decision shall be automatically suspended for as long as an applicant **or a person subject to withdrawal of international protection** has a right to remain or is allowed to remain in accordance with this Article.
2. Applicants **and persons subject to withdrawal of international protection** shall have the right to remain on the territory of the Member States until the time limit within which **they can** 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.
3. ***Without prejudice to the principle of non-refoulement, the applicant and the person subject to withdrawal of international protection shall not have the right to remain pursuant to paragraph 2 where the competent authority has taken one of the following decisions:***
 - (a) ***a decision which rejects an application as unfounded or manifestly unfounded if at the time of the decision:***
 - (i) ***the applicant is subject to an accelerated examination pursuant to Article 42(1) or (3);***
 - (ii) ***the applicant is subject to the border procedure, except where the applicant is an unaccompanied minor;***

(b) *a decision which rejects an application as inadmissible pursuant to Article 38(1), point (a), (d) or (e), or Article 38(2), except where the applicant is an unaccompanied minor subject to the border procedure;*

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

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

(e) a decision to withdraw international protection in accordance with Article 14(1), point (b), (d) or (e), or Article 19(1), point (b), of Regulation (EU) .../...⁺.

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 **or the person subject to withdrawal of international protection** should be allowed to remain on the territory of the Member States pending the outcome of the remedy, upon the **request of the applicant or of the person subject to withdrawal of international protection**. The competent court or tribunal **shall** under national law have the power to decide on this matter *ex officio*.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

5. For the purposes of paragraph 4, the following conditions shall apply ***where relevant in the light of any ex officio decisions***:
- (a) the applicant ***or the person subject to withdrawal of international protection*** shall have a time limit of at least five days from the date on which 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 ***or the person subject to withdrawal of international protection*** 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 ***or the person subject to withdrawal of international protection*** shall be provided, upon request, with free legal assistance and representation in accordance with Article 17;
 - (d) the applicant ***or the person subject to withdrawal of international protection shall not be removed from the territory of the Member State responsible***:
 - (i) until the time limit for requesting a court or tribunal to be allowed to remain has expired;

(ii) where the applicant ***or the person subject to withdrawal of international protection*** 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 ***or the person subject to withdrawal of international protection*** shall be allowed ***to*** remain on the territory;

(e) ***the applicant or the person subject to withdrawal of international protection shall be duly informed in a timely manner of her or his rights under this paragraph.***

6. In cases of subsequent applications, by way of derogation from paragraph 5, point (d), 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 is considered to have 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 **■** .

7. ***An applicant or a person subject to withdrawal of international protection 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 or the person subject to withdrawal of international protection to remain upon the request of the applicant or of the person subject to withdrawal of international protection or acting ex officio in cases where the principle of non-refoulement is invoked.***

Article 69

Duration of the first level of appeal

Without prejudice to an adequate and complete examination of an appeal, ***Member States shall lay down in their national law reasonable*** time **■** limits ***for the court or tribunal to examine decisions in accordance with Article 67(1).***

■

CHAPTER VI FINAL PROVISIONS

Article 70

Challenge by public authorities

This Regulation does not affect the possibility for public authorities to challenge administrative or judicial decisions as provided for in national legislation.

Article 71 Cooperation

1. Each Member State shall appoint a national contact point in relation to the matters covered by this Regulation and send its address to the Commission. The Commission shall send that information to the other Member States.
2. Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between their competent authorities, ***as well as between those competent authorities and the Asylum Agency.***

3. When resorting to the measures referred to in **Article 13(6)**, Article 27(5), Article 28(5) and Article **35(2) and (5)**, Member States shall inform the Commission and the Asylum Agency as soon as the reasons for applying those exceptional measures have ceased to exist and at least on an annual basis. That information shall, where possible, include data on the percentage of the applications for which derogations were applied to the total number of applications processed during that period.

Article 72 Data storage

1. ***Member States shall store the data referred to in Articles 14, 27 and 28 for ten years from the date of a final decision on the application for international protection. The data shall be erased upon expiry of that period or where they are related to a person who has acquired citizenship of any Member State before expiry of that period as soon as the Member State becomes aware that the person concerned has acquired such citizenship.***
2. ***All data shall be stored in compliance with the Regulation (EU) 2016/679, including the principle of purpose and storage limitation.***

Article 73
Calculation of time limits

Unless otherwise provided, any period of time prescribed in this Regulation shall be calculated as follows:

- (a) a period expressed in days, weeks or months shall be calculated from the time an event occurs or an action takes place; the day on which that event occurs or that action takes place shall not itself be counted as falling within the period in question;*
- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week, or falls on the same date of the month, respectively as the day on which the event or action from which the period is to be calculated occurred or took place; where, in a period expressed in months, the day on which it should expire does not occur in the last month of the period, the period shall end at midnight of the last day of that last month;*
- (c) time limits shall include Saturdays, Sundays and official holidays in the Member State concerned; where a time limit ends on a Saturday, Sunday or official holiday, the next working day shall be counted as the last day of the time limit.*

Article 74

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in **to in Articles 60, 62 and 63** shall be conferred on the Commission for a period of five years from ...[date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension no later than three months before the end of each period.

3. The delegation of power referred to in Articles 60, 62 and 63 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making²².

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act pursuant to Articles 60, 62 or 63 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **two months** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. **That period shall be extended by two months at the initiative of the European Parliament or of the Council.**

²² ***OJ L 123, 12.5.2016, p. 1.***

Article 75 Transitional measures

By ... [three months after the entry into force of this Regulation], the Commission, in close cooperation with the Member States and relevant Union bodies, offices and agencies, shall present a common implementation plan to the Council to ensure that Member States are adequately prepared to implement this Regulation by ... [the first day of the **twenty-fifth** month following the entry into force of this Regulation], assessing any gaps identified and operational steps required, and shall inform the European Parliament thereof.

Based on the common implementation plan referred to in the first paragraph, by ... [six months after entry into force of this Regulation] each Member State shall, with the support of the Commission and relevant Union bodies, offices and agencies, establish a national implementation plan setting the actions and the timeline for their implementation. Each Member State shall complete the implementation of its plan by ... [the first day of the **twenty-fifth** month following the entry into force of this Regulation].

For the purpose of implementing this Article, Member States may use the support of the relevant Union bodies, offices and agencies and the Union Funds may provide financial support to the Member States, in accordance with the legal acts governing those bodies, offices and agencies and Funds.

The Commission shall closely monitor the implementation of the national implementation plans.

Article 76 Financial support

Actions undertaken by Member States for putting in place free legal counselling and adequate capacity for carrying out the border procedure in accordance with this Regulation shall be eligible for financial support from the funds made available under the 2021-2027 multiannual financial framework.

Article 77

Monitoring and evaluation

By **■** ... [two years from ***the date of application*** of this Regulation] **■** and every five years thereafter, the Commission shall report to the European Parliament and to the Council on the application of this Regulation in the Member States and shall, where appropriate, propose any amendments.

Member States shall, at the request of the Commission, send it the necessary information for drawing up its report no later than nine months before that time limit expires.

By ... [three years from the date of entry into force of this Regulation] and every three years thereafter, the Commission shall assess whether the numbers set out in Article 46 and in Article 47(1), second subparagraph, and the exceptions to the asylum border procedure continue to be adequate in view of the overall migratory situation in the Union and shall, where appropriate, propose any targeted amendments.

By ... [one year from the date of entry into force of this Regulation], the Commission shall review the concept of safe third country and shall, where appropriate, propose any targeted amendments.

Article 78 Repeal

1. Directive 2013/32/EU is repealed ***with effect from the date referred to in Article 79(2), without prejudice to Article 79(3).***
2. References to the repealed Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in ***the Annex*** .
3. ***To the extent that Council Directive 2005/85/EC²³ continued to be binding upon Member States not bound by Directive 2013/32/EU, Directive 2005/85/EC is repealed with effect from the date on which those Member States are bound by this Regulation. References to the repealed Directive shall be construed as references to this Regulation.***

²³ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

Article 79

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply from ... [**two years** from the date of entry into force of this Regulation].
3. ***This Regulation shall apply to the procedure for granting international protection in relation to applications lodged as from ... [the date of application of this Regulation]. Applications for international protection lodged before that date shall be governed by Directive 2013/32/EU. This Regulation shall apply to the procedure for withdrawing international protection where the examination to withdraw international protection started as from ... [the date of application of this Regulation]. Where the examination to withdraw international protection started before ... [the date of application of this Regulation], the procedure for withdrawing international protection shall be governed by Directive 2013/32/EU.***
4. ***For Member States not bound by Directive 2013/32/EU, references thereto in paragraph 3 of this Article shall be construed as references to Directive 2005/85/EC.***

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament

The President

For the Council

The President

ANNEX

Correlation table

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-	Article 42(2)
-	Article 42(3)
-	Article 42(4)
Article 32(1)	Article 39(3)
Article 32(2)	Article 39(4)
Article 33(1)	Article 39(1)
Article 33(2)	Article 38(1)
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-	Article 38(1), point (e)
Article 34(1)	Articles 11(1)
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Article 35, first paragraph	Article 58(1)
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Article 36(1)	Article 61(5)
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Article 37(1)	Article 64(1)
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Article 37(3)	-
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-	Article 64(3)
Article 37(4)	Article 64(4)
Article 38(1)	Article 59(1)
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Directive 2013/32/EU	This Regulation
-	Article 59(3)
Article 38(2), point (a)	Article 59(5), point (b)
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Article 38(3)	Article 59(8)
Article 38(4)	Article 59(9)
Article 38(5)	Article 64(4)
Article 39	-
Article 40(1)	Article 55(1)
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Article 40(2)	Article 55(3)
Article 40(3)	Article 55(3), point (a)
-	Article 55(3), point (b)
-	Article 55(4)
Article 40(4)	Article 55(5)
-	Article 55(6)
Article 40(5)	Article 55(7)
Article 40(6)	-
Article 40(7)	-
Article 41	Article 56

Directive 2013/32/EU	This Regulation
Article 41(1), first subparagraph, point (a)	Article 56, point (a)
Article 41(1), first subparagraph, point (b)	Article 56, point (b)
Article 41(1), second subparagraph	Article 56, first sentence
Article 41(2)	-
Article 42	-
Article 42(1)	Article 55(4)
Article 42(2), first subparagraph, point (a)	-
Article 42(2), first subparagraph, point (b)	Article 55(4)
Article 42(2), second subparagraph	-
Article 42(3)	-
Article 43	Articles 43 to 54
Article 44	Article 65
Article 45	Article 66
Article 45(1)	Article 66(1)
Article 45(2)	Article 66(2)
Article 45(3)	Article 66(3)
Article 45(4)	Article 66(4)
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Article 45(5)	Article 66(6)
Article 46	Article 67
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Directive 2013/32/EU	This Regulation
Article 46(1), point (a)(i)	Article 67(1), point (b)
Article 46(1), point (a)(ii)	Article 67(1), point (a)
Article 46(1), point (a)(iii)	-
Article 46(1), point (a)(iv)	-
Article 46(1), point (b)	-
Article 46(1), point (c)	Article 67(1), point (d)
Article 46(2), first subparagraph	Article 67(2)
Article 46(2), second subparagraph	-
Article 46(3)	Article 67(3)
-	Article 67(4)
-	Article 67(5)
Article 46(4), first subparagraph	-
-	Article 67(6)
Article 46(4), second subparagraph	-
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Article 46(5)	Article 68(2)
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Article 46(6), point (a)	Article 68(3), point (a)(i) and (ii)
Article 46(6), point (b)	Article 68(3), point (b)
Article 46(6), point (c)	-
Article 46(6), point (d)	-

Directive 2013/32/EU	This Regulation
-	Article 68(3), points (c) and (e)
Article 46(7)	Article 68(4) and (5)
Article 46(8)	Article 68(5), point (d)(i) and (ii)
Article 46(9)	-
Article 46(10)	Article 69
Article 46(11)	-
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Article 49	Article 71
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Article 51	-
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Article 54	Article 79
Article 55	-

Brussels, 18 April 2024 (OR.
en)

Interinstitutional File:
2016/0224/B(COD)

8582/24

CODEC 1015
JAI 582
ASILE 51
MIGR 156
FRONT 111
COMIX 166
PE 102

INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL establishing a return border procedure, and amending Regulation (EU)
2021/1148
- Outcome of the European Parliament's first reading (Brussels, 10 to 11 April
2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 1) to the abovementioned proposal for a Regulation, for which Fabienne KELLER (RE, FR) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 10 April 2024, the plenary adopted the compromise amendment (amendment number 1) to the abovementioned proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)0180

Establishing a return border procedure, and amending Regulation (EU) 2021/1148

European Parliament legislative resolution of 10 April 2024 on the proposal for a regulation of the European Parliament and of the Council establishing a return border procedure, and amending Regulation (EU) 2021/1148 (COM(2016)0467/COM(2020)0611 – C9-0039/2024 – 2016/0224B(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0467) and the amended proposal (COM(2020)0611),
- having regard to Article 294(2) and Articles 78(2)(d) and 79(2)(c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0039/2024),
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to Article 294(3) and Article 79(2)(c) of the Treaty on the Functioning of the European Union,
- having regard to the opinions of the European Economic and Social Committee of 14 December 2016³ and of 25 February 2021⁴,
- having regard to the opinions of the Committee of the Regions of 8 February 2017⁵ and of 19 March 2021⁶,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 8 February 2024 to approve that position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

³ OJ C 75, 10.3.2017, p. 97.

⁴ OJ C 155, 30.4.2021, p. 64.

⁵ OJ C 207, 30.6.2017, p. 67.

⁶ OJ C 175, 7.5.2021, p. 32.

- having regard to the decision by the Conference of Presidents of 21 February 2024 to authorise the Committee on Civil Liberties, Justice and Home Affairs to split the legislative procedure and to proceed with the tabling of two separate consolidated texts for consideration in plenary;
 - having regard to Rules 59 and 40 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0164/2024),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Regulation (EU) 2024/... of the European Parliament and of the Council *establishing a return border procedure, and amending Regulation (EU) 2021/1148*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular **Articles 77(2)** and 79(2)(c) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinions of the European Economic and Social Committee¹,

Having regard to the opinions of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ ***OJ C 75, 10.3.2017, p. 97 and OJ C 155, 30.4.2021, p. 64.***

² ***OJ C 207, 30.6.2017, p. 67 and OJ C 175, 7.5.2021, p. 32.***

³ ***Position of the European Parliament of 10 April 2024.***

Whereas:

- (1) *The Union, in constituting an area of freedom, security and justice, should ensure the absence of internal border controls for persons, frame a common policy on asylum and migration, external border control and returns, and prevent unauthorised movements between Member States, based on solidarity and the fair sharing of responsibility between Member States, which is also fair towards third-country nationals and stateless persons and in full respect of fundamental rights.*

- (2) *The objective of this Regulation is to streamline, simplify and harmonise the procedural arrangements of the Member States by establishing a return border procedure. That procedure should apply to third-country nationals and stateless persons whose application has been rejected in the context of the asylum border procedure provided for in Regulation (EU) 2024/... of the European Parliament and of the Council⁴⁺ (the ‘asylum border procedure’).*
- (3) *For those Member States not bound by Regulation (EU) 2024/...⁺⁺, references in this Regulation to provisions in Regulation (EU) 2024/...⁺⁺ should be understood as references to equivalent provisions which they might have introduced in their national law.*
- (4) *With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.*
- (5) *The best interests of the child should be a primary consideration for Member States when applying the provisions of this Regulation that possibly affect minors.*

⁴ *Regulation (EU) 2024/... of the European Parliament and of the Council of ... establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, ..., ELI:...).*

⁺ *OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.*

⁺⁺ *OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).*

- (6) *Many applications for international protection are made at the external border or in a transit zone of a Member State, including by persons apprehended in connection with an unauthorised crossing of the external border, that is to say at the very time of the irregular crossing of the external border or near that external border after it has been crossed, or by persons disembarked following a search and rescue operation. In order to conduct identification, security and health screening at the external border and to direct the third-country nationals and stateless persons concerned to the relevant procedures, a screening is necessary. After the screening, third-country nationals and stateless persons should be channelled to the appropriate asylum or return procedure, or refused entry. A pre-entry phase consisting of screening and border procedures for asylum, as applicable, and return should therefore be established. There should be seamless and efficient links between all stages of the relevant procedures for all irregular arrivals.*

- (7) *Entry into the territory is not authorised where an applicant has no right to remain, where he or she has not requested to be allowed to remain for the purposes of the appeal procedure provided for in Regulation (EU) 2024/...⁺, or where a court or tribunal has decided that he or she should not be allowed to remain pending the outcome of such an appeal procedure. In such cases, to ensure continuity between the asylum procedure and the return procedure, the return procedure should also be carried out in the context of a border procedure for a period not exceeding 12 weeks. That period should be counted starting from the time the applicant, third-country national or stateless person no longer has a right to remain or is no longer allowed to remain.*
- (8) *To guarantee the equal treatment of all third-country nationals and stateless persons whose application has been rejected in the context of the border procedure, where a Member State has decided not to apply the provisions of Directive 2008/115/EC of the European Parliament and of the Council⁵ pursuant to the relevant derogation set out therein to third-country nationals and stateless persons and does not issue a return decision to the third-country national concerned, the treatment and level of protection of the applicant, third-country national or stateless person concerned should be in accordance with the provision of Directive 2008/115/EC on more favourable provisions with regard to third-country nationals excluded from the scope of that Directive and be equivalent to those applicable to persons subject to a return decision.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁵ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

- (9) *When applying the return border procedure, certain provisions of Directive 2008/115/EC should apply, as they regulate elements of the return border procedure that are not set out in this Regulation, in particular those on definitions, more favourable provisions, non-refoulement, the best interests of the child, family life and state of health, the risk of absconding, the obligation to cooperate, the period for voluntary departure, the return decision, removal, the postponement of removal, the return and removal of unaccompanied minors, entry bans, safeguards pending return, detention, the conditions of detention, the detention of minors and families, and emergency situations. To reduce the risk of unauthorised entry and movement of illegally staying third-country nationals and stateless persons subject to the return border procedure, a period for voluntary departure should be granted. That period for voluntary departure should be granted only upon request and it should neither exceed 15 days nor confer a right to enter the territory of the Member State concerned. Persons concerned should surrender any valid travel document in their possession to the competent authorities for as long as necessary to prevent their absconding. The provisions on return set out in this Regulation are without prejudice to the discretionary possibility for Member States at any time to decide to grant an autonomous residence permit or other authorisation granting a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory.*

- (10) *Where the illegally staying third-country national or stateless person does not return, or is not removed, within the maximum period of the return border procedure, the return procedure should continue as provided for in Directive 2008/115/EC.*
- (11) *Where an applicant, third-country national or stateless person who was detained during the asylum border procedure provided for in Regulation (EU) .../...⁺ no longer has a right to remain and has not been allowed to remain, Member States should be able to continue the detention for the purpose of preventing entry into the territory and carrying out a return procedure, in compliance with the guarantees and conditions for detention laid down in Directive 2008/115/EC. It should also be possible to detain an applicant, third-country national or stateless person who was not detained during such an asylum border procedure, who no longer has a right to remain and who has not been allowed to remain, if there is a risk of absconding, if he or she avoids or hampers return, or if he or she poses a risk to public policy, public security or national security. That detention should be for as short a period as possible and should not exceed the maximum duration of the return border procedure. When the illegally staying third-country national or stateless person does not return, or is not removed, within that period and the return border procedure ceases to apply, Directive 2008/115/EC should apply. The maximum period of detention set out in that Directive should include the period of detention applied during the return border procedure.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (12) *The return border procedure should facilitate, in a situation of crisis as defined in Regulation (EU) 2024/... of the European Parliament and of the Council⁶⁺, the return of irregularly staying third-country nationals or stateless persons whose application has been rejected in the context of a crisis in the asylum border procedure, who have no right to remain and who are not allowed to remain, by providing the competent national authorities with the necessary tools and a sufficient timeframe to carry out return procedures with due diligence. To be able to respond to situations of crisis in an effective manner, it should also be possible to apply the return border procedure in a situation of crisis to applicants, third-country nationals and stateless persons subject to the return border procedure whose application has been rejected before the adoption of a Council Implementing Decision as provided for in Regulation (EU) 2024/...⁺⁺ declaring that a Member State is confronted with a situation of crisis, and who have no right to remain and who are not allowed to remain after the adoption of such a Decision.*

⁶ *Regulation (EU) 2024/... of the European Parliament and of the Council of ... addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 (OJ L, ..., ELI:...).*

⁺ *OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 (2020/0277(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.*

⁺⁺ *OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 (2020/0277(COD)).*

- (13) *In accordance with Article 72 of the Treaty on the Functioning of the European Union (TFEU), this Regulation does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.*
- (14) *With a view to ensuring a coherent implementation of the provisions on the return border procedure set out in this Regulation by the time it applies, implementation plans at Union and national levels that identify gaps and operational steps for each Member State should be developed and implemented.*
- (15) *The application of this Regulation should be evaluated at regular intervals.*
- (16) *The policy objective of the Instrument for Financial Support for Border Management and Visa Policy (BMVI), established, as part of the Integrated Border Management Fund, by Regulation (EU) 2021/1148 of the European Parliament and of the Council⁷, is to ensure strong and effective European integrated border management at the external borders, including by preventing and detecting illegal immigration and effectively managing migratory flows. Allowing the financing of support under that Instrument for solidarity actions within the context of Regulation (EU) 2024/... of the European Parliament and of the Council⁸⁺ would contribute to reaching the objectives of Regulation (EU) 2021/1148. Regulation (EU) 2021/1148 should therefore be amended.*
- (17) *It should be possible to mobilise the resources of the BMVI and of other relevant Union funds (the ‘Funds’) to support Member States in their efforts to apply Regulation (EU) 2024/...⁺⁺, in accordance with the rules governing the use of the Funds and without prejudice to other priorities supported by the Funds. In that context, Member States should be able to make use of the allocations under their respective programmes,*

⁷ Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (OJ L 251, 15.7.2021, p. 48).

⁸ Regulation (EU) 2024/... of the European Parliament and of the Council of ... on asylum and migration management, amending Regulations (EU) 2021/1147, and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, ..., ELI:...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

including the amounts made available following the mid-term review. It should be possible to make additional support under the relevant Thematic Facilities available, in particular to those Member States which might need to increase their capacities at the borders.

- (18) *Regulation (EU) 2021/1148 should be amended to guarantee a full contribution by the Union budget to the total eligible expenditure of solidarity actions, as well as to introduce specific reporting requirements in relation to those actions, as part of the existing reporting obligations on the implementation of the Funds. That Regulation should also be amended to allow the Member States to provide financial contributions to the BMVI in the form of external assigned revenues.*
- (19) *Since the objectives of this Regulation, namely to establish a return border procedure, to provide for specific temporary rules in order to ensure that Member States are able to address situations of crisis and to allow the financing of support under Regulation (EU) 2021/1148 for solidarity actions within the context of Regulation (EU) 2024/...⁺, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.*
- (20) *In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.*

⁺ *OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).*

- (21) *This Regulation constitutes a development of the provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC⁹; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.*
- (22) *As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen acquis¹⁰ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC¹¹.*
- (23) *As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis¹² which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC¹³.*

⁹ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20).

¹⁰ OJ L 176, 10.7.1999, p. 36.

¹¹ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis (OJ L 176, 10.7.1999, p. 31).

¹² OJ L 53, 27.2.2008, p. 52.

¹³ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 1).

- (24) *As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis¹⁴ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁵,*
- (25) *This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the 'Charter'). In particular, this Regulation seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 8, 18, 19, 21, 23, 24, and 47 of the Charter,*

HAVE ADOPTED THIS REGULATION:

¹⁴ OJ L 160, 18.6.2011, p. 21.

¹⁵ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

CHAPTER I GENERAL PROVISIONS

Article 1

Subject matter and scope

1. *This Regulation establishes a return border procedure. It applies to third-country nationals and stateless persons whose application has been rejected in the context of the asylum border procedure provided for in Articles 43 to 54 of Regulation (EU) 2024/...⁺ (the ‘asylum border procedure’). It also provides for temporary specific rules on the return border procedure in situations of crisis as defined in Article 1(4) of Regulation (EU) 2024/...⁺⁺.*

This Regulation also amends Regulation (EU) 2021/1148, with the purpose of allowing the financing of support under that Regulation for solidarity actions within the context of Regulation (EU) 2024/...⁺⁺⁺.

2. *Temporary measures adopted pursuant to Chapter III of this Regulation shall meet the requirements of necessity and proportionality, be appropriate to achieving their stated objectives and ensuring the protection of the rights of the applicants and be consistent with the obligations of the Member States under the Charter and international law.*
3. *The measures in Chapter III of this Regulation shall be applied only to the extent strictly required by the exigencies of the situation, in a temporary and limited manner and only in exceptional circumstances. Following a request, Member States may apply the*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 (2020/0277(COD)).

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

measures provided for in Chapter III only to the extent provided for in the Decision referred to in Article 4(3) of Regulation (EU) 2024/...⁺.

⁺ ***OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 (2020/0277(COD)).***

Article 2

References to Regulation (EU) 2024/...⁺

For those Member States not bound by Regulation (EU) 2024/...⁺, references in this Regulation to provisions in Regulation (EU) 2024/...⁺ shall be understood as references to equivalent provisions which they might have introduced in their national law.

Article 3 Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) 'application for international protection' or 'application' means application for international protection or application as defined in Article 3, point (12), of Regulation (EU) 2024/...⁺;***
- (b) 'applicant' means applicant as defined in Article 3, point (13), of Regulation (EU) 2024/...⁺.***

⁺ ***OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).***

CHAPTER II

RETURN BORDER PROCEDURE

Article 4

Return border procedure

1. *Third-country nationals and stateless persons whose application has been rejected in the context of the asylum border procedure shall not be authorised to enter the territory of the Member State concerned.*
2. *Member States shall require the persons referred to in paragraph 1 to reside 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 such persons in those locations, it may resort to the use of other locations within its territory. The 12-week period shall start from the date on which the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain. The requirement to reside at a particular location in accordance with this paragraph shall not be regarded as authorisation to enter into or stay on the territory of a Member State. The conditions in those locations shall meet the standards equivalent to those of the material reception conditions and healthcare in accordance with Articles 19 and 20 of Directive (EU) 2024/... of the European Parliament and of the Council¹⁶⁺⁺ as they apply to persons still considered to be applicants.*
3. *Article 3, Article 4(1), Article 5, Article 6(1) to (5), Article 7(2) and (3), Articles 8 to 11, Article 12, Article 14(1), Article 15(2) to (4) and Articles 16 to 18 of Directive 2008/115/EC shall apply for the purposes of this Article.*

¹⁶ Directive (EU) 2024/... of the European Parliament and of the Council of ... laying down standards for the reception of applicants for international protection (recast) (OJ L, ..., ELI:...).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 69/23 (2016/0222(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

4. *Where a return decision cannot be enforced within the maximum period referred to in paragraph 2, Member States shall continue return procedures in accordance with Directive 2008/115/EC.*

5. *Without prejudice to the possibility for them to return voluntarily at any time, persons as referred to in paragraph 1 shall be granted a period for voluntary departure unless there is a risk of absconding, or if their application in the context of the asylum border procedure has been rejected as manifestly unfounded, or if the person concerned is a risk to public policy, public security or the national security of the Member States. The period for voluntary departure shall be granted only upon request and it shall neither exceed 15 days nor confer a right to enter the territory of the Member State concerned. For the purposes of this paragraph, such persons shall surrender any valid travel document in their possession to the competent authorities for as long as necessary to prevent absconding.*
6. *Member States that, following the rejection of an application in the context of the asylum border procedure, issue a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399 of the European Parliament and of the Council¹⁷, and that have decided not to apply Directive 2008/115/EC 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 2008/115/EC, and are equivalent to the treatment and level of protection set out in paragraph 2 of this Article and in Article 5(4) of this Regulation.*

Article 5 Detention

1. *Detention may be imposed only as a measure of last resort if it proves necessary on the basis of an individual assessment of each case and if other less coercive measures cannot be applied effectively.*

¹⁷ *Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).*

2. *Persons as referred to in Article 4(1) of this Regulation who were detained during the asylum border procedure, who no longer have a right to remain and who are not allowed to remain may continue to be detained for the purpose of preventing their entry into the territory of the Member State concerned, of preparing their return or of carrying out the removal process.*
3. *Persons as referred to in Article 4(1) of this Regulation who were not detained during the asylum border procedure, who no longer have a right to remain and who are not allowed to remain may be detained if there is a risk of absconding within the meaning of Directive 2008/115/EC, if they avoid or hamper the preparation of return or the removal process or if they pose a risk to public policy, public security or national security.*
4. *Detention shall be maintained for as short a period as possible, and for only as long as a reasonable prospect of removal exists, and while arrangements therefor are in progress and are executed with due diligence. The period of detention shall not exceed the period referred to in Article 4(2) of this Regulation and, where a consecutive detention is issued immediately following a period of detention as provided for under this Article, that period of detention shall be included in calculating the maximum periods of detention set out in Article 15(5) and (6) of Directive 2008/115/EC.*
5. *By ... [six months after the date of entry into force of this Regulation], the European Union Agency for Asylum established by Regulation (EU) 2021/2303 of the European Parliament and of the Council¹⁸ shall, in accordance with Article 13(2) of that Regulation, develop guidelines on various practices alternative to detention, that could be used in the context of a border procedure.*

¹⁸ *Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1).*

CHAPTER III

DEROGATIONS APPLICABLE IN SITUATIONS OF CRISIS

Article 6

Measures applicable to the return border procedure in a situation of crisis

- 1. *In a situation of crisis as defined in Article 1(4) of Regulation (EU) 2024/...⁺ and in relation to illegally staying third-country nationals or stateless persons whose application has been rejected in the context of the asylum border procedure pursuant to Article 11(3), (4) and (6) of Regulation (EU) 2024/...⁺, who have no right to remain and who are not allowed to remain, Member States may derogate as follows:***
 - (a) *by way of derogation from Article 4(2) of this Regulation, Member States may prolong the maximum period during which those third-country nationals or stateless persons are to be kept at the locations referred to in that Article by an additional period of a maximum of six weeks;***
 - (b) *by way of derogation from Article 5(4) of this Regulation, the period of detention shall not exceed the period referred to in point (a) of this paragraph, and shall be included in calculating the maximum periods of detention set out in Article 15(5) and (6) of Directive 2008/115/EC.***
- 2. *Paragraph 1 of this Article shall also apply to applicants, third-country nationals and stateless persons subject to the asylum border procedure whose application has been rejected before the adoption of the Council Implementing Decision referred to in Article 4(3) of Regulation (EU) 2024/...⁺ and who have no right to remain and who are not allowed to remain after the adoption of that Implementing Decision.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 (2020/0277(COD)).

3. *Organisations and persons permitted under national law to provide advice and counselling shall have effective access to applicants held in detention facilities or present at border crossing points. Member States may impose limits to such actions where, by virtue of national law, such limits are objectively necessary for the security, public order or administrative management of a detention facility, provided that access is not thereby severely restricted or rendered impossible.*

Article 7

Procedural rules

Where a Member State considers itself to be in a situation of crisis as defined in Article 1(4) of Regulation (EU) .../...⁺, it may submit a request to apply the derogations provided for in Article 6 of this Regulation. Where a Member State submits such a request, Articles 2 to 6 and Article 17(3) and (4) of Regulation (EU) 2024/...⁺ shall apply, as relevant. Where a procedure with a view to obtaining a derogation has already been initiated pursuant to Article 2 of Regulation (EU) 2024/...⁺, Member States may submit a request to apply the derogations provided for in Article 6 of this Regulation in the context of that procedure.

Article 8

Specific provisions and guarantees

A Member State applying the derogation provided for in Article 6 shall duly inform third-country nationals or stateless persons concerned in a language which the third-country nationals or stateless persons understand, or are reasonably supposed to understand, about the measures applied and the duration of the measures.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 (2020/0277(COD)).

CHAPTER IV

AMENDMENTS TO REGULATION (EU) 2021/1148

Article 9

Amendments to Regulation (EU) 2021/1148 Regulation (EU) 2021/1148 is

amended as follows:

(1) in Article 2, the following point is added:

“(11) ‘solidarity action’ means an action, the scope of which is set out in point (b) of Article 56(2) of Regulation (EU) 2024/... of the European Parliament of the Council⁺, funded through financial contributions provided by Member States, referred to in Article 64(1) of that Regulation.

**** Regulation (EU) 2024/... of the European Parliament and of the Council of ... on asylum and migration management, amending Regulations (EU) 2021/1147, and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, ..., ELI:...).***”;

(2) in Article 10, the following paragraph is added:

“3. Support under this Regulation may be financed, for the purposes of solidarity actions, by contributions made by Member States and by other public or private donors as external assigned revenue in accordance with Article 21(5) of the Financial Regulation.”;

(3) in Article 12, the following paragraph is inserted:

“7a. The contribution from the Union budget may be increased to 100 % of the total eligible expenditure for solidarity actions.”;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

(4) in Article 29(2) first subparagraph, the following point is inserted:

“(aa) the implementation of solidarity actions, including a breakdown of the financial contributions by actions and a description of the main results achieved as a result of the funding;”;

(5) *in Annex II, point 1, the following point is added:*

“(h) support to solidarity actions, in line with the scope of support set out in point 1 of Annex III.”;

(6) *Annex VI is amended as follows:*

(a) *in Table 1, point I, the following code is added:*

“030 Solidarity actions”;

(b) *Table 3 is amended as follows:*

(i) *codes 005 and 006 are replaced by the following:*

“005 Special Transit Scheme referred to in Article 17

006 Actions covered by Article 85(2) of Regulation (EU) 2018/1240”;

(ii) *the following codes are added:*

“007 Actions covered by Article 85(3) of Regulation (EU) 2018/1240

08 Emergency assistance

09 Solidarity actions”.

CHAPTER V FINAL PROVISIONS

Article 10 Challenge by public authorities

This Regulation does not affect the possibility for public authorities to challenge administrative or judicial decisions, as provided for in national law.

Article 11 Calculation of time limits

Any period of time prescribed in this Regulation shall be calculated as follows:

- (a) where a period expressed in days, weeks or months is to be calculated from the time an event occurs or an action takes place, the day on which that event occurs or that action takes place shall not itself be counted as falling within the period in question;***
- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week, or falls on the same date of the month, respectively, as the day on which the event or action from which the period is to be calculated occurred or took place; where, in a period expressed in months, the day on which it should expire does not occur in the last month of the period, the period shall end at midnight of the last day of that last month;***
- (c) time limits shall include Saturdays, Sundays and official holidays in the Member State concerned; where a time limit ends on a Saturday, Sunday or official holiday, the next working day shall be counted as the last day of the time limit.***

Article 12 Transitional measures

By ... [three months after the entry into force of this Regulation], the Commission, in close cooperation with the Member States and the relevant Union bodies, offices and agencies, shall present a common implementation plan to the Council to ensure that Member States are adequately prepared to implement Chapter II of this Regulation by ... [the first day of the twenty- fifth month following the entry into force of this Regulation], assessing any gaps identified and operational steps required, and shall inform the European Parliament thereof.

On the basis of that common implementation plan, by ... [six months after the entry into force of this Regulation], each Member State shall, with the support of the Commission and the relevant Union bodies, offices and agencies, establish a national implementation plan setting out actions and a timeline for their implementation. Each Member State shall complete the implementation of its plan by ... [the first day of the twenty-fifth month following the entry into force of this Regulation].

For the purpose of implementing this Article, Member States may use the support of the relevant Union bodies, offices and agencies, and the Union Funds may provide financial support to the Member States, in accordance with the legal acts governing those bodies, offices, agencies and Funds.

The Commission shall closely monitor the implementation of the national implementation plans.

Article 13 Monitoring and evaluation

By ... [two years from the date of application of this Regulation] and every five years thereafter, the Commission shall report to the European Parliament and to the Council on the application of this Regulation in the Member States and shall, where appropriate, propose any amendments.

Member States shall, at the request of the Commission, send it the necessary information for drawing up its report not later than ... [nine months before the date mentioned in the first subparagraph].

Article 14

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply from ... [**two years** after the date of entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament
The President

For the Council
The President

**Brussels, 18 April 2024 (OR.
en)**

**Interinstitutional File:
2020/0277(COD)**

8587/24

**CODEC 1017
JAI 584
ASILE 53
MIGR 158
PE 103**

INFORMATION NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL addressing situations of crisis and force majeure in the field of migration and asylum

- Outcome of the European Parliament's first reading (Brussels, 10 to 11 April 2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 131) to the abovementioned proposal for a Regulation, for which he had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. In addition, the ID political group tabled 11 amendments (amendments number 132 to 143).

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 10 April 2024, the plenary adopted the compromise amendment (amendment number 131) to the abovementioned proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)0178

Addressing situations of crisis and force majeure

European Parliament legislative resolution of 10 April 2024 on the proposal for a regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum (COM(2020)0613 – C9-0308/2020 – 2020/0277(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0613),
- having regard to Article 294(2) and Article 78(2)(c),(d) and (e) and Article 79(2)(c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0308/2020),
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to Article 294(3) and Article 78(2)(d) and (e) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Italian Senate and the Hungarian Parliament asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Economic and Social Committee of 30 April 2021¹,
- having regard to the opinion of the Committee of the Regions of 19 March 2021²,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 8 February 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

¹ OJ C 155, 30.4.2021, p. 58.

² OJ C 175, 7.5.2021, p. 32.

- having regard to Rules 59 and 40 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0127/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Regulation (EU) 2024/... of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147

■

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 155, 30.4.2021, p. 58.

² OJ C 175, 7.5.2021, p. 21.

³ Position of the European Parliament of 10 April 2024.

Whereas:

- (1) The Union, in constituting an area of freedom, security and justice, should ensure the absence of internal border controls for persons, frame a common policy on asylum ■ and **migration**, external border control **and returns, and prevent unauthorised movements between Member States**, based on solidarity **and fair sharing of responsibility** between Member States, which is **also** fair towards third-country nationals **and stateless persons and in full respect of fundamental rights**.
- (2) A comprehensive approach is required, with the objective of **reinforcing** mutual trust between Member States ■, recognising that the effectiveness of the overall approach depends on all components being jointly addressed and **implemented** in an integrated manner.
- (3) **The Union and its Member States could be confronted with migratory challenges that can vary greatly, in particular with regard to the scale and the composition of the arrivals. It is therefore essential that the Union be equipped with a variety of tools to respond to all types of situations.** The comprehensive approach **as outlined in Regulation (EU) 2024/... of the European Parliament and of the Council⁴, including through partnerships with relevant third countries**, should ensure that the Union has at its disposal specific rules to manage migration effectively, **in particular** with regard to the triggering of a **mandatory** solidarity mechanism, and that all the necessary measures are put in place to prevent crises from happening. **This Regulation sets out rules that are complementary to that approach as well as to the rules set out in Council Directive 2001/55/EC⁵, which can be used at the same time.**

⁴ Regulation (EU) 2024/... of the European Parliament and of the Council of ... on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, ..., ELI:...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)] and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

⁵ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).

(4) Notwithstanding the putting in place of the necessary preventive measures, it cannot be excluded that a situation of crisis or force majeure in the field of migration and asylum arises due to circumstances beyond the control of the Union and its Member States. ***Such exceptional situations can include the mass arrivals of third-country nationals and stateless persons in the territory of one or more Member States, or a situation of instrumentalisation of migrants by a third country or a hostile non-state actor with the aim of destabilising the Member State or the Union, or a situation of force majeure in the Member State. In those circumstances, it is possible that the measures and flexibility provided under Regulation (EU) 2024/...⁺ and Regulation (EU) 2024/... of the European Parliament and of the Council⁶⁺⁺ are not sufficient to address such exceptional situations. Those exceptional situations are different from those in which a Member State faces a significant migratory situation due to the cumulative effect of arrivals on its well-prepared asylum, reception and migration system or where a Member State is under migratory pressure because of the scale of arrivals which, while not reaching the levels of mass arrivals, nevertheless creates disproportionate obligations on its well-prepared systems, and for which situations Regulation (EU) 2024/...⁺ provides for relevant measures. Furthermore, this Regulation does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

⁶ Regulation (EU) 2024/... of the European Parliament and of the Council of ... establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, ..., ELI: ...).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)] and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

- (5) ***This Regulation intends to enhance the preparedness and resilience of the Union to manage situations of crisis and to facilitate operational coordination, capacity support and the availability of funding in situations of crisis.***
- (6) ***This Regulation ensures*** the effective application of the principle of solidarity and fair sharing of responsibility ***between Member States*** and the adaptation of the relevant rules on asylum procedure, ***including the application of the expedited procedure*** so that the Member States and the Union have the necessary ***legal*** tools at their disposal ***to react swiftly to situations of crisis and force majeure***, including ***the adaptation of the timelines*** to carry out ***all*** procedures.
- (7) ***This Regulation ensures that Member States receive full support in situations of crisis and force majeure, including through the solidarity mechanism that ensures a fair sharing of responsibility and a balance of efforts between Member States in situations of crisis.***

(8) This Regulation respects the fundamental rights of third-country nationals and stateless persons and observes the principles recognised by the Charter of Fundamental Rights of the European Union (the ‘Charter’), in particular the respect and protection of human dignity, prohibition of torture and inhuman or degrading treatment or punishment, respect for private and family life, the principle of the best interests of the child, the right to asylum and protection in the event of removal, expulsion or extradition, as well as the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (the ‘Geneva Convention’). This Regulation should be implemented in compliance with the Charter and general principles of Union law as well as with international law. In order to reflect the primary consideration that must be given to the best interests of the child, in line with the 1989 United Nations Convention on the Rights of the Child, and the need to respect family life, as well as to ensure the protection of the health of the persons concerned, safeguards should be applied in respect of minors and their family members, and of applicants for international protection (‘applicants’) whose state of health requires specific and adequate support. The rules and guarantees set out in Regulation (EU) 2024/...⁺ should continue to apply in respect of persons subject to the derogations provided for in this Regulation, except where this Regulation provides otherwise. The rules set out in Directive (EU) 2024/... of the European Parliament and of the Council⁷⁺⁺, including those concerning the detention of applicants, should continue to apply from the moment an application for international protection is made.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

⁷ Directive (EU) 2024/... of the European Parliament and of the Council of ... laying down standards for the reception of applicants for international protection (OJ L, ..., ELI: ...).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 [2016/0222(COD)] and insert the number, date, title, OJ reference and ELI of that Directive in the

- (9) *This Regulation does not provide for derogations from the rules and guarantees, including those related to material reception conditions, under Directive (EU) 2024/...⁺. A Member State in a situation of crisis should provide for additional and sufficient human and material resources to be able to meet its obligations under that Directive.*
- (10) *The rules and guarantees set out in Regulations (EU) 2024/...⁸⁺⁺, (EU) 2024/...⁹⁺⁺⁺ and (EU) 2024/...¹⁰⁺⁺⁺⁺ of the European Parliament and of the Council and in Directive (EU) 2024/... of the European Parliament and of the Council¹¹⁺⁺⁺⁺ should continue to apply*

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 [2016/0222(COD)].

⁸ Regulation (EU) 2024/... of the European Parliament and of the Council of ... introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L, ..., ELI:...).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 [2020/0278(COD)] and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

⁹ Regulation (EU) 2024/... of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/...⁺ and (EU) 2024/...⁺⁺ of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals or stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ L, ..., ELI:...).

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 [2016/0132 (COD)] and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

¹⁰ Regulation (EU) 2024/... of the European Parliament and of the Council of ... on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Council Directive 2011/95/EU of the European Parliament and of the Council (OJ L, ..., ELI:...).

⁺⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 [2016/0223(COD)] and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

¹¹ Directive (EU) 2024/... of the European Parliament and of the Council of amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (OJ L, ..., ELI:...).

⁺⁺⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 14/24 [2022/0426 (COD)] and insert the number, date, title, OJ reference and ELI of that

Directive in the

irrespective of derogations applied under this Regulation. Member States should apply the measures provided for in this Regulation only in accordance with the conditions to which those measures are subject, as provided for in the relevant Council implementing decision adopted pursuant to this Regulation and where strictly necessary and proportionate.

- (11) The adoption of measures under this Regulation in respect of a particular Member State should be without prejudice to the possibility to apply Article 78(3) of the Treaty on the Functioning of the European Union (TFEU).*

(12) ***Mass arrivals of third-country nationals or stateless persons*** could lead to a situation ***where a Member State is not in a position to process the applications for international protection of third-country nationals and stateless persons in accordance with the rules set out in Regulation (EU) 2024/...⁺ and Regulation (EU) 2024/...⁺⁺, and that has*** consequences for the functioning of the asylum and migration system, not only in that Member State but in the Union as a whole. ***Therefore, it*** is necessary to lay down specific rules and mechanisms that should enable effective action to address such situations.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

(13) *Member States should have sufficient human and financial resources and infrastructure to implement asylum and migration management policies effectively. Member States should ensure appropriate coordination between the relevant national authorities as well as with the national authorities of the other Member States to ensure that their asylum, reception, including child protection services, or return system is well prepared, including preparedness and contingency planning and that each component has sufficient capacity.*

(14) *A situation of instrumentalisation could arise where a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to the external borders of the Union or to a Member State, where such actions are indicative of an intention of a third country or a hostile non-state actor to destabilise the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.*

(15) Situations in which non-state actors are involved in organised crime, in particular smuggling, should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.

(16) Humanitarian assistance should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.

(17) Without prejudice to measures applicable under other policy fields and legal instruments, to ensure an immediate and appropriate response to hybrid threats in accordance with Union law and international obligations, this Regulation focuses on the specific measures applicable in the area of migration aimed at addressing the situations of instrumentalisation.

(18) In a situation of instrumentalisation, third-country nationals and stateless persons could apply for international protection at the external border or in a transit zone of a Member State, often being persons apprehended in connection with unauthorised crossings of the external border by land, sea or air or who are disembarked following search and rescue operations. This can lead, in particular, to an unexpected significant increase in the caseload of applications for international protection at the external borders. In that regard, effective and genuine access to the international protection procedure must be ensured in accordance with Article 18 of the Charter and the Geneva Convention.

(19) As regards Cyprus, Council Regulation (EC) No 866/2004¹² provides for specific rules that apply to the line between the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus exercises effective control and those areas in which it does not exercise effective control. Although that line does not constitute an external border, a situation where a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to cross that line should be considered as instrumentalisation, if all the other elements of instrumentalisation are present.

¹² Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession (OJ L 161, 30.4.2004, p. 128).

(20) *A Member State can also be* faced with abnormal and unforeseeable circumstances outside *its* control, the consequences of which could not have been avoided in spite of the exercise of all due care. Such situations of force majeure could ***prevent the Member State from complying with its obligations under Union law and could have consequences not only in that Member State, but in the Union as a whole. Examples of*** a situation of force majeure ***include, among others, pandemics and natural disasters.***

(21) Where a Member State considers itself to be in a situation of crisis or force majeure, that Member State should be able to request authorisation to apply the derogations and solidarity measures provided for in this Regulation. That request should include a description of the situation and should specify which measures it requests in order to address the specific situation. It should also provide the reasons why the situation requires it to resort to those measures and, where relevant, indicate which measures have already been taken to address the situation.

(22) The use of measures included in the Permanent EU Migration Support Toolbox as established by Article 6(3) of Regulation (EU) 2024/...⁺ (the ‘Toolbox’) should not be a precondition to benefit from solidarity measures under this Regulation.

(23) In a situation of crisis, the Member State facing such a situation should have the possibility to request from other Member States solidarity and support measures that are the most suited to its needs in order to manage the situation, and that call for enhanced solidarity compared to that provided for in Regulation (EU) 2024/...⁺ in alleviating the Member State’s responsibility for handling a situation of crisis. The enhanced solidarity and support measures could take the form of relocations, financial contributions, alternative solidarity measures or a combination of the above.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

(24) *In a situation of crisis or force majeure, the Member State facing such a situation should have the possibility to request authorisation to apply derogations from relevant rules on the asylum procedure, including the asylum border procedure. Where relevant, such requests should also include the choice of the Member State concerned as regards the exclusion or the cessation of the border procedure for specific categories of applicants. Together with such a request, the Member State concerned should be able to notify the Commission of its intention to apply the derogation from the registration deadline, before it is authorised to do so in a Council implementing decision, as well as the precise reasons for which immediate action is required. The application of that derogation should not exceed ten days from the day following the request unless authorised in the Council implementing decision. The Commission and the Council, when fulfilling their respective responsibilities under the authorisation procedure, should proceed expeditiously in order to limit the time gap between the end of such period and the adoption of the corresponding Council implementing decision.*

(25) *Considering that a Member State could be faced with several of the situations described in this Regulation at the same time, it is possible for that Member State to request various measures under this Regulation and be authorised to apply or benefit from those measures simultaneously, which are conceived as complementary.*

(26) *In order to allow for the proper management of a situation of crisis, including instrumentalisation, or force majeure, and to ensure predictability and the appropriate adaptation of the relevant rules on the asylum procedure to such situations, including the asylum border procedure, power should be conferred upon the Commission to assess the situation, upon a reasoned request by the Member State concerned, and to determine, by way of an implementing decision, whether the requesting Member State is facing a situation of crisis, including instrumentalisation, or force majeure.*

(27) In a situation of crisis, the solidarity measures to address such a situation should go beyond those provided for in Regulation (EU) 2024/...⁺. For that reason, when assessing the situation, the Commission should take into account quantitative and qualitative indicators provided for in Article 9 of that Regulation and substantiated information provided by the requesting Member State and information gathered pursuant to Regulation (EU) 2021/2303 of the European Parliament and of the Council¹³ and Regulation (EU) 2019/1896 of the European Parliament and of the Council¹⁴ and the European Annual Asylum and Migration Report referred to in Regulation (EU) 2024/...⁺. In situations of instrumentalisation, the Commission should also take into account the reasons why the Toolbox is not sufficient to address the situation. The Commission should gather sufficient information to properly assess whether the requesting Member State is facing a situation of crisis, including instrumentalisation, or force majeure, in consultation with the relevant Agencies, in particular the European Union Agency for Asylum (the ‘Asylum Agency’), the European Border and Coast Guard Agency and the European Union Agency for the Fundamental Rights, as well as international organisations, in particular the United Nations High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM), and other relevant organisations.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

¹³ Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1).

¹⁴ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

- (28) *To ensure a high level of political scrutiny and support and expression of the Union's solidarity, it is relevant to consider whether the European Council has acknowledged that the Union or one or more of its Member States are facing a situation of instrumentalisation of migrants. The instrumentalisation of migrants is liable to put at risk the essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.*
- (29) *In order to provide for an appropriate response that is necessary and proportionate to address the situation, the Commission proposal should identify, where relevant, the specific derogations that Member States should be authorised to apply. In a situation of instrumentalisation, the persons subject to instrumentalisation to whom the relevant derogations could be applied should be clearly identified. In a situation of crisis, where appropriate and after consultation with the Member State facing the situation of crisis, the Commission should include in its proposal a draft Solidarity Response Plan, indicating the relevant solidarity measures and their level required for the specific situation, including the total amount of relocations, financial contributions or alternative solidarity measures and their level, recognising that the various types of solidarity are of equal value, and respecting the full discretion of Member States in choosing the solidarity measures.*

(30) *Whereas in a situation of migratory pressure, relocation or responsibility offsets are to cover 60 % of the relocation needs under Regulation (EU) 2024/...⁺, in a situation of crisis, it is important that all solidarity needs of the Member State concerned are addressed. For that reason, if a Council implementing decision establishes a Solidarity Response Plan, the Member State facing the situation of crisis should have priority to use the unallocated solidarity pledges or those that have not yet been implemented and that are available in the Annual Solidarity Pool established in accordance with Article 57 of Regulation (EU) 2024/...⁺. If that is not possible or if the Annual Solidarity Pool does not contain sufficient pledges to cover the identified needs, the Member State facing the situation of crisis should also be able to make use of the contributions contained in the Council implementing decision, recognising that the various types of solidarity are of equal value. With a view to addressing all the needs of the Member State concerned, if the combination of the relocation pledges available in the Annual Solidarity Pool and in the Council implementing decision is not sufficient, responsibility offsets should become mandatory to cover the needs set out in the Solidarity Response Plan. For that to happen, there should be persons present on the territory of the contributing Member State to whom the offsets apply.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

(31) *Situations of crisis or force majeure are also liable to put at risk the essential functions of a Member State. In order to strengthen mutual trust between the Member States and to improve coordination at Union level, implementing powers should be conferred upon the Council to adopt an implementing decision authorising a Member State to apply the derogations and the solidarity measures provided for in this Regulation where the conditions laid down are met. The time period for the application of the measures authorised by the initial implementing decision should be three months. It should be possible to extend that period for a further three months upon confirmation by the Commission that the situation of crisis or force majeure persists. The Council should be empowered to further extend the authorisation to apply the derogations and the solidarity measures, by up to three months, on the basis of a Commission proposal, if the circumstances justifying the extension of the derogations and solidarity measures persist. It should be possible to extend that period by a further three months upon confirmation by the Commission that the situation persists. The Council should be empowered to repeal the application of the measures on the basis of a Commission proposal when the circumstances justifying the application of the derogations and solidarity measures have come to an end. It should be possible for the decision extending the authorisation to amend the derogations applied. In exercising their powers and carrying out their responsibilities, the Commission and the Council should ensure at all times that the principles of proportionality and necessity are respected.*

- (32) The Council implementing decision should specify, where appropriate, the specific derogations that the Member State facing a situation of crisis, or force majeure is authorised to apply, depending on the nature of each derogation, and set the date from which they could be applied. Moreover, the decision should state the grounds on which it is based and the personal scope of the derogations.*
- (33) The Council implementing decision should establish, where appropriate, a Solidarity Response Plan, indicating the specific solidarity and support measures required and the levels thereof, as well as the pledges made by the contributing Member States. To that end, the pledging exercise should take place in the framework of the adoption of the Council implementing decision. It is important to ensure the full discretion of the contributing Member States to choose between the types of solidarity and support measures.*
- (34) Given the importance of applying the measures set out in this Regulation only for as long and to the extent strictly necessary, the Commission and the Council should keep the situation under constant monitoring and review as regards the necessity and proportionality of those measures. In that context, the Commission should pay particular attention to compliance with fundamental rights and humanitarian standards and can request the Asylum Agency to initiate a monitoring exercise of the concerned Member State's asylum or reception system pursuant to Article 15(2) of Regulation (EU) 2021/2303.*

(35) The procedural rules set out in Regulation (EU) 2024/...⁺ for carrying out relocation
■ apply for the purpose of ensuring the proper implementation of the solidarity measures in a situation
of crisis, **taking** into account the gravity and urgency of that situation.

(36) *To ensure the smooth implementation of the solidarity mechanism under this
Regulation, the EU Solidarity Coordinator should, in addition to the tasks laid down in Regulation
(EU) 2024/...⁺, support relocation activities and promote a culture of
preparedness, cooperation and resilience among Member States. In a situation of crisis, the EU
Solidarity Coordinator should, every two weeks, provide a bulletin on the state of the implementation
and functioning of the relocation mechanism. The office of the EU Solidarity Coordinator should
be provided with sufficient staff and resources to
effectively fulfil its role under this Regulation. When implementing relocation, primary
consideration should be given to vulnerable persons.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS
21/24 [2020/0279(COD)].

(37) *Vulnerable persons should be given primary consideration for relocation, in particular when they have special reception needs within the meaning of Article 24 of Directive (EU) 2024/...⁺, or are in need of special procedural guarantees as referred to in Articles 20 to 23 of Regulation (EU) 2024/...⁺⁺. According to Article 24 of Directive (EU) 2024/...⁺, applicants falling within any of the following categories are more likely to have special reception needs: minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, lesbian, gay, bisexual, trans and intersex persons, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders including post traumatic stress disorder and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive.*

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 [2016/0222(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

(38) In contrast to the rules set out in Regulation (EU) 2024/...⁺ where Member States are not obliged to take responsibility above their fair share, in a situation of crisis, the implementation of the Solidarity Response plan could potentially lead to one or several contributing Member States taking responsibility for examining applications for international protection above their fair share. In such cases, such a Member State should be entitled to reduce proportionally the part above the fair share from the implementation of solidarity pledges under the upcoming annual cycles of Regulation (EU) 2024/...⁺ over a period of five years. Such reduction could also be applied in a Council implementing decision adopted pursuant to Article 4(3) with the corresponding amount of applications beyond the fair share and within five years from the date in which the Council implementing decision that led the Member State to go beyond its fair share is no longer in force. It should be possible for the reductions under the upcoming annual cycles and in a Council implementing decision to be applied alternatively or simultaneously, provided that they correspond to and do not go beyond the number of applications for which that Member State contributed above its fair share.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

(39) When a Member State is facing a situation of crisis or force majeure, it might need to divert resources to manage arrivals of third-country nationals and stateless persons at its borders. As a result, that Member State might need time to reorganise its resources and increase its capacity, including with the support of the relevant Union agencies. That Member State might also need more time to be able to decide on applications without allowing entry into its territory. In such a situation, it should be possible for that Member State to derogate from the deadlines for registration and border procedure.

(40) Where a Member State applies one or more of the measures provided for in this Regulation, the Member State should inform third-country nationals and stateless persons in a language which they understand or are reasonably supposed to understand, about the derogations applied and the duration of the measures. Member States are obliged to address any special procedural and special reception needs of the applicants that could arise and provide information in an appropriate manner accordingly. Moreover Article 8 on provision of information and Article 36(3) with regard to the information on the possibility to appeal the decision on the application, of the Regulation (EU) 2024/...⁺ apply.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

(41) Where derogations from the asylum procedure are applied, the safeguards for applicants with special procedural and special reception needs, including medical conditions, should be a primary consideration for the competent authorities. For that reason, the Member State facing a situation of crisis or force majeure should not apply, or should cease to apply, the derogations from the asylum procedure in cases where there are medical reasons for not applying the border procedure in accordance with Article 53(2), point (d), of Regulation (EU) 2024/...⁺, where the necessary support cannot be provided to applicants with special procedural needs in accordance with Article 53(2), point (b), of that Regulation or where the necessary support cannot be provided to applicants with special reception needs in accordance with Directive (EU) 2024/...⁺⁺. The Member State concerned should prioritise the examination of applications from persons with special procedural needs in accordance with Regulation (EU) 2024/...⁺ and with special reception needs as defined in Article 2, point, (14) of Directive (EU) 2024/...⁺⁺, especially minors and their family members.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-

(42) In **■** situations of crisis *and force majeure, the Member State* should be *authorised to derogate from Regulation (EU) 2024/...⁺ in order to* register applications *for international protection no later than four weeks after they are* made **■**. Such an extension should be without prejudice to the rights of asylum applicants guaranteed by the Charter, *Regulation (EU) 2024/...⁺ and Directive (EU) 2024/...⁺⁺. Without prejudice to the exception provided for during the period between the request and the adoption of the Council implementing decision, in a situation of crisis, characterised by mass arrivals of third-country nationals and stateless persons, the extension of the registration period should only be applied during the time period set out in the initial Council implementing decision.*

(43) *When confronted with a situation of crisis or force majeure, it should be possible for the Member State concerned to extend the examination of applications for international protection at the border by six weeks. The extension should not be used in addition to the period referred to in Article 51(2), third subparagraph, of Regulation (EU) 2024/...⁺.*

(44) *When faced with a situation of crisis or force majeure, a Member State should be able to request measures from among several options with regard to the application of the border procedure, taking into account the composition of the flows and their diverse nature, depending on the precise situation of crisis.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

⁺⁺

OJ: Please insert in the text the number of the Directive contained in document PE-

(45) In situations of crisis, characterised by mass arrivals of third-country nationals and stateless persons, or of force majeure, it could be necessary to allow a Member State not to apply the border procedure in respect of persons who come from third countries where the Union-wide average recognition rate is below 20%. In order to apply such a derogation, the Council implementing decision should assess whether the measures contained in the contingency plan of the Member State concerned, referred to in Article 32 of Directive (EU) 2024/...⁺ are sufficient to address the situation. In any event, Member States are obliged to apply the border procedure in the situations referred to in Article 42(1), points (c) and (f), of Regulation (EU) 2024/...⁺⁺.

(46) In a situation of crisis characterised by mass arrivals of third-country nationals and stateless persons applying for international protection, it could be necessary to allow a Member State to lower the threshold for the mandatory application of the border procedure provided for in Article 42(1), point (j), of Regulation (EU) 2024/...⁺⁺. In any event, the reduced threshold should not go below 5%. Member States are obliged to apply the border procedure in the situations referred to in Article 42(1), points (c) and (f), of that Regulation.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 [2016/0222(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

(47) *In a situation of crisis characterised by mass arrivals of third-country nationals and stateless persons applying for international protection, it could be necessary to broaden the scope of the application of the border procedure, established by Article 43 of Regulation (EU) 2024/...⁺ and to allow a Member State to take a decision in the framework of a border procedure also on the merits of an application in cases where the applicant is a national or, in the case of stateless persons, a former habitual resident, of a third country, for which the proportion of decisions granting international protection Union-wide is 50 % or lower. As a result, in the application of the crisis border procedure, Member States should continue to apply the border procedure as provided by **Articles 43 to 54** of that Regulation but could extend the application of the border procedure to **third- country** nationals **or stateless persons** who come from third countries where the Union-wide average recognition rate is above 20% but under 50%, **taking into account the rapidly evolving protection needs that might arise in the country of origin as reflected in quarterly updates of Eurostat data. This broadening of the scope of the border procedure should not affect the grounds and other rules applicable to the mandatory border procedure under that Regulation. Where a Member State is authorised to broaden the scope of the border procedure, applications examined under that procedure should not be considered as part of the adequate capacity pursuant to Article 47 or counted for the application of the annual cap pursuant to Article 50 of that Regulation.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

(48) *The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that that person is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. In accordance with Directive (EU) 2024/...⁺, minors should, as a rule, not be detained, but should be placed in accommodation with special provisions for minors, including where appropriate in non-custodial, community-based placements. Given the negative impact of detention on minors, such detention could be used, in accordance with Union law, exclusively in exceptional circumstances, where strictly necessary, only as a last resort, for the shortest time possible and never in prison accommodation or any other facility destined for law enforcement purposes. Minors are not to be separated from their parents or care givers, and the principle of family unity should generally lead to the use of adequate alternatives to detention for families with minors, in accommodation suitable for them. Moreover, everything possible must be done to ensure that a viable range of adequate alternatives to detention of minors is available and accessible.*

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23

(49) In a situation of instrumentalisation and to prevent a third country or a hostile non-state actor from targeting specific nationalities or specific categories of third-country nationals or stateless persons, it should be possible for a Member State to derogate from the asylum procedure set out in this Regulation by taking a decision in the framework of the border procedure, as set out in Articles 44 to 55 of Regulation (EU) 2024/...⁺ on the merits of all applications for international protection. The principles and guarantees set out in that Regulation should be respected. The Council implementing decision authorising the Member State to apply the referred derogations should specify the third- country nationals or stateless persons subject to the situation of instrumentalisation.

Where applying this derogation, specific attention should be given to certain categories of third-country nationals and stateless persons who have been subject to instrumentalisation, in particular minors under the age of 12 and their family members, and vulnerable persons with special procedural or special reception needs. Those groups should therefore either be excluded from the border procedure, or, when an individual assessment concludes that their applications are likely to be well-founded, that procedure should cease to apply to them. The choice between those alternatives remains at the discretion of the Member State requesting the application of that derogation. The choice indicated in the request should be reflected in the Council implementing decision authorising the application of this derogation. The broadening of the scope of the border procedure in a situation of instrumentalisation should not affect the grounds and other rules applicable to the mandatory border procedure under Regulation (EU) 2024/...⁺.

Where a Member State is authorised to broaden the scope of the border procedure, applications examined under that procedure should not be considered as part of the adequate capacity pursuant to Article 48 or counted for the application of the annual cap pursuant to Article 51 of that Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

(50) In order to support the Member State concerned in providing the necessary assistance to third-country nationals and stateless persons falling under the scope of this Regulation, United Nations agencies, and the UNHCR in particular, and other relevant partner organisations entrusted with specific tasks by Member States, should have effective access to the border under the conditions set out in Directive (EU) 2024/...⁺ and Regulation (EU) 2024/...⁺⁺. The UNHCR should be allowed access to applicants, including to those at the border. To this end, the Member State concerned should maintain cooperation with those organisations.

(51) Specific rules should be laid down for situations of crisis characterised by mass arrivals and for force majeure, to allow Member States to extend the time limits set out in Regulation (EU) 2024/...⁺⁺⁺ under strict conditions where it is impossible to comply with those time limits due to the extraordinary situation. Such extension should apply simultaneously to the time limits set out for sending and replying to take charge requests and take back notifications as well as the time limit to transfer an applicant to the Member State responsible. The time limits should be extended irrespective of whether that Regulation provides for shorter time limits for certain situations.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 [2016/0222(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS

(52) *In order to ensure effective access to the procedure for granting international protection, where the transfer does not take place due to the persistence of the situation of crisis characterised by mass arrivals or force majeure, or where the transferring Member State does not implement the transfer when the applicant is available to the competent authorities of the transferring Member State, a maximum time limit to carry out the transfer to a Member State facing that situation should be set out. That maximum time limit should not be longer than one year from the acceptance of the take charge request, from the confirmation of the take back notification by another Member State or from the final decision on an appeal or review of a transfer decision that has suspensive effect in accordance with Article 43(3) of Regulation (EU) No 2024/...⁺. That maximum time limit is without prejudice to the possibility to extend the time limits pursuant to Article 46(2) of that Regulation for carrying out a transfer.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

(53) *In order to avoid the Common European Asylum System becoming non-functional due to mass arrivals of such extraordinary scale and intensity that, even if a Member State has a well-prepared asylum, reception and return system, if the situation is not addressed by the Union as a whole, it could create a serious risk of serious deficiencies in the treatment of applicants, the Member State should, in those most exceptional circumstances, be able to be relieved of its obligation to take back an applicant pursuant to Article 16(2) and Article 38(4) of Regulation (EU) 2024/...⁺. However, in order to ensure that the application of such a derogation does not lead to additional pressure on the Member State facing that situation, that derogation should only apply retroactively to applications already registered in that Member State within four months before the date on which the Council implementing decision is adopted.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

(54) *Where, in accordance with Regulation (EU) 2024/...⁺, objective circumstances suggest that applications for international protection from groups of applicants from a specific country of origin or former habitual residence or a part of that country or on the basis of the criteria drawn from that Regulation could be well-founded, it is in the interest of both the determining authorities and the applicants concerned to conclude the examination of the merits of the application as soon as possible and to allow for a swift and efficient granting of international protection in a situation of crisis.*

(55) *Applicants whose applications are examined in the context of the expedited procedure provided for in this Regulation enjoy all of the rights and guarantees, to which applicants are entitled in accordance with Regulation (EU) 2024/...⁺⁺, including the right to information and to an effective remedy.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 [2016/0223(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

(56) When applying a Commission recommendation on expedited procedure, there should be no interview on the merits, but if there are doubts whether the applicant belongs to the category or categories of persons identified in that recommendation or whether the exclusion grounds apply, such an interview might be needed. In all cases, the procedure should not last longer than four weeks from the date of the lodging of the application.

Where a Member State has established that an applicant is a threat to internal security, that Member State should be able not to apply the expedited procedure in respect of that applicant. In such circumstances, the application should be examined in accordance with Articles 36 and 40 of Regulation (EU) 2024/...⁺.

(57) Applicants whose applications are examined in the context of the expedited procedure provided for in this Regulation, should, in accordance with Article 29 of Regulation (EU) 2024/...⁺, receive a document certifying their status in a language they can understand or can reasonably be supposed to understand.

(58) The relevant Union Agencies, UNHCR and other relevant organisations can be consulted at the different stages of the application of the expedited procedure.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

(59) To ensure a sufficient level of preparedness for a situation of crisis, Member States should include in their contingency plans measures needed to respond to and resolve a situation of crisis, including measures needed to overcome challenges in the functioning of the Common European Asylum System and to protect the rights of applicants and beneficiaries of international protection as well as foster future resilience in the Member State concerned. Member States should also use all the tools available under national and Union law, including making use of anticipation and early warning tools under the EU mechanism for preparedness and management of crises related to migration provided for in Commission Recommendation (EU) 2020/1366¹⁵.

(60) Without prejudice to the above and where relevant, in a situation of crisis, all mechanisms for crisis included in the Toolbox should be mobilised, particularly the financial and operational support that Union agencies, Union Funds and the Union Civil Protection Mechanism can provide in accordance with the applicable legal acts. Thereafter, the Commission should, in the context of the Technical-Level Migration Forum, ensure coordination and exchange of information with other platforms that are relevant to manage the situation of crisis, including the EU Migration Preparedness and Crisis Management Network in accordance with Recommendation (EU) 2020/1366, and the Integrated Political Crisis Response (IPCR) arrangements.

¹⁵ Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration (OJ L 317, 1.10.2020, p. 26).

(61) *A Member State facing a situation of crisis or force majeure can request support from the Asylum Agency, the European Border and Coast Guard Agency or Europol in accordance with their mandates. In addition and as appropriate, the Asylum Agency can propose assistance on its own initiative in accordance with Article 16(1), point (d), of Regulation (EU) 2021/2303, whereas the European Border and Coast Guard Agency can propose assistance in the field of return in accordance with Articles 48, 50, 52 and 53 of Regulation (EU) 2019/1896 in agreement with the Member State concerned, and Europol can propose assistance in accordance with Article 6(1) of Regulation (EU) 2016/794 of the European Parliament and of the Council¹⁶.*

(62) To support Member States **that** undertake relocation as a solidarity measure, financial support from the EU budget should be provided, **including from the thematic facility as set out in Regulation (EU) 2021/1147 of the European Parliament and of the Council¹⁷.**

(63) Since the objectives of this Regulation, namely to provide for the necessary adaptation of the rules on asylum procedures and where relevant those on solidarity in order to ensure that Member States are able to address situations of crisis and force majeure, in the field of asylum and migration management within the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

¹⁶ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

¹⁷ Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021, p. 1).

(64) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the **TEU** and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that **Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13** of this Regulation constitute amendments within the meaning of Article 3 of the Agreement concluded between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention¹⁸, Denmark has to notify the Commission of its decision whether or not to implement the content of such amendments at the time of the adoption of the amendments or within 30 days hereafter.

²⁰ OJ L 53, 27.2.2008, p. 5.

(65) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(66) As regards Iceland and Norway, **Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13** of this Regulation constitute new legislation in a field which is covered by the subject matter of the Annex to the Agreement concluded by the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway¹⁹.

(67) As regards Switzerland, **Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13** of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland²⁰.

¹⁹ OJ L 93, 3.4.2001, p. 40.

²⁰ OJ L 53, 27.2.2008, p. 5.

(68) As regards Liechtenstein, **Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13** of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland to which Article 3 of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland²¹ refers,

HAVE ADOPTED THIS REGULATION:

²¹ OJ L 160, 18.6.2011, p. 39.

Chapter I
General provisions

Article 1 Subject matter

1. This Regulation addresses **exceptional** situations of crisis, **including instrumentalisation**, and force majeure, in the field of migration and asylum within the Union by means of temporary measures. **It provides for enhanced solidarity and support measures that build upon Regulation (EU) 2024/...⁺ while ensuring the fair sharing of responsibility, and for temporary** specific rules derogating from those set out in Regulations (EU) 2024/...⁺ and (EU) 2024/...⁺⁺.
2. **Temporary measures adopted pursuant to this Regulation shall meet the requirements of necessity and proportionality, be appropriate to achieving their stated objectives and ensuring the protection of the rights of applicants and beneficiaries of international protection, and be consistent with the obligations of the Member States under the Charter, international law and the Union asylum acquis. This Regulation shall not affect the fundamental principles and guarantees, established by the legislative acts from which derogations are allowed pursuant to this Regulation.**

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

3. *The measures adopted pursuant to this Regulation shall be applied only to the extent strictly required by the exigencies of the situation, in a temporary and limited manner and only in exceptional circumstances. Member States may apply the measures provided for in Chapter IV and benefit from the measures provided for in Chapter III only upon request and to the extent provided for in the Council implementing decision referred to in Article 4(3) without prejudice to Article 10(5).*

4. For the purposes of this Regulation, a situation of crisis **means**:

(a) an exceptional situation of mass **arrivals** of third-country nationals or stateless persons **■** in a Member State **by land, air or sea, including of persons** that have been disembarked **■** following search and rescue operations, of such a scale **and nature, taking into account, inter alia**, the population, GDP **and geographical specificities** of the Member State, **including the size of the territory, ■** that it renders the Member State's **well-prepared** asylum, reception, **including child protection services**, or return system non-functional, **including as a result of a situation at local or regional level, such that there could be** serious consequences for the functioning of the Common European Asylum System; **■** or

(b) a situation of instrumentalisation where a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.

Member States may request the authorisation to apply measures listed in Chapter III and IV in particular where there is an unexpected significant increase in the caseload of applications for international protection at the external borders.

Member States may apply the derogations provided for in the Council implementing decision referred to in Article 4(3) in the situation of instrumentalisation only in respect of third-country nationals or stateless persons who are subject to instrumentalisation and who are either apprehended or found in the proximity of the external border, meaning the Member State's land borders, including river and lake borders, sea borders and its airports, river ports, sea ports and lake ports, provided that they are not internal borders, in connection with an unauthorised crossing by land, sea or air, or who are disembarked following search and rescue operations or who have presented themselves at border crossing points.

5. *For the purposes of this Regulation, force majeure refers to abnormal and unforeseeable circumstances outside a Member State's control, the consequences of which could not have been avoided notwithstanding the exercise of all due care, which prevent that Member State from complying with obligations under Regulations (EU) 2024/...⁺ and (EU) 2024/...⁺⁺.*

Chapter II

Governance

Article 2

Reasoned request by a Member State

1. *Where a Member State considers itself to be in a situation of crisis or force majeure, it may, given those exceptional circumstances, submit a reasoned request to the Commission, in order to benefit from solidarity measures allowing for the proper management of that situation and to allow for possible derogations from the relevant rules on the asylum procedure, while ensuring that the applicants' fundamental rights are respected.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

2. *A reasoned request as referred to in paragraph 1 shall include:*

(a) a description of:

(i) how, as a result of a situation of crisis as referred to in Article 1(4), point (a), the Member State's asylum and reception system, including child-protection services, has become non-functional, as well as the measures taken so far to address the situation and a justification proving that that system, although well-prepared and notwithstanding the measures already taken, is unable to address the situation; or

(ii) how the Member State is faced with a situation of instrumentalisation as referred to in Article 1(4), point (b), that is putting its essential functions at risk, including the maintenance of law and order or the safeguard of its national security; or

(iii) how the Member State is faced with abnormal and unforeseeable circumstances outside its control, the consequences of which could not be avoided notwithstanding the exercise of all due care, and how that situation of force majeure prevents it from fulfilling its obligations laid down in Article 27, Article 45(1) and Article 51(2) of Regulation (EU) 2024/...⁺ and in Articles 39, 40, 41 and 46 of the Regulation (EU) 2024/...⁺⁺;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

- (b) where relevant, the type and level of solidarity measures provided for in Article 8(1) that it considers necessary;*
- (c) where relevant, the derogations provided for in Articles 10 to 13 that it considers necessary; and*
- (d) if the Member State requests to apply the derogation provided for in Article 11(6), whether it intends to provide for the exclusion of specific categories of applicants as referred to in paragraph 7, point (a), or paragraph 7, point (b) of that Article or the cessation of the border procedure for specific categories of applicants following an individual assessment as provided for in paragraph 9 of that Article.*

Article 3

Commission implementing decision establishing a situation of crisis or force majeure

1. Following the submission of a reasoned request as referred to in Article 2, the Commission, in close cooperation with the requesting Member State and in consultation with relevant Union agencies and international organisations, in particular UNHCR and IOM, shall expeditiously assess the situation and, where the conditions set out in Article 1 are met, adopt an implementing decision as referred to in paragraph 8 of this Article.

2. *The Commission may also adopt a recommendation on the application of an expedited procedure for granting international protection to certain categories of applicants as referred to in Article 14.*
3. *The Commission shall immediately notify the European Parliament, the Council and the Member States that it is undertaking an assessment as referred to in [] paragraph 1.*
4. *When assessing whether the Member State is facing a situation of instrumentalisation as referred to in Article 1(4), point (b), of this Regulation, the Commission shall assess inter alia the following:*
 - (a) *whether a third country or a hostile non-state actor is facilitating the movement of third-country nationals or stateless persons into the Union;*
 - (b) *whether the information provided by the Member State adequately demonstrates that any actions falling under point (a) have the aim of destabilising the Union or the Member State concerned;*
 - (c) *whether there is an unexpected significant increase in the caseload of applications for international protection at the external borders or in the Member State concerned compared to the average number of applications;*

(d) whether the response to the implications of the situation of instrumentalisation on the migration and asylum system of the Member State concerned cannot be sufficiently addressed by means of the measures contained in the Toolbox in accordance with Article 6(3) of Regulation 2024/...⁺.

*5. The Commission shall determine whether the conditions with regard to the situation faced by the Member State as set out in Article 1 are met, taking into account the reasoned request as referred to in Article 2, and in the light of the information provided and the indicators relating to the Member State concerned referred to in Article 9 of Regulation (EU) 2024/...⁺ **■**. The Commission shall assess the information provided in the reasoned request against the situation in the Member State concerned during the preceding two months and as compared to the overall situation in the Union.*

6. The Commission shall determine in particular:

(a) whether the requesting Member State's asylum, reception, including child-protection services, or migration system, although well-prepared, and notwithstanding the measures already taken, has become non-functional as a result of a situation of mass arrivals of third-country nationals or stateless persons rendering that Member State unable to address the situation and whether there might be serious consequences for the functioning of the Common European Asylum System.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24

(b) whether the Member State ■ is faced with a situation of *instrumentalisation* as referred to in Article 1(4), point (b), *to be addressed with the necessary and proportionate use of the measures set out in* this Regulation;

(c) *whether the Member State is faced with abnormal and unforeseeable circumstances outside its control, the consequences of which could not be avoided notwithstanding of the exercise of all due care, and how such situation of force majeure prevents it from fulfilling its obligations set out in Article 27, Article 51(2) and Article 60(1) of Regulation (EU) 2024/...⁺ and in Articles 39, 40, 41 and 46 of the Regulation (EU) 2024/...⁺⁺.*

7. *When adopting an implementing decision as referred to in paragraph 8 of this Article, the Commission shall indicate why the response to the situation of instrumentalisation cannot be sufficiently addressed by means of the measures set out in the Toolbox in accordance with Article 6(3) of Regulation (EU) 2024/...⁺⁺.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS

8. *Where the Commission determines pursuant to paragraph 5 of this Article that the assessment referred to in paragraph 1 demonstrates the existence of the conditions set out in Article 1, taking into account the reasoned request as referred to in Article 2, and in the light of the information provided and the indicators relating to the Member State concerned referred to in Article 9 ■ of Regulation (EU) 2024/...⁺, the Commission shall adopt, without delay and in any case no later than two weeks from the submission of the reasoned request referred to in Article 2 of this Regulation, an implementing decision determining whether the requesting Member State is in a situation of crisis referred to in Article 1(4), point (a) or (b), of this Regulation, or force majeure. The Commission shall transmit the implementing decision to the European Parliament and the Council.*

Article 4

Commission proposal and Council implementing decision authorising derogations and establishing solidarity measures

1. *Simultaneously with the adoption of the Commission implementing decision referred to in Article 3, the Commission shall, where appropriate, make a proposal for a Council implementing decision. The Commission shall immediately inform the European Parliament of that proposal.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24

2. *The Commission's proposal for a Council implementing decision referred to in paragraph 1 shall ensure that the principles of necessity and proportionality are respected and shall include:*
- (a) where appropriate, the specific derogations as referred to in Articles 10 to 13 that the Member State should be authorised to apply;*
 - (b) where appropriate, where the Member State is facing a situation of crisis, a draft Solidarity Response Plan, after consultation with the Member State, that ensures the full discretion of contributing Member States in choosing between the types of solidarity measures, and that includes:*
 - (i) where appropriate, the total amount of relocation contributions needed to address the situation of crisis;*
 - (ii) where appropriate, the other relevant solidarity measures referred to in Article 8(1), points (b) and (c), and the level of such measures needed to address the specific situation of crisis;*
 - (iii) where applicable, the total amount of solidarity measures to be taken from the available pledges in the Annual Solidarity Pool;*

(iv) *where the available pledges in the Annual Solidarity Pool do not cover the needs identified in subpoints (i) and (ii) of this point, the Solidarity Response Plan shall also establish the additional pledges needed to cover such needs; and*

(v) *the indicative contributions of each Member State to contribute their fair share, calculated in accordance with the reference **key** set out in Article 66 of Regulation (EU) 2024/...⁺; and*

(c) *where the Member State ■ is facing a ■ situation of crisis as referred to in Article 1(4), point (b), the identification of ■ the third-country nationals or stateless persons subject to that situation.*

When setting up the solidarity needs of the Member State, the Commission shall take into account whether the Member State is already a benefitting Member State pursuant to Articles 58 and 59 of Regulation (EU) 2024/...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

Where, in the reasoned request as referred to in Article 2, the Member State considers that relocation is the primary or only solidarity measure to address the situation, the Commission shall take that into account in its proposal for a Council implementing decision, without prejudice to the discretion of the contributing Member States to choose between the types of solidarity measures.

3. The Council shall assess the Commission's proposal for a Council implementing decision as referred to in paragraph 1 and adopt an implementing decision within two weeks of receipt of that proposal, authorising the Member State ■ to apply the derogations provided for in Articles 10 to 13 and establishing a Solidarity Response Plan as referred to in paragraph 2, point (b), of this Article, including the solidarity measures that the Member State can benefit from in order to address the situation.

4. Where appropriate, when adopting the proposal for a Council implementing decision as referred to in paragraph 1, the Commission may adopt a recommendation on the application of an expedited procedure for granting international protection to certain categories of applicants as referred to in Article 14.

5. The **Council** implementing decision ■ shall ***ensure that the principles of necessity and proportionality are respected***, shall ***state the grounds on which it is based and*** set the date from which the ***derogations*** laid down in Articles **10 to 13** may be applied, as well as the time period for their application, ***in accordance with Article 5. The Council implementing decision shall:***

- (a) ***where appropriate, identify the specific derogations referred to in Articles 10 to 13 that the Member State concerned is authorised to apply;***
- (b) ***where appropriate, establish a Solidarity Response Plan that includes:***
 - (i) ***the total amount of relocation contributions needed to address the situation of crisis giving full consideration to the assessment of the Commission;***
 - (ii) ***the other relevant solidarity measures referred to in Articles 8(1), points (b) and (c), and the level of such measures needed to address the situation of crisis;***
 - (iii) ***the total amount of solidarity measures to be taken from the Annual Solidarity Pool;***

- (iv) *the additional pledges needed to cover the needs to address the situation of crisis, if the existing pledges in the annual Solidarity Pool are not sufficient;*
- (v) *the specific contribution by each Member State pledged under the mandatory fair share calculated in accordance with the reference key set out in Article 66 of Regulation (EU) 2024/...⁺;*
- (c) *where the Member State concerned is facing a situation of crisis as referred to in Article 1(4), point (b), identify the third-country nationals or stateless persons subject to that situation.*

The Council shall transmit the implementing decision immediately to the European Parliament and the Commission.

Article 5 Duration

1. *Without prejudice to paragraph 3 of this Article, the period for the application of the derogations and solidarity measures set out in the Council implementing decision as referred to in Article 4(3) shall be three months. Unless that decision is repealed pursuant to Article 6 (3), that period may be extended once by three months upon confirmation by the Commission that the situation of crisis or force majeure persists.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

2. *At the end of the period referred to in paragraph 1 and upon request of the Member State concerned, the Commission may submit a proposal for a new Council implementing decision to amend or extend the specific derogations or the Solidarity Response Plan referred to in Article 4(5) for a period not exceeding three months. Unless that decision is repealed pursuant to Article 6(3), that period may be extended once by three months upon confirmation by the Commission of the persistence of the situation of crisis or force majeure. Article 4(3) and (5) shall apply.*

3. *The Member State facing a situation of crisis or force majeure, shall apply Articles 10 to 13 no longer than what is strictly necessary to address the situation, and, in any case, no longer than the period set out in the Council implementing decision referred to in Article 4(3). The total duration of the application of the measures shall not exceed the duration of the situation of crisis or force majeure and shall be a maximum of 12 months.*

Article 6 Monitoring

1. *The Commission and Council shall constantly monitor whether a situation of crisis or force majeure, identified in a Commission implementing decision as referred to in Article 3(8) persists.*

2. *The Commission shall pay particular attention to the compliance with fundamental rights and humanitarian standards and may request the Asylum Agency to initiate a specific monitoring exercise pursuant to Article 15(2) of Regulation (EU) 2021/2303.*
3. *Where the Commission considers that the circumstances that led to the establishment of the situation of crisis or force majeure have ceased to exist, it shall propose to repeal the Council implementing decision referred to in Article 4(3). Where the Commission considers it appropriate on the basis of relevant information, it shall propose the adoption of a new Council implementing decision authorising the amendment or extension of the measures as established in accordance with Article 5(2).*
4. *The Commission shall report to the European Parliament and the Council, every three months after the entry into force of the Council implementing decision as referred to in Article 4(3), on the application of that decision, in particular on the effectiveness of the measures undertaken in resolving the situation of crisis or force majeure and shall determine whether the situation persists and whether the measures continue to be necessary and proportionate.*

Article 7

EU Solidarity coordinator

The EU Solidarity Coordinator, as established by Articles 15 and 60 of Regulation (EU) 2024/...⁺ shall, in addition to the tasks listed under those Articles:

- (a) support the relocation activities from the Member State concerned to the contributing Member State under this Regulation;***
- (b) promote a culture of preparedness, cooperation and resilience among Member States in the field of asylum and migration, including through the sharing of best practices.***

For that purpose, the EU Solidarity Coordinator shall be updated by the EU Migration Preparedness and Crisis Management Network in the framework of the relevant stages of the Migration Preparedness and Crisis Blueprint pursuant to Recommendation (EU) 2020/1366 in its original version.

The EU Solidarity Coordinator shall, every two weeks, provide a bulletin on the state of the implementation and functioning of the relocation mechanism. That bulletin shall be transmitted to the European Parliament and to the Council.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

Chapter III

Solidarity measures applicable in a situation of crisis

Article 8

Solidarity and support measures in a situation of crisis

1. ***A Member State facing a ■ situation of crisis may request the following types of contributions in the reasoned request referred to in Article 2:***
 - (a) ***relocations, to be conducted following the procedures set out in Articles 67 and 68 of Regulation (EU) 2024/...⁺:***
 - (i) ***of applicants for international protection;***
 - (ii) ***where bilaterally agreed by the contributing and benefitting Member State concerned, of beneficiaries of international protection who have been granted international protection less than three years prior to the adoption of the Council implementing act establishing the Annual Solidarity Pool;***
 - (b) ***financial contributions aiming at actions that are relevant to address the situation of crisis in the Member State concerned or in relevant third countries, in full respect of human rights, to be provided by other Member States pursuant to Article 64 of Regulation (EU) 2024/...⁺;***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

(c) alternative solidarity measures as referred to in Article 56(2), point (c), of Regulation (EU) 2024/...⁺, specifically needed to address the situation of crisis and in accordance with Article 65(2) and (3) of that Regulation; such measures shall be counted as financial solidarity and their actual value shall be established based on objective criteria.

2. When implementing relocations referred to in paragraph 1, point (a), of this Article, Member States shall give primary consideration to the relocation of vulnerable persons in accordance with Article 60 of Regulation (EU) 2024/...⁺.

Article 9 Responsibility offsets

1. Where the additional relocation pledges set out in the Council implementing decision referred to in Article 4(3) and the pledges available in the Annual Solidarity Pool are below the relocation needs identified in that Council implementing decision:

(a) the contributing Member States shall take responsibility, up to 100% of the relocation needs identified in the Solidarity Response Plan established in the Council implementing decision, for applications for international protection for which the Member State facing a situation of crisis has been determined as responsible;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

(b) when applying point (a) of this subparagraph and where necessary, the contributing Member States shall take responsibility above their fair share by way of derogation from Article 63(7) of Regulation (EU) 2024/...⁺;

(c) when applying points (a) and (b) of this subparagraph, Article 63(6), (8) and (9) of Regulation (EU) 2024/...⁺ shall apply mutatis mutandis.

Where Directive 2001/55/EC is activated in relation to the same situation as referred to in Article 1(4), point (a), and Member States agree at the moment of activation not to apply Article 11 of that Directive, mandatory offsets pursuant to this Article shall not apply. Where the Council implementing decision referred to in Article 4(3) authorises the Member State concerned to apply Article 13, mandatory offsets pursuant to this Article shall not apply.

2. Where the application of paragraph 1 of this Article is not sufficient to cover 100% of the relocation needs identified in the Council implementing decision referred to in Article 4(3), the High-Level EU Solidarity Forum shall be reconvened as a matter of urgency, in accordance with Article 13(4) of Regulation (EU) 2024/...⁺ and following the procedure set out in Article 57 of that Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

3. *A benefitting Member State may request the other Member States to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 69 of Regulation (EU) 2024/...⁺.*

4. *Where a contributing Member State has become responsible for applications above its fair share in accordance with paragraph 1, point (b), of this Article or Article 13, it shall be entitled to:*

(a) proportionally reduce from its fair share in relation to future solidarity contributions under the upcoming annual cycles of Regulation (EU) 2024/...⁺, with the corresponding number of applications for which that Member State contributed above its fair share over a period of five years;

(b) reduce from its fair share in relation to future solidarity contributions set out in a Council implementing decision adopted pursuant to Article 4(3) with the corresponding number of applications for which that Member State contributed above its fair share; such reduction may only be claimed within five years from the date in which the Council implementing decision that led the Member State to go beyond its fair share is no longer in force.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

5. *Where a Member State intends to avail itself of the possibility provided for in paragraph 4, it shall notify the Commission accordingly. The notification shall contain the number of applications for which the Member State took responsibility above its fair share and the reduction it intends to apply under the upcoming annual cycles of Regulation (EU) 2024/...⁺ or during the implementation of a Council implementing decision adopted pursuant to Article 4(3).*

If, on completing its examination of the notification referred to in the first subparagraph, the Commission confirms that the Member State concerned has contributed above its fair share, the Commission shall authorise, by means of an implementing act, the Member State concerned to reduce from its fair share the corresponding number of applications for which that Member State contributed above its fair share under the upcoming annual cycles of Regulation (EU) 2024/...⁺ or when implementing a Council implementing decision adopted pursuant to Article 4(3) within the period referred to in paragraph 4, point (b), of this Article to support another Member State or where responsibility offsets are required pursuant to paragraph 1, point (b), of this Article.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

6. *Where the solidarity needs of other Member States that are benefitting Member States pursuant to Article 58 or 59 of Regulation (EU) 2024/...⁺ cannot be addressed as a result of the use made by the Member State facing a situation of crisis of the pledges available in the Annual Solidarity Pool pursuant to Article 4(5), point (b), of this Article, the High-Level EU Solidarity Forum shall be reconvened as a matter of urgency, in accordance with Article 13 of Regulation (EU) 2024/...⁺ and following the procedure set out in Article 57 of that Regulation.*

7. *Where, as a result of the measures required to support the Member State facing a situation of crisis that are included in the Council implementing decision as referred to in Article 4(3), another Member State considers itself to be under migratory pressure or facing a significant migratory situation within the meaning of Article 2, points (24) and (25) respectively, of Regulation (EU) 2024/...⁺ or facing a situation of crisis, the Member State concerned may request solidarity measures, full or partial reductions of its solidarity contributions in accordance with that Regulation, or solidarity and support measures in accordance with this Regulation.*

When assessing the Member State's reasoned request as referred to in Article 2 of this Regulation, the Commission shall also take into account whether that Member State has taken responsibility for examining applications for international protection above its fair share, in addition to the information set out in Articles 9 and 10 of Regulation 2024/...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

Chapter IV Derogations

Article 10

Registration of applications for international protection in situations of crisis, or force majeure

- 1. In a situation of crisis or force majeure, by way of derogation from Article 27 of Regulation (EU) 2024/...⁺, the Member State facing that situation may register applications made within the period during which this paragraph is applied, no later than four weeks after those applications are made.***
- 2. When applying paragraph 1, the Member State concerned shall prioritise the registration of applications of persons with special reception needs as defined in Directive (EU) 2024/...⁺⁺ and of minors and their family members.***
- 3. When applying paragraph 1, Member States may prioritise the registration of applications which are likely to be well-founded.***
- 4. In a situation of crisis as referred to in Article 1(4), point (a), the derogation referred to in paragraph 1 of this Article may only be applied during the time period set out in the initial Council implementing decision referred to in Article 4(3) and not during any subsequent extensions thereof pursuant to Article 5(1) or (2).***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS

5. *In accordance with Article 3 of Directive (EU) 2024/...⁺ and Regulation (EU) 2024/...⁺⁺, Member States shall ensure that applicants are able to access and exercise their rights under those instruments in an effective manner as soon as they make an application, regardless of when the registration takes place. The Member State concerned shall duly inform the third-country nationals or stateless persons in a language which they understand, or are reasonably supposed to understand, about the measure applied, the location of the registration points, including the border crossing points accessible for registering and lodging an application for international protection, and the duration of the measure.*

6. *When submitting a reasoned request as referred to in Article 2(1), a Member State may notify the Commission that it considers it necessary to apply the derogation referred to in paragraph 1 of this Article before it is authorised to do so in the Council implementing decision as referred to in Article 4(3), indicating the precise reasons for which immediate action is required.*

In such a case, the Member State concerned may apply the derogation referred to in paragraph 1 of this Article for a period not exceeding 10 days from the day following the date of the submission of the request, unless the Council implementing decision as referred to in Article 4(3) authorises the Member State concerned to continue to apply that derogation.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 [2016/0222(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

7. *The extension of the time limit for registration of applications for international protection is without prejudice to the obligations to comply with the deadlines set out in Article 15(1), point (b), of Regulation (EU) 2024/...⁺.*

Article 11

Measures applicable to the asylum border procedure in a situation of crisis or force majeure

1. *In a situation of crisis or force majeure, Member States may, as regards applications made within the period during which this Article is applied, derogate from Article 51(2) of Regulation (EU) 2024/...⁺⁺, by extending the maximum duration of the border procedure for the examination of applications set out in that Article by an additional period of maximum six weeks. That period shall not be used in addition to the period referred to in Article 51(2), third subparagraph, of that Regulation.*

2. *In a situation of crisis as referred to in Article 1(4), point (a), or force majeure, by way of derogation from Article 45(1) of Regulation (EU) 2024/...⁺⁺, Member States may not be required to examine, in a border procedure, applications made by applicants referred to in Article 42(1), point (j), of that Regulation, when the measures in the contingency plan of the concerned Member State referred to in Article 32 of Directive (EU) 2024/...⁺⁺⁺ are not sufficient to address that situation.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 [2016/0132(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

⁺⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 [2016/0222(COD)].

3. ***In a situation of crisis as referred to in Article 1(4), point (a), by way of derogation from Article 45(1) of Regulation (EU) 2024/...⁺, Member States may reduce the threshold provided for in Article 42(1), point (j), to 5%.***
4. ***In a situation of crisis as referred to in Article 1(4), point (a), by way of derogation from Article 44(1), point (b), of Regulation (EU) 2024/...⁺, Member States may, in a border procedure, take decisions on the merits of an application in cases where the applicant is a national or, in the case of stateless persons, a former habitual resident of, a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 50 % or lower, in addition to the cases referred to in Article 42(1), point (j), of that Regulation, taking into account the rapidly evolving protection needs that might arise in the country of origin as reflected in quarterly updates of Eurostat data.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

5. *When applying paragraph 3 or 4 of this Article, the Member State concerned shall prioritise the examination of applications for international protection lodged by persons with special procedural or special reception needs as defined in Directive (EU) 2024/...⁺ and in Regulation (EU) 2024/...⁺⁺, and minors and their family members. When applying paragraph 3, 4 or 6 of this Article, the Member State concerned may also prioritise the examination of application for international protection s which are likely to be well-founded.*
6. *In a situation of crisis as referred to in Article 1(4), point (b), by way of derogation from Article 44(1), point (b), and Article 53(2), point (a), of Regulation (EU) 2024/...⁺⁺, Member States may, in a border procedure, take decisions on the merits of all applications that are made by any third-country national or stateless person who is subject to instrumentalisation and that are registered within the period during which this paragraph is applied.*
7. *When applying paragraph 6, Member States shall:*
- (a) *exclude from the border procedure minors under the age of 12 and their family members, and persons with special procedural or special reception needs as defined in Directive (EU) 2024/...⁺ and in Regulation (EU) 2024/...⁺⁺; or*

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 [2016/0222(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

(b) cease to apply the border procedure in respect of the following categories of applicants where it is determined, on the basis of an individual assessment, that their applications are likely to be well-founded:

- (i) minors under the age of 12 and their family members; and***
- (ii) vulnerable persons with special procedural or special reception needs as defined in Directive (EU) 2024/...⁺ and in Regulation (EU) 2024/...⁺⁺.***

This paragraph shall be without prejudice to the mandatory nature of the border procedure as referred to in Article 46 of Regulation (EU) 2024/...⁺⁺.

- 8. *Where the Member State concerned is authorised to apply the derogation referred to in paragraph 6 of this Article, the Council implementing decision as referred to in Article 4(3) shall specify whether paragraph 7, point (a) or (b), applies, based on the indication made by the Member State concerned in accordance with Article 2(2), point (d).***

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 [2016/0222(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

9. *The Member State facing a situation of crisis or force majeure shall not apply or shall cease to apply the derogation from the asylum procedure provided for in paragraphs 4 and 6 of this Article in cases where there are medical reasons for not applying the border procedure in accordance with Article 53(2), point (d), of Regulation (EU) 2024/...⁺, or where the necessary support cannot be provided to applicants with special reception needs in accordance with Directive (EU) 2024/...⁺⁺ or with special procedural needs in accordance with Article 53(2), point (c), of Regulation (EU) 2024/...⁺.*

10. *For the purpose of applying the derogations referred to in this Article, the basic principles of the right to asylum and the respect of the principle of non-refoulement, as well as the guarantees provided for in Chapters I and II of Regulation (EU) 2024/...⁺ shall apply to ensure that the rights of those who seek international protection, including the right to an effective remedy, are protected.*

Organisations and persons permitted under national law to provide advice and counselling shall have effective access to applicants held in detention facilities or present at border crossing points. Member States may impose limits to such actions where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of a detention facility, provided that access is not thereby severely restricted or rendered impossible.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-

11. *The derogations provided for in this Article do not affect the process of determining the Member State responsible within the framework of Regulation (EU) 2024/...⁺. Where that process is longer than the maximum duration of the asylum border procedure in a situation of crisis or force majeure, the process and the remainder of the asylum procedure shall be completed in the territory of the determining Member State in accordance with Article 51 of Regulation (EU) 2024/...⁺⁺.*

Article 12

Extension of time limits set out for take charge requests, take back notifications and transfers in a situation of crisis referred to in Article 1(4), point (a), or force majeure

1. *In a situation of crisis as referred to in Article 1(4), point (a), or force majeure which renders it impossible for a Member State facing such a situation to comply with the time limits set out in Articles 39, 40, 41 and 46 of Regulation (EU) 2024/...⁺ or to receive persons for whom it is responsible pursuant to that Regulation, Member States may derogate from the time limits set out in Articles 39, 40, 41 and 46 of that Regulation simultaneously.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

2. *Where a Member State applies the derogation provided for in paragraph 1 of this Article, it shall:*

- (a) submit a take charge request as referred to in Article 39 of Regulation (EU) 2024/...⁺ within four months of the date on which the application was registered;*
- (b) reply to a take charge request as referred to in Article 40 of Regulation (EU) 2024/...⁺ within two months of receipt of the request;*
- (c) submit a take back notification as referred to in Article 41 of Regulation (EU) 2024/...⁺ within one month of receiving the Eurodac hit or confirm receipt within one month of such notification; and*

(d) carry out a transfer as referred to in Article 46(1) of Regulation (EU) 2024/...⁺ within one year of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision that has suspensive effect in accordance with Article 43(3) of that Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

3. *If the Member State referred to in paragraph 1 does not comply with the time limits set out in paragraph 2, point (a), (b) or (d), of this Article, the responsibility for examining the application for international protection pursuant to Regulation (EU) 2024/...⁺ shall lie with it or be transferred to it.*
4. *Where paragraph 1 of this Article is applied, transfers pursuant to Article 46 of Regulation (EU) 2024/...⁺ to the Member State responsible that faces a situation of crisis as referred to in Article 1(4), point (a), of this Regulation or force majeure, shall not be carried out until that Member State is no longer facing that situation, unless, due to the individual circumstances of the applicant, the responsible Member State has agreed to receive the person concerned. If the transfer does not take place within one year of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision that has suspensive effect in accordance with Article 43(3) of Regulation (EU) 2024/...⁺, including due to the persistence of the situation of crisis referred to in Article 1(4), point (a), of this Regulation or force majeure, by way of derogation from Article 46(1) of ~~that~~ Regulation (EU) 2024/...⁺, the Member State responsible, facing that situation, shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the transferring Member State.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

Article 13

Derogations from the obligation to take back an applicant in a situation of extraordinary mass arrivals

1. *By way of derogation from Article 36(1), point (b), and Article 38(4) of Regulation (EU) 2024/...⁺, in a situation of crisis as referred to in Article 1(4), point (a), of this Regulation where the mass arrivals of third-country nationals or stateless persons are of such extraordinary scale and intensity that it could create a serious risk of serious deficiencies in the treatment of applicants, thereby creating a serious risk that the Common European Asylum System is rendered non-functional, the Member State facing that situation may be relieved of its obligation to:*

- a) take back an applicant, a third-country national or stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 16(1) of Regulation (EU) 2024/...⁺⁺ where that responsibility was determined pursuant to Article 16(2) of Regulation (EU) 2024/...⁺; or*
- b) take back an applicant pursuant to Article 38(4) of Regulation (EU) 2024/...⁺.*

This paragraph shall only apply where the application was registered in the Member State facing that situation within the period set out in the Council implementing decision referred to in Article 4(3) of this Regulation which shall not exceed four months before the date of adoption of that Council implementing decision.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24

2. *Where paragraph 1 of this Article is applied, and the Member State facing that situation was determined as responsible pursuant to Article 16(2) of Regulation (EU) 2024/...⁺, that Member State shall be relieved of its obligation to take back the person concerned and responsibility shall be transferred to the Member State where the second application was registered.*

The Member State that becomes responsible pursuant to the first subparagraph of this paragraph shall indicate in Eurodac that it has become the Member State responsible in accordance with Article 16(3) of Regulation (EU) 2024/...⁺⁺.

3. *By way of derogation from paragraphs 2 and 4 of Article 38 of Regulation (EU) 2024/...⁺, where paragraph 1 of this Article is applied and the Member State facing that situation is obliged to take back an applicant pursuant to Article 38(4) of Regulation (EU) 2024/...⁺, the Member State where the second application is registered shall apply the procedures set out in Part III of that Regulation, with the exception of Article 16(2), Article 17(1) and (2), Article 25(5) and Article 33(1) and (2), and the obligation to take back an applicant pursuant to Article 38(4) shall be transferred to that Member State.*

Where no Member State responsible can be determined under the first subparagraph of this paragraph, the Member State where the second application was registered shall be responsible for examining the application for international protection. Applications for international protection for which a Member State has sent a take back notification pursuant to Article 41 of Regulation (EU) 2024/...⁺ before the date of adoption of the Council implementing decision referred to in Article 4(3) of this Regulation shall not be affected by this subparagraph.

The Member State that becomes responsible pursuant to the second subparagraph of this paragraph shall indicate in Eurodac that it has become the Member State responsible in accordance with Article 16(1) of Regulation (EU) 2024/...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 [2016/0132(COD)].

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS

Chapter V
Expedited procedure

Article 14
Expedited procedure

1. *Where objective circumstances suggest that applications for international protection from groups of applicants from a specific country of origin or of former habitual residence, or from a part of such a country, or on the basis of the criteria set out in Regulation (EU) 2024/...⁺ could be well-founded, the Commission may, after consultation with the High-Level EU Solidarity Forum, adopt a recommendation for the application of an expedited procedure by providing all relevant information in view of facilitating, in particular, the application by the determining authorities of Article 13(11), point (a), and Article 34(5), point (a), of Regulation (EU) 2024/...⁺⁺.*
2. *Where, following the adoption of a recommendation as referred to in paragraph 1 of this Article, the determining authority applies Article 13(12), point (a), of Regulation (EU) 2024/...⁺⁺ to omit the personal interview and Article 34(5), point (a), of that Regulation to prioritise the examination of the application because it is likely to be well-founded, it shall ensure, by way of derogation from Article 35(4) of that Regulation, that the examination of the merits of the application is concluded no later than four weeks from the lodging of the application.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 [2016/0223(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24[2016/0224A(COD)].

3. *When considering whether to adopt a recommendation as referred to in paragraph 1, the Commission may consult the relevant Union agencies, UNHCR and other relevant organisations.*

Chapter VI

Final provisions

Article 15

Specific provisions and guarantees

In a situation of crisis, where a Member State applies a derogation as referred to in Articles 10 to 13, it shall duly inform third-country nationals or stateless persons in a language which they understand or are reasonably supposed to understand about the measures applied, the location of the registration points, including the border crossing points, which are accessible for registering and lodging an application for international protection, and the duration of the measures.

Article 16 Crisis preparedness

- 1. National strategies established by Member States in accordance with Article 7 of Regulation (EU) 2024/...⁺ shall also include:**
 - (a) preventive measures to ensure a sufficient level of preparedness and to reduce the risk of situations of crisis, and contingency planning, taking into account the contingency planning pursuant to Regulations (EU) 2021/2303 and (EU) 2019/1896 and Directive (EU) 2024/...⁺⁺ and the reports of the Commission issued within the framework of the Migration Preparedness and Crisis Blueprint;**
 - (b) an analysis of measures needed to respond to and resolve situations of crisis and force majeure in the Member State concerned, including measures to protect the rights of applicants and beneficiaries of international protection and other forms of protection.**
- 2. For the purposes of paragraph 1, Member States may consult the Commission and relevant Union bodies, offices and agencies, in particular the Asylum Agency, as well as regional and local authorities, as appropriate and in accordance with national law.**

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 [2016/0222(COD)].

3. *The Member States shall revise, where necessary, the national strategies established in accordance with Article 7 of Regulation (EU) 2024/...⁺ and in any case, no later than one year from the date on which the situation of crisis ended in accordance with Article 5 of this Regulation.*

Article 17

Cooperation and assessment

1. *In order to ensure the smooth application of the measures included in the Council implementing decision referred to in Article 4(3) of this Regulation, the EU Solidarity Coordinator shall convene a first meeting of the Technical-Level EU Solidarity Forum as referred to in Article 14(5) of Regulation (EU) 2024/...⁺ immediately following the adoption of such a Council implementing decision. Following that first meeting, the Technical-Level EU Solidarity Forum shall meet as many times as necessary.*

2. *The Member State in a situation of crisis may request the assistance of all authorities that are able to increase, at short notice, the human resources of its competent authorities in accordance with Article 5 of Regulation (EU) 2024/...⁺⁺ and the assistance of experts deployed by the Asylum Agency in accordance with Article 5, point (a), of that Regulation, and Article 16(2), point (b), and Article 21(3), point (d), of Regulation (EU) 2021/2303.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 [2020/0279(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

3. *The Commission, the European Parliament, the Council, the relevant Union agencies and the Member State facing a situation of crisis or force majeure shall closely cooperate and regularly inform each other on the implementation of the Council implementing decision referred to in Article 4(3).*
4. *The Member State facing a situation of crisis or force majeure shall continue reporting all relevant data to the Commission, including statistics that are relevant for the implementation of this Regulation. The Member State concerned shall also provide the Commission with the specific information needed for it to carry out the review under Article 6(3) and to make the proposal for repeal or extension of the Council implementing decision as well as any other information the Commission may request on that basis.*
5. *The Member State facing a situation of crisis or force majeure shall continue to cooperate closely with the UNHCR and any other organisations entrusted by the Member State with tasks under this Chapter and Regulation (EU) 2024/...⁺ and Directive (EU) 2024/...⁺⁺.*
6. *In exercising their powers and carrying out their responsibilities pursuant to this Article* **■** *, the Commission and the Council shall ensure at all times that the principles of necessity and proportionality are respected.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 [2016/0224A(COD)].

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 [2016/0222(COD)].

Article 18 Financial support

- 1. Member States undertaking relocation as a solidarity measure shall be able to benefit from Union financial support under the conditions set out in Article 11(9) of Regulation (EU) 2021/1147, including for early integration measures implemented by regional and local authorities.**
- 2. Emergency funding support for a Member State in a situation of crisis may be allocated pursuant to Article 31(1), point (a), of Regulation (EU) 2021/1147, including for the construction, maintenance and renovation of reception facilities required for the implementation of this Regulation, in accordance with the standards provided for in Directive (EU) 2024/...⁺.**

Article 19

Amendment to Regulation (EU) 2021/1147

In Article 31(1) of Regulation (EU) 2021/1147, the following point is added:

‘(ba) a situation of crisis within the meaning of Article 1(4), point (a), of Regulation (EU) 2024/... of the European Parliament and of the Council^{*++}.’.

*** Regulation (EU) 2024/... of the European Parliament and of the Council of ... addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 (OJ L, ..., ELI:...).**

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 [2016/0222(COD)].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 [2020/0277(COD)] and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

Article 20

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from ... [the first day of the twenty-fifth month following its entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ,

For the European Parliament

The President

For the Council

The President

**Brussels, 18 April 2024 (OR.
en)**

**Interinstitutional File:
2016/0132(COD)**

8576/24

**CODEC 1010
ASILE 47
EURODAC 5
ENFOPOL 167
IXIM 99
PE 78**

INFORMATION NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)

- Outcome of the European Parliament's first reading (Brussels, 10 to 11 April 2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

¹ OJ C 145, 30.6.2007, p. 5.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 158) to the abovementioned proposal for a Regulation, for which Jorge BUIXADÉ VILLALBA (ECR, ES) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. In addition, the ID political group tabled 1 amendment (amendment number 159).

II. VOTE

When it voted on 10 April 2024, the plenary adopted the compromise amendment (amendment number 158) to the abovementioned proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)0183

Establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013, for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes

European Parliament legislative resolution of 10 April 2024 on the proposal for a regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast) (COM(2016)0272/COM(2020)0614 – C8-0179/2016 – 2016/0132(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0272) and the amended proposal (COM(2020)0614),
- having regard to Article 294(2), Article 78(2)(c), (d), (e) and (g), Article 79(2)(c), Article 87(2)(a), and Article 88(2)(a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0179/2016),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Hungarian Parliament and the Italian Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,

- having regard to the opinions of the European Economic and Social Committee of 19 October 2016 and of 25 February 2021¹,
 - having regard to the opinions of the Committee of Regions of 8 December 2016 and of 19 March 2021²,
 - having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 8 February 2024 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Budgets,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0212/2017),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 34, 2.2.2017, p. 144 and OJ C 155, 30.4.2021, p. 64.

² OJ C 185, 9.6.2017, p. 91 and OJ C 175, 7.5.2021, p. 32.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Regulation (EU) 2024/... of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/...⁺ and (EU) 2024/...⁺⁺ of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2), points (c), (d), (e) and (g), Article 79(2), point (c), Article 87(2), point (a), and Article 88(2), point (a), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinions of the European Economic and Social Committee¹,

Having regard to the opinions of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

⁺ OJ: Please insert in the title the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the title the number of the Regulation contained in document PE-CONS 18/24(2016/0225(COD)) [Resettlement Regulation].

¹ OJ C 34, 2.2.2017, p. 144 and OJ C 155, 30.4.2021, p. 64.

² OJ C 185, 9.6.2017, p. 91 and OJ C 175, 7.5.2021, p. 32.

³ Position of the European Parliament of 10 April 2024.

Whereas:

(1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, seek international protection in the Union.

(2) For the purpose of applying Regulation (EU) .../... of the European Parliament and of the Council⁴ , it is necessary to establish the identity of applicants for international protection and of persons apprehended in connection with the **irregular** crossing of the external borders of the Member States. In order to apply that Regulation effectively, it is also desirable to allow each Member State to check whether a third-country national or stateless person **found** to be illegally staying on its territory has applied for international protection in another Member State.

⁴ Regulation .../... of the European Parliament and the Council of ... on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013(OJ L, ..., ELI: ...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation] and insert the number, date, title and OJ reference of that Regulation in the footnote.

(3) Moreover, for the purpose of applying Regulation (EU) .../...⁺ effectively, it is necessary to clearly record in Eurodac the fact that there has been a shift of responsibility between Member States, including in cases of relocation. █

█

(4) In order to apply Regulation (EU) .../...⁺⁺ █ effectively and to detect any secondary movements within the Union, it is also necessary to allow each Member State to check whether a third-country national or a stateless person who is ***found*** to be illegally staying on its territory or who applies for international protection has been ***granted international protection or humanitarian status*** under national law by another Member State in accordance with Regulation (EU) .../... of the European Parliament and of the Council⁵⁺⁺⁺ or in accordance with a national resettlement scheme. For that purpose, the biometric data of persons registered for the purpose of conducting an admission procedure should be stored in Eurodac ***as soon as the international protection or humanitarian status under national law is granted, and no later than 72 hours thereafter.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁵ Regulation .../... of the European Parliament and the Council of ... establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147 (OJ L, ..., ELI: ...).

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation] and insert the number, date and OJ reference of that Regulation in the footnote.

(5) ***In order to apply*** Regulation (EU) .../...⁺ efficiently, it is necessary to ■ allow each Member State to check whether a third-country national or a stateless person has been ***granted international protection or humanitarian status under national law in accordance with that Regulation*** by another Member State or has been admitted to the territory of a Member State in accordance with a national resettlement scheme. In order to be able to apply the relevant grounds for refusal provided for in ***that*** Regulation within the context of a new admission procedure, Member States also need information on the conclusion of previous admission procedures and information on any decision on granting international protection or humanitarian status under national law. Furthermore, information on a ***decision on granting international protection or humanitarian status*** under national law is necessary to identify the Member State that concluded the procedure and thus enable other Member States to seek supplementary information from that Member State.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

(6) *Furthermore, in order to reflect accurately the obligations Member States have under international law to conduct search and rescue operations and to provide a more accurate picture of the composition of migratory flows in the Union, it is also necessary to record in Eurodac the fact that the third-country nationals or stateless persons were disembarked following search and rescue operations, including for statistical purposes. Without prejudice to the application of Regulation (EU) .../...⁺, the recording of that fact should not result in any difference of treatment of persons registered in Eurodac upon apprehension in connection with the irregular crossing of an external border. That should be without prejudice to the rules under Union law applicable to third-country nationals or stateless persons disembarked following search and rescue operations.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

(7) Furthermore, for the purpose of supporting the asylum system by applying Regulations (EU) .../...⁺, (EU) .../...⁶⁺⁺ and (EU) .../... of the European Parliament and of the Council⁷⁺⁺⁺ and Directive (EU) .../... of the European Parliament and of the Council⁸⁺⁺⁺⁺, it is necessary to record whether, following security checks referred to in this Regulation, it appears that a person could pose a threat to internal security. That recording should be carried out by the Member State of origin. The existence of such a record in Eurodac is without prejudice to the requirement of an individual examination under Regulations (EU) .../...⁺⁺⁺⁺ and (EU) .../...⁺⁺⁺⁺. The record should be erased if the investigation shows that there are insufficient grounds for considering that the person concerned represents a threat to internal security.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁶ Regulation .../... of the European Parliament and the Council of ... establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, ..., ELI: ...).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)) [Asylum Procedure Regulation] and insert the number, date, title and OJ reference of that Regulation in the footnote.

⁷ Regulation .../... of the European Parliament and the Council of ... on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, ..., ELI: ...).

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) [Qualification Regulation] and insert the number, date and OJ reference of that Regulation in the footnote.

⁸ Directive .../... of the European Parliament and the Council of ... laying down standards for the reception of applicants for international protection (OJ L, ..., ELI: ...).

⁺⁺⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)) [Reception Conditions Directive] and insert the number, date and OJ reference of that Regulation in the footnote.

⁺⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) [Qualification Regulation].

⁺⁺⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)) [Asylum Procedure Regulation].

(8) *Following the security checks referred to in this Regulation, the fact that a person could pose a threat to internal security ('security flag') should only be recorded in Eurodac if the person is violent or unlawfully armed or where there are clear indications that the person is involved in any of the offences referred to in Directive (EU) 2017/541 of the European Parliament and of the Council⁹ or in any of the offences referred to in Council Framework Decision 2002/584/JHA¹⁰. When assessing whether a person is unlawfully armed, it is necessary that a Member State determine whether the person is carrying a firearm without a valid permit or authorisation or any other type of prohibited weapon as defined under national law. When assessing whether a person is violent, it is necessary that a Member State determine whether the person has displayed behaviour that results in physical harm to other persons that would amount to a criminal offence under national law.*

⁹ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

¹⁰ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L **190**, **18.7.2002**, p. 1).

(9) *Council Directive 2001/55/EC¹¹ provides for a system of temporary protection which was activated for the first time by means of Council Implementing Decision (EU) 2022/382¹² in response to the war in Ukraine. Pursuant to that system of temporary protection, Member States are to register persons enjoying temporary protection on their territory. Member States are also required, inter alia, to reunite family members and to cooperate with each other with regard to the transferral of the residence of persons enjoying temporary protection from one Member State to another. It is appropriate to supplement the data collection provisions in Directive 2001/55/EC by including persons enjoying temporary protection in Eurodac. In that regard, biometric data are an important element in establishing such persons' identity or family relationships, and thus protecting a substantial public interest within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council¹³. Moreover, by including the biometric data of beneficiaries of temporary protection in Eurodac rather than in a peer-to-peer system between Member States, such persons will benefit from the safeguards and protections laid down in this Regulation, in particular with regard to data retention periods, which should be as short as possible.*

¹¹ *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).*

¹² *Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1).*

¹³ *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).*

(10) *However, in view of the fact that a platform has already been set up by the Commission, in cooperation with the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), established by Regulation (EU) 2018/1726 of the European Parliament and of the Council¹⁴, and the Member States, to deal with the information exchanges necessary pursuant to Directive 2001/55/EC, it is appropriate to exclude from Eurodac persons enjoying temporary protection pursuant to Implementing Decision (EU) 2022/382 and any other equivalent national protection pursuant thereto. Such exclusion should also apply in respect of any future amendments to Implementing Decision (EU) 2022/382 and any extensions of that temporary protection.*

(11) *It is appropriate to defer the collection and transmission of biometric data of third-country nationals or stateless persons registered as a beneficiary of temporary protection to three years after the entry into application of the other provisions of this Regulation, in order to ensure sufficient time for the Commission to assess the functioning and the operational efficiency of any IT system used to exchange the data of beneficiaries of temporary protection and the expected impact of such collection and transmission in the event that Directive 2001/55/EC is activated.*

(12) Biometrics constitute an important element in establishing the exact identity of the persons falling under the scope of this Regulation because they ensure a high level of accuracy of identification. Therefore, it is necessary to set up a system for the comparison of such persons' biometric data.

¹⁴ *Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).*

(13) It is also necessary to ■ ensure **that** the system for the comparison of biometric data **functions** within the interoperability framework established by Regulations (EU) 2019/817¹⁵ and (EU) 2019/818¹⁶ of the European Parliament and of the Council **in accordance with this Regulation and with Regulation (EU) 2016/679, in particular with the principles of necessity and proportionality and with the principle of purpose limitation set out in Regulation (EU) 2016/679.**

(14) **The reuse by Member States of the biometric data of third-country nationals or stateless persons that have already been taken pursuant to this Regulation for the purposes of transmission to Eurodac in accordance with the conditions set out in this Regulation should be encouraged.**

¹⁵ Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).

¹⁶ Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).

(15) Furthermore, it is necessary to introduce provisions that frame the access of European Travel Information and Authorization System (ETIAS) national units and of competent visa authorities to Eurodac in accordance with Regulations (EU) 2018/1240¹⁷ and (EC) No 767/2008¹⁸ of the European Parliament and of the Council, respectively.

(16) **For the purpose of assisting in the control of irregular immigration and of providing statistics to support evidence-based policy making, eu-LISA should be able to produce cross-system statistics using data from Eurodac, the Visa Information System (VIS), ETIAS and the Entry/Exit System (EES), established by Regulation (EU) 2017/2226 of the European Parliament and of the Council¹⁹.** In order to specify the content of those cross-system statistics, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²⁰.

¹⁷ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

¹⁸ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

¹⁹ **Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).**

²⁰ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(17) It is therefore necessary to set up a system known as ‘Eurodac’, consisting of a Central System and the Common Identity Repository (**CIR**) established by Regulation (EU) 2019/818¹, which will operate a computerised central database of biometric data, **alphanumeric data and, where available, a scanned colour copy of an identity or travel document**, as well as the electronic means of transmission between **Eurodac** and the Member States (the ‘Communication Infrastructure’).

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(18) In its communication of 13 May 2015 entitled ‘A European Agenda on Migration’, the Commission noted that Member States must also implement fully the rules on taking migrants’ fingerprints at the borders, and further proposed that it will also explore how more biometric identifiers, such as using facial recognition techniques through digital photos, can be used through Eurodac .

(19) For the purpose of obtaining a high level of accuracy of identification, fingerprints should always be preferred over facial images. To that end, Member States should exhaust all avenues for ensuring that fingerprints can be taken from the data subject before carrying out a comparison using exclusively a facial image. To assist Member States in overcoming challenges, where it is impossible to take the fingerprints of the third-country national or stateless person because his or her fingertips are damaged, whether intentionally or not, or amputated, this Regulation should allow Member States to carry out a comparison using a facial image without taking fingerprints.

(20) The return of third-country nationals or stateless persons who do not have a right to stay in the Union, in accordance with fundamental rights as a general principle of Union law, as well as international law, including refugee protection, the principle of non-refoulement and human rights obligations, and in compliance with Directive 2008/115/EC of the European Parliament and of the Council²¹, is an important part of the comprehensive efforts to address migration in a fair and efficient way and, in particular, to reduce and deter irregular immigration. An increase in the effectiveness of the Union system to return illegally staying third-country nationals or stateless persons is necessary in order to maintain public trust in the Union migration and asylum system, and should go hand in hand with efforts to protect those in need of protection.

(21) For that purpose, it **is** also necessary to clearly **record** in Eurodac the fact that an application for international protection has been rejected where the third-country national or stateless person has no right to remain and has not been allowed to remain in accordance with Regulation (EU) .../...⁺.

²¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)) [Asylum Procedure Regulation].

(22) National authorities in the Member States experience difficulties in identifying illegally staying third-country nationals or stateless persons with a view to their return and readmission. It is therefore essential to ensure that data on third-country nationals or stateless persons who are staying illegally in the Union are collected and transmitted to Eurodac and are also compared with data collected and transmitted for the purpose of establishing the identity of applicants for international protection and of third-country nationals or stateless persons apprehended in connection with the irregular crossing of the external borders of the Member States, in order to facilitate their identification and re-documentation, to ensure their return and readmission, and to reduce identity fraud. That collection, transmission and comparison of data should also contribute to reducing the length of the administrative procedures necessary for ensuring the return and readmission of illegally staying third-country nationals or stateless persons, including the period during which they may be kept in administrative detention awaiting removal. It should also enable the identification of third countries of transit, where the illegally staying third-country national or stateless person may be readmitted.

(23) With a view to facilitating the procedures for the identification and the issuance of travel documents for return purposes of illegally staying third-country nationals or stateless persons, a scanned colour copy of an identity or travel document should be recorded in **Eurodac**, where available, along with an indication of its authenticity. If such an identity or travel document is not available, only one other available document identifying the third-country national or stateless person should be recorded in **Eurodac** along with an indication of its authenticity. In order to facilitate the procedures for the identification and the issuance of travel documents for return purposes of illegally staying third-country nationals or stateless persons, and in order not to populate the system with counterfeit documents, only documents validated as authentic or the authenticity of which cannot be established due to the absence of security features should be kept in the system.

(24) In its conclusions on the future of return policy of 8 October 2015, the Council endorsed the initiative announced by the Commission to explore an extension of the scope and purpose of Eurodac to enable the use of data for return purposes. Member States should have the necessary tools at their disposal to be able to control illegal migration to the Union and to detect secondary movements within the Union and illegally staying third-country nationals and stateless persons in the Union. Therefore, the data in Eurodac should be available, subject to the conditions set out in this Regulation, for comparison by the Member States' designated authorities.

(25) The European Border and Coast Guard Agency, established by Regulation (EU) 2019/1896 of the European Parliament and of the Council²², supports Member States in their efforts to better manage the external borders and control illegal immigration. The European Union Agency for Asylum, established by Regulation (EU) 2021/2303 of the European Parliament and of the Council²³, provides operational and technical assistance to Member States. Consequently, authorised users of those agencies, as well as of other agencies acting in the field of Justice and Home Affairs, should be provided with access to the central repository if such access is relevant for the implementation of their tasks in line with relevant data protection safeguards.

(26) As members of the European Border and Coast Guard Teams and experts of the asylum support teams referred to in Regulations (EU) 2019/1896 and (EU) **2021/2303**, respectively, may, upon request of the host Member State, take and transmit biometric data, adequate technological solutions should be developed to ensure that efficient and effective assistance is provided to the host Member State.

²² ***Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).***

²³ Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1).

(27) Moreover, in order for Eurodac to effectively assist in the control of irregular **immigration to the Union** and in the detection of secondary movements within the **Union**, it is necessary to allow the system to count applicants, as well as applications, by linking all datasets corresponding to one person, regardless of their category, in one sequence. **Where a dataset registered in Eurodac is erased, any link to that dataset should be automatically erased.**

(28) In the fight against terrorist offences and other serious criminal offences, it is essential for law enforcement authorities to have the fullest and most up-to-date information **if they are** to perform their tasks. The information contained in Eurodac is necessary for the purposes of the prevention, detection or investigation of terrorist offences as referred to in Directive (EU) 2017/541 or of other serious criminal offences as referred to in Framework Decision 2002/584/JHA. Therefore, the data in Eurodac should be available, subject to the conditions set out in this Regulation, for comparison by Member States' designated authorities and the designated authority of the European Union Agency for Law Enforcement Cooperation (Europol), established by Regulation (EU) 2016/794 of the European Parliament and of the Council²⁴. ■

²⁴ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

(29) *The powers granted to law enforcement authorities to access Eurodac should be without prejudice to the right of an applicant for international protection to have his or her application processed in due course in accordance with the relevant law. Furthermore, any subsequent follow-up after obtaining a ‘hit’ from Eurodac should also be without prejudice to that right.*

(30) In its communication to the Council and the European Parliament of 24 November 2005 on improved effectiveness, enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs, the Commission outlined that authorities responsible for internal security could have access to Eurodac in well-defined cases, when there is a substantiated suspicion that the perpetrator of a terrorist offence or other serious criminal offence has applied for international protection. In that communication, the Commission stated that the proportionality principle requires that Eurodac be queried for such purposes only if there is an overriding public security concern, that is, if the act committed by the criminal or terrorist to be identified is so reprehensible that it justifies querying a database that registers persons with a clean criminal record, and concluded that the threshold for authorities responsible for internal security to query Eurodac must therefore always be significantly higher than the threshold for querying criminal databases.

- (31) Moreover, Europol plays a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in supporting Union-wide crime prevention, analyses and investigation. Consequently, Europol should also have access to Eurodac within the framework of its tasks and in accordance with Regulation (EU) 2016/794.
- (32) Requests for comparison of Eurodac data by Europol should be allowed only in specific cases, under specific circumstances and under strict conditions, in line with the principles of necessity and proportionality enshrined in Article 52(1) of the Charter of Fundamental Rights of the European Union (*the 'Charter'*) and as interpreted by the Court of Justice of the European Union (the 'Court of Justice')²⁵.

²⁵ Judgment of the Court of Justice of 8 April 2014, *Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others*, Joined cases C-293/12 and C-594/12, ECLI:EU:C:2014:238; Judgment of the Court of Justice of 21 December 2016, *Tele2 Sverige AB v. Post-och telestyrelsen and Secretary of State for the Home Department v. Tom Watson and Others*, Joined cases C-203/15 and C-698/15, ECLI:EU:C:2016:970.

(33) Since Eurodac was originally established to facilitate the application of the Dublin Convention²⁶, access to Eurodac for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes a further development to the original purpose of Eurodac. In line with Article 52(1) of the Charter¹, any limitation on the exercise of the fundamental right to respect for the private life of individuals whose personal data are processed in Eurodac must be provided for by law, which must be formulated with sufficient precision to allow individuals to adjust their conduct, and must protect individuals against arbitrariness and indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise. Subject to the principle of proportionality, any such limitation must be necessary and genuinely meet objectives of general interest recognised by the Union.

(34) Although the original purpose of the establishment of Eurodac did not require the possibility of requesting comparisons of data with the database on the basis of a latent fingerprint, which is the dactyloscopic trace which may be found at a crime scene, such a feature is fundamental in the field of police cooperation. The possibility to compare a latent fingerprint with the fingerprint data which is stored in Eurodac in cases where there are reasonable grounds for believing that the perpetrator or victim might fall under one of the categories covered by this Regulation would provide the Member States' designated authorities with a very valuable tool in preventing, detecting or investigating terrorist offences or other serious criminal offences when, for example, the only evidence available at a crime scene are latent fingerprints.

²⁶ Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention (OJ C 254, 19.8.1997, p. 1).

(35) This Regulation also lays down the conditions under which requests for the comparison of biometric or alphanumeric data with Eurodac data for the purpose of preventing, detecting, or investigating terrorist offences or other serious criminal offences should be allowed and the necessary safeguards to ensure the protection of the fundamental right to respect for the private life of individuals whose personal data are processed in Eurodac. The strictness of those conditions reflects the fact that the Eurodac database registers biometric and alphanumeric data of persons who are not presumed to have committed a terrorist offence or other serious criminal offence. It is acknowledged that law enforcement authorities and Europol do not always have the biometric data of the suspect or victim whose case they are investigating, which might hamper their ability to check biometric matching databases such as Eurodac. It is important to equip law enforcement authorities and Europol with the necessary tools to prevent, detect and investigate terrorist offences or other serious criminal offences where it is necessary to do so. In order to contribute further to the investigations carried out by those authorities and Europol, searches based on alphanumeric data should be allowed in Eurodac, in particular in cases where no biometric evidence can be found but where those authorities and Europol possess evidence of the personal details or identity documents of the suspect or victim.

(36) The expansion of the scope of and simplification of the access to Eurodac for law enforcement purposes should help Member States deal with the increasingly complicated operational situations and cases involving cross-border crimes and terrorism with a direct impact on the security situation in the Union. The conditions for access to Eurodac for the purposes of the prevention, detection or investigation of terrorist offences or of other serious criminal offences should also allow the law enforcement authorities of the Member States to tackle cases of suspects using multiple identities. For that purpose, obtaining a hit during a consultation of a relevant database prior to accessing Eurodac should not prevent such access. It can also be a useful tool to respond to the threat from radicalised persons or terrorists who might have been registered in Eurodac. A broader and simpler access to Eurodac for law enforcement authorities of the Member States should, while guaranteeing full respect for fundamental rights, enable Member States to use all existing tools to ensure an area of freedom, security and justice.

(37) With a view to ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with the current Union asylum *acquis*, in particular with Regulations (EU) .../...⁺, (EU) .../...⁺⁺ and (EU) .../...⁺⁺⁺ , this Regulation includes in its scope applicants for subsidiary protection and persons eligible for subsidiary protection.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) [Qualification Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

(38) It is **also** necessary that Member States promptly take and transmit the biometric data of every applicant for international protection, of every person for whom Member States intend to conduct an admission procedure in accordance with Regulation (EU) .../...⁺, of every third-country national or stateless person who is apprehended in connection with the irregular crossing of an external border of a Member State or is ***found to be*** staying illegally in a Member State, ***and of every person disembarked following a search and rescue operation***, provided that they are at least six years of age.

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(39) The obligation to take the biometric data of illegally staying third-country nationals or stateless persons of at least six years of age does not affect Member States' right to extend a third-country national or stateless person's stay on their territory pursuant to Article 20(2) of the Convention implementing the Schengen Agreement²⁷.

(40) ***The fact that the application for international protection follows or is made simultaneously with the apprehension of the third-country national or stateless person in connection with the irregular crossing of the external borders does not exempt Member States from registering those persons as persons apprehended in connection with the irregular crossing of the external border.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

²⁷ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).

(41) The fact that the application for international protection follows or is made simultaneously with the apprehension of the third-country national or stateless person illegally staying on the territory of Member States, does not exempt Member States from registering those persons as persons found to be illegally staying on the territory of the Member States.

(42) The fact that the application for international protection follows or is made simultaneously with the disembarkation following a search and rescue operation of the third-country national or stateless person does not exempt Member States from registering those persons as persons disembarked following a search and rescue operation.

(43) The fact that an application for international protection follows or is made simultaneously with the registration of the beneficiary of temporary protection does not exempt Member States from registering those persons as beneficiaries of temporary protection.

- (44) With a view to strengthening the protection of all children falling under the scope of this Regulation, including unaccompanied minors who have not applied for international protection and children who might become separated from their families, it is also necessary to take biometric data for storage in **Eurodac** to help establish the identity of children and to assist Member States in tracing any of their family members in, or links they might have with, another Member State, as well as in tracing missing children, including for law enforcement purposes, by complementing the existing instruments, in particular ■ the Schengen Information System (SIS) established by Regulation (EU) 2018/1862 of the European Parliament and of the Council²⁸ ■ . Effective identification procedures will assist Member States in guaranteeing the adequate protection of children. Establishing family links is a key element in restoring family unity and must be closely linked to the determination of the best interests of the child and, eventually, the determination of a sustainable solution in accordance with national practices following a needs assessment by the competent national child protection authorities.
- (45) The official responsible for taking the biometric data of a minor should receive training so that sufficient care is taken to ensure an adequate quality of biometric data of the minor and to guarantee that the process is child friendly so that the minor, particularly a very young minor, feels safe and can readily cooperate in the process of having his or her biometric data taken.

²⁸ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).

(46) Any minor from the age of six years old and above should be accompanied by, where present, an adult family member throughout the time when his or her biometric data are taken. The unaccompanied minor should be accompanied by a ■ representative or, where a representative has not been designated, a person trained to safeguard the best interests of the child and his or her general wellbeing, throughout the time his or her biometric data are taken. Such a trained person should not be the official responsible for taking the biometric data, should act independently and should not receive orders either from the official or the service responsible for taking the biometric data. Such a trained person should be the person designated to provisionally act as a representative under Directive (EU) .../...⁺ where that person has been designated.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)) [Reception Conditions Directive].

(47) The best interests of the child should be a primary consideration for Member States when applying this Regulation. Where the requesting Member State establishes that Eurodac data pertain to a child, those data may only be used for law enforcement purposes, in particular those relating to the prevention, detection and investigation of child trafficking and other serious crimes against children, by the requesting Member State and in accordance with that Member State's laws applicable to minors and in accordance with the obligation to give primary consideration to the best interests of the child.

(48) It is necessary to lay down precise rules for the transmission of such biometric data and of other relevant personal data in **Eurodac**, their storage, their comparison with other biometric data, the transmission of the results of such comparisons and the marking and erasure of the recorded data. Such rules may be different for, and should be specifically adapted to, the situation of different categories of third-country nationals or stateless persons.

(49) Member States should ensure the transmission of biometric data of an appropriate quality for the purposes of comparison by means of the computerised fingerprint and facial recognition system. All authorities with a right of access to Eurodac should invest in adequate training and in the necessary technological equipment. The authorities with a right of access to Eurodac should inform eu-LISA of specific difficulties encountered with regard to the quality of data in order to resolve them.

(50) The fact that it is temporarily or permanently impossible to take or to transmit the biometric data of a person, due to, inter alia, insufficient quality of the data for appropriate comparison, technical problems, reasons linked to the protection of health or the data subject being unfit or unable to have his or her biometric data taken owing to circumstances beyond his or her control, should not adversely affect the examination of or the decision on that person's application for international protection ■ ■ .

(51) Member States should take into account the Commission Staff Working Document on Implementation of the Eurodac Regulation as regards the obligation to take fingerprints, which the Council, on 20 July 2015, invited Member States to follow. It sets out a best-practice approach to taking fingerprints. Where relevant, Member States should also take into account the Checklist to act in compliance with fundamental rights when obtaining fingerprints for Eurodac, published by the European Union Agency for Fundamental Rights, which aims to assist them with complying with fundamental rights obligations when taking fingerprints.

(52) Member States should inform all persons required by this Regulation to give biometric data of their obligation to do so. Member States should also explain to those persons that it is in their interests to fully and immediately cooperate with the procedure by providing their biometric data. Where a Member State's national law lays down administrative measures that provide for the possibility of taking biometric data by means of coercion as a last resort, those measures are to fully respect the Charter **■** . Only in duly justified circumstances and as a last resort, having exhausted other possibilities, can a proportionate degree of coercion be used to ensure the compliance of third-country nationals or stateless persons who are deemed to be vulnerable persons, and minors, with the obligation to provide biometric data.

(53) Where detention is used in order to determine or verify a third-country national's or stateless person's identity, it should only be used by Member States as a means of last resort and in full respect of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in compliance with relevant Union law, including *the* Charter **■** .

(54) Where necessary, hits should be checked by a trained fingerprint expert in order to ensure the accurate determination of responsibility under Regulation (EU) .../...⁺, the exact identification of the third-country national or stateless person and the exact identification of the criminal suspect or victim of crime whose data might be stored in Eurodac. Checks by a trained expert should be considered necessary where there is doubt as to whether the result of the comparison of the fingerprint data relates to the same person, in particular where the data corresponding to a fingerprint hit belong to a person of a different sex or where the facial image data do not correspond to the facial feature of the person whose biometric data were taken. Hits obtained from Eurodac based on facial images should also be checked by an expert trained in accordance with national practice, where the comparison is made with facial image data only. Where a fingerprint and facial image data comparison is carried out simultaneously and hits are returned for both biometric datasets, Member States should be able to check the result of the comparison of the facial image data.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

(55) Third-country nationals or stateless persons who have requested international protection in one Member State might try to request international protection in another Member State for many years to come. The maximum period during which the biometric data of third-country nationals or stateless persons who have requested international protection can be kept in **Eurodac** should be strictly limited to the extent necessary and should be proportionate, in line with the principle of proportionality enshrined in Article 52(1) of the Charter and as interpreted by the Court of Justice. Given that most third-country nationals or stateless persons who have stayed in the Union for several years will have obtained a settled status or even citizenship of a Member State after that period, a period of **10** years should be considered a reasonable period for the storage of biometric and alphanumeric data.

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(56) *In its conclusions on Statelessness of 4 December 2015, the Council and the Representatives of the Governments of the Member States recalled the Union's pledge of September 2012 that all Member States were to accede to the Convention relating to the Status of Stateless Persons done at New York on 28 September 1954 and were to consider acceding to the Convention on the Reduction of Statelessness done at New York on 30 August 1961.*

(57) *For the purpose of applying the grounds for refusal under Regulation (EU) .../...⁺, the biometric data of third-country nationals or stateless persons registered for the purpose of conducting an admission procedure under that Regulation should be taken, transmitted to Eurodac and compared against the data stored in Eurodac of beneficiaries of international protection, of persons who have been granted international protection or humanitarian status under national law in accordance with that Regulation, of persons who have been refused admission to a Member State on one of the █ grounds referred to in that Regulation, namely that there were reasonable grounds for considering that third-country national or stateless person as a danger to the community, public policy, security or public health of the Member State concerned or the ground that an alert has been issued in the SIS or in a national database of a Member State for the purpose of refusing entry, or in respect of whom that admission procedure has been discontinued because they have not given or have withdrawn their consent, and of persons who have been admitted under a national resettlement scheme. Therefore, those categories of data should be stored in Eurodac and made available for comparison.*

(58) For the purpose of applying Regulations (EU) .../...⁺⁺ and (EU) .../...⁺⁺⁺ █, the biometric data of third-country nationals or stateless persons ***granted international protection or humanitarian status under national law in accordance with Regulation (EU) .../...⁺⁺⁺⁺*** should be stored in ***Eurodac*** for ***five*** years from the date on which they were taken. Such a period should be sufficient given the fact that the majority of such persons will have resided for several years in the Union and will have obtained a long-term resident status or even citizenship of a Member State.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

(59) Where a third-country national or a stateless person has been refused admission to a Member State **on one of the grounds set out in** Regulation (EU) .../...⁺, **namely that there were reasonable grounds for considering that third-country national or stateless person as a danger to the community, public policy, security or public health of the Member State concerned or the ground that an alert has been issued in the SIS or in a national database of a Member State for the purpose of refusing entry**, the related data should be stored for a period of three years from the date on which the negative conclusion on admission was reached. It is necessary to store such data for that length of time in order to allow other Member States conducting an admission procedure to receive information, including any information on the marking of data by other Member States, from **Eurodac** throughout the admission procedure , where necessary, by applying the **grounds** for refusal set out in Regulation (EU) .../...⁺⁺. In addition, data on admission procedures that have previously been discontinued because the third-country nationals or stateless persons have not given or have withdrawn their consent should be stored **for three years** in Eurodac in order to allow the other Member States conducting an admission procedure to ■ reach a negative conclusion, **as** permitted by that Regulation.

(60) The **transmission** of ■ data of persons registered for the purpose of conducting an admission procedure in **Eurodac** should **contribute to limiting** the number of Member States that exchange those persons' personal data during a subsequent admission procedure, and should thus contribute to ensuring compliance with the principle of data minimisation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

(61) Where a hit is received by a Member State from Eurodac that can assist that Member State in carrying out its obligations necessary for the application of the grounds for refusing admission under Regulation (EU) .../...⁺, the Member State of origin which had previously refused to admit a third-country national or a stateless person should promptly exchange supplementary information with the Member State that received the hit in accordance with the principle of sincere cooperation and subject to the principles of data protection. Such an exchange of data should allow the Member State that received the hit to reach a conclusion on the admission within the time limit set in that Regulation for concluding the admission procedure.

(62) The obligation to take and transmit the biometric data of persons registered for the purpose of conducting an admission procedure should not apply where the Member State in question discontinues the procedure before the biometric data were taken.

(63) With a view to successfully preventing and monitoring unauthorised movements of third-country nationals or stateless persons who do not have a right to stay in the Union and to taking the necessary measures for successfully enforcing effective return and readmission to third countries in accordance with Directive 2008/115/EC and in view of the right to protection of personal data, a period of five years should be considered necessary for the storage of biometric and alphanumeric data.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

(64) In order to support Member States in their administrative cooperation during the implementation of Directive 2001/55/EC, data of beneficiaries of temporary protection should be kept in Eurodac for a period of one year from the date of entry into force of the relevant Council Implementing Decision. The retention period should be extended every year for the duration of the temporary protection.

- (65) The storage period should be shorter in certain special situations where there is no need to keep biometric data or any other personal data for that length of time. Biometric data and all other personal data belonging to third-country nationals or stateless persons should be erased immediately and permanently once third-country nationals or stateless persons obtain citizenship of a Member State.
- (66) It is appropriate to store data relating to those data subjects whose biometric data were recorded in Eurodac upon ■ **making** or registering their applications for international protection ■ and who have been granted international protection in a Member State in order to make it possible for data recorded upon ■ registering **or making another** application for international protection ■ to be compared against the data previously recorded.

(67) eu-LISA has been entrusted with the Commission's tasks relating to the operational management of Eurodac in accordance with this Regulation and with certain tasks relating to the Communication Infrastructure as from 1 December 2012, the date on which eu-LISA took up its responsibilities. In addition, Europol should have observer status at the meetings of the Management Board of eu-LISA when a question in relation to the application of this Regulation concerning access to Eurodac for consultation by the Member States' designated authorities and the Europol designated authority for the purposes of the prevention, detection or investigation of terrorist offences or of other serious criminal offences is on the agenda. Europol should be able to appoint a representative to the Eurodac Advisory Group of eu-LISA.

(68) It is necessary to lay down clearly the responsibilities of the Commission and eu-LISA as regards **Eurodac** and the Communication Infrastructure and the responsibilities of the Member States as regards data processing, data security, access to, and rectification of, recorded data.

(69) It is necessary to designate the competent authorities of the Member States as well as the National Access Point through which the requests for comparison with Eurodac data are made and to keep a list of the operating units within the designated authorities that are authorised to request such comparison for the specific purposes of the prevention, detection or investigation of terrorist offences or of other serious criminal offences.

(70) It is necessary to designate and keep a list of the operating units of Europol that are authorised to request comparisons with Eurodac data through the Europol Access Point.

Such units, including units dealing with trafficking in human beings, sexual abuse and sexual exploitation, in particular where victims are minors, should be authorised to request comparisons with Eurodac data through the Europol Access Point in order to support and strengthen action by Member States in preventing, detecting or investigating terrorist offences or other serious criminal offences falling within Europol's mandate.

(71) Requests for comparison with data stored in **Eurodac** should be made by the operating units within the designated authorities to the National Access Point, through the verifying authority, and should be reasoned. The operating units within the designated authorities that are authorised to request comparisons with Eurodac data should not act as a verifying authority. The verifying authorities should act independently of the designated authorities and should be responsible for ensuring, in an independent manner, strict compliance with the conditions for access laid down in this Regulation. The verifying authorities should then forward the request, without forwarding the reasons for it, for comparison through the National Access Point to **Eurodac** following verification that all the conditions for access have been fulfilled. In exceptional cases of urgency where early access is necessary to respond to a specific and actual threat related to terrorist offences or other serious criminal offences, it should be possible for the verifying authority to forward the request immediately and only carry out the verification afterwards.

- (72) It should be possible for the designated authority and the verifying authority to be part of the same organisation, if permitted under national law, but the verifying authority should act independently when performing its tasks under this Regulation.
- (73) For the purpose of protecting personal data, and to exclude systematic comparisons which should be forbidden, the processing of Eurodac data should only take place in specific cases and when it is necessary for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences. A specific case exists, in particular, when the request for comparison is connected to a specific and concrete situation, to a specific and concrete danger associated with a terrorist offence or other serious criminal offence, or to specific persons in respect of whom there are serious grounds for believing that they will commit or have committed any such offence. A specific case also exists when the request for comparison is connected to a person who is the victim of a terrorist offence or other serious criminal offence. The Member States' designated authorities and the Europol designated authority should thus only request a comparison with Eurodac when they have reasonable grounds to believe that such a comparison will provide information that will substantially assist them in preventing, detecting or investigating a terrorist offence or other serious criminal offence.

(74) In addition, access should be allowed **■** on condition that a prior search in the national biometric databases of the Member State and in the automated fingerprinting identification systems of all other Member States under Council Decision 2008/615/JHA²⁹ has been conducted, ***unless the consultation of CIR in accordance with Article 22(2) of Regulation (EU) 2019/818 indicates that the data of the person concerned are stored in Eurodac.*** That condition requires the requesting Member State to conduct comparisons with the automated fingerprinting identification systems of all other Member States under Decision 2008/615/JHA which are technically available, unless that Member State can justify that there are reasonable grounds to believe that it would not lead to the establishment of the identity of the data subject. Such reasonable grounds exist, in particular, where the specific case does not present any operational or investigative link to a given Member State. That condition requires the prior legal and technical implementation of Decision 2008/615/JHA by the requesting Member State in the area of fingerprint data, as it should not be permitted to conduct a Eurodac check for law enforcement purposes where the requirements for meeting that condition have not been fulfilled. In addition to the prior check of the databases, designated authorities should also be able to conduct a simultaneous check in the VIS, provided that the conditions for a comparison with the data stored therein, as laid down in Council Decision 2008/633/JHA³⁰, have been met.

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²⁹ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime **■** (OJ L 210, 6.8.2008, p. 1).

³⁰ Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 218, 13.8.2008, p. 129).

- (75) For the purposes of the efficient comparison and exchange of personal data, Member States should fully implement and make use of existing international agreements and of Union law concerning the exchange of personal data already in force, in particular Decision 2008/615/JHA.
- (76) While the non-contractual liability of the Union in connection with the operation of Eurodac is governed by the relevant provisions of the Treaty on the Functioning of the European Union (TFEU), it is necessary to lay down specific rules for the non-contractual liability of the Member States in connection with the operation of Eurodac.

(77) Regulation (EU) 2016/679³¹ applies to the processing of personal data by Member States carried out in application of this Regulation unless such processing is carried out by the designated or verifying competent authorities of the Member States for the purposes of the prevention, investigation, detection or prosecution of terrorist offences or of other serious criminal offences, including safeguarding against, and the prevention of, threats to public security.

(78) National rules adopted pursuant to Directive (EU) 2016/680 of the European Parliament and of the Council³¹ apply to the processing of personal data by competent authorities of the Member States for the purposes of the prevention, investigation, detection or prosecution of terrorist offences or of other serious criminal offences pursuant to this Regulation.

(79) Regulation (EU) 2016/794 applies to the processing of personal data by Europol for the purposes of the prevention, investigation or detection of terrorist offences or of other serious criminal offences pursuant to this Regulation.

³¹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

(80) The rules set out in Regulation (EU) 2016/679 regarding the protection of the rights and freedoms of individuals, in particular their right to the protection of personal data concerning them, should be specified in this Regulation with regard to the responsibility for the processing of the data, safeguarding the rights of data subjects and supervising data protection, in particular as far as certain sectors are concerned.

(81) *A person's right to privacy and to data protection should be safeguarded in accordance with this Regulation at all times, both with regard to access by the Member States' authorities and by the Union's authorised agencies to Eurodac.*

(82) Data subjects should have the right of access to, and rectification and erasure of, personal data concerning them and the right of restriction of the processing thereof. Taking into account the purposes for which the data are processed, data subjects should have the right to have incomplete personal data completed, including by means of providing a supplementary statement. Those rights should be exercised pursuant to Regulation (EU) 2016/679 and in accordance with the procedures set out in this Regulation, Directive (EU) 2016/680 and Regulation (EU) 2016/794 as regards the processing of personal data for law enforcement purposes pursuant to this Regulation. In relation to the processing of personal data in Eurodac by national authorities, each Member State, for reasons of legal certainty and transparency, should designate the authority which is to be considered as controller in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680 and which should have central responsibility for the processing of data by that Member State. Each Member State should communicate the details of that authority to the Commission.

(83) It is also important that factually incorrect data recorded in Eurodac be rectified in order to ensure that statistics produced in accordance with this Regulation are accurate.

(84) Transfers of personal data obtained by a Member State or Europol pursuant to this Regulation from **Eurodac** to any third country or international organisation or private entity established in or outside the Union should be prohibited in order to ensure the right to asylum and to safeguard **persons whose data are processed** under **this** Regulation ■ from having their data disclosed to a third country. That implies that Member States should not transfer information obtained from **Eurodac** concerning: the name(s); date of birth; nationality; the Member State(s) of origin, Member State of relocation or Member State of resettlement; the details of the identity or travel document; the place and date of resettlement or of the application for international protection; the reference number used by the Member State of origin; the date on which the biometric data were taken and the date on which the Member State(s) transmitted the data to Eurodac; the operator user ID; and any information relating to any transfer of the data subject under Regulation (EU) .../...⁺ ■. That prohibition should be without prejudice to the right of Member States to transfer such data to third countries to which Regulation (EU) .../...⁺⁺ ■ applies, ■ in accordance with Regulation (EU) 2016/679 and with the national rules adopted pursuant to Directive (EU) 2016/680, in order to ensure that Member States have the possibility of cooperating with such third countries for the purposes of this Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

(85) By way of derogation from the rule that no personal data obtained by a Member State pursuant to this Regulation should be transferred or made available to any third country, it should be possible to transfer such personal data to a third country where such a transfer is subject to strict conditions and is necessary in individual cases in order to assist with the identification of a third-country national in relation to his or her return. The transfer of any personal data should be subject to strict conditions. Where such personal data are transferred, information relating to the fact that an application for international protection has been made by that third-country national should not be disclosed to a third-country. The transfer of any personal data to third countries should be carried out in accordance with Regulation (EU) 2016/679 and be conducted with the agreement of the Member State of origin. Third countries of return are often not subject to adequacy decisions adopted by the Commission under Regulation (EU) 2016/679. Furthermore, the extensive efforts of the Union in cooperating with the main countries of origin of illegally staying third-country nationals subject to an obligation to return have not ensured the systematic fulfilment by such third countries of the obligation established by international law to readmit their own nationals. Readmission agreements, concluded or being negotiated by the Union or the Member States and providing for appropriate safeguards for the transfer of data to third countries pursuant to Article 46 of Regulation (EU) 2016/679, cover a limited number of such third countries and the conclusion of new readmission agreements remains uncertain. In such situations, and as an exception to the requirement of an adequacy decision or appropriate safeguards, the transfer of personal data to third-country authorities pursuant to this Regulation should be allowed for the purpose of implementing the return policy of the Union, and it should be possible to use the derogation provided for in Regulation (EU) 2016/679, provided that the conditions laid down in that Regulation are met. The implementation of Regulation (EU) 2016/679 ¹, including with regard to transfers of personal data to third countries pursuant to this Regulation, is subject to monitoring by the national independent supervisory authority. Regulation (EU) 2016/679 applies with regard to the responsibility of the Member States' authorities as controllers within the meaning of that Regulation.

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(86) Regulation (EU) 2018/1725 of the European Parliament and of the Council³², and in particular Article 33 thereof concerning ***the confidentiality and*** security of processing, applies to the processing of personal data by Union institutions, bodies, offices and agencies carried out in the application of this Regulation, without prejudice to Regulation (EU) 2016/794, which should apply to the processing of personal data by Europol. However, certain points should be clarified in respect of the responsibility for the processing of data and of the supervision of data protection, bearing in mind that data protection is a key factor in the successful operation of Eurodac and that data security, high technical quality and the lawfulness of consultations are essential to ensure the smooth and proper functioning of Eurodac and to facilitate the application of Regulations (EU) .../...⁺ [] and (EU) .../...⁺⁺.

(87) The data subject should be informed in particular of the purpose for which his or her data will be processed within Eurodac, including a description of the aims of Regulations (EU) .../...⁺⁺⁺ [] and (EU) .../...⁺⁺⁺⁺, and of the use to which law enforcement authorities may put his or her data.

³² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

- (88) It is appropriate that national supervisory authorities established in accordance with Regulation (EU) 2016/679 monitor the lawfulness of the processing of personal data by the Member States, while the European Data Protection Supervisor, established by Regulation (EU) 2018/1725, monitors the activities of the Union institutions, bodies, offices and agencies in relation to the processing of personal data carried out in the application of this Regulation. Those supervisory authorities and the European Data Protection Supervisor should cooperate with each other in the monitoring of the processing of personal data, ***including in the context of the Coordinated Supervision Committee established within the framework of the European Data Protection Board.***
- (89) Member States, the European Parliament, the Council and the Commission should ensure that the national supervisory authorities and the European Data Protection Supervisor are able to supervise the use of and access to Eurodac data adequately.

(90) It is appropriate to monitor and evaluate the performance of Eurodac at regular intervals, including in terms of whether the access for law enforcement purposes has led to indirect discrimination against applicants for international protection, as raised in the Commission's evaluation of the compliance of this Regulation with the Charter[■]. eu-LISA should submit an annual report on the activities of **Eurodac** to the European Parliament and to the Council.

(91) Member States should provide for a system of effective, proportionate and dissuasive penalties to sanction the unlawful processing of data recorded in **Eurodac** contrary to *its* purpose[■].

(92) It is necessary that Member States be informed of the status of particular asylum procedures, with a view to facilitating the adequate application of Regulation (EU) .../...⁺
[■].

(93) This Regulation should be without prejudice to the application of Directive 2004/38/EC of the European Parliament and of the Council³³.

(94) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter. In particular, this Regulation seeks to ensure full respect for the protection of personal data and for the right to seek international protection, and to promote the application of Articles 8 and 18 of the Charter. This Regulation should therefore be applied accordingly.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

³³ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

(95) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered ***opinions*** on 21 September 2016 and ***on 30 November 2020.***

(96) Since the objective of this Regulation, namely the creation of a system for the comparison of biometric data to assist the implementation of Union asylum and migration policy, cannot, by its very nature, be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(97) ***It is appropriate to restrict the territorial scope of this Regulation so as to align it to the territorial scope of Regulation (EU) .../...⁺, with the exception of the provisions related to data collected to assist with the application of Regulation (EU) .../...⁺⁺ under the conditions set out in this Regulation,***

(98) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

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⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

(99) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

■

HAVE ADOPTED THIS REGULATION:

Chapter I General provisions

Article 1

Purpose of ‘Eurodac’

1. A system known as ‘Eurodac’ is hereby established. Its purpose is to:

- (a) ***support the asylum system, including by assisting*** in determining which Member State is to be responsible pursuant to Regulation (EU) .../...⁺ for examining an application for international protection registered in a Member State by a third- country national or a stateless person and by facilitating the application of that Regulation ■ under the conditions set out in this Regulation;
- (b) assist with the application of Regulation (EU) .../...⁺⁺ under the conditions set out in this Regulation;
- (c) assist with the control of irregular immigration to the Union, with the detection of secondary movements within the Union and with the identification of illegally staying third-country nationals and stateless persons for the purpose of determining the appropriate measures to be taken by Member States;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

- (d) *assist with the protection of children, including in the context of law enforcement;*
- (e) lay down the conditions under which Member States' designated authorities and the Europol designated authority may request the comparison of biometric or alphanumeric data with those stored in **Eurodac** for law enforcement purposes for the prevention, detection or investigation of terrorist offences or of other serious criminal offences;
- (f) assist in the correct identification of persons registered in Eurodac in accordance with Article 20 of Regulation (EU) 2019/818 by storing identity data, travel document data and biometric data in the ■ common identity repository (CIR) ■ ■ ;
- (g) support the objectives of the European Travel Information and Authorisation System (ETIAS) established by Regulation (EU) 2018/1240 ■ ;
- (h) support the objectives of the Visa Information System (VIS) *referred to in* Regulation (EC) No 767/2008 ■ ;
- (i) *support evidence-based policy making through the production of statistics;*
- (j) *assist with the implementation of Directive 2001/55/EC.*

2. Without prejudice to the processing of data intended for Eurodac by the Member State of origin in databases set up under that Member State's national law, biometric data and other personal data may be processed in Eurodac only for the purposes set out in this Regulation, in Regulations **(EC) No 767/2008, (EU) 2018/1240, (EU) 2019/818, (EU) .../...⁺ and (EU) .../...⁺⁺ and in Directive 2001/55/EC.**

This Regulation fully respects human dignity and fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union (the ‘Charter’), including the right to respect for private life, the right to the protection of personal data, the right to asylum and the prohibition of torture and inhuman or degrading treatment. In that respect, the processing of personal data in accordance with this Regulation shall not result in any discrimination against persons covered by this Regulation based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

A person’s right to privacy and to data protection shall be safeguarded in accordance with this Regulation, both with regard to access by the Member States’ authorities and by the Union’s authorised agencies to Eurodac.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

Article 2 Definitions

1. For the purposes of this Regulation:

- (a) ‘applicant for international protection’ means a third-country national or a stateless person who has made an application for international protection as defined in

Article **3, point (7)**, of Regulation (EU) .../...⁺ in respect of which a final decision has not yet been taken;

- (b) ‘person registered for the purpose of conducting an admission procedure’ means a person who has been registered for the purpose of conducting a resettlement or humanitarian admission procedure in accordance with Article **9(3)** of Regulation (EU) .../...⁺⁺;

⁺ OJ: please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) [Qualification Regulation].

⁺⁺ OJ: please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

- (c) ‘person admitted in accordance with a national resettlement scheme’ means a person resettled by a Member State outside the framework of Regulation (EU) .../...⁺,
where that person is granted international protection as defined in Article 3, point (3), of Regulation (EU) .../...⁺⁺ or humanitarian status under national law ***within the meaning of Article 2(3), point (c), of Regulation (EU) .../...⁺⁺⁺*** in accordance with the rules governing the national resettlement scheme;
- (d) ‘humanitarian status under national law’ means a humanitarian status under national law that provides for rights and obligations equivalent to the rights and obligations set out in Articles 20 to 26 and 28 to 35 of Regulation (EU) .../...⁺⁺⁺⁺;
- (e) ‘Member State of origin’ means:
- (i) in relation to a person covered by Article 15(1), the Member State which transmits the personal data to ***Eurodac*** and receives the results of the comparison;
 - (ii) ***in relation to a person covered by Article 18(1), the Member State which transmits the personal data to Eurodac and receives the results of the comparison;***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) [Qualification Regulation].

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

⁺⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) [Qualification Regulation].

- (iii) *in relation to a person covered by Article 18(2), the Member State which transmits the personal data to Eurodac;*
- (iv) *in relation to a person covered by Article 20(1), the Member State which transmits the personal data to Eurodac;*
- (v) in relation to a person covered by Article 22(1), the Member State which transmits the personal data to **Eurodac** and receives the results of the comparison;
- (vi) in relation to a person covered by Article 23(1), the Member State which transmits the personal data to **Eurodac** and receives the results of the comparison;
- (vii) in relation to a person covered by Article 24(1), the Member State which transmits the personal data to **Eurodac** and receives the results of the comparison;
- (viii) in relation to a person covered by Article 26(1), the Member State which transmits the personal data to **Eurodac** and receives the results of the comparison;

(f) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not a national of a state which ***participates*** in the application of this Regulation by virtue of an agreement with the Union;

(g) ‘illegal stay’ means the presence on the territory of a Member State of a third-country national or a stateless person who does not fulfil or no longer fulfils the conditions of entry set out in Article 6 of Regulation (EU) 2016/399 of the European Parliament and of the Council³⁴ or other conditions for entry, stay or residence in that Member State;

(h) ‘beneficiary of international protection’ ***means a*** person who has been granted refugee status ***as defined in Article 3, point (1), of Regulation (EU) .../...⁺*** or subsidiary protection status as defined in Article 3, ***point (2)***, of that Regulation;

(i) ***‘beneficiary of temporary protection’ means a person who enjoys temporary protection as defined in Article 2, point (a), of Directive 2001/55/EC and in a Council Implementing Decision introducing temporary protection or any other equivalent national protection introduced in response to the same event as that Council Implementing Decision;***

³⁴ Regulation (EU) 2016/399 of the European Parliament and the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 077, 23.3.2016, p. 1).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) [Qualification Regulation].

- (j) ‘hit’ means the existence of a match or matches established by **Eurodac** by means of a comparison between biometric data recorded in the computerised central database and those transmitted by a Member State with regard to a person, without prejudice to the requirement that Member States immediately check the results of the comparison pursuant to Article 38(4);
- (k) ‘National Access Point’ means the designated national system which communicates with **Eurodac**;
- (l) ‘Europol Access Point’ means the designated Europol system which communicates with **Eurodac**;
- (m) ‘Eurodac data’ means all data stored in **Eurodac** in accordance with **Article 17(1) and (2), Article 19(1) ■** , Article 21(1) ■ , **Article 22(2) and (3), Article 23(2) and (3), Article 24(2) and (3) and Article 26(2)**;

- (n) ‘law enforcement’ means the prevention, detection or investigation of terrorist offences or of other serious criminal offences;
- (o) ‘terrorist offence’ means an offence under national law which corresponds or is equivalent to one of the offences referred to in Directive (EU) 2017/541;
- (p) ‘serious criminal offence’ means an offence which corresponds or is equivalent to those referred to in Article 2(2) of Framework Decision 2002/584/JHA, if it is punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years;
- (q) ‘fingerprint data’ means the data relating to plain and rolled impressions of the fingerprints of all ten fingers, where present, or a latent fingerprint;
- (r) ‘facial image data’ means digital images of the face with sufficient image resolution and quality to be used in automatic biometric matching;
- (s) ‘biometric data’ means fingerprint data or facial image data ;
- (t) ‘alphanumeric data’ means data represented by letters, digits, special characters, space or punctuation marks;

(u) ‘residence document’ means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in Regulation (EU) .../...⁺ or during the examination of an application for international protection or an application for a residence permit;

(v) ‘interface control document’ means a technical document that specifies the necessary requirements with which the National Access Points or the Europol Access Point are to comply in order to be able to communicate electronically with **Eurodac**, in particular by detailing the format and possible content of the information to be exchanged between **Eurodac** and the National Access Points or the Europol Access Point;

(w) ‘CIR’ means the common identity repository as established by Article 17(1) and (2) of Regulation (EU) 2019/818;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

(x) ‘identity data’ means the data referred to in Article 17(1), points (c) to (f) and (h), Article 19(1), points (c) to (f) and (h), Article 21(1), points (c) to (f) and (h), Article 22(2), points (c) to (f) and (h), Article 23(2), points (c) to (f) and (h) ■ , Article 24(2), points (c) to (f) and (h), and Article 26(2), points (c) to (f) and (h);

(y) ‘dataset’ means the set of information recorded in Eurodac on the basis of Article 17, 19, 21, 22, 23, 24 or 26, corresponding to one set of fingerprints of a data subject and composed of biometric data, alphanumeric data and, where available, a scanned colour copy of an identity or travel document;

(z) ‘child’ or ‘minor’ means a third-country national or a stateless person below the age of 18 years.

2. The definitions set out in Article 4 of Regulation (EU) 2016/679 shall apply to this Regulation in so far as personal data are processed by the authorities of the Member States for the purposes laid down in Article 1(1), points (a), (b), (c) and (j) of this Regulation.
3. Unless stated otherwise, the definitions set out in Article 2 of Regulation (EU) .../...⁺ ■ shall apply to this Regulation.
4. The definitions set out in Article 3 of Directive (EU) 2016/680 shall apply to this Regulation in so far as personal data are processed by the competent authorities of the Member States for law enforcement purposes.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE- CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

Article 3

System architecture and basic principles

1. Eurodac shall consist of:
 - (a) a Central System composed of:
 - (i) a Central Unit,
 - (ii) a business continuity plan and system;
 - (b) a communication infrastructure between the Central System and Member States that provides a secure and encrypted communication channel for Eurodac data (the ‘Communication Infrastructure’);
 - (c) the **■** CIR **■** **■**;
 - (d) a secure communication infrastructure between the Central System and the central infrastructures of the European search portal ***and*** between the Central System and the CIR **■** .

2. The CIR shall contain the data referred to in Article 17(1), **points** (a) to (f), (h) and (i), Article 19(1), points (a) to (f), (h) and (i), Article 21(1), points (a) to (f), (h) and (i), Article 22(2), points (a) to (f), (h) and (i), Article 23(2), points (a) to (f), (h) and (i), Article 24, paragraph (2), points **(a) to (f) and (h), and paragraph (3), point (a), and Article 26(2), points** (a) to (f), (h) **■** and (i). The remaining Eurodac data shall be stored in the Central System.
3. The Communication Infrastructure shall use the existing ‘Secure Trans European Services for Telematics between Administrations’ (TESTA) network. In order to ensure confidentiality, personal data transmitted to or from Eurodac shall be encrypted.
4. Each Member State shall have a single National Access Point. Europol shall have a single access point (the Europol Access Point).
5. Data relating to persons covered by Article 15(1), Article 18(2), Article **20(1)**, Article 22(1), Article 23(1), Article 24(1) and Article 26(1) which are processed in **Eurodac** shall be processed on behalf of the Member State of origin under the conditions set out in this Regulation and separated by appropriate technical means.

6. All **datasets** registered in Eurodac corresponding to the same third-country national or stateless person shall be linked in a sequence. Where ***an automatic comparison is carried out in accordance with Articles 27 and 28*** and a hit is obtained against at least one other set of fingerprints ***or, where those fingerprints are of a quality which does not ensure appropriate comparison or are not available, facial image data*** in another dataset corresponding to that same third-country national or stateless person, Eurodac shall automatically link those datasets on the basis of the **■** comparison. ***Where*** necessary, ***an*** expert ***shall check***, in accordance with Article 38(4) and (5), ***the result of an automatic comparison carried out in accordance with Articles 27 and 28***. When the receiving Member State confirms the hit, it shall send a notification confirming the linking of those datasets to eu-LISA.

7. The rules governing Eurodac shall also apply to operations carried out by the Member States as from the transmission of data to ***Eurodac*** until use is made of the results of the comparison.

Article 4

Operational management

1. eu-LISA shall be responsible for the operational management of Eurodac.

The operational management of Eurodac shall consist of all the tasks necessary to keep Eurodac functioning 24 hours a day, 7 days a week in accordance with this Regulation, in particular the maintenance work and technical developments necessary to ensure that the system functions at a satisfactory level of operational quality, in particular as regards the time required to query **Eurodac**. eu-LISA shall develop a business continuity plan and system, taking into account maintenance needs and unforeseen downtime of Eurodac, including the impact of business continuity measures on data protection and security.

eu-LISA shall ensure, in cooperation with the Member States, that the best available and most secure technology and techniques, subject to a cost-benefit analysis, are used for **Eurodac**.

2. **eu**-LISA may use real personal data from the Eurodac production system for testing purposes, in accordance with Regulation (EU) 2016/679, in the following cases:
 - (a) for diagnostics and repair when faults are discovered in **Eurodac**; or

(b) for testing new technologies and techniques relevant to enhancing the performance of **Eurodac** or the transmission of data to it.

In the cases referred to in points (a) and (b) of the first subparagraph, the security measures, access control and logging activities at the testing environment shall be equal to the ones for the Eurodac production system. Processing of real personal data adapted for testing shall be subject to stringent conditions and rendered anonymous in such a way that the data subject is no longer identifiable. Once the purpose for which the testing was carried out has been achieved or the tests have been completed, the real personal data shall be immediately and permanently erased from the testing environment.

3. eu-LISA shall be responsible for the following tasks relating to the Communication Infrastructure:

- (a) supervision;
- (b) security;
- (c) the coordination of relations between the Member States and the provider.

4. The Commission shall be responsible for all tasks relating to the Communication Infrastructure, other than those referred to in paragraph 3, in particular:

- (a) implementation of the budget;

(b) acquisition and renewal;

(c) contractual matters.

5. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, laid down in Regulation (EEC, Euratom, ECSC) No 259/68 of the Council³⁵, eu-LISA shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to all its staff required to work with Eurodac data. This paragraph shall also apply after such staff leave office or employment or after the termination of their duties.

Article 5

Member States' designated authorities for law enforcement purposes

1. For law enforcement purposes, Member States shall designate the authorities that are authorised to request comparisons with Eurodac data pursuant to this Regulation.

Designated authorities shall be authorities of the Member States which are responsible for the prevention, detection or investigation of terrorist offences or of other serious criminal offences.

2. Each Member State shall keep a list of its designated authorities.
3. Each Member State shall keep a list of the operating units within its designated authorities that are authorised to request comparisons with Eurodac data through the National Access Point.

³⁵ [OJ L 56, 4.3.1968, p. 1.](#)

Article 6

Member States' verifying authorities for law enforcement purposes

1. For law enforcement purposes, each Member State shall designate a single national authority or a unit of such an authority to act as its verifying authority. The verifying authority shall be an authority of the Member State which is responsible for the prevention, detection or investigation of terrorist offences or of other serious criminal offences.

The designated authority and the verifying authority may be part of the same organisation, if permitted under national law, but the verifying authority shall act independently when performing its tasks under this Regulation. The verifying authority shall be separate from the operating units referred to in Article 5(3) and shall not receive instructions from them as regards the outcome of the verification.

In accordance with their constitutional or legal requirements, Member States may designate more than one verifying authority to reflect their organisational and administrative structures.

2. The verifying authority shall ensure that the conditions for requesting comparisons of biometric or alphanumeric data with Eurodac data are fulfilled.

Only duly empowered staff of the verifying authority shall be authorised to receive and forward requests for access to Eurodac in accordance with Article 32.

Only the verifying authority shall be authorised to forward requests for comparison of biometric or alphanumeric data to the National Access Point.

Article 7

Europol designated authority and Europol verifying authority for law enforcement purposes

1. For law enforcement purposes, Europol shall designate one or more of its operating units as the ‘Europol designated authority’. The Europol designated authority shall be authorised to request comparisons with Eurodac data through the Europol Access Point in order to support and strengthen action by Member States in preventing, detecting or investigating terrorist offences or other serious criminal offences falling within Europol’s mandate.
2. For law enforcement purposes, Europol shall designate a single specialised unit with duly empowered Europol officials to act as its verifying authority. The Europol verifying authority shall be authorised to forward requests by the Europol designated authority for comparisons with Eurodac data through the Europol Access Point. The Europol verifying authority shall be fully independent of the Europol designated authority when performing its tasks under this Regulation. The Europol verifying authority shall be separate from the Europol designated authority and shall not receive instructions from it as regards the outcome of the verification. The Europol verifying authority shall ensure that the conditions for requesting comparisons of biometric or alphanumeric data with Eurodac data are fulfilled.

Article 8
Interoperability with ETIAS

1. From ... [the date of application of this **Regulation**], Eurodac shall be connected to the European search portal referred to in Article 6 of Regulation (EU) 2019/818 **in order** to enable the **application of Articles 11 and 20** of Regulation (EU) 2018/1240.
2. The automated processing referred to in Article **20** of Regulation (EU) 2018/1240 shall enable the verifications provided for in **that** Article ■ and the subsequent verifications **provided for in** Articles 22 and 26 of that Regulation.

For the purpose of carrying out the verifications referred to in Article 20(2), point (k), of Regulation (EU) 2018/1240, the ETIAS Central System shall use the European search portal to compare the data in ETIAS with the data in Eurodac collected on the basis of Articles **17, 19, 21, 22, 23, 24** and 26 **of this Regulation in a read-only format using the data categories listed in the table of correspondences set out in Annex I** of this Regulation corresponding to persons having left or having been removed from the territory of the Member States in compliance with a return decision or removal order ■ . Those verifications shall be without prejudice to the specific rules provided for in Article 24(3) of Regulation (EU) 2018/1240.

Article 9

Conditions for access to Eurodac for the manual processing by ETIAS National Units

1. ETIAS National Units shall consult Eurodac by means of the same alphanumerical data as those used for the automated processing referred to in Article 8.
2. For the purposes of Article 1(1), point (g) ■, of this Regulation, the ETIAS National Units ■ shall have access to ■ Eurodac, ***in accordance with Regulation (EU) 2018/1240***, to consult data in a read-only format in order to examine applications for travel authorisation. In particular, the ETIAS National Units may consult the data referred to in Articles 17, 19, **21, 22, 23, 24** and 26 ***of this Regulation.***
3. Following consultation and access pursuant to paragraphs 1 and 2, the result of the assessment shall be recorded only in the ETIAS application files.

Article 10

Access to Eurodac by the competent visa authorities

For the purpose of manually verifying hits triggered by the automated queries carried out by VIS in accordance with Articles 9a and 9c of Regulation (EC) No 767/2008 and of examining and deciding on visa applications in accordance with Article 21 of Regulation (EC) No 810/2009 of the European Parliament and of the Council³⁶, the competent visa authorities shall, ***in accordance with those Regulations***, have access to Eurodac to consult data in a read-only format.

Article 11

Interoperability with **VIS**

As provided for in Article 3(1), point (d), of this Regulation, Eurodac shall be connected to the European search portal referred to in Article 6 of Regulation (EU) 2019/817 in order to enable the automated processing referred to in Article 9a of Regulation (EC) No 767/2008 ***and, therefore***, to query Eurodac and compare the relevant data in the VIS with the relevant data in Eurodac. The verifications shall be without prejudice to the specific rules provided for in Article 9b of Regulation (EC) No 767/2008. ■

³⁶ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

Article 12 Statistics

1. eu-LISA shall draw up statistics on the work of **Eurodac** every month indicating, in particular:
 - (a) the number of applicants and the number of first-time applicants **resulting** from the linking process referred to in Article 3(6);
 - (b) the number of rejected applicants resulting from the linking process **referred to in Article 3(6) and pursuant to Article 17(2), point (j)**;
 - (c) **the number of persons who have been disembarked following search and rescue operations**;
 - (d) **the number of persons who have been registered as beneficiaries of temporary protection**;
 - (e) **the number of applicants who have been granted international protection in a Member State**;
 - (f) **the number of persons who have been registered as minors**;
 - (g) **the number of persons** referred to in Article 18(2), point (a), of this Regulation who **have been admitted under Regulation (EU) .../...⁺**;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

- (h) *the number of persons referred to in Article 20(1) who have been admitted under a national resettlement scheme;*
- (i) the number of datasets transmitted *on persons as referred to in Article 15(1), Article 18(2), points (b) and (c), Article 22(1), Article 23(1), Article 24(1) and Article 26(1);*
- (j) *the number of transmissions of data relating to persons as referred to in Articles 18(1);*
- (k) the number of hits for persons as referred to in Article 15(1) of this Regulation:
- (i) for whom an application for international protection has been registered ■ in a Member State;
 - (ii) who have been apprehended in connection with the irregular crossing of an external border;
 - (iii) who have been illegally staying in a Member State;
 - (iv) *who have been disembarked following a search and rescue operation;*
 - (v) *who have been granted international protection in a Member State;*
 - (vi) *who have been registered as a beneficiary of temporary protection in a Member State;*

(vii) who have been registered for the purpose of conducting an admission procedure ■ in accordance with Regulation (EU) .../...⁺ ■ and:

– *have been granted international protection or humanitarian status*

under national law,

– *have been refused admission on one of the grounds referred to in Article 6(1), point (f), of that Regulation, or*

– *for whom the admission procedure has been discontinued due to the fact that that person did not give or withdrew his or her consent in*

accordance with Article 7 of that Regulation;

(viii) who *have been* admitted in accordance with a national resettlement scheme;

■

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

(l) the number of hits for persons as referred to in Article 18(1) of this Regulation:

(i) *who have previously been granted international protection in a Member State;*

(ii) *who have been registered for the purpose of conducting an admission procedure in accordance with Regulation (EU) .../...⁺ and:*

- have been granted international protection or humanitarian status under national law,*
- have been refused admission on one of the grounds referred to in Article 6(1), point (f), of that Regulation, or*
- for whom the admission procedure was discontinued due to the fact that that person did not give or withdrew his or her consent in accordance with Article 7 of that Regulation;*

(iii) *who have been admitted in accordance with a national resettlement scheme;*

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⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

- (m) the number of hits for persons as referred to in Article 22(1) of this Regulation:
- (i) for whom an application for international protection has been registered ***in a Member State;***
 - (ii) who have been apprehended in connection with the irregular crossing of an external border;
 - (iii) who have been illegally staying in a Member State;
 - (iv) ***who have been disembarked following a search and rescue operation;***
 - (v) ***who have been granted international protection in a Member State;***
 - (vi) who have been registered for the purpose of conducting an admission procedure in accordance with Regulation (EU) .../...⁺ ***and:***
 - ***have been granted international protection or humanitarian status under national law,***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

- *have been refused admission on one of the grounds referred to in Article 6(1), point (f), of that Regulation; or*
 - *for whom the admission procedure has been discontinued due to the fact that that person did not give or withdrew his or her consent in accordance with Article 7 of that Regulation;*
- (vii) who *have been* admitted ■ in accordance with a national resettlement scheme;
- (viii) *who have been registered as a beneficiary of temporary protection in a Member State;*
- (n) the number of hits for persons as referred to in Article 23(1) of this Regulation:
- (i) for whom an application for international protection *has been registered in a Member State;*
 - (ii) who have been apprehended in connection with the irregular crossing of an external border;

(iii) who have been illegally staying in a Member State;

(iv) who have been disembarked following a search and rescue operation;

(v) *who have been granted international protection in a Member State;*

(vi) *who have been registered for the purpose of conducting an admission procedure in accordance with Regulation (EU) .../...⁺ and:*

– *have been granted international protection or humanitarian status under national law,*

– *have been refused admission on one of the grounds referred to in Article 6(1), point (f), of that Regulation, or*

– *for whom the admission procedure has been discontinued due to the fact that that person did not give or withdrew his or her consent in*

accordance with Article 7 of that Regulation,

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

- (vii) who have been admitted in accordance with a national resettlement scheme;
- (viii) *who have been registered as a beneficiary of temporary protection in a Member State;*
- (o) the number of hits for persons as referred to in Article 24(1) of this Regulation:
 - (i) for *whom* an application for international protection *has been registered in a Member State;*
 - (ii) who have been apprehended in connection with the irregular crossing of an external border;
 - (iii) who have been illegally staying in a Member State;
 - (iv) *who have been disembarked following a search and rescue operation;*
 - (v) *who have been granted international protection in a Member State;*
 - (vi) who have been registered for the purpose of conducting an admission procedure ■ in accordance with Regulation (EU) .../...⁺ ■ and:
 - *have been granted international protection or humanitarian status under national law,*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

– *have been refused admission on one of the grounds referred to in Article 6(1), point (f), of that Regulation , or*

– *for whom the admission procedure has been discontinued due to the fact that that person did not give or withdrew his or her consent in accordance with Article 7 of that Regulation ,*

(vii) who *have been* admitted in accordance with a national resettlement scheme;

(viii) *who have been registered as a beneficiary of temporary protection in a Member State;*

(p) the number of hits for persons as referred to in Article 26(1) of this Regulation:

(i) for *whom* an application for international protection *has been registered in a Member State;*

(ii) who have been apprehended in connection with the irregular crossing of an external border;

(iii) who have been illegally staying in a Member State;

(iv) *who have been disembarked following a search and rescue operation;*

(v) *who have been granted international protection in a Member State;*

(vi) who have been registered for the purpose of conducting an admission procedure in accordance with Regulation (EU) .../...⁺ and:

- *have been granted international protection or humanitarian status under national law,*
- *have been refused admission on one of the grounds referred to in Article 6(1), point (f), of that Regulation, or*
- *for whom the admission procedure has been discontinued due to the fact that that person did not give or withdrew his or her consent in*

accordance with Article 7 of that Regulation;

(vii) who *have been* admitted in accordance with a national resettlement scheme;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

(viii) who have been registered as beneficiary of temporary protection in a Member State;

- (q) the number of biometric data which **Eurodac** had to request more than once from the Member States of origin because the biometric data originally transmitted did not lend themselves to comparison using the computerised fingerprint and facial image recognition systems;
- (r) the number of datasets marked and unmarked in accordance with Article 31(1), (2), (3) and (4);
- (s) the number of hits for persons as referred to in Article 31(1) and (4) for whom hits have been recorded under paragraph 1, points (k) to (p), of this Article;
- (t) the number of requests and hits as referred to in Article 33(1);
- (u) the number of requests and hits as referred to in Article 34(1);
- (v) the number of requests made **■** in **accordance with** Article 43;
- (w) the number of hits received from **Eurodac** as referred to in Article 38(6).

2. The monthly statistical data for persons as referred to in paragraph 1, shall be published each month. At the end of each year, eu-LISA shall publish the yearly statistical data for persons referred to in paragraph 1. The statistical data shall ■ be broken down by Member State. The statistical data for persons as referred to in paragraph 1, point (i), shall, where possible, be broken down by year of birth and sex.

Nothing in this paragraph shall affect the anonymised nature of the statistical data.

3. For the purpose of supporting the objectives referred to in Article 1, points (c) ***and (i)***, eu-LISA shall produce monthly cross-system statistics. Those statistics shall not allow for the identification of individuals and shall use data from Eurodac, the VIS, ETIAS and the ***EES***.

The statistics referred to in the first subparagraph shall be made available ***to the Member States***, to the ***European Parliament***, to the Commission, ***to the*** European Union Agency for Asylum ■, to the European Border and Coast Guard Agency and to ***Europol***.

The Commission shall, by means of implementing acts, specify the content of the monthly cross-system statistics referred to in the first subparagraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).

Cross-system statistics alone shall not be used to deny access to the territory of the Union.

4. At the request of the Commission, eu-LISA shall provide it with statistics on specific aspects related to the application of this Regulation and the statistics referred to in paragraph 1 and shall, upon request, make them available to the Member States **■**, to the **European Parliament, to the European Union Agency for Asylum, to the European Border and Coast Guard Agency and to Europol.**
5. eu-LISA shall store the data referred to in paragraphs 1 to 4 of this Article for research and analysis purposes, thus enabling the authorities referred to in paragraph 3 of this Article to obtain customisable reports and statistics in the central repository for reporting and statistics referred to in Article 39 of Regulation (EU) 2019/818. Those data shall not allow for the identification of individuals.
6. Access to the central repository for reporting and statistics as referred to in Article 39 of Regulation (EU) 2019/818 shall be granted to eu-LISA, to the Commission **■**, to the authorities designated by each Member State in accordance with Article 40(2) of this Regulation **and to the authorised users of the European Union Agency for Asylum, of the European Border and Coast Guard Agency and of Europol**, where such access is relevant for the implementation of their tasks.

Article 13

Obligation to take biometric data

1. Member States shall take the biometric data of persons referred to in Article 15(1), Article 18(1) and (2), Article 20(1), Article 22(1), Article 23(1), **Article 24(1) and Article 26(1) ■** for the purposes of Article 1(1), points (a), (b), (c) **and (j)**, and shall require those persons to provide their biometric data and inform them in accordance with Article 42.

2. Member States shall respect the dignity and physical integrity of the person during the fingerprinting procedure and when capturing his or her facial image.
3. Administrative measures for the purpose of ensuring compliance with the obligation to provide biometric data ■ set out in paragraph 1 shall be laid down in national law. Those measures shall be effective, proportionate and dissuasive and may include the possibility to use means of coercion as a last resort.
4. Where all of the measures laid down in national law as referred to in paragraph 3 fail to ensure compliance by an applicant with the obligation to provide biometric data, the relevant provisions of Union law on asylum concerning non-compliance with that obligation shall apply.

■

5. Without prejudice to paragraphs 3 and 4, where it is impossible to take the biometric data of a third-country national or stateless person who is deemed to be a vulnerable person due to the condition of that person's fingertips or face, and where that person did not intentionally bring about the condition, the authorities of the Member State concerned shall not employ administrative measures for ensuring compliance with the obligation to provide biometric data.
6. The procedure for taking biometric data shall be determined and applied in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in the Charter and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 14

Special provisions relating to minors

1. The biometric data of minors from the age of six shall be taken by officials trained specifically to take a minor's biometric data in a child-friendly and child-sensitive manner and in full respect of the best interests of the child and the safeguards laid down in the United Nations Convention on the Rights of the Child.

The best interests of the child shall be a primary consideration in the application of this Regulation. In the event that there is uncertainty as to whether or not a child is under the age of six and there is no supporting proof of that child's age, the competent authorities of the Member States shall consider that child to be under the age of six for the purposes of this Regulation.

The minor shall be accompanied by, where present, an adult family member throughout the time when his or her biometric data are taken. The unaccompanied minor shall be accompanied by a representative or, where a representative has not been designated, a person trained to safeguard the best interests of the child and his or her general wellbeing, throughout the time when his or her biometric data are taken. Such a trained person shall not be the official responsible for taking the biometric data, shall act independently and shall not receive orders either from the official or the service responsible for taking the biometric data. Such a trained person shall be the person designated to provisionally act as a representative under Directive (EU) .../...⁺, where that person has been designated.

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)) [Reception Conditions Directive].

No form of force shall ■ be used against minors to ensure their compliance with the obligation to provide biometric data. However, where permitted by relevant Union or national law, and as a last resort, a proportionate degree of coercion may be used against minors to ensure their compliance with that obligation. When applying such a proportionate degree of coercion, Member States shall respect the dignity and physical integrity of the minor.

Where a minor, in particular an unaccompanied or separated minor, refuses to give their biometric data and there are reasonable grounds for believing that there are risks relating to safeguarding or protecting the minor, as assessed by an official trained specifically to take a minor's biometric data, the minor shall be referred to the competent national child protection authorities, the national referral mechanisms or both.

2. Where it is not possible to take the fingerprints or capture the facial image of a minor due to the conditions of the fingertips or face, Article **13(5)** shall apply. Where the fingerprints or facial image of a minor are retaken, paragraph 1 of this Article shall apply.

3. *Eurodac data that pertain to a child under the age of 14 shall only be used for law enforcement purposes against such a child where there are grounds in addition to those referred to in Article 33(1), point (d), to consider that those data are necessary for the purpose of the prevention, detection or investigation of a terrorist offence or other serious criminal offence which that child is suspected of having committed.*
4. *This Regulation shall be without prejudice to the application of the conditions set out in Article 13 of Directive (EU) .../...⁺.*

⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)) [Reception Conditions Directive].

Chapter II

Applicants for international protection

Article 15

Collection and transmission of biometric data

1. Each Member State shall take, ***in accordance with Article 13(2)***, the biometric data of every applicant for international protection of at least six years of age **■** :
 - (a) upon the registration of the application for international protection referred to in Article 27 of Regulation (EU) .../...⁺ **■** and transmit them, as soon as possible and no later than 72 hours ***from that registration***, together with the ***other*** data referred to in Article 17(1) of this Regulation, to ***Eurodac*** in accordance with Article 3(2) of this Regulation; ***or***
 - (b) ***upon the making of the application*** for international protection, ***where the application is made at external border crossing points or in transit zones by a person who does not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399, and*** transmit them, ***as soon as possible and no later than 72 hours after*** the biometric data ***have been*** taken, **■** together with the data referred to in Article 17(1) of this Regulation, to ***Eurodac*** in accordance with Article 3(2) **■** of this Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)) [Asylum Procedure Regulation].

Non-compliance with the 72-hour time limit referred to in the first subparagraph, points (a) and (b), of this paragraph shall not relieve Member States of the obligation to take the biometric data and transmit them to **Eurodac**. Where the condition of the fingertips does not allow the taking of fingerprints of a quality ensuring appropriate comparison under Article 38, the Member State of origin shall retake the fingerprints of the applicant and retransmit them as soon as possible and no later than 48 hours after they have been successfully retaken.

2. By way of derogation from paragraph 1, where it is not possible to take the biometric data of an applicant for international protection on account of measures taken to ensure his or her health or the protection of public health, Member States shall take and transmit **such** biometric data as soon as possible and no later than 48 hours after those health grounds no longer prevail.

In the event of serious technical problems, Member States may extend the 72-hour time limits referred to in paragraph 1, the first subparagraph, points (a) and (b), by a maximum of a further 48 hours in order to carry out their national continuity plans.

3. Where requested by the Member State concerned, the biometric data, **alphanumeric data and, where available, a scanned colour copy of an identity or travel document** may also be taken and transmitted on behalf of that Member State by members of the European Border and Coast Guard Teams or experts of the asylum support teams specifically **trained** for that purpose, when exercising powers and performing their tasks in accordance with Regulations (EU) 2019/1896 and (EU) **2021/2303**.

4. Each ■ dataset collected and transmitted in accordance with **this Article** shall be linked with other datasets corresponding to the same third-country national or stateless person in a sequence as set out in Article 3(6).

Article 16

Information on the status of the data subject

1. As soon as the Member State responsible has been determined in accordance with Regulation (EU) .../...⁺, the Member State that conducts the procedures for determining the Member State responsible shall update its dataset recorded in accordance with Article 17 of this Regulation regarding the person concerned by adding the Member State responsible.

Where a Member State becomes responsible because there are reasonable grounds to consider that the applicant poses a **threat to internal** security ■ in accordance with Article 16(4) of Regulation (EU) .../...⁺⁺ ■, it shall update its dataset recorded in accordance with Article 17 of this Regulation regarding the person concerned by adding the Member State responsible.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

2. The following information shall be sent to **Eurodac** in order to be stored in accordance with Article 29(1) for the purposes of transmission under Articles 27 and 28:

(a) when an applicant for international protection arrives in the Member State responsible following a transfer pursuant to a decision acceding to a take charge request as referred to in Article 40 of Regulation (EU) .../...⁺ , the Member State responsible shall send a dataset recorded in accordance with Article 17 of this Regulation relating to the person concerned and shall include his or her date of arrival;

(b) when an applicant for international protection or another person as referred to in Article 36(1), point (b) or (c), of Regulation (EU) .../...⁺⁺ arrives in the Member State responsible following a transfer pursuant to a take back notification as referred to in Article 41 of that Regulation, the Member State responsible shall update its dataset recorded in accordance with Article 17 of this Regulation relating to the person concerned by adding his or her date of arrival;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

(c) *as soon as the Member State of origin establishes that the person concerned whose data were recorded in Eurodac in accordance with Article 17 of this Regulation has left the territory of the Member States, it shall update its dataset recorded in accordance with Article 17 of this Regulation relating to the person concerned by adding the date when that person left the territory, in order to facilitate the application of Article 37(4) of Regulation (EU) .../...⁺;*

(d) as soon as the Member State of origin ensures that the person concerned whose data were recorded in Eurodac in accordance with Article 17 of this Regulation has left the territory of the Member States in compliance with a return decision or removal order issued following the withdrawal or rejection of the application for international protection *as provided for in Article 37(5) of Regulation (EU) .../...⁺⁺*, it shall update its dataset recorded in accordance with Article 17 of this Regulation relating to the person concerned by adding the date of his or her removal or when he or she left the territory.

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⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

3. Where responsibility shifts to another Member State, pursuant to Articles 37(1) and Article 68(3) of Regulation (EU) .../...⁺ ■, the Member State that establishes that responsibility has shifted, or the Member State of relocation, shall indicate the Member State responsible.

4. Where paragraph 1 or 3 of this Article or Article 31(6) apply, **Eurodac** shall, as soon as possible and no later than 72 hours after receiving the data concerned, inform all Member States of origin of the transmission of such data by another Member State of origin having produced a hit with data which they transmitted relating to persons as referred to in Article 15(1), Article 18(2), Article 20(1), Article 22(1), Article 23(1), Article 24(1) or Article 26(1). Those Member States of origin shall also update the Member State responsible in the datasets corresponding to persons as referred to in Article 15(1).

Article 17 Recording of data

1. Only the following data shall be recorded in **Eurodac in accordance with Article 3(2)**:
 - (a) fingerprint data;
 - (b) a facial image;
 - (c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

- (d) nationality(ies);
- (e) date of birth;
- (f) place of birth;
- (g) Member State of origin, place and date of the application for international protection; in the cases referred to in Article 16(2), point (a), the date of application shall be the date entered by the Member State who transferred the applicant;
- (h) sex;
- (i) where available, the type and number of identity or travel document, the three letter code of the issuing country and the expiry date of that document;
- (j) where available, a scanned colour copy of an identity or travel document along with an indication of its authenticity or, where unavailable, another document which facilitates the identification of the third-country national or stateless person along with an indication of its authenticity;
- (k) the reference number used by the Member State of origin;

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- (l) the date on which the biometric data were taken;
- (m) the date on which the data were transmitted to **Eurodac**;
- (n) operator user ID.

2. ***Additionally, where applicable and available, the following data shall be promptly recorded in Eurodac in accordance with Article 3(2):***

- (a) the Member State responsible in the cases referred to in Article 16(1), (2) or (3);***
- (b) the Member State of relocation in accordance with Article 25(1);***
- (c) [redacted] in the cases referred to in Article 16(2), point (a), the date of the arrival of the person concerned after a successful transfer;***
- (d) [redacted] in the cases referred to in Article 16(2), point (b), the date of the arrival of the person concerned after a successful transfer;***
- (e) [redacted] in the cases referred to in Article 16(2), point (c), the date when the person concerned left [redacted] the territory of the Member States;***
- (f) in the cases referred to in Article 16(2), point (d), the date when the person concerned was removed from or left the territory of the Member States;***

- (g) in the cases referred to in Article 25(2), the date of arrival of the person concerned after a successful transfer;
- (h) **the fact** that a visa was issued to the applicant, the Member State which issued or extended the visa or on behalf of which the visa was issued and the visa application number;
- (i) the fact that the person could pose a threat to internal security following the **security check** referred to in Regulation (EU) .../...³⁷⁺ or following an examination pursuant to Article 16(4) of Regulation (EU) .../...⁺⁺ **or to Article 9(5) of Regulation (EU) .../...⁺⁺⁺, if any of the following circumstances apply:**
- (i) **the person concerned is armed;**
 - (ii) **the person concerned is violent;**
 - (iii) **there are indications that the person concerned is involved in any of the offences referred to in Directive (EU) 2017/541;**

³⁷ Regulation .../... of the European Parliament and of the Council introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 of ... (OJ L, ..., ELI: ...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)) [Screening Regulation] and insert the number, date, title and OJ reference of that Regulation in the footnote.

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)) [Asylum Procedure Regulation].

- (iv) *there are indications that the person concerned is involved in any of the offences referred to in Article 2(2) of the Framework*

Decision 2002/584/JHA;

(j) **■** the fact that the application for international protection has been rejected where the applicant has no right to remain and has not been allowed to remain in a Member State pursuant to Regulation (EU) .../...⁺;

(k) *the fact that, following an examination of an application in the border procedure pursuant to Regulation (EU) .../...⁺⁺, a decision rejecting an application for international protection as inadmissible, unfounded or manifestly unfounded or a decision declaring an application as implicitly or explicitly withdrawn has become final;*

(l) **■** the fact that assistance for voluntary return and reintegration (AVRR) has been granted.

3. **Where all the data referred to in paragraph 1, points (a) to (f) and (h), of this Article relating to a person as referred to in Article 15 are recorded in Eurodac, they shall be considered to be a dataset transmitted to Eurodac for the purposes of Article 27(1), point (aa), of Regulation (EU) 2019/818 **■**.**

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)) [Asylum Procedure Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-

CONS 16/24 (2016/0224A(COD)) [Asylum Procedure Regulation].

4. *The Member State of origin which has concluded that the threat to internal security identified following the screening referred to in Regulation (EU) .../...⁺ or following an examination pursuant to Article 16(4) of Regulation (EU) .../...⁺⁺ or to Article 9(5) of Regulation (EU) No .../...⁺⁺⁺ no longer applies shall delete the record of the security flag from the dataset, after having consulted any other Member States having registered a dataset of the same person. Eurodac shall, as soon as possible and no later than 72 hours after the deletion of the security flag by another Member State of origin having produced a hit with data which other Member States of origin transmitted relating to persons as referred to in Articles 15(1), Article 22(1), Article 23(1) or Article 24(1) of this Regulation, inform those Member States of origin of that deletion. Those Member States of origin shall also delete the security flag in the corresponding dataset.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)) [Screening Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)) [Asylum Procedure Regulation].

Chapter III

Persons registered for the purpose of conducting ***an admission procedure and persons admitted in accordance with a national resettlement scheme***

Section 1

Persons registered for the purpose of conducting an admission procedure under the Union Resettlement and Humanitarian Admission Framework

Article 18

Collection and transmission of biometric data

1. Each Member State shall take and transmit to ***Eurodac*** the biometric data of every ■ person of at least six years of age ***registered for the purpose of conducting an admission procedure under the Union Resettlement and Humanitarian Admission Framework*** as soon as possible following the registration referred to in Article 9(3) of Regulation (EU) .../...⁺, and at the latest before reaching the conclusion on admission referred to in Article ***9(9)*** of that Regulation. That obligation shall not apply if a Member State ■ can reach that conclusion without a comparison of biometric data, where such a conclusion is negative.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

2. *Each Member State shall take the biometric data of every person of at least six years of age registered for the purpose of conducting an admission procedure under the Union Resettlement and Humanitarian Admission Framework and:*
- (a) to whom that Member State grants international protection or humanitarian status under national law in accordance with Regulation (EU) .../...⁺;*
 - (b) who that Member State refuses to admit on one of the grounds referred to in Article 6(1), point (f) of that Regulation; or*
 - (c) for whom that Member State discontinues the admission procedure due to the fact that that person does not give or withdraws his or her consent in accordance with Article 7 of that Regulation.*

Member States shall transmit the biometric data of those persons referred to in the first subparagraph together with the data referred to in Article 19(1), points (c) to (q), of this Regulation to Eurodac as soon as possible and no later than 72 hours after the decision to grant international protection or humanitarian status under national law, to refuse admission or to discontinue the admission procedure.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

3. Non-compliance with the **time limits** set out in **paragraphs** 1 and 2 of this Article shall not relieve Member States of the obligation to take biometric data and transmit them to **Eurodac**. Where the condition of the fingertips does not allow the taking of the fingerprints of a quality ensuring appropriate comparison under Article 38, the Member State of origin shall retake the fingerprints ■ and retransmit them as soon as possible after they have been successfully retaken.

Where it is not possible to take ■ biometric data ■ on account of measures taken to ensure the person's health or the protection of public health, Member States shall take and transmit such biometric data as soon as possible after those health grounds no longer prevail.

4. Where requested by the Member State concerned, the biometric data may, for the purposes of Regulation (EU) .../...⁺, be taken and transmitted to the requesting Member State by another Member State, the European Union Agency for Asylum or a relevant international organisation.

■

5. ***The European Union Agency for Asylum and international organisations as referred to in paragraph 4 shall not have access to Eurodac for the purposes of this Article.***

■

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

Article 19 Recording of data

1. Only the following data shall be recorded in ***Eurodac in accordance with Article 3(2) of this Regulation:***

- (a) fingerprint data;
- (b) a facial image;
- (c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;
- (d) nationality(ies);
- (e) date of birth;
- (f) place of birth;
- (g) Member State of origin, place and date of the registration in accordance with Article 9(3) of Regulation (EU) .../...⁺;
- (h) sex;
- (i) where available, the type and number of identity or travel document, the three letter code of the issuing country and the expiry date of that document;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

- (j) where available, a scanned colour copy of an identity or travel document along with an indication of its authenticity, and where unavailable, another document which facilitates the identification of the third-country national or stateless person along with an indication of its authenticity;
- (k) the reference number used by the Member State of origin;
- (l) the date on which the biometric data were taken;
- (m) the date on which the data were transmitted to **Eurodac**;
- (n) operator user ID;
- (o) **where applicable**, the date of the **decision to grant international protection or humanitarian status** under national law **in accordance with Article 9(14) of Regulation (EU) .../...⁺**;
- (p) **where applicable**, the date of the **refusal of admission in accordance with Regulation (EU) .../...⁺⁺** and the grounds **on which admission was refused**;
- (q) **where applicable**, the date **of the discontinuation of** the admission procedure **■** as referred to in Regulation (EU) .../...⁺⁺⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

⁺⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

2. *Where all the data referred to in paragraph 1, points (a) to (f) and (h), of this Article relating to a person as referred to in Article 18(2) are recorded in Eurodac, they shall be considered to be a dataset transmitted to Eurodac for the purposes of Article 27(1), point (aa), of Regulation (EU) 2019/818* ■ .

Section 2

Persons admitted in accordance with a national resettlement scheme

Article 20

Collection and transmission of biometric data

1. Each Member State shall take the biometric data of every ■ person of at least six years of age *who has been admitted in accordance with a national resettlement scheme* and transmit such data to **Eurodac**, together with the data referred to in Article 21(1), points (c) to (o), as soon as *it grants that person* international protection or humanitarian status under national law ■ and no later than 72 hours thereafter.

2. Non-compliance with the time limit set out in paragraph 1 shall not relieve Member States of the obligation to take the biometric data and transmit them to **Eurodac**. Where the condition of the fingertips does not allow the taking of the fingerprints of a quality ensuring appropriate comparison under Article 38, the Member State of origin shall retake the fingerprints ■ and retransmit them as soon as possible after they have been successfully retaken.

3. By way of derogation from the paragraph 2, where it is not possible to take biometric data of a person admitted in accordance with a national resettlement scheme on account of measures taken to ensure his or her health or the protection of public health, Member States shall take and transmit such **biometric data** as soon as possible and no later than 48 hours after those health grounds no longer prevail.



Article 21 Recording of data

1. Only the following data shall be recorded in ***Eurodac in accordance with Article 3(2)***:
 - (a) fingerprint data;
 - (b) a facial image;
 - (c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;
 - (d) nationality(ies);
 - (e) date of birth;
 - (f) place of birth;
 - (g) Member State of origin, place and date of the registration;
 - (h) sex;

- (i) where available, the type and number of identity or travel document ■, the three letter code of the issuing country and the expiry date of that document;
- (j) where available, a scanned colour copy of an identity or travel document along with an indication of its authenticity, and where unavailable, another document which facilitates the identification of the third-country national or stateless person along with an indication of its authenticity;
- (k) the reference number used by the Member State of origin;
- (l) the date on which the biometric data were taken;
- (m) the date on which the data were transmitted to **Eurodac**;
- (n) operator user ID;
- (o) the date on which international protection or humanitarian status under national law was granted.

2. **Where all the data referred to in paragraph 1, points (a) to (f), and (h), of this Article relating to a person referred to in Article 20(1) of this Regulation are recorded in Eurodac, they shall be considered to be a dataset transmitted to Eurodac for the purposes of Article 27(1), point (aa) of Regulation (EU) 2019/818 ■.**

Chapter IV

Third-country nationals or stateless persons apprehended in connection with the irregular crossing of an external border

Article 22

Collection and transmission of biometric data

1. Each Member State shall promptly take, ***in accordance with Article 13(2)***, the biometric data of every third-country national or stateless person of at least six years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State, who comes from a third country, who is not turned back, or who remains physically on the territory of the Member States, and who is not kept in custody, confinement or detention during the entirety of the period between apprehension and removal on the basis of the decision to turn him or her back.
2. The Member State concerned shall, as soon as possible and no later than 72 hours after the date of apprehension, transmit to ***Eurodac in accordance with Article 3(2)*** the following data in relation to any third-country national or stateless person referred to in paragraph 1 who is not turned back:
 - (a) fingerprint data;

- (b) a facial image;
- (c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;
- (d) nationality(ies);
- (e) date of birth;
- (f) place of birth;
- (g) Member State of origin, place and date of the apprehension;
- (h) sex;
- (i) where available, the type and number of identity or travel document, the three letter code of the issuing country and the expiry date of that document;
- (j) where available, a scanned colour copy of an identity or travel document along with an indication of its authenticity or, where unavailable, another document which facilitates the identification of the third-country national or stateless person along with an indication of its authenticity;
- (k) the reference number used by the Member State of origin;

- (l) the date on which the biometric data were taken;
- (m) the date on which the data were transmitted to **Eurodac**;
- (n) operator user ID.

3. ***Additionally, where applicable and available, the following data shall be promptly transmitted to Eurodac in accordance with Article 3(2):***

- (a) in accordance with paragraph 7 of this Article, the date when the person concerned left or was removed from the territory of the Member States;
- (b) the Member State of relocation in accordance with Article 25(1);
- (c) **■** the fact that AVRR has been granted,
- (d) the fact that the person could pose a threat to internal security, following the screening referred to in Regulation (EU) .../...⁺, ***if any of the following***

circumstances apply:

- (i) ***the person concerned is armed;***
- (ii) ***the person concerned is violent;***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD) [Screening Regulation].

(iii) there are indications that the person concerned is involved in any of the offences referred to in Directive (EU) 2017/541;

(iv) there are indications that the person concerned is involved in any of the offences referred to in Article 2(2) of Framework Decision 2002/584/JHA.

4. By way of derogation from paragraph 2, the data referred to in paragraph 2 relating to persons apprehended, as referred to in paragraph 1, who remain physically on the territory of the Member States but are kept in custody, confinement or detention upon their apprehension for a period exceeding 72 hours shall be transmitted before their release from custody, confinement or detention.

5. Non-compliance with the 72-hour time limit referred to in paragraph 2 of this Article shall not relieve Member States of the obligation to take the biometric data and transmit them to **Eurodac**. Where the condition of the fingertips does not allow the taking of fingerprints of a quality ensuring appropriate comparison under Article 38, the Member State of origin shall retake the fingerprints of persons apprehended as described in paragraph 1 of this Article and retransmit them as soon as possible and no later than 48 hours after they have been successfully retaken.

6. By way of derogation from paragraph 1, where it is not possible to take the biometric data of the apprehended person on account of measures taken to ensure his or her health or the protection of public health, the Member State concerned shall take and transmit such biometric data as soon as possible and no later than 48 hours after those health grounds no longer prevail.

In the event of serious technical problems, Member States may extend the 72-hour time limit referred to in paragraph 2 by a maximum of a further 48 hours in order to carry out their national continuity plans.

7. As soon as the Member State of origin ensures that the person concerned whose data were recorded in Eurodac in accordance with paragraph 1 has left the territory of the Member States in compliance with a return decision or removal order, it shall update its dataset recorded relating to the person concerned by adding the date of his or her removal or when he or she left the territory.

8. Where requested by the Member State concerned, the biometric data, ***alphanumeric data and, where available, a scanned colour copy of an identity or travel document*** may also be taken and transmitted on behalf of that Member State by members of the European Border and Coast Guard Teams or experts of the asylum support teams ***specifically trained for that purpose***, when exercising powers and performing their tasks in accordance with Regulations (EU) 2019/1896 and (EU) **2021/2303**.
9. Each dataset collected and transmitted in accordance with ***this Article*** shall be linked with other datasets corresponding to the same third-country national or stateless person in a sequence as set out in Article 3(6).
10. ***Where all the*** data referred to ***in*** paragraph 2, ***points (a) to (f) and (h), of this Article relating to a person as referred to in paragraph 1 of this Article are recorded in Eurodac, they shall be*** considered to be ***a dataset transmitted to Eurodac*** for the ***purposes*** of Article 27(1), ***point (aa)***, of Regulation (EU) 2019/818 ■ .

Chapter V

Third-country nationals or stateless persons illegally staying in a Member State

Article 23

Collection and transmission of biometric data

1. Each Member State shall promptly take, ***in accordance with Article 13(2)***, the biometric data of every third-country national or stateless person of at least six years of age who is illegally staying within its territory.
2. The Member State concerned shall, as soon as possible and no later than 72 hours after the third-country national or the stateless person has been found to be illegally staying, transmit to ***Eurodac in accordance with Article 3(2)*** the following data in relation to any third-country national or stateless person referred to in paragraph 1:
 - (a) fingerprint data;
 - (b) a facial image;
 - (c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;
 - (d) nationality(ies);

- (e) date of birth;
- (f) place of birth;
- (g) Member State of origin, place and date of the apprehension;
- (h) sex;
- (i) where available, **the** type and number of identity or travel document, **the** three letter code of the issuing country and the expiry date of that document;
- (j) where available, a scanned colour copy of an identity or travel document along with an indication of its authenticity or, where unavailable, another document which facilitates the identification of the third-country national or stateless person along with an indication of its authenticity;
- (k) the reference number used by the Member State of origin;
- (l) the date on which the biometric data were taken;
- (m) the date on which the data were transmitted to **Eurodac**;
- (n) operator user ID.

3. ***Additionally, where applicable and available, the following data shall be promptly transmitted to Eurodac in accordance with Article 3(2):***

- (a) ***in accordance with*** paragraph 6 of this Article, the date when the person concerned left or was removed from the territory of the Member States;
- (b) the Member State of relocation in accordance with Article 25(1);
- (c) where applicable, in the cases referred to in Article 25(2), the date of arrival of the person concerned after a successful transfer;
- (d) **■** the fact that AVRR has been granted;
- (e) **■** the fact that the person could pose a threat to internal security, following the screening referred to in Regulation (EU) .../...⁺ ***or following a security check carried out at the moment of taking the biometric data as provided for in paragraph 1 of this Article, if any of the following circumstances apply:***
 - (i) ***the person concerned is armed;***
 - (ii) ***the person concerned is violent;***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD) [Screening Regulation].

(iii) there are indications that the person concerned is involved in any of the offences referred to in Directive (EU) 2017/541;

(iv) there are indications that the person concerned is involved in any of the offences referred to in Article 2(2) of Framework Decision 2002/584/JHA.

4. Non-compliance with the 72-hour time limit referred to in paragraph 2 of this Article shall not relieve Member States of the obligation to take the biometric data and transmit them to **Eurodac**. Where the condition of the fingertips does not allow the taking of fingerprints of a quality ensuring appropriate comparison under Article 38, the Member State of origin shall retake the fingerprints of persons apprehended as described in paragraph 1 of this Article and retransmit them as soon as possible and no later than 48 hours after they have been successfully retaken.

5. By way of derogation from paragraph 1, where it is not possible to take the biometric data of the apprehended person on account of measures taken to ensure his or her health or the protection of public health, the Member State concerned shall take and transmit such biometric data as soon as possible and no later than 48 hours after those health grounds no longer prevail.

In the event of serious technical problems, Member States may extend the 72-hour time limit referred to in paragraph 2 by a maximum of a further 48 hours in order to carry out their national continuity plans.

6. As soon as the Member State of origin ensures that the person concerned whose data were recorded in Eurodac in accordance with paragraph 1 has left the territory of the Member States in compliance with a return decision or removal order, it shall update its dataset recorded relating to the person concerned by adding the date of his or her removal or when he or she left the territory.

7. Each dataset collected and transmitted in accordance with **this Article** shall be linked with other datasets corresponding to the same third-country national or stateless person in a sequence as set out in Article 3(6).

8. **Where all the** data referred to **in** paragraph 2, **points (a) to (f) and (h), of this Article relating to a person as referred to in paragraph 1 of this Article are recorded in Eurodac, they shall be** considered to be **a dataset transmitted to Eurodac** for the **purposes** of Article 27(1), **point (aa)**, of Regulation (EU) 2019/818 ■ .

Chapter VI

Third-country nationals or stateless persons disembarked following a search and rescue operation

Article 24

Collection and transmission of biometric data

1. Each Member State shall promptly take the biometric data of every third-country national or stateless person of at least six years of age who is disembarked following a search and rescue operation as defined in Regulation (EU) .../...⁺.
2. The Member State concerned shall, as soon as possible and no later than 72 hours after the date of disembarkation, transmit to ***Eurodac in accordance with Article 3(2)*** the following data in relation to any third-country national or stateless person referred to in paragraph 1:
 - (a) fingerprint data;
 - (b) a facial image;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

- (c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;
- (d) nationality(ies);
- (e) date of birth;
- (f) place of birth;
- (g) Member State of origin, place and date of disembarkation;
- (h) sex;
- (i) the *reference number used by the Member State of origin*;
- (j) *the date on which the biometric data were taken*;
- (k) *the date on which the data were transmitted to Eurodac*;
- (l) *operator user ID*.

3. ***Additionally, where applicable and available, the following data shall be transmitted to Eurodac in accordance with Article 3(2) as soon as available:***

- (a) ***the*** type and number of identity or travel document, the three letter code of the issuing country and the expiry date of that document;
- (b) **■** a scanned colour copy of an identity or travel document along with an indication of its authenticity or, where unavailable, another document which facilitates the identification of the third-country national or stateless person along with an indication of its authenticity;

■

- (c) in accordance with paragraph 8 ***of this Article***, the date when the person concerned left or was removed from the territory of the Member States;
- (d) the Member State of relocation in accordance with Article 25(1);
- (e) **■** the fact that AVRR has been granted;

- (f) the fact that the person could pose a threat to internal security following the screening referred to in Regulation (EU) .../...⁺, ***if any of the following***

circumstances apply:

- (i) the person concerned is armed;***
- (ii) the person concerned is violent;***
- (iii) there are indications that the person concerned is involved in any of the offences referred to in Directive (EU) 2017/541;***
- (iv) there are indications that the person concerned is involved in any of the offences referred to in Article 2(2) of Framework Decision 2002/584/JHA.***

4. Non-compliance with the ■ time limit referred to in paragraph 2 of this Article shall not relieve Member States of the obligation to take the biometric data and transmit them to ***Eurodac***. Where the condition of the fingertips does not allow the taking of fingerprints of a quality ensuring appropriate comparison under Article 38, the Member State of origin shall retake the fingerprints of persons disembarked as described in paragraph 1 of this Article and retransmit them as soon as possible and no later than 48 hours after they have been successfully retaken.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD) [Screening Regulation].

5. By way of derogation from paragraph 1, where it is not possible to take the biometric data of the disembarked person on account of measures taken to ensure his or her health or the protection of public health, the Member State concerned shall take and transmit such biometric data as soon as possible and no later than 48 hours after those health grounds no longer prevail.

In the event of serious technical problems, Member States may extend the 72-hour time limit referred to in paragraph 2 by a maximum of a further 48 hours in order to carry out their national continuity plans.

6. *In the event of a sudden influx, Member States may extend the 72-hour time limit referred to in paragraph 2 by a maximum of a further 48 hours. That derogation shall enter into force on the date it is notified to the Commission and to the other Member States and for the duration stated in the notification. The duration stated in the notification shall not exceed one month.*

7. As soon as the Member State of origin ensures that the person concerned whose data were recorded in Eurodac in accordance with paragraph 1 has left the territory of the Member States in compliance with a return decision or removal order, it shall update its dataset recorded relating to the person concerned by adding the date of his or her removal or when he or she left the territory.

8. Where requested by the Member State concerned, the biometric data, ***alphanumeric data and, where available, a scanned colour copy of an identity or travel document*** may also be taken and transmitted on behalf of that Member State by members of the European Border and Coast Guard Teams or experts of the asylum support teams ***specifically trained for that purpose***, when exercising powers and performing their tasks in accordance with Regulations (EU) 2019/1896 and (EU) 2021/2303.

9. ***Each dataset collected and transmitted in accordance with this Article shall be linked with other datasets corresponding to the same third-country national or stateless person in a sequence as set out in Article 3(6).***

10. ***Without prejudice to the application of Regulation (EU) .../...⁺, the fact that the data of a person are transmitted to Eurodac in accordance with this Article shall not result in any discrimination against or difference of treatment of a person covered by Article 22(1) of this Regulation.***

11. ***Where all the data referred to in paragraph 2, points (a) to (f) and (h), of this Article relating to a person as referred to in paragraph 1 of this Article are recorded in Eurodac, they shall be considered to be a dataset transmitted to Eurodac for the purposes of Article 27(1), point (aa), of Regulation (EU) 2019/818*** ■ .

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

Chapter VII

Information on Relocation

Article 25

Information on the status of relocation of the data subject

1. As soon as the Member State of relocation is obliged to relocate the person concerned pursuant to Article 67(9) of Regulation (EU) .../...⁺, the benefitting Member State shall update its dataset recorded in accordance with Article 17, 22, 23 or 24 of this Regulation relating to the person concerned by adding the Member State of relocation.
2. When a person arrives in the Member State of relocation following the confirmation by the Member State of relocation to relocate the person concerned pursuant to Article 67(9) of Regulation (EU) .../...⁺⁺, that Member State shall send a dataset recorded in accordance with Article 17 or 23 of this Regulation relating to the person concerned and shall include his or her date of arrival. The dataset shall be stored in accordance with Article 29(1) for the purpose of transmission under Articles 27 and 28.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

Chapter VIII
Beneficiaries of temporary protection

Article 26
Collection and transmission of biometric data

- 1. Each Member State shall promptly take the biometric data of every third-country national or stateless person of at least six years of age registered as a beneficiary of temporary protection in the territory of that Member State pursuant to Directive 2001/55/EC.**
- 2. The Member State concerned shall, as soon as possible and no later than 10 days after the registration as a beneficiary of temporary protection, transmit to Eurodac in accordance with Article 3(2) the following data in relation to any third-country national or stateless person referred to in paragraph 1:**

 - (a) fingerprint data;**
 - (b) a facial image;**
 - (c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;**

- (d) nationality(ies);*
- (e) date of birth;*
- (f) place of birth;*
- (g) Member State of origin, place and date of registration as beneficiary of temporary protection ;*
- (h) sex;*
- (i) where available, the type and number of identity or travel document, the three letter code of the issuing country and the expiry date of that document;*
- (j) where available, a scanned colour copy of an identity or travel document along with an indication of its authenticity or, where unavailable, another document;*
- (k) the reference number used by the Member State of origin;*
- (l) the date on which the biometric data were taken;*
- (m) the date on which the data were transmitted to Eurodac;*

(n) operator user ID;

(o) where relevant, the fact that the person previously registered as a beneficiary of temporary protection falls under one of the exclusion grounds set out in Article 28 of Directive 2001/55/EC;

(p) the reference of the relevant Council Implementing Decision.

3. Non-compliance with the 10-day time limit referred to in paragraph 2 of this Article shall not relieve Member States of the obligation to take the biometric data and transmit them to Eurodac. Where the condition of the fingertips does not allow the taking of fingerprints of a quality ensuring appropriate comparison under Article 38, the Member State of origin shall retake the fingerprints of the beneficiary of temporary protection as described in paragraph 1 of this Article and retransmit them as soon as possible and no later than 48 hours after they have been successfully retaken.

4. By way of derogation from paragraph 1, where it is not possible to take the biometric data of the beneficiary of temporary protection on account of measures taken to ensure his or her health or the protection of public health, the Member State concerned shall take and transmit such biometric data as soon as possible and no later than 48 hours after those health grounds no longer prevail.

In the event of serious technical problems, Member States may extend the 10-day time limit referred to in paragraph 2 by a maximum of a further 48 hours in order to carry out their national continuity plans.

5. *Where requested by the Member State concerned, the biometric data may also be taken and transmitted on behalf of that Member State by members of the European Border and Coast Guard Teams or experts of the asylum support teams specifically trained for that purpose, when exercising powers and performing their tasks in accordance with Regulations (EU) 2019/1896 and (EU) 2021/2303.*
6. *Each dataset collected and transmitted in accordance with this Article shall be linked with other datasets corresponding to the same third-country national or stateless person in a sequence as set out in Article 3(6).*
7. *Where all the data referred to in paragraph 2, points (a) to (f) and (h), of this Article relating to a person as referred to in paragraph 1 of this Article are recorded in Eurodac, they shall be considered to be a dataset transmitted to Eurodac for the purposes of Article 27(1), point (aa), of Regulation (EU) 2019/818.*

Chapter IX

Procedure for comparison of data for applicants for international protection, third-country nationals and stateless persons apprehended crossing the border irregularly or illegally staying in the territory of a Member State, third-country nationals and stateless persons registered for the purpose of conducting an admission procedure and admitted in accordance with a national resettlement scheme, third-country nationals and stateless persons disembarked following a search and rescue operation ***and beneficiaries of temporary protection***

Article 27 Comparison of biometric data

1. Biometric data transmitted by any Member State, with the exception of those transmitted in accordance with **Article 16(2)**, points (a) **and (c)**, **and Articles 18 and 20**, shall be compared automatically with the biometric data transmitted by other Member States and already stored in **Eurodac** in accordance with Article 15, Article 18(2), and Articles 20, 22, **23** , 24 **and 26**.

2. ***Biometric data transmitted by any Member State in accordance with Article 18(1) shall be compared automatically with the biometric data transmitted by other Member States and already stored in Eurodac in accordance with Article 15 and marked in accordance with Article 31, and with Article 18(2) and Article 20.***
3. ***Eurodac*** shall ensure, at the request of a Member State, that the comparison referred to in paragraph 1 covers the biometric data previously transmitted by that Member State, in addition to the biometric data from other Member States.
4. ***Eurodac*** shall automatically transmit the hit or the negative result of the comparison to the Member State of origin following the procedures set out in Article 38(4). Where there is a hit, it shall transmit, for all datasets corresponding to the hit, the data referred to in ***Article 17(1) and (2)***, Article 19(1) ■ , Article 21(1) ■ , Article 22(2) and (3), Article 23(2) and (3), ***Article 24(2)*** and (3) and Article 26(2) along with, where appropriate, the mark referred to in Article 31(1) and (4). Where a negative result is received, the data referred to in ***Article 17(1) and (2)***, Article 19(1) ■ , Article 21(1) ■ , Article 22(2) and (3), Article 23(2) and (3), ***Article 24(2)*** and (3) and Article 26(2) shall not be transmitted.
5. Where a hit is received by a Member State from Eurodac that can assist that Member State in carrying out its obligations under Article 1(1), point (a), that hit shall take precedence over any other hit received.

Article 28 Comparison of facial image data

1. Where the condition of the fingertips does not allow for the taking of fingerprints of a quality ensuring appropriate comparison under Article 38 or where no fingerprints are available for comparison, a Member State shall carry out a comparison of facial image data.
2. Facial image data and data relating to the sex of the data subject may be compared automatically with the facial image data and **the** data relating to the sex of the data subject transmitted by other Member States and already stored in **Eurodac** in accordance with **Article 15**, Article 18(2) and Articles 20, 22, **23**, 24 and 26, with the exception of those transmitted in accordance with **Article 16(2), points (a) and (c), and Articles 18 and 20**.

Eurodac shall ensure, at the request of a Member State, that the comparison referred to in paragraph 1 covers the facial image data previously transmitted by that Member State, in addition to the facial image data from other Member States.

3. *Facial image data and data relating to the sex of the data subject transmitted by any Member State in accordance with Article 18(1) may be compared automatically with the facial image data and the data relating to the sex of the data subject transmitted by other Member States and already stored in Eurodac in accordance with Article 15 and marked in accordance with Article 31, and with Article 18(2) and Article 20.*

4. **Eurodac** shall automatically transmit the hit or the negative result of the comparison to the Member State of origin following the procedures set out in Article 38(5). Where there is a hit, it shall transmit, for all datasets corresponding to the hit, the data referred to in Article 17(1) **and** (2), Article 19(1) ■ , Article 21(1) ■ , Article 22(2) and (3), Article 23(2) and (3), **Article 24**(2) and (3) and Article 26(2) along with, where appropriate, the mark referred to in Article 31(1) and (4). Where a negative result is received, the data referred to in Article 17(1) **and** (2), Article 19(1) ■ , Article 21(1) ■ , Article 22(2) and (3), Article 23(2) and (3), **Article 24**(2) and (3) and Article 26(2) shall not be transmitted.

5. Where a hit is received by a Member State from Eurodac that can assist that Member State in carrying out its obligations under Article 1(1), point (a), that hit shall take precedence over any other hit received.

Chapter X

Data storage, advanced data erasure and marking of data

Article 29 Data storage

1. For the purposes of Article 15(1), each dataset relating to an applicant for international protection recorded in accordance with **Article 17, shall be stored in Eurodac** for ten years from the date on which the biometric data were **transmitted**.
2. ***The biometric data referred to in Article 18(1) shall not be recorded in Eurodac.***
3. For the purposes of Article 18(2), each dataset **recorded in accordance with Article 19** relating to a third-country national or stateless person **as** referred to in Article 18(2), **point (a)**, shall be stored in **Eurodac** for **five** years from the date on which the biometric data were **transmitted**.
4. ***For the purposes of Article 18(2), each dataset recorded in accordance with Article 19 relating to a third-country national or stateless person as referred to in Article 18(2), point (b) or (c), shall be stored in Eurodac for three years from the date on which the biometric data were transmitted.***

5. For the purposes of Article 20, each dataset relating to a third-country national or stateless person recorded in accordance with Article 21 shall be stored in **Eurodac** for **five** years from the date on which the biometric data were **transmitted**.
6. For the purposes of Article 22(1), each dataset relating to a third-country national or stateless person recorded in accordance with Article 22 shall be stored in **Eurodac** for five years from the date on which the biometric data were **transmitted**.
7. For the purposes of Article 23(1), each dataset relating to a third-country national or stateless person recorded in accordance with Article 23 shall be stored in **Eurodac** for five years from the date on which the biometric data were **transmitted**.
8. For the purposes of Article 24(1), each dataset relating to a third-country national or stateless person recorded in accordance with Article 24 shall be stored in **Eurodac** for five years from the date on which the biometric data were **transmitted**.

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9. *For the purposes of Article 26(1), each* dataset relating to a *third-country national or stateless person* recorded in accordance with Article 26 shall be stored in **Eurodac** for *one year* from the date of *entry into force of the relevant Council Implementing Decision. The retention period shall be extended every year for the duration of the temporary protection.*

10. Upon expiry of the data storage periods referred to in paragraphs 1 to 9 of this Article, the data of the data subjects shall be **automatically erased** from **Eurodac**.

Article 30

Advanced data erasure

1. Data relating to a person who has acquired the citizenship of a Member State of origin before the expiry of the period referred to in Article 29(1), (3), (5), (6), (7), (8) or (9) shall be erased from **Eurodac** without delay by that Member State in accordance with Article 40(3).

Data relating to a person who has acquired the citizenship of *another* Member State before the expiry of the period referred to in Article 29(1), (3), (5), (6), (7), (8) or (9) shall be erased from **Eurodac** by the Member State of origin, in accordance with Article 40(3), as soon as it becomes aware of the fact that the person concerned has acquired such citizenship.

2. **Eurodac** shall, as soon as possible and no later than 72 hours after the erasure, inform all Member States of origin of the erasure of data in accordance with paragraph 1 of this Article by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in Article 15(1), Article 18(2), Article 20(1), Article 22(1), Article 23(1), **Article 24(1)** or Article 26(1).

■

Article 31

Marking ■ of data

1. For the purposes laid down in Article 1(1), point (a) ■, the Member State of origin which granted international protection ■ to a person whose data were previously recorded in **Eurodac** pursuant to Article 17 ■ shall mark the relevant data in accordance with the requirements for electronic communication with **Eurodac** established by eu-LISA. That mark shall be stored in **Eurodac** in accordance with Article 29(1) ■ for the purposes of transmission under Articles 27 **and 28** ■. **Eurodac** shall, as soon as possible and no later than 72 hours after the marking of the data, inform all Member States of origin of the marking of data by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in Article 15(1), Article 18(2), **Article 20(1)**, Article 22(1), Article 23(1), **Article 24(1)** or Article 26(1). Those Member States of origin shall also mark the corresponding datasets.

2. The data of beneficiaries of international protection stored in **Eurodac in accordance with Article 3(2)** and marked pursuant to paragraph 1 of this Article shall be made available for comparison for law enforcement purposes until such data are automatically erased from **Eurodac** in accordance with Article 29(10).
3. The Member State of origin shall unmark data concerning a third-country national or stateless person whose data were previously marked in accordance with paragraph 1 of this Article if his or her status is withdrawn under Article 14 or 19 of Regulation (EU) .../...⁺.
4. For the purposes laid down in Article 1(1), points (a) and (c), the Member State of origin which issued a residence document to an illegally staying third-country national or stateless person whose data were previously recorded in **Eurodac**, as appropriate, pursuant to Article 22(2) or Article 23(2), or to a third-country national or stateless person disembarked following a search and rescue operation whose data were previously recorded in **Eurodac** pursuant to Article 24(2), shall mark the relevant data in accordance with the requirements for electronic communication with **Eurodac** established by eu-LISA. That mark shall be stored in **Eurodac** in accordance with Article 29(6), (7), **(8)** and **(9)** for the purposes of transmission under Articles 27 and 28. **Eurodac** shall, as soon as possible and no later than 72 hours after the marking of data, inform all Member States of origin of the marking of data by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in Article 15(1), Article 18(2), Article 20(1), Article 22(1), Article 23(1), **Article 24(1)** or Article 26(1). Those Member States of origin shall also mark the corresponding datasets.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) [Qualification Regulation].

5. The data of illegally staying third-country nationals or stateless persons stored in **Eurodac** and marked pursuant to paragraph 4 of this Article shall be made available for comparison for law enforcement purposes until such data are automatically erased from **Eurodac** in accordance with Article 29(10).
6. For the purposes of Article 68(4) of Regulation (EU) .../...⁺, the Member State of relocation shall, following the registration of the data pursuant to Article 25(2) of this Regulation, register itself as the Member State responsible and mark those data with the marking introduced by the Member State that granted protection.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

Chapter XI

Procedure for comparison and data transmission for law enforcement purposes

Article 32

Procedure for comparison of biometric or alphanumeric data with Eurodac data

1. For law enforcement purposes, the Member States' designated authorities and the Europol designated authority may submit a reasoned electronic request as provided for in Article 33(1) and in Article 34(1), together with the reference number used by them, to the verifying authority to be forwarded for a comparison of biometric data or alphanumeric data to **Eurodac** via the National Access Point or Europol Access Point. Upon receipt of such a request, the verifying authority shall verify whether all the conditions for requesting a comparison as referred to in Article 33 or 34, as applicable, are fulfilled.
2. Where all the conditions for requesting a comparison as referred to in Article 33 or 34 are fulfilled, the verifying authority shall forward the request for comparison to the National Access Point or Europol Access Point, which shall forward it to **Eurodac** in accordance with Articles 27 and 28 for the purposes of comparison with the biometric or alphanumeric data transmitted to **Eurodac** pursuant to Article 15, Article 18(2) and Articles 20, 22, 23, 24 and 26.

3. A comparison of a facial image with other facial image data in **Eurodac** for law enforcement purposes may be carried out as provided for in Article 28(1), if such data are available at the time the reasoned electronic request is made by the Member States' designated authorities or the Europol designated authority.
4. In exceptional cases of urgency where there is a need to prevent an imminent danger associated with a terrorist offence or other serious criminal offence, the verifying authority may transmit the biometric or alphanumeric data to the National Access Point or Europol Access Point for comparison immediately upon receipt of a request by a designated authority and only verify ex post whether all the conditions for requesting a comparison as referred to in Article 33 or 34 are fulfilled, including whether an exceptional case of urgency actually existed. The ex-post verification shall take place without undue delay after the processing of the request.
5. Where an ex-post verification determines that the access to Eurodac data was not justified, all the authorities that have accessed such data shall erase the information communicated from Eurodac and shall inform the verifying authority of such erasure.

Article 33

Conditions for access to Eurodac by designated authorities

1. For law enforcement purposes, designated authorities may submit a reasoned electronic request for the comparison of biometric or alphanumeric data with the data stored in **Eurodac** within the scope of their powers only where all of the following conditions have been met:
 - (a) a prior check has been conducted in:
 - (i) national databases; and
 - (ii) the automated fingerprinting identification systems of all other Member States under Decision 2008/615/JHA where comparisons are technically available, unless there are reasonable grounds to believe that a comparison with such systems would not lead to the establishment of the identity of the data subject; such reasonable grounds shall be included in the reasoned electronic request for comparison with Eurodac data sent by the designated authority to the verifying authority;
 - (b) the comparison is necessary for the purpose of the prevention, detection or investigation of terrorist offences or of other serious criminal offences, which means that there is an overriding public security concern which makes the searching of the database proportionate to the objective pursued;

(c) the comparison is necessary in a specific case including specific persons; and

(d) there are reasonable grounds to consider that the comparison will substantially contribute to the prevention, detection or investigation of any of the terrorist offences or other serious criminal offences in question; such reasonable grounds exist in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls within a category covered by this Regulation.

In addition to the prior check of the databases referred to in the first subparagraph, designated authorities may also conduct a check in the VIS, provided that the conditions for a comparison with the data stored therein, as laid down in Decision 2008/633/JHA, are met. Designated authorities may submit the reasoned electronic request referred to in the first subparagraph simultaneously with a request for comparison with the data stored in the VIS.

2. Where the designated authorities have consulted the CIR in accordance with Article 22(1) of Regulation (EU) 2019/818 **and the CIR, in accordance with paragraph 2 of that Article, has *indicated* that the data *relating to the person concerned* are stored in Eurodac, *the designated authorities may access Eurodac for consultation without a prior check in national databases or in the automated fingerprinting identification systems of all other Member States.***

3. Requests for comparison with Eurodac data for law enforcement purposes, shall be carried out with biometric or alphanumeric data.

Article 34

Conditions for access to Eurodac by Europol

1. For law enforcement purposes, the Europol designated authority may submit a reasoned electronic request for the comparison of biometric or alphanumeric data with the data stored in **Eurodac** within the limits of Europol's mandate and where necessary for the performance of Europol's tasks only where all of the following conditions have been met:
 - (a) comparisons with biometric or alphanumeric data stored in any information processing systems that are technically and legally accessible by Europol did not lead to the establishment of the identity of the data subject;
 - (b) the comparison is necessary to support and strengthen action by Member States in preventing, detecting or investigating terrorist offences or other serious criminal offences falling under Europol's mandate, which means that there is an overriding public security concern which makes the searching of the database proportionate to the objective pursued;
 - (c) the comparison is necessary in a specific case including specific persons; and

(d) there are reasonable grounds to consider that the comparison will substantially contribute to the prevention, detection or investigation of any of the terrorist offences or other serious criminal offences in question; such reasonable grounds exist in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls within a category covered by this Regulation.

2. Where Europol has consulted the CIR in accordance with Article 22(1) of Regulation **(EU)** 2019/818 and the CIR, in accordance with paragraph 2 of that Article, has ***indicated*** that the data relating to the person concerned are stored in Eurodac, Europol may access Eurodac for consultation under the conditions provided for in this Article.
3. Requests for comparison with Eurodac data for law enforcement purposes, shall be carried out with biometric or alphanumeric data.
4. Processing of information obtained by Europol from comparison with Eurodac data shall be subject to the authorisation of the Member State of origin. Such authorisation shall be obtained via the Europol national unit of that Member State.

Article 35

Communication between the designated authorities, the verifying authorities, the National Access Points and the Europol Access Point

1. Without prejudice to Article 39, all communication between the designated authorities, the verifying authorities, the National Access Points and the Europol Access Point shall be secure and take place electronically.
2. For law enforcement purposes, searches with biometric or alphanumeric data shall be digitally processed by the Member States and Europol and transmitted in the data format as set out in the agreed Interface Control Document, in order to ensure that the comparison can be carried out with other data stored in ***Eurodac***.

Chapter XII

Data processing, data protection and liability

Article 36

Responsibility for data processing

1. The Member State of origin shall be responsible for ensuring that:
 - (a) biometric data and the other data referred to in Article 17(1) and (2), **Article 19(1)** , **Article 21(1)** , **Article 22(2) and (3)**, **Article 23(2) and (3)**, **Article 24(2) and (3)** and **Article 26(2)** are taken lawfully **and** are lawfully transmitted to **Eurodac**;
 - (b) data are accurate and up to date when they are transmitted to **Eurodac**;
 - (c) without prejudice to the responsibilities of eu-LISA, data in **Eurodac** are lawfully recorded, stored, rectified and erased;
 - (d) the results of biometric data comparisons transmitted by **Eurodac** are lawfully processed.

2. The Member State of origin shall ensure the security of the data referred to in paragraph 1 of this Article before and during transmission to **Eurodac**, as provided for in Article 48, and the security of the data it receives from **Eurodac**.
 3. The Member State of origin shall be responsible for the final identification of the data pursuant to Article 38(4).
 4. eu-LISA shall ensure that **Eurodac** is operated, including for testing purposes, in accordance with this Regulation and relevant Union data protection rules. In particular, eu-LISA shall:
 - (a) adopt measures ensuring that all persons, including contractors, working with **Eurodac** process the data recorded therein only in accordance with the purposes of Eurodac laid down in Article 1;
 - (b) take the necessary measures to ensure the security of **Eurodac** in accordance with Article 48;
 - (c) ensure that only persons authorised to work with **Eurodac** have access thereto, without prejudice to the competences of the European Data Protection Supervisor.
- eu-LISA shall inform the European Parliament, the Council and the European Data Protection Supervisor of the measures it takes pursuant to the first subparagraph of this paragraph.

Article 37 Transmission

1. Biometric data and other personal data shall be digitally processed and transmitted in the data format as set out in the agreed Interface Control Document. As far as necessary for the efficient operation of **Eurodac**, eu-LISA shall establish the technical requirements concerning the data format to be used for the transmission of data by Member States to **Eurodac** and vice versa. eu-LISA shall ensure that the biometric data transmitted by the Member States can be compared by the computerised fingerprint and facial recognition system.

2. Member States shall transmit the data referred to in **Article 17(1) and (2), Article 19(1) █**, **Article 21(1) █**, **Article 22(2) and (3), Article 23(2) and (3), Article 24(2) and (3) and Article 26(2)** electronically. The data referred to in **Article 17(1) and (2), Article 19(1) █**, **Article 21(1) █**, **Article 22(2) and (3), Article 23(2) and (3), Article 24(2) and (3) and Article 26(2)** shall be automatically recorded in **Eurodac**. As far as necessary for the efficient operation of **Eurodac**, eu-LISA shall establish the technical requirements to ensure that data can be properly electronically transmitted from the Member States to **Eurodac** and vice versa.

3. Member States shall ensure that the reference number referred to in Article 17(1), point (k), Article 19(1), point (k), Article 21(1), point (k), Article 22(2), point (k), Article 23(2), **point (k), Article 24(2), point (k), Article 26(2)**, point (k), and Article 32(1) makes it possible to relate data unambiguously to a particular person and to the Member State which is transmitting the data and also makes it possible to indicate whether such data relate to a person as referred to in Article 15(1), Article 18(2), Article 20(1), Article 22(1), Article 23(1), **Article 24(1)** or **Article 26(1)**.
4. The reference number referred to in paragraph 3 of this Article shall begin with the identification letter or letters by which the Member State transmitting the data is identified. The identification letter or letters shall be followed by the identification of the category of person or request. ‘1’ refers to persons as referred to in Article 15(1), ‘2’ to persons as referred to in Article 22(1), ‘3’ to persons as referred to in Article 23(1), ‘4’ to requests as referred to in Article 33, ‘5’ to requests as referred to in Article 34, ‘6’ to requests as referred to in Article 43, ‘7’ to requests as referred to in Article 18, ‘8’ to persons as referred to in Article 20, ‘9’ to **persons** as referred to in Article 24(1) and ‘0’ to **persons as referred to in Article 26(1)**.
5. eu-LISA shall establish the technical procedures necessary for Member States to ensure receipt of unambiguous data by **Eurodac**.

6. **Eurodac** shall confirm receipt of the transmitted data as soon as possible. To that end, eu-LISA shall establish the necessary technical requirements to ensure that Member States receive the confirmation receipt if requested.

Article 38

Carrying out comparisons and transmitting results

1. Member States shall ensure the transmission of biometric data of an appropriate quality for the purposes of comparison by means of the computerised fingerprint and facial recognition system. As far as is necessary to ensure that the results of the comparison by **Eurodac** reach a very high level of accuracy, eu-LISA shall establish the appropriate quality of transmitted biometric data. **Eurodac** shall, as soon as possible, check the quality of the biometric data transmitted. If the biometric data do not lend themselves to comparison using the computerised fingerprint and facial recognition system, **Eurodac** shall inform the Member State concerned. That Member State shall then transmit biometric data of the appropriate quality using the same reference number as the previous set of biometric data.

2. **Eurodac** shall carry out comparisons in the order of arrival of requests. Each request shall be handled within 24 hours of its arrival. A Member State may, for reasons connected with national law, require particularly urgent comparisons to be carried out within one hour.

Where such time limits cannot be respected due to circumstances which are outside **the** eu-LISA's responsibility, **Eurodac** shall process the request as a matter of priority as soon as those circumstances no longer prevail. In such cases, as far as is necessary for the efficient operation of **Eurodac**, eu-LISA shall establish criteria to ensure the priority handling of requests.

3. As far as is necessary for the efficient operation of **Eurodac**, eu-LISA shall establish the operational procedures for the processing of the data received and for transmitting the result of the comparison.

4. Where necessary, a fingerprint expert in the receiving Member State, as defined in accordance with its national rules and specifically trained in the types of fingerprint comparisons provided for in this Regulation, shall immediately check the result of the comparison of fingerprint data carried out pursuant to Article 27.

Where, following a comparison of both fingerprint and facial image data with data recorded in the computerised central database, **Eurodac** returns a fingerprint hit and a facial image hit, Member States may check the result of the comparison of the facial image data.

For the purposes laid down in Article 1(1), points (a), (b), (c) and (j), of this Regulation, final identification shall be made by the Member State of origin in cooperation with the other Member States concerned.

5. The result of the comparison of facial image data carried out pursuant to Article 27, where a hit based only on a facial image is received, and Article 28 shall be immediately checked and verified in the receiving Member State by an expert trained in accordance with national practice.

For the purposes laid down in Article 1(1), points (a), (b), (c) and (j), of this Regulation, final identification shall be made by the Member State of origin in cooperation with the other Member States concerned.

Information received from **Eurodac** relating to other data found to be unreliable shall be erased as soon as the unreliability of the data is established.

6. Where final identification in accordance with paragraphs 4 and 5 reveals that the result of the comparison received from **Eurodac** does not correspond to the biometric data sent for comparison, Member States shall immediately erase the result of the comparison and communicate that fact as soon as possible, and no later than three working days after the receipt of the result, to eu-LISA and inform it of the reference number of the Member State of origin and the reference number of the Member State that received the result.

Article 39

Communication between Member States and **Eurodac**

Data transmitted from the Member States to **Eurodac** and vice versa shall use the Communication Infrastructure. As far as is necessary for the efficient operation of **Eurodac**, eu-LISA shall establish the technical procedures necessary for the use of the Communication Infrastructure.

Article 40

Access to, and rectification or erasure of, data recorded in Eurodac

1. The Member State of origin shall have access to data which it has transmitted and which are recorded in **Eurodac** in accordance with this Regulation.

Member States shall not conduct searches of the data transmitted by another Member State or receive such data with the exception of data resulting from the comparison referred to in Articles 27 and 28.

2. The authorities of Member States which, pursuant to paragraph 1 of this Article, have access to data recorded in **Eurodac** shall be those designated by each Member State for the purposes laid down in Article 1(1), points (a), (b), (c) **and (j)**. That designation shall specify the exact unit responsible for carrying out tasks related to the application of this Regulation. Each Member State shall without delay communicate to the Commission and eu-LISA a list of those units and any amendments thereto. eu-LISA shall publish the consolidated list in the *Official Journal of the European Union*. Where there are amendments to that list, eu-LISA shall publish once a year an updated consolidated list online.

3. Only the Member State of origin shall have the right to amend the data which it has transmitted to Eurodac by rectifying or supplementing such data, or to erase them, without prejudice to erasure carried out pursuant to Article 29.

4. Access for the purpose of consulting the Eurodac data stored in the CIR shall be granted to the duly authorised staff of the national authorities of each Member State and to the duly authorised staff of the Union bodies competent for the purposes laid down in **Articles 20** and **21** of Regulation (**EU**) 2019/818. That access shall be limited to the extent necessary for the performance of the tasks of those national authorities and **Union** bodies and for the achievement of those purposes and shall be proportionate to the objectives pursued.

5. If a Member State or eu-LISA has evidence to suggest that data recorded in **Eurodac** are factually inaccurate, it shall, without prejudice to the notification of a personal data breach pursuant to Article 33 of Regulation (EU) 2016/679, inform the Member State of origin thereof as soon as possible.

If a Member State has evidence to suggest that data were recorded in **Eurodac** in breach of this Regulation, it shall inform eu-LISA, the Commission and the Member State of origin thereof as soon as possible. The Member State of origin shall check the data concerned and, if necessary, amend or erase them without delay.

6. eu-LISA shall not transfer or make available data recorded in **Eurodac** to the authorities of any third country. That prohibition shall not apply to transfers of such data to third countries to which Regulation (EU) .../...⁺ applies.

Article 41

Keeping of records

1. eu-LISA shall keep records of all data processing operations within Eurodac. Those records shall show the purpose, date and time of access, the data transmitted, the data used for querying and the name of both the unit entering or retrieving the data and the persons responsible.
2. For the purposes of Article 8 of this Regulation, eu-LISA shall keep records of each data processing operation carried out within Eurodac. Records of such **type** of operations shall include the elements provided for in paragraph 1 of this Article and the hits triggered while carrying out the automated processing laid down in Article 20 of Regulation (EU) 2018/1240.
3. For the purposes of Article 10 of this Regulation, Member States and eu-LISA shall keep records of each data processing operation carried out within Eurodac and the VIS in accordance with this Article and Article 34 of Regulation (EC) No 767/2008.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

4. The records referred to in paragraph 1 of this Article may be used only for the data protection monitoring of the admissibility of data processing and to ensure data security pursuant to Article 46. Those records shall be protected by appropriate measures against unauthorised access and erased after a period of one year after the storage period referred to in Article 29 has expired, unless they are required for monitoring procedures which have already begun.

5. For the purposes laid down in Article 1(1), points (a), (b) ■, (c), **(g), (h) and (j)**, each Member State shall take the necessary measures in order to achieve the objectives set out in paragraphs 1 to 4 of this Article in relation to its national system. In addition, ■ each Member State shall keep a **record** of the staff duly authorised to enter or retrieve the data.

Article 42 Rights of information

1. The Member State of origin shall inform a person covered by Article 15(1), Article 18(1) and (2), Article 20(1), **Article 22(1)**, **Article 23(1)**, **Article 24(1)** or **Article 26(1)** of this Regulation, in writing, and where necessary, orally, in a language that he or she understands or is reasonably supposed to understand, in a concise, transparent, intelligible and easily accessible form, using clear and plain language, of the following:

(a) the identity and contact details of the controller within the meaning of Article 4, point (7), of Regulation (EU) 2016/679 and of his or her representative, if any, and the contact details of the data protection officer;

(b) **■** the data to be processed in Eurodac and the legal basis for processing, including a description of the aims of Regulation (EU) .../...⁺**■**, in accordance with Article 19 of that Regulation and, where applicable, of the aims of Regulation (EU) .../...⁺⁺, and an explanation in an intelligible form of the fact that Eurodac may be accessed by the Member States and Europol for law enforcement purposes;

■

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

(c) *in relation to a person covered by Article 15(1), Article 22(1), Article 23(1) or Article 24(1), the fact that, if a security check as referred to in Articles 17(2), point (i), 22(3), point (d), Article 23(3), point (e), and Article 24(3), point (f), shows that he or she could pose a threat to internal security, the Member State of origin is obliged to register that fact in Eurodac;*

(d) *the recipients or categories of recipients of the data, if any;*

(e) *in relation to a person covered by Article 15(1), Article 18(1) and (2), Article 20(1), Article 22(1), Article 23(1), Article 24(1) or Article 26(1), the obligation to have his or her biometric data taken and the relevant procedure, including the possible implications of non-compliance with such an obligation;*

(f) the period for which the data will be stored pursuant to Article 29;

(g) the existence of the right to request from the controller access to data relating to him or her, and the right to request the rectification of inaccurate personal data, the completion of incomplete personal data or the erasure or restriction of the processing of unlawfully processed personal data concerning the data subject, as well as the right to receive information on the procedures for exercising those rights including the contact details of the controller and the supervisory authorities referred to in Article 44(1);

(h) the right to lodge a complaint with the supervisory authority.

2. In relation to a person covered by Article 15(1), Article 18(1) and (2), Article 20(1), Article 22(1), Article 23(1), Article 24(1) and Article 26(1), ■ the information referred to in paragraph 1 of this Article shall be provided at the time when his or her biometric data are taken.

Where a person covered by **Article 15(1), Article 18(1) and (2), Article 20(1), Article 22(1), Article 23(1), Article 24(1) and Article 26(1),** ■ is a minor, the information shall be provided by Member States in an age-appropriate manner.

The procedure to capture biometric data shall be explained to minors by using leaflets, infographics or demonstrations, or a combination of any of the three, as appropriate, specifically designed in such a way as to ensure that minors **understand** it.

3. A common leaflet, containing at least the information referred to in paragraph 1 of this Article and the information referred to in Article 19(1) of Regulation (EU) .../...⁺ ■, shall be drawn up in accordance with the procedure referred to in Article 77(2) of that Regulation.

The leaflet shall be clear and simple, drafted in a concise, transparent, intelligible and easily accessible form and in a language that the person concerned understands or is reasonably supposed to understand.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

The leaflet shall be drawn up in such a manner as to enable Member States to complete it with additional Member State-specific information. That Member State-specific information shall include at least the administrative measures for ensuring compliance with the obligation to provide biometric data, the rights of the data subject, the possibility of information and assistance by the national supervisory authorities, the contact details of the office of the controller and of the data protection officer, and the contact details of the national supervisory authorities.

Article 43

Right of access to, rectification, completion, erasure and restriction of the processing of personal data

1. For the purposes laid down in Article 1(1), points (a), (b), (c) **and (j)**, of this Regulation, the data subject's rights of access to, rectification, completion, erasure and restriction of the processing of personal data shall be exercised in accordance with Chapter III of Regulation (EU) 2016/679 and applied as set out in this Article.
2. The right of access of the data subject in each Member State shall include the right to have communicated to him or her the personal data relating to him or her recorded in ***Eurodac, including any record indicating that the person could pose a threat to internal security,*** and the Member State which transmitted them to ***Eurodac under the conditions set out in Regulation (EU) 2016/679 and in national law adopted pursuant thereto.*** Such access to personal data ***may*** be granted only by a Member State.

When the rights of rectification and erasure of personal data are exercised in a Member State other than that, or those, which transmitted the data, the authorities of that Member State shall contact the authorities of the Member State or Member States which transmitted the data so that they can check the accuracy of the data and the lawfulness of their transmission to and recording in **Eurodac**.

3. ***With regard to a record indicating that the person could pose a threat to internal security, Member States may restrict the data subject's rights referred to in this Article in accordance with Article 23 of Regulation (EU) 2016/679.***

4. If it emerges that data recorded in **Eurodac** are factually inaccurate or have been recorded unlawfully, the Member State which transmitted them shall rectify or erase the data in accordance with Article 40(3). That Member State shall confirm in writing to the data subject that it has taken action to rectify, complete, erase or restrict the processing of personal data relating to that data subject.

5. If the Member State which has transmitted the data does not agree that the data recorded in **Eurodac** are factually inaccurate or have been recorded unlawfully, it shall explain in writing to the data subject why it does not intend to rectify or erase the data.

That Member State shall also provide the data subject with information explaining the steps which can be taken if he or she does not accept the explanation provided. That shall include information on how to bring an action or, if appropriate, a complaint before the competent authorities or courts of that Member State and on any financial or other assistance that is available in accordance with the laws, regulations and procedures of that Member State.

6. Any request under paragraphs 1 and 2 for access to, rectification, completion, erasure or restriction of the processing of personal data shall contain all the necessary particulars to identify the data subject, including biometric data. Such data shall be used exclusively to permit the exercise of the data subject's rights as referred to in paragraphs 1 and 2 and shall be erased immediately afterwards.

7. The competent authorities of the Member States shall cooperate actively to enforce promptly the data subject's rights to access, rectification, completion, erasure and restriction of the processing of personal data.

8. Whenever a person requests access to data relating to him or her, the competent authority shall keep a record in the form of a written document that such a request was made and how it was addressed, and shall make that document available to the national supervisory authorities without delay.

9. The national supervisory authority of the Member State which has transmitted the data and the national supervisory authority of the Member State in which the data subject is present shall, where requested, provide information to the data subject concerning the exercise of his or her right to request from the data controller access to, rectification, completion, erasure or the restriction of the processing of personal data concerning him or her. The supervisory authorities shall cooperate in accordance with Chapter VII of Regulation (EU) 2016/679.

Article 44

Supervision by the national supervisory authorities

1. Each Member State shall provide that its supervisory authority or authorities, as referred to in Article **51(1)** of Regulation (EU) 2016/679, are to monitor the lawfulness of the processing of personal data by the Member State in question for the purposes laid down in Article 1(1), points (a), (b), (c) and (j), of this Regulation, including their transmission to ***Eurodac***.
2. Each Member State shall ensure that its supervisory authority has access to advice from persons with sufficient knowledge of biometric data.

Article 45

Supervision by the European Data Protection Supervisor

1. The European Data Protection Supervisor shall ensure that all the personal data processing activities concerning Eurodac, in particular by eu-LISA, are carried out in accordance with Regulations (EU) 2018/1725 and with this Regulation.
2. The European Data Protection Supervisor shall ensure that an audit of eu-LISA's personal data processing activities is carried out in accordance with international auditing standards at least every three years. A report of such audits shall be sent to the European Parliament, to the Council, to the Commission, to eu-LISA, and to the national supervisory authorities. eu-LISA shall be given an opportunity to make comments before the report is adopted.

Article 46

Cooperation between national supervisory authorities and the European Data Protection Supervisor

1. ***In accordance with Article 62 of Regulation (EU) 2018/1725, the*** national supervisory authorities and the European Data Protection Supervisor shall, each acting within the scope of their respective competences, cooperate actively in the framework of their responsibilities and ensure ***the*** coordinated supervision of Eurodac.

2. Member States shall ensure that every year an audit of the processing of personal data for law enforcement purposes is carried out by an independent body, in accordance with Article 47(1), including an analysis of a sample of reasoned electronic requests.

The audit shall be attached to the annual report by the Member States referred to in Article 57(8).

3. The national supervisory authorities and the European Data Protection Supervisor shall, each acting within the scope of their respective competences, exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties in the interpretation or application of this Regulation, study problems with regard to the exercise of independent supervision or in the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary.

4. For the purposes of paragraph 3, the national supervisory authorities and the European Data Protection Supervisor shall meet at least twice a year ***within the framework of the European Data Protection Board***. The costs and servicing of the meetings shall be covered by the European Data Protection ***Board***. The rules of procedure for the meetings shall be adopted at the first such meeting. Further working methods shall be developed jointly as necessary. ***The European Data Protection Board shall send*** a joint report of activities to the European Parliament, to the Council ***and*** to the Commission **■** every two years. That report shall include a chapter with regard to each Member State prepared by the national supervisory authority of that Member State.

Article 47

Protection of personal data for law enforcement purposes

1. The supervisory authority or authorities of each Member State, as referred to in Article 41(1) of Directive (EU) 2016/680, shall monitor the lawfulness of the processing of personal data under this Regulation by the Member States for law enforcement purposes, including their transmission to and from Eurodac.
2. The processing of personal data by Europol pursuant to this Regulation shall be in accordance with Regulation (EU) 2016/794 and shall be supervised by the European Data Protection Supervisor.

3. Personal data obtained pursuant to this Regulation from Eurodac for law enforcement purposes shall only be processed for the purposes of the prevention, detection or investigation of the specific case for which the data have been requested by a Member State or by Europol.

4. Without prejudice to Article 24 of Directive (EU) 2016/680, **Eurodac**, the designated and verifying authorities and Europol shall keep records of searches for the purpose of permitting the national supervisory authorities and the European Data Protection Supervisor to monitor the compliance of data processing with Union data protection rules, including for the purpose of maintaining records in order to prepare the annual reports referred to in Article 57(8) of this Regulation. Other than for such purposes, personal data, as well as the records of the searches, shall be erased in all national and Europol files after a period of one month, unless the data are required for the purposes of the specific ongoing criminal investigation for which they were requested by a Member State or by Europol.

Article 48 Data security

1. The Member State of origin shall ensure the security of data before and during transmission to **Eurodac**.

2. Each Member State shall, in relation to all data processed by its competent authorities pursuant to this Regulation, adopt the necessary measures, including a data security plan, in order to:

- (a) physically protect the data, including by making contingency plans for the protection of critical infrastructure;
- (b) deny unauthorised persons access to data-processing equipment and national installations in which the Member State carries out operations in accordance with the purposes of Eurodac (equipment, access control and checks at entrance to the installation);
- (c) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
- (d) prevent the unauthorised input of data and the unauthorised inspection, modification or erasure of stored personal data (storage control);
- (e) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);

- (f) prevent the unauthorised processing of data in Eurodac and any unauthorised modification or erasure of data processed in Eurodac (control of data entry);
- (g) ensure that persons authorised to access Eurodac have access only to the data covered by their access authorisation, by means of individual and unique user IDs and confidential access modes only (data access control);
- (h) ensure that all authorities with a right of access to Eurodac create profiles describing the functions and responsibilities of persons who are authorised to access, enter, update, erase and search the data, and make those profiles and any other relevant information which those authorities might require for supervisory purposes available to the supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679 and in Article 41 of Directive (EU) 2016/680, without delay, at their request
(personnel profiles);
- (i) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
- (j) ensure that it is possible to verify and establish what data have been processed in Eurodac, when, by whom and for what purpose (control of data recording);

- (k) prevent the unauthorised reading, copying, modification or deletion of personal data during the transmission of personal data to or from Eurodac or during the transport of data media, in particular by means of appropriate encryption techniques (transport control);
- (l) ensure that installed systems may, in the event of interruption, be restored (recovery);
- (m) ensure that Eurodac performs its functions, that the appearance of faults in the functions is reported (reliability) and that stored personal data cannot be corrupted by means of the system malfunctioning (integrity); and
- (n) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring in order to ensure compliance with this Regulation (self-auditing) and to automatically detect within 24 hours any relevant events arising from the application of measures listed in points (b) to (k) that might indicate the occurrence of a security incident.

3. Member States and Europol shall inform eu-LISA of security incidents related to Eurodac detected on their systems without prejudice to the notification and communication of a personal data breach, pursuant to Articles 33 and 34 of Regulation (EU) 2016/679 and Articles 30 and 31 of Directive (EU) 2016/680, as well as Articles 34 and 35 of Regulation (EU) 2016/794, respectively. eu-LISA shall inform the Member States, Europol and the European Data Protection Supervisor, without undue delay, of security incidents related to Eurodac detected on their systems without prejudice to Articles 34 and 35 of Regulation (EU) 2018/1725. The Member States concerned, eu-LISA and Europol shall collaborate during a security incident.

4. eu-LISA shall take the necessary measures in order to achieve the objectives set out in paragraph 2 of this Article as regards the operation of Eurodac, including the adoption of a data security plan.

Prior to the start of the operational use of Eurodac, the security framework for Eurodac's business and technical environment shall be updated, in accordance with Article 33 of Regulation (EU) 2018/1725.

5. **The** European Union Agency for Asylum ■ shall take necessary measures in order to implement Article 18(4), including the adoption of a data security plan as referred to in paragraph 2 of this Article.

Article 49

Prohibition of transfers of data to third countries, international organisations or private entities

1. Personal data obtained by a Member State or by Europol from **Eurodac** pursuant to this Regulation shall not be transferred or made available to any third country, international organisation or private entity established in or outside the Union. That prohibition shall also apply if those data are further processed within the meaning of Article 4, point (2), of Regulation (EU) 2016/679 and Article 3, point (2), of Directive (EU) 2016/680, at national level or between Member States.

2. Personal data which originate in a Member State and are exchanged between Member States following a hit obtained for law enforcement purposes shall not be transferred to third countries if there is a real risk that, as a result of such a transfer, the data subject might be subjected to torture, inhuman and degrading treatment or punishment or any other violation of his or her fundamental rights.

3. Personal data which originate in a Member State and are exchanged between a Member State and Europol following a hit obtained for law enforcement purposes shall not be transferred to third countries if there is a real risk that, as a result of such a transfer, the data subject might be subjected to torture, inhuman and degrading treatment or punishment or any other violation of his or her fundamental rights. In addition, any transfers shall only be carried out when they are necessary and proportionate in cases falling within Europol's mandate, in accordance with Chapter V of Regulation (EU) 2016/794 and subject to the consent of the Member State of origin.
4. No information regarding the fact that an application for international protection has been made or that a person has been subject to an admission procedure in a Member State shall be disclosed to any third country with regard to persons as referred to in **Article 15(1)**, **Article 18(1) and (2)** or **Article 20(1)**.
5. The prohibitions set out in paragraphs 1 and 2 of this Article shall be without prejudice to the right of Member States to transfer such data in accordance with Chapter V of Regulation (EU) 2016/679 or with the national rules adopted pursuant to Chapter V of Directive (EU) 2016/680, as appropriate, to third countries to which Regulation (EU) .../...⁺ applies.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

Article 50

Transfer of data to third countries for the purpose of return

1. By way of derogation from Article 49, the personal data relating to persons as referred to in Article 15(1), Article 18(2)(a), Article 20(1), Article 22(2), Article 23(1), **Article 24(1) and Article 26(1)** obtained by a Member State following a hit for the purposes laid down in Article 1(1), point (a), (b), (c) or (j), may be transferred or made available to a third country with the agreement of the Member State of origin.
2. Transfers of data to a third country pursuant to paragraph 1 of this Article shall be carried out in accordance with the relevant provisions of Union law, in particular provisions on data protection, including Chapter V of Regulation (EU) 2016/679, and, where applicable, readmission agreements, and the national law of the Member State transferring the data.
3. Transfers of data to a third country pursuant to paragraph 1 shall take place only where the following conditions have been met:
 - (a) the data are transferred or made available solely for the purpose of identifying, and issuing an identification or travel document to, an illegally staying third-country national for the purposes of return; and
 - (b) the third-country national concerned has been informed that his or her personal data may be shared with the authorities of a third country.

4. The implementation of Regulation (EU) 2016/679, including with regard to the transfer of personal data to third countries pursuant to this Article, and, in particular, the use, proportionality and necessity of transfers based on Article 49(1), point (d), of that Regulation, shall be subject to monitoring by the independent supervisory authority set up pursuant to Chapter VI of Regulation (EU) 2016/679.
5. Transfers of personal data to third countries pursuant to this Article shall not prejudice the rights of persons as referred to in Article 15(1), Article 18(2)(a), Article 20(1), Article 22(2), Article 23(1), Article 24(1) and Article 26(1) of this Regulation, in particular as regards non-refoulement, or the prohibition to disclose or obtain information in accordance with Article 7 of Regulation (EU) .../...⁺.
6. A third country shall not have direct access to **Eurodac** to compare or transmit biometric data or any other personal data of a third-country national or stateless person and shall not be granted access to Eurodac via a Member State's National Access Point.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)) [Asylum Procedure Regulation].

Article 51 Logging and documentation

1. Member States and Europol shall ensure that all data processing operations resulting from requests for comparison with Eurodac data for law enforcement purposes are logged or documented for the purpose of checking the admissibility of the request and monitoring the lawfulness of the data processing and data integrity and security and for the purposes of self-monitoring.

2. The log or documentation shall show in all cases:
- (a) the exact purpose of the request for comparison, including the type of terrorist offence or other serious criminal offence concerned and, for Europol, the exact purpose of the request for comparison;
 - (b) the reasonable grounds given in accordance with Article 33(1), point (a), of this Regulation for not conducting comparisons with other Member States under Decision 2008/615/JHA;
 - (c) the national file number;

(d) the date and exact time of the request for comparison by the National Access Point to **Eurodac**;

(e) the name of the authority that requested access for comparison and the person responsible who made the request and processed the data;

(f) where applicable, the use of the urgent procedure referred to in Article 32(4) and the decision taken with regard to the ex-post verification;

(g) the data used for comparison;

(h) in accordance with national rules or with Regulation (EU) 2016/794, the identifying mark of the official who carried out the search and of the official who ordered the search or supply;

(i) where **applicable**, a reference to the use of the European search portal to query Eurodac as referred to in Article 7(2) of Regulation **(EU)** 2019/818.

3. Logs and documentation shall be used only for monitoring the lawfulness of data processing and for ensuring data integrity and security. Logs which contain personal data shall not be used for the monitoring and evaluation referred to in Article 57.

The national supervisory authorities responsible for checking the admissibility of the request and monitoring the lawfulness of the data processing and data integrity and security shall have access to those logs at their request for the purpose of fulfilling their tasks.

Article 52 Liability

1. Any person who, or Member State which, has suffered material or non-material damage as a result of an unlawful processing operation or any other act incompatible with this Regulation shall be entitled to receive compensation from the Member State responsible for the damage suffered, or from eu-LISA if it is responsible for the damage suffered and in so far as it has not complied with obligations on it pursuant to this Regulation specifically directed to it or where it has acted outside or contrary to lawful instructions of that Member State. The Member State responsible or eu-LISA shall be exempt from its liability, in whole or in part, if it proves that it is not in any way responsible for the event giving rise to the damage.

2. If any failure of a Member State to comply with its obligations under this Regulation causes damage to **Eurodac**, that Member State shall be held liable for such damage, unless and in so far as eu-LISA or another Member State failed to take reasonable steps to prevent the damage from occurring or to minimise its impact..

3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 of this Article shall be governed by the provisions of national law of the defendant Member State in accordance with Articles 79 and 80 of Regulation (EU) 2016/679 and Articles 54 and 55 of Directive (EU) 2016/680. Claims for compensation against eu-LISA for the damage referred to in paragraphs 1 and 2 of this Article shall be subject to the conditions provided for in the Treaties.

Chapter XIII

Amendments to Regulations (EU) 2018/1240 and (EU) 2019/818

Article 53

Amendments to Regulation (EU) 2018/1240

(1) in Article 11, the following paragraph is inserted:

‘6a. For the purpose of proceeding with the verifications referred to in Article 20(2), second subparagraph, point (k), the automated verifications pursuant to paragraph 1 of this Article shall enable the ETIAS Central System to query Eurodac established by Regulation (EU) .../... of the European Parliament and of the Council⁺, with the

■ following data provided by applicants under Article 17(2), points (a) to (d) of this Regulation:

- (a) surname (family name), first name(s) (given name(s)), surname at birth, date of birth, place of birth, sex, current nationality;
- (b) other names (alias(es), artistic name(s), usual name(s)), if any;
- (c) other nationalities, if any;
- (d) type, number, the country of issue of the travel document.

* Regulation (EU) .../... of the European Parliament and of the Council of ... on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) ■ .../... ■ and (EU) ■ .../... of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ L, ..., ELI: ...).’;

⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

(2) in Article 25a(1), *the following* point is *inserted*:

‘(f) the *data referred to in* Articles 17, **19, 21**, 22, 23, **24** and 26 of Regulation (EU) .../...⁺.’;

(3) in Article 88, paragraph 6 is replaced by the following:

‘6. ETIAS shall start operations irrespective of whether interoperability with Eurodac or ECRIS-TCN is put in place.’.

⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

Article 54

Amendments to Regulation (EU) 2019/818 Regulation (EU) 2019/818 is amended

as follows:

(1) in Article 4, point (20) is replaced by the following:

‘(20) “designated authorities” means the Member States’ designated authorities within the meaning of Article 5 of Regulation (EU) .../... of the European Parliament and of the Council⁺, Article 3(1), point (26), of Regulation (EU) 2017/2226 of the European Parliament and the Council^{**}, Article 4, point (3a), of Regulation (EC) No 767/2008, and Article 3(1), point (21), of Regulation (EU) 2018/1240 of the European Parliament and of the Council^{***} ■ ;

⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

* Regulation (EU .../... of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) .../... and (EU) .../... of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ L, ..., ELI: ...).

** Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (EES Regulation) (OJ L 327, 9.12.2017, p. 20).

*** Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).';

(2) in Article 10(1), the introductory wording is replaced by the following:

‘Without prejudice to Article 51 of Regulation (EU) .../...⁺⁺, Articles 12 and 18 of Regulation (EU) 2018/1862, Article 31 of Regulation (EU) 2019/816 and Article 40 of Regulation (EU) 2016/794, eu-LISA shall keep logs of all data processing operations within the ESP. Those logs shall include, in particular, the following:’;

⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

(3) in Article 13(1), the first subparagraph is amended as follows:

(a) point (b) is replaced by the following:

‘(b) the data referred to in Article 5(1), point (b), and Article 5(3) of Regulation (EU) 2019/816;’;

(b) the following point is added:

‘(c) the data referred to in Article 17(1), points (a) and (b), Article 19(1), points (a) and (b), Article 21 (1) ■ points (a) and (b), Article 22(2), points (a) and (b), Article 23(2), points (a) and (b) ■ , Article 24(2), **points (a) and (b) and Article 26(2)**, points (a) and (b) of Regulation (EU) .../...⁺.’;

(4) Article 14 is replaced by the following:

‘Article 14

Searching biometric data with the shared biometric matching service

In order to search the biometric data stored within the CIR and SIS, the CIR and SIS shall use the biometric templates stored in the shared BMS. Queries with biometric data shall take place in accordance with the purposes provided for in this Regulation and in Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1860, (EU) 2018/1861, (EU) 2018/1862, (EU) 2019/816 and (EU) .../...⁺⁺.’;

⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

(5) in Article 16(1), the first sentence is replaced by the following:

‘Without prejudice to Article 51 of Regulation (EU) ...⁺, Articles 12 and 18 of Regulation (EU) 2018/1862 and Article 31 of Regulation (EU) 2019/816, eu-LISA shall keep logs of all data processing operations within the shared BMS.’;

(6) in Article 18, paragraph 1 is replaced by the following:

‘1. The CIR shall store the following data, logically separated according to the information system from which the data have originated:

(a) the data referred to in Article 17(1), points (a) to (f), (h) and (i), **Article 19(1) points (a) to (f)**, (h) and (i), Article 21(1) points (a) to (f), (h) and (i), Article 22(2), points (a) to (f), (h) and (i), Article 23(2), points (a) to (f), (h) and (i) **■**, Article 24(2), **points (a) to (f) and (h), Article 24(3), point (a), and Article 26(2)**, points (a) to (f), (h) and (i), of Regulation (EU) .../...⁺⁺;

⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

(b) the data referred to in Article 5(1), point (b), and Article 5(3) of Regulation (EU) 2019/816 and the following data listed in Article 5(1), point (a) of that Regulation : surname (family name), first names (given names), date of birth, place of birth (town and country), nationality or nationalities, gender, previous names, if applicable, where available pseudonyms or aliases, as well as, where available, information on travel documents.’;

(7) in Article 23, paragraph 1 is replaced by the following:

‘1. The data referred to in Article 18(1), (2) and 4) shall be deleted from the CIR in an automated manner in accordance with the data retention provisions of Regulation (EU) .../...⁺ and of Regulation (EU) 2019/816.’;

(8) in Article **24, paragraph 1** is replaced by the following:

‘1. Without prejudice to Article 51 of Regulation (EU) .../...⁺⁺ and Article 29 of Regulation (EU) 2019/816, eu-LISA shall keep logs of all data processing operations within the CIR in accordance with paragraphs 2, 3 and 4 of this Article.’;

⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

(9) in Article 26(1), the following points are added:

- ‘(c) the authorities competent to *collect the data provided for in Chapter II of Regulation (EU) .../...⁺ when transmitting data to Eurodac;*
- (d) *the authorities competent to collect the data provided for in Chapter III of Regulation (EU) .../...⁺⁺ when transmitting data to Eurodac for matches that occurred when transmitting such data;*
- (e) the authorities competent to collect the data provided for in Chapter IV of Regulation (EU) .../...⁺⁺⁺ when transmitting data to Eurodac;
- (f) the authorities competent to collect the data provided for in Chapter V of Regulation (EU) .../...⁺⁺⁺⁺ when transmitting data to Eurodac;
- (g) the authorities competent to collect the data provided for in Chapter VI of Regulation (EU) .../...⁺⁺⁺⁺⁺ when transmitting data to Eurodac;
- (h) the authorities competent to collect *the* data provided for in Chapter VIII of Regulation (EU) .../...⁺⁺⁺⁺⁺ when transmitting data to Eurodac;’;

⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺⁺⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺⁺⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

(10) Article 27 is amended as follows:

(a) in paragraph 1, the following point is added:

‘(c) a dataset is transmitted to Eurodac in accordance with Articles 17, 19, 21, 22, 23, **24** or 26 of Regulation (EU) .../...⁺’;

(b) in paragraph 3, the following point is added:

‘(c) surname(s); forename(s); name(s) at birth, previously used names and aliases; date of birth, place of birth, nationality(ies) and sex as referred to in Articles 17 **■**, **19, 21, 22, 23, 24 and 26** of Regulation (EU) .../...⁺⁺’;

(11) in Article 29(1), the following **points are** added:

‘(c) the ***authorities competent to collect the data provided for in Chapter II of Regulation (EU) .../...⁺⁺⁺ when transmitting data to Eurodac for matches that occurred when transmitting such data;***

(d) ***the authorities competent to collect the data provided for in Chapter III of Regulation (EU) .../...⁺⁺⁺⁺ when transmitting data to Eurodac for matches that occurred when transmitting such data;***

⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

(e) *the authorities competent to collect the data provided for in Chapter IV of Regulation (EU) .../...⁺ for matches that occurred when transmitting such data;*

(f) *the authorities competent to collect the data provided for in Chapter V of Regulation (EU) .../...⁺⁺ for matches that occurred when transmitting such data;*

(g) *the authorities competent to collect the data provided for in Chapter VI of Regulation (EU) .../...⁺⁺⁺ when transmitting data to Eurodac for matches that occurred when transmitting such data;*

(h) *the authorities competent to collect the data provided for in Chapter VIII of Regulation (EU) .../...⁺⁺⁺⁺ when transmitting data to Eurodac for matches that occurred when transmitting such data.’;*

⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

(12) in Article 39, paragraph 2 is replaced by the following:

‘2. eu-LISA shall establish, implement and host in its technical sites the CRRS containing the data and statistics referred to in **Article 12** of Regulation (EU) .../...⁺, Article 74 of Regulation (EU) 2018/1862 and Article 32 of Regulation (EU) 2019/816 logically separated by EU information system. Access to the CRRS shall be granted by means of controlled, secured access and specific user profiles, solely for the purpose of reporting and statistics, to the authorities referred to in **Article 12** of Regulation (EU) .../...⁺⁺, Article 74 of Regulation (EU) 2018/1862 and Article 32 of Regulation (EU) 2019/816.’;

(13) in Article 47(3), the following subparagraph is added:

‘Persons whose data are recorded in Eurodac shall be informed about the processing of personal data for the purposes of this Regulation in accordance with paragraph 1 when a new dataset is transmitted to Eurodac in accordance with Articles 15, 18, 20, 22, 23, **24** and 26 of Regulation (EU) .../...⁺⁺⁺.’;

⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

⁺⁺⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24 (2016/0132(COD)).

(14) Article 50 is replaced by the following:

‘Article 50

Communication of personal data to third countries, international organisations and private parties

Without prejudice to Article 31 of Regulation (EC) No 767/2008, Articles 25 and 26 of Regulation (EU) 2016/794, Article 41 of Regulation (EU) 2017/2226, Article 65 of Regulation (EU) 2018/1240, Articles 49 and 50 of Regulation (EU) .../...⁺ and the

querying of Interpol databases through the ESP in accordance with Article 9(5) of this Regulation which comply with the provisions of Chapter V of Regulation (EU) 2018/1725 and Chapter V of Regulation (EU) 2016/679, personal data stored in, processed or accessed by the interoperability components shall not be transferred or made available to any third country, to any international organisation or to any private party.’.

⁺ OJ: Please insert in the text the number of Regulation contained in doc PE-CONS 15/24

(2016/0132(COD)).

Chapter XIV Final provisions

Article 55 Costs

1. The costs incurred in connection with the establishment and operation of **Eurodac** and the Communication Infrastructure shall be borne by the general budget of the Union.
2. The costs incurred by National Access Points and the Europol Access Point and their costs for connection to **Eurodac** shall be borne by each Member State and Europol respectively.
3. Each Member State and Europol shall set up and maintain at their expense the technical infrastructure necessary to implement this Regulation, and shall be responsible for bearing its costs resulting from requests for comparison with Eurodac data for law enforcement purposes.

Article 56
Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

Article 57
Reports, monitoring and evaluation

1. eu-LISA shall submit to the European Parliament, to the Council, to the Commission and to the European Data Protection Supervisor an annual report on the activities of **Eurodac**, including on its technical functioning and security. The annual report shall include information on the management and performance of Eurodac against pre-defined quantitative indicators for the objectives relating to output, cost-effectiveness and quality of service.

2. eu-LISA shall ensure that procedures are in place to monitor the functioning of ***Eurodac*** against the objectives referred to in paragraph 1.
3. For the purposes of technical maintenance, reporting and statistics, eu-LISA shall have access to the necessary information relating to the processing operations performed in ***Eurodac***.
4. By ... [three years ***from the date of entry into force of this Regulation***], eu-LISA shall conduct a study on the technical feasibility of adding facial recognition software to ***Eurodac*** for the purpose of comparing facial images, including of minors. The study shall evaluate the reliability and accuracy of the results produced from facial recognition software for the purposes of ***Eurodac*** and shall make any necessary recommendations prior to the introduction of the facial recognition technology to ***Eurodac***.

5. By ... [*five years from the date of entry into force of this Regulation*] and every four years thereafter, the Commission shall produce an overall evaluation of Eurodac, examining the results achieved against objectives and the impact on fundamental rights, in particular data protection and privacy rights including whether the access for law enforcement purposes has led to indirect discrimination against persons covered by this Regulation, and assessing the continuing validity of the underlying rationale including the use of facial recognition software, and any implications for future operations, and shall make any necessary recommendations. That evaluation shall also include an assessment of the synergies between this Regulation and Regulation (EU) 2018/1862. The Commission shall transmit the evaluation to the European Parliament and to the Council.
6. Member States shall provide eu-LISA and the Commission with the information necessary to draft the annual report referred to in paragraph 1.
7. eu-LISA, Member States and Europol shall provide the Commission with the information necessary to draft the overall evaluation provided for in paragraph 5. That information shall not jeopardise working methods or include information that reveals sources, staff members or investigations of the designated authorities.

8. While respecting the provisions of national law on the publication of sensitive information, each Member State and Europol shall prepare reports every two years on the effectiveness of the comparison of biometric data with Eurodac data for law enforcement purposes, containing information and statistics on:
- (a) the exact purpose of the comparison, including the type of terrorist offence or other serious criminal offence;
 - (b) grounds given for substantiated suspicion;
 - (c) the reasonable grounds given in accordance with Article 33(1), point (a), of this Regulation for not conducting comparisons with other Member States under Decision 2008/615/JHA;
 - (d) the number of requests for comparison;
 - (e) the number and type of cases which have ended in successful identifications; and
 - (f) the need and use made of the exceptional case of urgency, including those cases where that urgency was not accepted by the ex-post verification carried out by the verifying authority.

The reports by Member States and Europol referred to in the first subparagraph shall be transmitted to the Commission by 30 June of the subsequent year.

9. On the basis of the reports by Member States and Europol referred to in paragraph 8, and in addition to the overall evaluation provided for in paragraph 5, the Commission shall compile a report every two years on the access to Eurodac for law enforcement purposes and shall transmit it to the European Parliament, to the Council and to the European Data Protection Supervisor.

Article 58 Assessment

1. ***By ... [48 months from the date of entry into force of this Regulation], the Commission shall assess the functioning and the operational efficiency of any IT system used to exchange the data of beneficiaries of temporary protection for the purposes of the administrative cooperation referred to in Article 27 of Directive 2001/55/EC.***
2. ***The Commission shall also assess the expected impact of applying Article 26 of this Regulation in the event that Directive 2001/55/EC is activated, taking into consideration:***
- (a) the nature of data subject to processing;***
 - (b) the expected impact of providing access to the data listed in Article 26(2) to the designated authorities referred to in Articles 5(1) and 9(1); and***
 - (c) the safeguards provided for in this Regulation.***

3. ***Depending on the outcome of the assessments referred to in paragraphs 1 and 2 of this Article, the Commission shall make a legislative proposal amending or repealing Article 26, if appropriate.***

Article 59 Penalties

Member States shall take the necessary measures to ensure that any processing of data recorded in ***Eurodac*** contrary to the purposes of Eurodac as laid down in Article 1 is punishable by penalties, including administrative or criminal penalties, or both, in accordance with national law, that are effective, proportionate and dissuasive.

Article 60

Territorial scope

The provisions of this Regulation shall not be applicable to any territory to which Regulation (EU) .../...⁺ does not apply, with the exception of the provisions related to data collected to assist with the application of Regulation (EU) .../...⁺⁺ under the conditions set out in this Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) [Asylum and Migration Management Regulation].

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) [Resettlement Regulation].

Article 61

Notification of designated authorities and verifying authorities

1. By ... [***three months from the date of entry into force of this Regulation***], each Member State shall notify the Commission of its designated authorities, of the operating units referred to in Article 5(3) and of its verifying authority ■ and shall notify it without delay of any amendment thereto.
2. By ... [***three months from the date of entry into force of this Regulation***], Europol shall notify the Commission of its designated authority and of its verifying authority ■ and shall notify it without delay of any amendment thereto.
3. The Commission shall publish the information referred to in paragraphs 1 and 2 in the *Official Journal of the European Union* on an annual basis and via an electronic publication that shall be available online and updated without delay.

Article 62 Repeal

Regulation (EU) No 603/2013 of the European Parliament and of the Council³⁸ is repealed with effect from ... **[24 months from the date of entry into force of this Regulation]**.

References to the repealed **Regulation** shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 63

Entry into force and applicability

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply from ... [24 months from the date of entry into force of this Regulation].

However, Article 26 shall apply from ... [five years from the date of entry into force of this Regulation].

3. ***This Regulation shall not apply to persons enjoying temporary protection pursuant to Implementing Decision (EU) 2022/382 and any other equivalent national protection pursuant thereto, any future amendments to Implementing Decision (EU) 2022/382, and any extensions to that temporary protection.***

4. The Interface Control Document shall be agreed between Member States and eu-LISA no later than ... [six months from the date of entry into force of this Regulation].

³⁸ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).

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5. Comparisons of facial images with the use of facial recognition software as set out in Articles 15 and 16 of this Regulation shall apply from the date upon which the facial recognition technology has been introduced into **Eurodac**. Facial recognition software shall be introduced into **Eurodac** within one year of the conclusion of the study on the introduction of facial recognition software referred to in Article 57(4). Until that date, facial image shall be stored in **Eurodac** as part of the data subject's datasets and transmitted to a Member State following the comparison of fingerprints where there is a hit result.
6. Member States shall notify the Commission and eu-LISA as soon as they have made the technical arrangements to transmit data to **Eurodac**, no later than ... [24 months from the date of entry into force of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament
The President

For the Council
The President

ANNEX I

Table of correspondences referred to in Article 8

Data provided pursuant to Article 17(2) of Regulation (EU) 2018/1240 of the European Parliament and of the Council recorded and stored by ETIAS Central System	The corresponding data in Eurodac pursuant to Articles 17, 19, 21, 22, 23, 24 and 26 of this Regulation against which the ETIAS data should be checked
surname (family name)	surname(s)
surname at birth	name(s) at birth
first name(s) (given name(s))	forename(s)
other names (alias(es), artistic name(s), usual name(s))	previously used names and any aliases
date of birth	date of birth
place of birth	place of birth
sex	sex
current nationality	nationality(ies)
other nationalities (if any)	nationality(ies)
type of the travel document	type of travel document
number of the travel document	number of travel document
country of issue of the travel document	three letter code of the issuing country

ANNEX II

Correlation table

Regulation (EU) No 603/2013	This Regulation
Article 1(1)	Article 1(1), points (a) and (c)
-	Article 1(1), points (b) and (d)
Article 1(2)	Article 1(1), point (e)
-	Article 1(1), points (f) to (j)
Article 1(3)	Article 1(2)
Article 2(1), introductory wording	Article 2(1), introductory wording
Article 2(1), points (a) and (b)	Article 2(1), points (a) and (e)
-	Article 2(1), points (b), (c) and (d)
	Article 2(1), points (f) and (g)
Article 2(1), point (c)	Article 2(1), point (h)
-	Article 2(1), point (i)
Article 2(1), point (d)	Article 2(1), point (j)
Article 2(1), point (e)	Article 2(1), point (k)
-	Article 2(1), point (l)
Article 2(1), point (f)	-
Article 2(1), point (g)	-
Article 2(1), point (h)	Article 2(1), point (m)
Article 2(1), point (i)	Article 2(1), point (n)
Article 2(1), point (j)	Article 2(1), point (o)
Article 2(1), point (k)	Article 2(1), point (p)
Article 2(1), point (l)	Article 2(1), point (q)
-	Article 2(1), points (r) to (z)
Article 2(2), (3) and (4)	Article 2(2), (3) and (4)
Article 3(1), introductory wording and points (a) and (b)	Article 3(1), introductory wording and points (a) and (b)
-	Article 3(1), point (c) and (d) Article
-	3(2)
-	Article 3(3)

Article 3(2)	Article 3(4)
Article 3(3)	Article 3(5)
-	Article 3(6)
Article 3(4)	Article 3(7)
Article 3(5)	Article 13(6)
Article 4(1)	Article 4(1)
Article 4(2)	Article 4(3)
Article 4(3)	Article 4(4)
-	Article 4(2)
Article 4(4)	Article 4(5)
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
-	Article 8
-	Article 9
-	Article 10
-	Article 11
Article 8(1) introductory wording	Article 12(1) introductory wording
-	Article 12(1), points (a) to (h)
Article 8(1), point (a)	Article 12(1), point (i) Article
-	12(1), point (j)
Article 8(1), point (b)	Article 12(1), point (k), subpoint (i)
-	Article 12(1), point (l)
Article 8(1), point (c)	Article 12(1), point (m), subpoint (i)
Article 8(1), point (d)	Article 12(1), point (n), subpoint (i)
-	Article 12(1), points (o) and (p)
Article 8(1), point (e)	Article 12(1), point (q)
Article 8(1), point (f)	Article 12(1), point (r)
Article 8(1), point (g)	Article 12(1), point (s)
Article 8(1), point (h)	Article 12(1), point (t)
Article 8(1), point (i)	Article 12(1), point (u)

-	Article 12(1), points (v) and (w)
Article 8(2)	Article 12(2)
-	Article 12(3) to (6)
-	Article 13
-	Article 14
Article 9(1)	Article 15(1)
Article 9(2)	Article 15(2)
Article 9(3)	-
Article 9(4)	-
Article 9(5)	-
-	Article 15(3)
-	Article 16(1)
Article 10, introductory wording and points (a) to (d)	Article 16(2), introductory wording and points (a) to (d)
Article 10, point (e)	Article 16(3)
-	Article 16(2) and (4)
Article 11, introductory wording	Article 17(1), introductory wording, and Article 17(2), introductory wording
Article 11, point (a)	Article 17(1), point (a)
Article 11, point (b)	Article 17(1), point (g)
Article 11, point (c)	Article 17(1), point (h)
Article 11, point (d)	Article 17(1), point (k)
Article 11, point (e)	Article 17(1), point (l)
Article 11, point (f)	Article 17(1), point (m)
Article 11, point (g)	Article 17(1), point (n)
-	Article 17(1), points (b) to (f), (i) and (j)
Article 11, point (h)	Article 17(2), points (c) and (d)
Article 11, point (i)	Article 17(2), point (e)
Article 11, point (j)	Article 17(2), point (f)
Article 11, point (k)	Article 17(2), point (a)
-	Article 17(2), points (b) and (g) to (l)
-	Article 17(3) and (4)
Article 12	-

Article 13	-
-	Article 18
-	Article 19
-	Article 20
-	Article 21
Article 14(1)	Article 22(1)
Article 14(2), introductory wording	Article 22(2), introductory wording
Article 14(2), point (a)	Article 22(2), point (a)
Article 14(2), point (b)	Article 22(2), point (g)
Article 14(2), point (c)	Article 22(2), point (h)
Article 14(2), point (d)	Article 22(2), point (k)
Article 14(2), point (e)	Article 22(2), point (l)
Article 14(2), point (f)	Article 22(2), point (m)
Article 14(2), point (g)	Article 22(2), point (n)
-	Article 22(2), points (b) to (f), (i) and (j)
-	Article 22(3)
Article 14(3)	Article 22 (4)
Article 14(4)	Article 22(5)
Article 14(5)	Article 22(6)
-	Article 22(7) to (10)
Article 15	-
Article 16	-
Article 17	-
-	Article 23
-	Article 24
-	Article 25
-	Article 26
-	Article 27
-	Article 28
-	Article 29
-	Article 30
Article 18(1)	Article 31(1)

Article 18(2)	Article 31(2)
Article 18(3)	Article 31(3)
-	Article 31(4), (5) and (6)
Article 19(1)	Article 32(1)
Article 19(2)	Article 32(2)
-	Article 32(3)
Article 19(3)	Article 32(4)
Article 19(4)	Article 32(5)
Article 20(1), introductory wording	Article 33(1), first subparagraph, introductory wording and point (a), and second subparagraph
Article 20(1), points (a), (b) and (c)	Article 33(1), first subparagraph, points (a), (b) and (c)
-	Article 33(2)
Article 20(2)	Article 33(3)
Article 21(1), introductory wording	Article 34(1), introductory wording and point (a)
Article 21(1), points (a), (b) and (c)	Article 34(1), points (b), (c) and (d) Article
-	34(2)
Article 21(2)	Article 34(3)
Article 21(3)	Article 34(4)
Article 22(1)	Article 35(1)
Article 22(2)	Article 35(2)
Article 23(1), introductory wording	Article 36(1), introductory wording Article
Article 23(1), points (a) and (b)	36(1), point (a)
Article 23(1), points (c), (d) and (e)	Article 36(1), points (b), (c) and (d)
Article 23(2)	Article 36(2)
Article 23(3)	Article 36(3)
Article 23(4), points (a), (b) and (c)	Article 36(4), points (a), (b) and (c)
Article 24	Article 37
Article 25(1) to (5)	Article 38(1) to (4) and (6)
-	Article 38(5)
Article 26	Article 39
Article 27(1) to (5)	Article 40(1), (2), (3), (5) and (6)
-	Article 40(4)

Article 28(1), (2) and (3)	Article 41(1), (4) and (5)
-	Article 41(2) and (3)
Article 29(1), introductory wording and points (a) to (e)	Article 42 (1), points (a), (b), (d), (e) and (g)
-	Article 42(1), points (c), (f) and (h)
Article 29(2)	Article 42(2)
Article 29(3)	Article 42(3)
Article 29(4) to (15)	-
-	Article 43(1)
-	Article 43(2)
-	Article 43(3)
-	Article 43(4)
-	Article 43(5)
-	Article 43(6)
-	Article 43(7)
-	Article 43(8)
Article 30	Article 44
Article 31	Article 45
Article 32	Article 46
Article 33(1)	-
Article 33(2)	Article 47(1)
Article 33(3)	Article 47(2)
Article 33(4)	Article 47(3)
Article 33(5)	Article 47(4)
Article 34(1)	Article 48(1)
Article 34(2), introductory wording and points (a) to (k)	Article 48(2), introductory wording and points (a) to (d), (f) to (k) and (n)
-	Article 48(2), points (e), (l) and (m)
Article 34(3)	Article 48(3)
Article 34(4)	Article 48(4)
-	Article 48(5)
Article 35(1)	Article 49(1)
Article 35(2)	Article 49(2)

-	Article 49(3)
-	Article 49(4)
Article 35(3)	Article 49(5)
-	Article 50
Article 36(1)	Article 51(1)
Article 36(2), introductory wording and points (a) to (h)	Article 51(2), introductory wording and points (a) to (h)
-	Article 51(2), point (i)
Article 36 (3)	Article 51(3)
Article 37	Article 52
Article 38	-
-	Article 53
-	Article 54
Article 39	Article 55
-	Article 56
Article 40(1)	Article 57(1)
Article 40(2)	Article 57(2)
Article 40(3)	Article 57(3)
-	Article 57(4)
Article 40(4)	Article 57(5)
Article 40(5)	Article 57(6)
Article 40(6)	Article 57(7)
Article 40(7)	Article 57(8)
Article 40(8)	Article 57(9)
-	Article 58
Article 41	Article 59
Article 42	Article 60
Article 43	Article 61
Article 44	-
Article 45	Article 62
Article 46	Article 63
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Annex II
Annex III

Annex I
Annex II

**Brussels, 18 April 2024 (OR.
en)**

**Interinstitutional File:
2016/0222(COD)**

8577/24

**CODEC 1011
ASILE 48
PE 79**

INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down standards for the reception of applicants for international protection (recast)
- Outcome of the European Parliament's first reading (Brussels, 10 to 11 April 2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 146) to the abovementioned proposal for a Directive, for which Sophia IN'T VELD (RE, NL) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. In addition, the ID political group tabled 14 amendments (amendments number 147 to 161).

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 10 April 2024, the plenary adopted the compromise amendment (amendment number 146) to the abovementioned proposal for a Directive. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)0186

Standards for the reception of applicants for international protection (recast)

European Parliament legislative resolution of 10 April 2024 on the proposal for a directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) (COM(2016)0465 – C8-0323/2016 – 2016/0222(COD))

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0465),
- having regard to Article 294(2) and Article 78(2)(f) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0323/2016),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Italian Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Economic and Social Committee of 14 December 2016¹,
- having regard to the opinion of the Committee of the Regions of 8 February 2017²,
- having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts³,
- having regard to the letter of 12 January 2017 sent by the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 110(3) of its Rules of Procedure,

¹ OJ C 75, 10.3.2017, p. 97.

² OJ C 207, 30.6.2017, p. 67.

³ OJ C 77, 28.3.2002, p. 1.

- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 8 February 2024 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 110 and 59 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Employment and Social Affairs,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0186/2017),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Directive (EU) 2024/... of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 75, 10.3.2017, p. 97.

² OJ C 207, 30.6.2017, p. 67.

³ Position of the European Parliament of 10 April 2024

Whereas:

- (1) A number of amendments are to be made to Directive 2013/33/EU of the European Parliament and of the Council⁴. In the interests of clarity, that Directive should be recast.
- (2) A common policy on asylum ■ based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (the ‘Geneva Convention’), is a constituent part of the Union’s objective of establishing progressively an area of freedom, security and justice open to ***third-country nationals and stateless persons who*** seek protection in the Union, thus affirming the principle of *non-refoulement*. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility ■ .

⁴ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96).

- (3) The Common European Asylum System (CEAS) **establishes** a system for determining the Member State responsible for examining an application for international protection, common standards for asylum procedures, reception conditions and procedures and rights of beneficiaries of international protection. Notwithstanding the ■ progress that has been made in the development of the CEAS, there are still notable differences between the Member States with regard to procedures used, reception conditions provided to applicants, recognition rates and type of protection granted to beneficiaries of international protection. **Those differences** are important drivers of secondary movement and undermine the objective of ensuring that all applicants are equally treated wherever they apply for international protection in the Union.

- (4) In its communication of 6 April 2016 'Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe', the Commission underlined the need for strengthening and harmonising further the CEAS. It also set out **priority areas** where the CEAS should be **structurally** improved, namely **the establishment of** a sustainable and fair system for determining the Member State responsible for examining an application for international protection, **the reinforcement of** the Eurodac system, **the achievement of** greater convergence in the Union asylum system, **the prevention of** secondary movements within the Union and **an enhanced** mandate for the European Union Agency for Asylum established by Regulation (EU) 2021/2303 of the European Parliament and of the Council⁵ (the 'Asylum Agency'). That communication replies to calls by the European Council on 18-19 February 2016 and on 17-18 March 2016 to make progress in reforming the Union's existing framework so as to ensure a humane, **fair** and efficient asylum policy. **That communication** also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its resolution of 12 April 2016 on the **situation in the Mediterranean and the need for a holistic EU approach to migration**.

⁵ Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1).

- (5) Reception conditions continue to vary considerably between Member States ***in particular with regard to*** the reception standards provided to applicants. ■ More ***harmonised*** reception standards set out at an ***adequate*** level across all Member States will contribute to ***more equal*** treatment and the fairer distribution of applicants across the ***Union***.
- (6) The resources of the Asylum, Migration and Integration Fund, established by Regulation (EU) 2021/1147 of the European Parliament and of the Council⁶, and of the Asylum Agency should be mobilised in order to provide adequate support to Member States in implementing the reception standards set out in this Directive, including to Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.

⁶ Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021, p. 1).

- (7) In order to ensure the equal treatment of applicants throughout the Union, this Directive should apply during all stages and types of procedures for international protection, in all locations and facilities housing applicants and for as long as they are allowed to remain on the territory of the Member States as applicants. It is necessary to clarify that material reception conditions should be available to applicants from the moment they express their wish to apply for international protection to officials of the **competent** authorities **■** in **accordance** with Regulation (EU) .../... of the European Parliament and of the Council⁷⁺.
- (8) *A daily expenses allowance should be provided to applicants in all cases as part of the material reception conditions in order for applicants to enjoy a minimum degree of autonomy in their daily life. It should be possible to provide the daily expenses allowance as a monetary amount, in vouchers, in kind, such as in products, or as a combination thereof provided that such an allowance includes a monetary amount.*

⁷ Regulation (EU) .../... of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, ..., ELI:...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A (COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

- (9) Where an applicant is present in a Member State other than the one in which he or she is required to be present in accordance with Regulation (EU) .../... of the European Parliament and of the Council⁸⁺, the applicant should not be entitled to ***material reception conditions, access to the labour market, language courses or vocational training in accordance with this Directive from the moment the applicant has been notified of a decision to transfer him or her to the Member State responsible. Unless a separate decision has been issued to this effect, the transfer decision should state that the relevant reception conditions have been withdrawn. In all circumstances, Member States should ensure access to health care and a standard of living for applicants which is in accordance with Union law, including the Charter of Fundamental Rights of the European Union (the ‘Charter’), and other international obligations.***

⁸ Regulation (EU) .../... of the European Parliament and of the Council on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, ..., ELI:...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

- (10) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party.
- (11) Standard conditions for the reception of applicants sufficient to ensure them ***an adequate*** standard of living and comparable living conditions in all Member States should be laid down. The harmonisation of reception conditions for applicants should help to limit the secondary movements of applicants influenced by the variety of conditions for their reception.

- (12) In order to ensure that applicants are aware of ***their rights and obligations***, Member States should ***provide them in writing, or, where necessary, orally, or, where appropriate, in a visual form, with information*** relating to ***the*** reception conditions ***set out in this Directive***. ***Such information should be provided as soon as possible, and in good time, and should include the reception conditions to which applicants, including applicants with special reception needs, are entitled, employment rights and obligations, the circumstances under which the granting of material reception conditions may be restricted to a geographical area or limited to a specific place and the consequences of not complying with such restrictions or limitations and of absconding, as well as the situations in which it is possible to order detention, possibilities for appeal and review and possibilities for the provision of legal assistance and representation. Member States should, in particular, inform applicants of the reception conditions to which they are not entitled in a Member State other than the one in which they are required to be present. A Member State should no longer be obliged to provide that information where it is no longer necessary to effectively enable the applicant to benefit from the rights, and comply with the obligations, provided for in this Directive, or where the applicant is not available to the competent authorities or has absconded from the territory of that Member State. The Asylum Agency should develop a template with standard information relating to reception conditions to be provided by Member States to applicants as soon as possible and no later than three days from the making of the application or within the timeframe for its registration.***

- (13) Harmonised **Union** rules on the documents to be issued to applicants ***should contribute to making*** it more difficult for applicants to move in an unauthorised manner within the Union. ■ Member States should ***be able to*** provide applicants with a travel document ***only*** where ***duly justified*** serious humanitarian ***reasons*** or other imperative reasons arise. The validity of travel documents should be limited to the purpose and duration necessary for the reason for which they are issued. Serious humanitarian reasons could be considered to arise where, for example, an applicant needs to travel to another State for ***necessary*** medical treatment ***which is not available within the Member State*** in which the applicant is required to be present, to visit relatives in particular cases such as where close relatives are seriously ill or ■ to attend ■ funerals of close relatives. Other imperative reasons could include situations ***such as attending marriages of close relatives, or travelling as part of a study curriculum or*** with foster families. ***The issuance and use of such a travel document does not affect the Member States' responsibilities under Regulation (EU) .../...⁺. Member States retain the right to assess applicants' rights to stay on their territory.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (14) Applicants do not have the right to choose the Member State of application. An applicant is to apply for international protection in **accordance with** Regulation (EU) .../...⁺.
- (15) Applicants are required to **remain available to the competent authorities of** the Member States. **Appropriate measures should be taken to prevent applicants from absconding.** **Where the** applicant has absconded ■ and **has** travelled to another Member State **without permission**, it is vital, for the purpose of ensuring a well-functioning CEAS, that the applicant is swiftly **transferred** to the Member State where he or she is required to be present. Until such a transfer has taken place, there is a risk that the applicant may abscond and his or her whereabouts should therefore be closely monitored.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (16) The fact that an applicant has previously absconded to another Member State is an important factor when assessing the risk that the applicant may abscond. ***Member States should take appropriate measures to prevent the applicant from absconding again*** and to ensure that he or she remains available to the competent authorities, once the applicant has been ***transferred*** to the Member State where he or she is required to be present. His or her whereabouts should therefore continue to be closely monitored.

- (17) *Member States should be able to freely organise their reception systems. As part of that organisation, Member States should be able to allocate applicants to accommodation within their territory in order to manage their asylum and reception systems. Member States should also be able to put in place mechanisms for assessing and addressing the needs of their reception systems, including mechanisms for verifying applicants' actual presence in the accommodation. Such mechanisms should not restrict the applicants' freedom of movement within the territory of the Member State concerned. Member States should not be required to take an administrative decision for that purpose.*
- (18) *Where applicants are able to move freely only within a geographical area of the Member States' territory, Member States should guarantee the applicants' effective access to their rights under this Directive and to the procedural guarantees in the procedure for international protection within that geographical area. The possibility to temporarily leave that geographical area should be assessed individually, objectively and impartially. Where applicants have not been granted effective access to those rights and procedural guarantees in that geographical area, the allocation to that area should no longer apply.*

- (19) For reasons of public order or in order to effectively prevent the applicant from absconding, Member States ***should be able to decide that*** the applicant ***is allowed to reside only*** in a specific place, such as an accommodation centre, a private house, flat, hotel or other premises adapted for housing applicants. ***Such decision should not result in the detention of the applicant. Such decision could*** be necessary in cases where the applicant has not complied with the obligations to remain in the Member State where he or she is required to be present, or in cases where the applicant has been ***transferred*** to the Member State where he or she is required to be present after having absconded to another Member State. ***Where*** the applicant is entitled to material reception conditions, such material reception conditions should be provided subject to the applicant residing in that specific place.
- (20) Where there is a risk that an applicant may abscond ***or where it is necessary to ensure that restrictions to an applicant's freedom of movement are respected***, Member States ***could*** require applicants to report to the competent authorities ***at a specified time or at reasonable intervals, without disproportionately affecting the rights of applicants under this Directive.***

- (21) All decisions restricting an applicant's freedom of movement ***should take into account relevant aspects of*** the individual ■ situation of the applicant, ***including the*** special reception needs of that applicant, and the ***principles of necessity and*** proportionality. Applicants ***should*** be duly informed of such decisions, of the procedures for challenging them and of the consequences of non-compliance.
- (22) ***All provisions under this Directive relating to detention, residence and reporting obligations as well as the reduction and withdrawal of rights or benefits should be applied with due regard to the principle of proportionality, ensuring at all times effective access to the applicable reception conditions in accordance with this Directive, in particular with regard to health care, education, family unity and access to the labour market. Particular attention is to be paid to the possible cumulative effect of measures.***

- (23) In view of the serious consequences for applicants who have absconded or who are considered to be at risk of absconding, the meaning of absconding should be defined in view of encompassing both a deliberate action ■ and the factual circumstance, ***which is not beyond the applicant's control***, of not remaining available to the competent administrative or judicial authorities, ***such as*** by leaving the territory of the Member State where the applicant is required to be present. ***Member States should be able to consider that an applicant has absconded even if the applicant has previously not been considered to be at risk of absconding.***
- (24) ***Where Member States define in national law the objective criteria that are relevant for determining a risk of absconding under this Directive, they could consider factors such as: the applicant's cooperation with competent authorities or compliance with procedural requirements; the applicant's links in the Member State; and whether the application for international protection has been rejected as inadmissible or manifestly unfounded. In the overall assessment of the individual situation of an applicant, a combination of several factors frequently provides the basis for concluding that there is a risk of absconding.***

- (25) *An applicant should be considered as no longer being available to the competent authorities where that applicant fails to respond to requests relating to the procedures under Regulation (EU) .../...⁺ or the procedure under Regulation (EU) .../...⁺⁺ unless the applicant provides adequate reasons why he or she was unable to respond to those requests, for example medical or other unexpected reasons which are beyond his or her control.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (26) The detention of applicants should be applied in accordance with the underlying principle that persons should not be held in detention for the sole reason that they are seeking international protection, particularly in accordance with the international legal obligations of the Member States and in particular with Article 31 of the Geneva Convention. It should be possible for applicants to be detained only under the very clearly defined exceptional circumstances laid down in this Directive and subject to the principles of necessity and proportionality with regard to both the manner and the purpose of such detention. The detention of applicants pursuant to this Directive should only be ordered in writing by judicial or administrative authorities stating the reasons on which it is based, including in cases where the person is already detained when making the application for international protection. Where an applicant is held in detention, that applicant should have effective access to the necessary procedural guarantees, such as judicial review ***and the right to free legal assistance and representation, where applicable under this Directive.***

- (27) *An acceptable maximum timeframe for the judicial review of detention should be determined in light of the circumstances of each case, taking into account the complexity of the procedure, as well as the diligence shown by the competent authorities, any delay caused by the detained person and any other factors causing delay for which the Member State cannot be held responsible.*
- (28) Where an applicant has been ***allowed to reside only in*** a specific place ■ but has not complied with that obligation, there ***still*** needs to be a ■ risk that the applicant ***could*** abscond in order for the applicant to be detained. In all circumstances, special care ***should*** be taken to ensure that the length of the detention is proportionate and that it ends as soon as the obligation put on the applicant has been fulfilled or there are no longer reasons for believing that the applicant will not fulfil that obligation. The applicant ***should*** also have been made aware of the obligation in question and of the consequences of non-compliance.

- (29) With regard to administrative procedures relating to the grounds for detention, the notion of ‘due diligence’ at least requires that Member States take concrete and meaningful steps to ensure that the time needed to verify the grounds for detention is as short as possible, and that there is a real prospect that such verification can be carried out successfully in the shortest possible time. Detention **should** not exceed the time reasonably needed to complete the relevant administrative procedures.
- (30) The grounds for detention set out in this Directive are without prejudice to other grounds for detention, including detention grounds within the framework of criminal proceedings, which are applicable under national law and unrelated to the third-country national’s or stateless person’s application for international protection.
- (31) Applicants who are in detention should be treated with full respect for human dignity and their reception should be specifically designed to meet their needs in that situation. In particular, Member States should ensure that Article 24 of the Charter and Article 37 of the 1989 United Nations Convention on the Rights of the Child are applied.

- (32) There may be cases where it is not possible in practice to immediately ensure certain reception guarantees in detention, for example due to the geographical location or the specific structure of the detention facility. Any derogation from those guarantees should be temporary and should only be applied under the circumstances set out in this Directive. Derogations should only be applied in exceptional circumstances and should be duly justified, taking into consideration the circumstances of each case, including the level of severity of the derogation applied, its duration and its impact on the applicant concerned.
- (33) In order to better ensure the physical and psychological integrity of applicants, detention should be a measure of last resort and it should only be possible to detain applicants after all non-custodial alternative measures to detention have been duly examined. ***The obligation to examine those alternative measures should not prejudge the use of detention where such alternative measures, including residence and reporting obligations, cannot be applied effectively. Any decision imposing detention should state the reasons why other less coercive alternative measures could not be applied effectively.*** Any alternative measure to detention ***should*** respect the fundamental human rights of applicants.

- (34) In order to ensure compliance with the procedural guarantee of the opportunity to contact organisations or groups of persons that provide legal assistance, information should be provided on such organisations and groups of persons.
- (35) When deciding on housing arrangements, Member States should take into account the best interests of the child, as well as the particular circumstances of any applicant who is dependent on family members or close relatives such as unmarried minor siblings already present in the Member State.
- (36) ***Member States should be able to resort to temporary housing solutions of a lower standard where the normally available housing capacities are temporarily exhausted. Member States should also be able to resort to those temporary housing solutions where, due to a disproportionate number of persons to be accommodated or a man-made or natural disaster, the normally available housing capacities are temporarily unavailable. Member States should consider providing such temporary housing solutions in fixed building structures to the extent possible.***

- (37) The reception of persons with special reception needs should be a primary concern for national authorities in order to ensure that such reception is specifically designed to meet their special reception needs. ***Member States should also ensure, as far as possible, the prevention of assault and violence, including violence committed with a sexual, gender, racist or religious motive, when providing housing. Violence with a religious motive also entails violence directed towards people who do not have a religious belief or who have renounced their religious faith.***
- (38) In applying this Directive, Member States should seek to ensure full respect for the principles of the best interests of the child and of family unity, in accordance with the Charter, the 1989 United Nations Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms ***and, where applicable, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.***

- (39) Reception conditions need to be adapted to the specific situation of minors ***and their special reception needs***, whether unaccompanied or within families, with due regard to their security, ***including security against sexual and gender-based violence***, physical and emotional care and need to be provided in a manner that encourages their general development.

- (40) *Minors should, as a rule, not be detained. They should be placed in suitable accommodation with special provisions for minors, including where appropriate in non-custodial, community-based placements. Given the negative impact of detention on minors, such detention should only be used, in accordance with Union law, exclusively in exceptional circumstances, where strictly necessary, as a measure of last resort and for the shortest possible period of time, after it has been established that other less coercive alternative measures cannot be applied effectively, and after detention is assessed to be in their best interests. Minors should never be detained in prison or another facility used for law enforcement purposes. Minors should not be separated from their parents or care-givers, and the principle of family unity should generally lead to the use of adequate alternatives to detention for families with minors, in accommodation suitable for them. Moreover, everything possible should be done to ensure that a viable range of adequate alternatives to the detention of minors is available and accessible. In this context, Member States are to take into account the New York Declaration for Refugees and Migrants of 19 September 2016, relevant authoritative guidance by the United Nations' treaty body on the 1989 United Nations Convention on the Rights of the Child and relevant case-law.*

- (41) *In its communication of 12 April 2017 ‘The protection of children in migration’, the Commission underlined that Member States must put in place appropriate safeguards to protect all children in migration present on their territory, including by the adoption of measures to ensure that children are provided with safe and appropriate accommodation as well as necessary support services to secure the child's best interests and wellbeing, in accordance with the Member States’ obligations arising from national, Union and international law.*

- (42) *Representatives play a crucial role in guaranteeing access to the rights under this Directive and in safeguarding the best interests of all unaccompanied children. The early appointment of representatives is essential for tackling situations of migrant children going missing in the Union. Member States should ensure that representatives are appointed as early as possible, in line with the 1989 United Nations Convention on the Rights of the Child, to ensure that unaccompanied children benefit fully from their rights as applicants for international protection granted under this Directive.*
- (43) *The main role of a representative should be to guarantee the best interests of the child and represent, assist or act on behalf of an unaccompanied minor. The representative should be able to explain information provided to the unaccompanied minor, liaise with the competent authorities to ensure immediate access for the unaccompanied minor to material reception conditions and health care and represent, assist or, in accordance with national law, act on behalf of an unaccompanied minor to ensure that that minor can benefit from the rights and comply with the obligations provided for in this Directive. Representatives should be appointed in accordance with the procedure defined by national law.*

- (44) *Member States should appoint a representative where an application is made by a person who claims to be a minor and who is unaccompanied. A representative should also be appointed where the competent authorities have objective grounds to believe that the person is a minor in view of relevant visible signs, statements or behaviour. Where a Member State has assessed that a person who claims to be a minor is without any doubt above the age of 18 years, it need not appoint a representative.*
- (45) *Until the representative has been appointed, Member States should designate a person suitable to provisionally act as a representative under this Directive. That person might be for example an employee of an accommodation centre, of a child-care facility, of social services, or of another relevant organisation designated to carry out the tasks of a representative. Persons whose interests conflict or could potentially conflict with those of the unaccompanied minor should not be designated as a person suitable to provisionally act as a representative. It is also important that such person be immediately informed when an application for international protection is made by an unaccompanied minor.*

- (46) Member States should ensure that applicants receive the necessary health care, ***whether provided by generalists or, where needed, specialist practitioners. The necessary health care should be of adequate quality and*** include, at least, emergency care and essential treatment of illnesses, including of serious mental disorders, ***and sexual and reproductive health care which is essential in addressing a serious physical condition***. To respond to public health concerns with regard to disease prevention and safeguard the health of applicants, applicants' access to health care should also include preventive medical treatment, such as vaccinations. Member States should ***also*** be able to require medical screening for applicants on public health grounds. The results of medical screening should not influence the assessment of applications for international protection, which should always be carried out objectively, impartially and on an individual basis in accordance with Regulation (EU) .../...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (47) It should be possible for an applicant's entitlement to material reception conditions under this Directive to be curtailed in certain circumstances, such as where an applicant has absconded to another Member State from the Member State where that applicant is required to be present. However, Member States should in all circumstances ensure access to health care and a **■** standard of living for applicants **which is** in **accordance** with **Union law, including** the Charter, and **other international obligations, including** the 1989 United Nations Convention on the Rights of the Child. **Member States should** in particular **provide** for the applicant's subsistence and basic needs, both in terms of physical safety and dignity and in terms of interpersonal relationships, with due regard to the inherent vulnerabilities of the person as applicant for international protection and that of his or her family or **care-giver**. Due regard **should** also be given to applicants with special reception needs. **■** The specific needs of **■** applicants who have experienced **sexual or** gender-based **violence, in particular women**, should also be taken into account, including via ensuring access, at different stages of the procedure for international protection, to health care, legal assistance, and appropriate trauma counselling and psycho-social care.

- (48) *The specific needs of minors, in particular with regard to respect for the child's right to education and access to health care should be taken into account. Minor children of applicants and applicants who are minors should be granted the same access to education as Member States' own nationals and under similar conditions. That access need not be provided during school holidays. Their education should, as a rule, be integrated with that of Member States' own nationals and be of the same quality. Member States should also ensure the continuity of the education of minors for so long as an expulsion measure against them or their parents is not enforced.*
- (49) *In view of the Charter, the European Convention for the Protection of Human Rights and Fundamental Freedoms and relevant case-law, and in order not to discriminate against family members on the basis of the place where the family was formed, the notion of family should also include families formed outside the country of origin of applicants, but before their arrival on the territory of the Member States.*

(50) In order to promote the self-sufficiency of applicants and to limit wide discrepancies between Member States, it is essential to provide clear rules on the applicants' access to the labour market and to ensure that such access is effective, by not imposing conditions that effectively hinder an applicant from seeking employment, ***not unduly restricting access to specific sectors of the labour market or working time of an applicant and not setting unreasonable administrative formalities. Applicants who have effective access to the labour market and have been allowed to reside only in a specific place should be able to seek employment within a reasonable distance from that place. Where required by an applicant's employment contract, Member States should be able to grant the applicant permission to leave their territory to carry out specific work tasks in another Member State in accordance with national law.*** Labour market tests used to give priority to nationals or to other Union citizens or to third-country nationals and stateless persons lawfully residing in the Member State concerned should not hinder effective access for applicants to the labour market and should be implemented without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the applicable Acts of Accession.

(51) ***Access to the labour market should entitle the applicant to seek employment. It is possible for Member States to also allow applicants to be self-employed.***

(52) **■** In order to increase integration prospects and self-sufficiency of applicants, earlier access to the labour market is encouraged where the application is likely to be well-founded, including when its examination has been prioritised in accordance with Regulation (EU) .../...⁺. Member States should therefore consider reducing that time period as much as possible **■** in cases where the application is likely to be well-founded. ***Access to the labour market should not be granted or, if already granted, should be withdrawn where an applicant's application for international protection is likely to be unfounded and for which an accelerated examination procedure is therefore applied, including where relevant information or documents relating to the identity of the applicant is withheld by that applicant.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (53) Once applicants are granted access to the labour market, they should be entitled to a common set of rights based on equal treatment with the nationals of the Member State concerned. Working conditions should cover at least pay and dismissal, health and safety requirements at the workplace, working **hours**, leave **and holidays**, taking into account collective agreements in force. **Such** applicants should also enjoy equal treatment as regards freedom of association and affiliation, education and vocational training, recognition of professional qualifications and, **with regard to employed applicants**, social security. ***It is possible for Member States to grant equal treatment also to applicants who are self-employed. Member States are to use their best endeavours to prevent the exploitation of applicants or any form of discrimination against them in the workplace by means of undeclared work practices and other forms of severe labour exploitation.***

- (54) ***Once applicants are granted access to the labour market, a*** Member State should recognise professional qualifications acquired by an applicant in another Member State in the same way as those of citizens of the Union and should take into account qualifications acquired in a third country in accordance with Directive 2005/36/EC of the European Parliament and of the Council⁹. **■ Measures *should* also ■** be considered with a view to effectively addressing the practical difficulties encountered by applicants concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualifications, in particular ***where applicants cannot provide*** documentary evidence and ***cannot*** meet the costs related to the recognition procedures.
- (55) The branches of social security referred to in ***Article 3(1) and (2) of*** Regulation (EC) No 883/2004 of the European Parliament and of the Council¹⁰ apply regarding applicants in employment.

⁹ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

¹⁰ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

- (56) Due to the possibly temporary nature of the stay of applicants and without prejudice to Regulation (EU) No 1231/2010 of the European Parliament and of the Council¹¹, Member States should be able to exclude **social security** benefits ***which are not dependent on periods of employment or on contributions*** from equal treatment between applicants and their own nationals. **Member States** should **also** be able to **restrict** the application of equal treatment in relation to education and vocational training ***and the recognition of formal qualifications***. ***In addition, Member States should also be able to limit the*** right to freedom of association and affiliation by excluding applicants from taking part in the management of certain bodies and from holding a public office.
- (57) Union law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at Union level, it is for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States are to comply with Union law.

¹¹ Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).

- (58) *Language skills are important to ensure that applicants have an adequate standard of living. Those skills also constitute a deterrent against secondary movements. Member States should therefore ensure or facilitate access to language courses to the extent they consider such courses appropriate in order to help enhance an applicant's ability to act autonomously and interact with competent authorities.*
- (59) *The right to equal treatment should not give rise to rights in relation to situations which fall outside the scope of Union law.*

- (60) To ensure that the material reception conditions provided to applicants comply with the principles set out in this Directive, it is necessary to further clarify the nature of those conditions, ***which should include*** not only housing, food and clothing but also ***personal hygiene products***. It is also necessary that Member States determine the level of material reception conditions provided in the form of financial allowances or vouchers on the basis of relevant references ***applied*** to ensure adequate ***standard*** of living for nationals, such as, ***depending on the national context***, minimum income benefits, minimum wages, minimum pensions, unemployment benefits and social assistance benefits. It is not, however, necessary for the amount granted ***to applicants*** to be the same as for nationals. Member States ***should be able to*** grant less favourable treatment to applicants than to nationals as specified in this Directive. ***Member States should also have the possibility to adapt the level of financial allowances or the vouchers granted to applicants in regions referred to in Article 349 of the Treaty on the Functioning of the European Union (TFEU), provided that the standard of reception conditions provided for in this Directive is ensured.***

- (61) In order to restrict the possibility of abuse of the reception system, Member States should be able to provide material reception conditions only to the extent applicants do not have sufficient means to provide for themselves. ***Member States should be able to require applicants with sufficient means to cover, contribute to or refund the cost of the material reception conditions or health care received, including through financial guarantees. It is possible for applicants to be considered as having sufficient means to provide for themselves if, for example, they have been working for a reasonable period of time.***
- When assessing the resources of an applicant and requiring an applicant to cover or contribute to the cost of the material reception conditions or health care received, Member States should respect the principle of proportionality and take into account the individual circumstances of the applicant and the need to respect his or her dignity or personal integrity, including the applicant's special reception needs. Applicants should not be required to cover or contribute to the costs of their necessary health care ***where the health care is provided free of charge to Member States' nationals. Applicants should not be required to take out loans to pay for reception conditions.***

(62) *The possible abuse of the reception system should also be prevented by specifying the circumstances in which material reception conditions can be reduced or withdrawn. Member States should be able to reduce or withdraw the daily expenses allowance or, where duly justified and proportionate, reduce other material reception conditions where certain conditions are met, including where the applicant does not cooperate with the competent authorities or does not comply with the procedural requirements established by them. Non-cooperation or non-compliance can be considered to occur in particular where: applicants fail to attend fixed appointments or comply with reporting obligations for reasons which are not beyond their control; applicants fail to lodge their applications for international protection in accordance with the requirements of Regulation (EU) .../...⁺ despite having had an effective opportunity to do so; or applicants fail to respect requests to provide information in order to facilitate their identification, including by refusing to provide biometric data or necessary contact information or by refusing to co- operate during medical screening procedures. Member States should also, where duly justified and proportionate, be able to withdraw other material reception conditions where the applicant has seriously or repeatedly breached the rules of the accommodation centre or has behaved in a violent or threatening manner in the accommodation centre. Member States should always ensure a standard of living for all applicants in accordance with Union law, including the Charter, and international obligations, taking into account applicants with special reception needs and the best interests of the child.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (63) *It is possible for Member States to apply other penalties, including disciplinary measures in accordance with the rules of the accommodation centre, in as far as those penalties are not contrary to this Directive.*
- (64) Member States should establish appropriate guidance, monitoring and control of their reception conditions. In order to ensure comparable **reception** conditions, Member States should be required to take into account, in their monitoring and control systems, **available non-binding** operational standards, **indicators, guidelines and best practices regarding** reception conditions ■ developed by ■ the Asylum Agency ■ . **Provided that the material reception conditions provide for an adequate standard of living, conditions in premises for housing applicants could be considered appropriate despite differing from one facility to another.** The efficiency of national reception systems and cooperation among Member States in the field of reception of applicants should be secured, including through the Asylum **Agency** network of reception authorities ■ .

- (65) Appropriate coordination should be encouraged between the competent authorities as regards the reception of applicants, and harmonious relationships between local communities and accommodation centres should therefore be promoted.
- (66) Experience shows that contingency planning is needed to ensure ***to the extent possible*** adequate reception of applicants in cases where Member States are confronted with a disproportionate number of applicants for international protection. Whether the measures envisaged in Member States' contingency plans are adequate should be monitored and assessed. ***Contingency planning is an integral part of the Member States' planning processes and cannot be seen as an exceptional activity.***

- (67) *The Asylum Agency should assist Member States to draw up and review their contingency plans, with the agreement of the Member State concerned. A contingency plan should consist of a comprehensive set of measures that are necessary in order to deal with a possible disproportionate pressure on the Members States' reception systems, and to enhance the efficiency of those systems. For the purpose of this Directive, a situation of disproportionate pressure may be characterised by a sudden and massive influx of third-country nationals and stateless persons to the extent that that influx places an extreme burden even on a well-prepared reception system. To achieve greater preparedness for such a situation, the template developed by the Asylum Agency should include guidance on how to identify possible scenarios, the impact of those scenarios, actions to be taken and resources available to respond to those scenarios.*
- (68) Member States should have the power to introduce or maintain more favourable provisions for third-country nationals and stateless persons who ask for international protection from a Member State.

- (69) Member States are ■ invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of protection other than those provided for under Regulation (EU) .../...of the European Parliament and of the Council¹²⁺.
- (70) The implementation of this Directive should be evaluated at regular intervals. Member States should provide the Commission with the necessary information in order for the Commission to be able to fulfil its reporting obligations under this Directive.
- (71) Since the objective of this Directive, namely to establish **harmonised** standards for the reception conditions of applicants in Member States, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

¹² Regulation (EU) .../... of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC ■, and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, ..., ELI:...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

- (72) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹³, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (73) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, **Ireland is** not taking part in the adoption of this Directive and **is** not bound by it or subject to its application.
- (74) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the **TEU** and to the **TFEU**, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

¹³ OJ C 369, 17.12.2011, p. 14.

- (75) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 21, 24 and 47 of the Charter and has to be implemented accordingly.
- (76) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (77) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for the transposition into national law of the Directive set out in Annex I,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT-MATTER, DEFINITIONS AND SCOPE

Article 1 Subject-matter

This Directive lays down standards for the reception of applicants for international protection in Member States.

Article 2 Definitions

For the purposes of this Directive, the following definitions apply:

- (1) ‘application for international protection’ *or* ‘**application**’ means ***a request for protection from a Member State made by a third-country national or a stateless person who can be understood to be seeking refugee status or subsidiary protection status;***

- (2) ‘applicant’ means ***a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;***
- (3) ‘family *members*’ means, ***in so far as the family already existed before the applicant arrived on the territory of the Member States, the following members of the applicant's family who are present on the territory of the same Member State during the procedure for international protection:***
- (a) ***the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples as equivalent to married couples;***
- (b) ***the minor or adult dependent children of the couples, as referred to in point (a) or of the applicant, provided that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as provided for under national law; a minor is considered unmarried provided that, on the basis of an individual assessment, the minor's marriage would not be in accordance with the relevant national law had it been contracted in the Member State concerned, having regard, in particular, to the legal age of marriage;***

(c) where the applicant is minor and unmarried, the father, mother or another adult responsible for that applicant, including an adult sibling, whether by the law or practice of the Member State concerned; a minor is considered unmarried provided that, on the basis of an individual assessment, the minor's marriage would not be in accordance with the relevant national law had it been contracted in the Member State concerned, having regard, in particular, to the legal age of marriage;

(4) 'minor' means *a third-country national or stateless person below the age of 18 years;*

(5) 'unaccompanied minor' means *a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by the law or practice of the Member State concerned, and for as long as that minor is not effectively taken into the care of such an adult, including a minor who is left unaccompanied after he or she has entered the territory of the Member States;*

- (6) ‘reception conditions’ means the full set of measures that Member States grant to applicants in accordance with this Directive;
- (7) ‘material reception conditions’ means the reception conditions that include housing, food, clothing and ***personal hygiene products*** provided in kind, as financial allowances, in vouchers, or as a combination thereof, ***as well as*** a daily expenses allowance;
- (8) ***‘daily expenses allowance’ means an allowance provided to applicants periodically to enable them to enjoy a minimum degree of autonomy in their daily life, provided as a monetary amount, in vouchers, in kind, or as a combination thereof provided that such an allowance includes a monetary amount;***

(9) ‘detention’ means the confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

(10) ‘accommodation centre’ means any place used for the collective housing of applicants;

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(11) ‘risk of absconding’ means the existence of *specific* reasons *and circumstances* in an individual case, which are based on objective criteria defined by national law, to believe that an applicant might abscond;

- (12) ‘***absconding***’ means the action by which an applicant ■ does not remain available to the competent ***administrative or judicial*** authorities, ***such as by leaving the territory of the Member State without permission from the competent authorities, for reasons which are not beyond the applicant’s control;***
- (13) ‘***representative***’ means a natural person or an organisation, including a public authority, appointed by the competent authorities, with the necessary skills and expertise, including with regard to the treatment and specific needs of minors, to represent, assist and act on behalf of an unaccompanied minor, as applicable, in order to safeguard the best interests and general well-being of that unaccompanied minor and so that the unaccompanied minor can benefit from the rights and comply with the obligations provided for in this Directive;
- (14) ‘applicant with special reception needs’ means an applicant who is in need of special ***conditions or*** guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive ■ .

Article 3 Scope

1. This Directive applies to all third-country nationals and stateless persons who make an application for international protection on the territory, including at the external border, in the territorial sea or in the transit zones of the Member States, provided that those third-country nationals and stateless persons are allowed to remain on the territory as applicants. This Directive also applies to family members of an applicant provided that those family members are covered by such an application for international protection in accordance with national law.
 2. This Directive does not apply to requests for diplomatic or territorial asylum submitted to representations of Member States.
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3. Member States may decide to apply this Directive in connection with procedures for deciding on applications for forms of protection other than those under Regulation (EU) .../...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions as regards reception conditions for applicants ***as well as for family members*** and close relatives ***of applicants*** who are present in the same Member State ***provided that such family members and close relatives are dependent on the applicants***, or for humanitarian reasons, insofar as those provisions are compatible with this Directive.

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5 Information

1. Member States shall **provide** applicants **with information relating to the reception conditions set out in this Directive, including information specific to their reception systems**, as soon as possible and **in good time** in order **to effectively enable applicants to benefit from the rights** and **comply with the** obligations provided for in this Directive.

Member States shall in particular provide applicants with standard information relating to *reception conditions set out in* *this Directive, using a template to be developed by the European Union Agency for Asylum (the ‘Asylum Agency’). That information shall be provided as soon as possible and no later than three days from the making of the application or within the timeframe for its registration in accordance with* Regulation

.../...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and ***representation, including information on organisations or groups of persons that provide that legal assistance and representation free of charge, and*** organisations that might be able to help or inform them concerning the available reception conditions, including health care.

2. Member States shall ensure that the information referred to in paragraph 1 is ***provided*** in writing ***in a concise, transparent, intelligible and easily accessible form***, using ***clear and plain language*** and in a language that the applicant understands or is reasonably supposed to understand. Where necessary, that information shall also be provided orally ***or, where appropriate, in a visual form such as by using videos or pictograms***, and ***shall be*** adapted to the ***applicant's*** needs.

In the case of an unaccompanied minor, Member States shall provide the information referred to in paragraph 1 in an age-appropriate manner and in a manner that ensures that the unaccompanied minor understands it, by using information materials specifically adapted to minors where appropriate. That information shall be provided in the presence of the representative of the unaccompanied minor or of the person suitable to provisionally act as a representative until the representative is appointed.

In exceptional cases, a Member State may provide the information referred to in paragraph 1 to the applicant by means of an oral translation, or where appropriate in a visual form such as videos or pictograms, where:

- (a) it is not able to provide that information in writing within the time limit set out in that paragraph because the language that an applicant understands or is reasonably supposed to understand is a rare language; and*
- (b) that applicant subsequently confirms that he or she understands the information provided.*

In cases referred to in the third subparagraph, the Member State shall as soon as possible obtain a translation of the information referred to in paragraph 1 in writing and provide it to the applicant, except where it is clear that such a provision is no longer needed.

Article 6

Documentation

1. *Member States shall ensure that the applicant is provided with the document referred to in Article 29(1) of Regulation (EU) .../...⁺.*
2. *Member States shall not require applicants, for the sole reason that they are applicants for international protection or on the sole basis of their nationality, to provide unnecessary or a disproportionate amount of documentation or impose other administrative requirements on applicants before granting them the rights to which they are entitled under this Directive.*
3. Member States **may** provide applicants with a travel document only when serious humanitarian **reasons** or other imperative reasons arise that require their presence in another State. The validity of the travel document shall be limited to the purpose and duration necessary for the reason for which it is issued.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

Article 7 Organisation of reception systems

- 1. Member States may freely organise their reception systems in accordance with this Directive. Applicants may move freely within the territory of the Member State concerned.**
- 2. Provided that all applicants benefit effectively from their rights under this Directive, Member States may allocate applicants to accommodation within their territory in order to manage their asylum and reception systems.**
- 3. When allocating or re-allocating applicants to accommodation, Member States shall take into account objective factors, including family unity as referred to in Article 14 and applicants' special reception needs.**

4. *The provision of material reception conditions by Member States may be made subject to the actual residence by the applicants in the accommodation to which they have been allocated in accordance with paragraph 2.*
5. *Member States may also put in place mechanisms to assess and address the needs of their reception systems, including mechanisms for the purpose of verifying that the applicants are actually residing in the accommodation allocated to them in accordance with paragraph 2.*
6. Member States shall require applicants to provide the competent authorities with their **current** address, a telephone number where they may be reached and, **if available, an electronic mail address. Member States shall also require applicants to** notify such competent authorities of any change of **address**, telephone number **or electronic mail address** as soon as possible.
7. *Member States shall not be required to take administrative decisions for the purpose of this Article.*

Article 8

Allocation of applicants to a geographical area

- 1. Member States may allocate applicants to a geographical area within their territory in which they are able to move freely, for the duration of the procedure for international protection in accordance with Regulation (EU) .../...⁺.***
- 2. Member States may allocate applicants to a geographical area within their territory pursuant to paragraph 1 only for the purpose of ensuring the swift, efficient and effective processing of their applications in accordance with Regulation (EU) .../...⁺ or the geographic distribution of those applicants, taking into account the capacities of the geographical areas concerned.***

Member States shall inform applicants in accordance with Article 5 of their allocation to a geographical area, including of the geographical boundaries of that area.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

3. *Member States shall ensure that applicants have effective access to their rights under this Directive and to the procedural guarantees in the procedure for international protection within the geographical area to which those applicants are allocated. That geographical area shall be sufficiently large, allow access to necessary public infrastructure and shall not affect the applicants' unalienable sphere of private life.*
4. *Member States shall not be required to take administrative decisions for the purpose of paragraph 1.*
5. *Member States shall, upon the request of the applicant, grant that applicant permission to temporarily leave the geographical area for duly justified urgent and serious family reasons, or necessary medical treatment which is not available within the geographical area.*

Where an applicant leaves the geographical area without permission, a Member State shall not apply penalties other than those provided for under this Directive.

The applicant shall not be required to request permission to attend appointments with authorities and courts if the attendance of that applicant is necessary. The applicant shall notify the competent authorities in advance of such appointments.

- 6. Where it has been established, including as a consequence of an applicant's request for appeal or review in accordance with Article 29, that an applicant has not been granted effective access to his or her rights under this Directive or to the procedural guarantees in the procedure for international protection within the geographical area, the allocation of that applicant to that geographical area shall no longer apply.*
- 7. Before applying this Article, the Member State concerned shall lay down the conditions for the application of this Article in national law and inform the Commission and the Asylum Agency in accordance with Chapter 5 of Regulation (EU) 2021/2303.*

Article 9

Restrictions of freedom of movement

1. ***Where necessary***, Member States ***may*** decide ***that*** an applicant ***is allowed to reside only*** in a specific place ***that is adapted*** for ***housing applicants, for*** reasons of public order ***or*** to effectively prevent the applicant from absconding, ***where there is a risk of absconding***, in particular ***with regard to***:

- (a) ***applicants who*** are required to be present in another Member State in accordance with ***Article 17(4) of Regulation (EU) .../...⁺***; or
- (b) ***applicants who*** have been ***transferred*** to the Member State where they are required to be present in accordance with ***Article 17(4) of Regulation (EU) .../...⁺*** after having absconded to another Member State.

Where an applicant has been allowed to reside only in a specific place in accordance with this paragraph, the provision of material reception conditions shall be subject to the actual residence by the applicant in that specific place.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

2. █ Member States *may*, where necessary, require **applicants** to report to the competent authorities █ at a specified time *or at reasonable intervals, without disproportionately affecting the rights of the applicants under this Directive.*

Such reporting requirements may be imposed to ensure that the decisions referred to in paragraph 1 are respected or to effectively prevent applicants from absconding.

3. *Upon the request of the applicant,* Member States *may grant that applicant permission to reside temporarily outside the specific place designated in accordance with paragraph 1.* Decisions regarding such permission shall be taken objectively and impartially on the merits of the individual case and reasons shall be given if such permission is not granted.

The applicant shall not be required to request permission to attend appointments with authorities and courts if the attendance of that applicant is necessary. *The applicant shall notify the competent authorities of such appointments.*

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4. ***The*** decisions taken in accordance with ***paragraphs 1 and 2*** shall be ***proportionate and take into account relevant aspects of the individual situation of the applicant, including the*** special reception needs of that applicant **■** .
5. Member States shall state reasons in fact and, where relevant, in law for any decision taken in accordance with ***paragraphs 1 and 2 of this Article in that decision***. Applicants shall be **■** informed in writing **■** of such a decision, ***as well as*** of the procedures for challenging the decision in accordance with Article 29 and of the consequences of non-compliance with the obligations imposed by the decision. ***Member States shall provide applicants with such information in a language that they understand or are reasonably supposed to understand and in a concise, transparent, intelligible and easily accessible form, using clear and plain language. Member States shall ensure that the decisions taken in accordance with this Article are reviewed by a judicial authority ex officio where those decisions have been applied for more than two months, or that those decisions may be appealed at the request of the applicant concerned in accordance with Article 29.***

Article 10 Detention

1. Member States shall not hold a person in detention for the sole reason that that person is an applicant ***or on the basis of the nationality of that applicant. The detention shall be based only on one or more of the grounds for detention set out in paragraph 4. The detention shall not be punitive in nature.***
2. Where necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.
3. ***When detaining an applicant, Member States shall take into account any visible signs, statements or behaviour indicating that the applicant has special reception needs. Where the assessment provided for in Article 25 has not yet been completed, it shall be completed without undue delay and its results shall be taken into account when deciding whether to continue detention or whether the detention conditions need to be adjusted.***

4. An applicant may be detained only ***on the basis of one or more of the following grounds***:
- (a) to determine or verify his or her identity or nationality;
 - (b) to determine the elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular where there is a risk of absconding;
 - (c) to ensure compliance with legal obligations imposed on the applicant through an individual decision in accordance with ***Article 9(1)*** in cases where the applicant has not complied with such obligations and there ***continues to be*** a risk of absconding;
 - (d) to decide, in the context of a border procedure in accordance with Article 43 of Regulation (EU) .../...⁺, on the applicant's right to enter the territory;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (e) when the applicant is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council¹⁴ in order to prepare the return, or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that the applicant already had the opportunity to access the ■ procedure for international protection, that there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
- (f) when protection of national security or public order so requires;
- (g) in accordance with Article 44 of Regulation (EU) .../...⁺.

The grounds for detention referred to in the first subparagraph shall be laid down in national law.

5. Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.

¹⁴ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

Article 11

Guarantees for detained applicants

1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 10(4) are applicable.

Administrative procedures relevant to the grounds for detention set out in Article 10(4) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.

2. The detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based ***as well as why less coercive alternative measures cannot be applied effectively.***

3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted ex officio **or** upon the request of the applicant, **or both**. When conducted ex officio, such review shall be **concluded** as speedily as possible, **taking into account the circumstances of each case, and no later than 15 days or, in exceptional situations, no later than 21 days** from the beginning of detention. When conducted upon the request of the applicant, such review shall be **concluded** as speedily as possible, **taking into account the circumstances of each case, and no later than 15 days or, in exceptional situations, no later than 21 days** from the launch of the relevant proceedings. ■

Where the judicial review referred to in the first subparagraph has, where conducted ex officio, not been concluded within 21 days from the beginning of detention or, where conducted upon the request of the applicant, not been concluded within 21 days from the launch of the relevant proceedings, the applicant concerned shall be released immediately.

4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.
5. Detention shall be reviewed by a judicial authority at reasonable intervals of time, ex officio or upon the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

Without prejudice to the first subparagraph, the detention of unaccompanied minors shall be reviewed ex officio at regular intervals.

Where, as a result of the judicial review, detention is held to be unlawful, the applicant concerned shall be released immediately.

6. In the event of ■ judicial review of the detention order provided for in *paragraphs 3 and 5 of this Article*, Member States shall ensure that applicants have access to free legal assistance and representation *under the conditions set out in Article 29.* ■

■

Article 12 Conditions of detention

1. Detention of applicants shall take place, as a rule, in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners and the detention conditions provided for in this Directive shall apply.

As far as possible, detained applicants shall be kept separately from other third-country nationals who have not lodged an application for international protection.

Where applicants cannot be detained separately from other third-country nationals, the Member State concerned shall ensure that the detention conditions provided for in this Directive are applied.

2. Detained applicants shall have access to open-air spaces.

3. Member States shall ensure that persons representing the United Nations High Commissioner for Refugees (UNHCR) have the possibility to communicate with and visit applicants in conditions that respect privacy. That possibility shall also apply to an organisation which is working on the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State.
4. Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy. Limits to access to the detention facility may be imposed only where, by virtue of national law, they are objectively necessary for security, public order or the administrative management of the detention facility, provided that access is not thereby severely restricted or rendered impossible.

5. Member States shall ensure that applicants in detention are systematically provided with information which explains the rules applied in the facility and sets out the rights and obligations of those applicants in a language which they understand or are reasonably supposed to understand. In the event that an applicant is detained at a border post or in a transit zone, Member States may derogate from that obligation in duly justified cases and for a reasonable period of time which shall be as short as possible. This derogation shall not apply in cases referred to in Article 43 of Regulation (EU) .../...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

Article 13

Detention of applicants with special reception needs

1. The health, including the mental health, of applicants in detention who have special reception needs shall be of primary concern to national authorities.

Where the detention of applicants with special reception needs would put their physical and mental health at serious risk, those applicants shall not be detained.

Where applicants with special reception needs are detained, Member States shall ensure regular monitoring ***of, and the provision of timely*** and adequate support ***to, those applicants***, taking into account their particular situation, including their ***physical and mental*** health.

2. ***Minors shall, as a rule, not be detained. They shall be placed in suitable accommodation in accordance with Articles 26 and 27.***

Adequate alternatives to detention shall, as a rule, be used for families with minors in accordance with the principle of family unity. Such families shall be placed in accommodation suitable for them.

In exceptional circumstances, as a measure of last resort and after it has been established that other less coercive alternative measures cannot be applied effectively, ***and after detention is assessed to be in their best interests in accordance with Article 26, minors may be detained:***

- (a) in the case of accompanied minors, where the minor's parent or primary care-giver is detained; or***
- (b) in the case of unaccompanied minors, where detention safeguards the minor.***

Such detention shall be for the shortest ***possible*** period of time. Minors ***shall never be detained in prison or another facility used for law enforcement purposes.*** All efforts shall be made to release minors from detention and place them in accommodation suitable for minors.

The best interests of the child, as referred to in Article 26, shall be a primary consideration for Member States.

Where minors are detained, ***they shall have the*** right to education ***in accordance with Article 16, unless the provision of education is of limited value to them due to the very short period of their detention. Those minors shall also*** have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.

3. ***Where unaccompanied minors are detained, they*** shall be accommodated in ***facilities adapted to the housing of unaccompanied minors. Such facilities shall be*** provided with staff ***qualified to safeguard*** the rights ***of unaccompanied minors*** and ***attend to*** their ***needs***.

Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults.

4. Detained families shall be provided with separate accommodation that guarantees adequate privacy.

Detained families with minors shall be accommodated in detention facilities adapted to the needs of minors.

5. **■** Member States shall ensure that ***detained male and female applicants are*** accommodated separately, unless ***those detained applicants*** are family members and all individuals concerned consent to be accommodated together.

Exceptions to the first subparagraph may also apply to the use of common spaces designed for recreational or social activities, including the provision of meals.

6. Where the applicant is detained at a border post or in a transit zone, with the exception of the cases referred to in Article 43 of Regulation (EU) .../...⁺, Member States may derogate from paragraph 3, **first** subparagraph, paragraph 4 and paragraph 5, first subparagraph, in duly justified cases and for a reasonable period of time, that shall be as short as possible.

Member States shall have sufficient facilities and resources in place to ensure that they apply the derogations provided for in this paragraph only in exceptional situations.

When applying those derogations, Member States shall inform the Commission and the Asylum Agency thereof.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

Article 14 Families

Where a Member State provides applicants with housing, it shall take appropriate measures to maintain, as far as possible, family unity present within its territory. Such measures shall be implemented with the applicant's consent.

Article 15 Medical screening

Member States may require medical screening for applicants on public health grounds.

Article 16

Schooling and education of minors

1. Member States shall grant to minor children of applicants and to applicants who are minors **the same** access to education **as their own nationals and** under similar conditions for so long as an expulsion measure against such minors or their parents is not actually enforced.

The specific needs of minors, in particular with regard to respect for the child's right to education and access to health care shall be taken into account. The education of minors shall, as a rule, be integrated with that of Member States' own nationals and be of the same quality. Member States shall make every effort to ensure the continuity of education of minors for so long as an expulsion measure against them or their parents is not actually enforced.

Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.

2. Member States shall grant minors referred to in paragraph 1 access to **■** an education system ***as soon as possible and shall*** not postpone the granting of that access for more than ***two*** months from the date on which the application for international protection was lodged ***taking into account school holidays. Member States shall provide education within the general education system. However, as a temporary measure and for a maximum period of one month, Member States may provide that education outside the general education system.***

Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the **general** education system ■ .

3. Where access to the **general** education system ■ is not possible due to the specific situation of the minor, the Member State concerned shall offer other education arrangements in accordance with its national law and practice.

Article 17 Employment

1. Member States shall ensure that applicants have access to the labour market no later than **six** months from the date on which the application for international protection was **registered provided that** an administrative decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.

Where the Member State has accelerated the examination on the merits of an application for international protection in accordance with Article 42(1), points (a) to (f) of Regulation (EU) .../...⁺, access to the labour market shall not be granted **or, if already granted, shall be withdrawn.**

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

2. Member States shall ensure that applicants who have **■** access to the labour market in accordance with paragraph 1 have effective access to the labour market ***in accordance with national law.***

For reasons of labour market policies, ***including regarding youth unemployment levels,*** Member States may verify whether a ***specific*** vacancy ***that an employer is considering to fill with an applicant who has access to the labour market in accordance with paragraph 1*** could be filled by nationals of the Member State concerned, by other Union citizens, or by third-country nationals and stateless persons lawfully residing in that Member State. ***If the Member State finds that the specific vacancy could be filled by such persons, the Member State or the employer may refuse the employment of the applicant for that vacancy.***

3. Member States shall ***ensure that*** applicants ***who have access to the labour market in accordance*** with ***paragraph 1 enjoy*** equal treatment with their own nationals as regards:
- (a) ***terms of employment, the minimum working age and working conditions, including*** pay and dismissal, ***working hours***, leave and holidays, as well as health and safety requirements at the workplace;
 - (b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

- (c) education and vocational training, *including training courses for improving skills, practical workplace experience and employment guidance services*;
- (d) recognition of diplomas, certificates and other evidence of formal qualifications in the context of existing procedures for recognition of foreign qualifications ■ ; *and*
- (e) *access to appropriate schemes for the assessment, validation and recognition of applicants' prior learning outcomes and experience.*

4. Member States may restrict equal treatment of applicants *who have access to the labour market in accordance with paragraph 1*:
- (a) as regards paragraph 3, point (b) ■ , by excluding them from taking part in the management of bodies governed by public law and from holding an office governed by public law;
 - (b) as regards paragraph 3, point (c), *by excluding*:
 - (i) *grants and loans related to* education and vocational training *and the payment of fees in accordance with national law with regard to access to university or post-secondary education; and*
 - (ii) *education and vocational training which is not provided within the framework of an existing employment contract, including where provided for employment promotion purposes;*

(c) as regards paragraph 3, point (d) or (e), **■** by *not granting equal treatment for at least three months from the date on which the application for international protection was registered.*

5. *Member States shall ensure that applicants who are employed or, based on previous employment, are entitled to social security benefits, enjoy equal treatment with their own nationals as regards branches of social security referred to in Article 3(1) and (2) of Regulation (EC) No 883/2004.*
6. *Without prejudice to Regulation (EU) No 1231/2010, Member States may restrict equal treatment under paragraph 5 of this Article by excluding social security benefits which are not dependent on periods of employment or on contributions.*

7. The right to equal treatment pursuant to this Article shall not give rise to a right to reside in cases where a decision taken in accordance with Regulation (EU) .../...⁺ has terminated the applicant's right to remain.
8. ***For the purposes of paragraph 3, point (d), of this Article, and without prejudice to Articles 2(2) and 3(3) of Directive 2005/36/EC, Member States shall facilitate, to the extent possible, full access to existing procedures for the recognition of foreign qualifications for applicants who cannot provide documentary evidence of their qualifications.***
9. Access to the labour market shall not be withdrawn during an appeal procedure where ***the applicant has the right to remain on the territory of the Member State during that procedure and until*** a negative decision on the appeal is notified.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

Article 18

Language courses and vocational training

Member States shall ensure that applicants have access to language courses, civic education courses or vocational training courses that those Member States consider appropriate in order to help enhance applicants' ability to act autonomously, to interact with competent authorities or to find employment, or, depending on the national system, Member States shall facilitate access to such courses, irrespective of whether applicants have access to the labour market in accordance with Article 17.

Where applicants have sufficient means, Member States may require them to cover or contribute to the cost of courses referred to in the first paragraph.

Article 19

General rules on material reception conditions **and health** care

1. Member States shall ensure that material reception conditions are available to applicants from the moment they make their application for international protection in accordance with Article 26 of Regulation (EU) .../...⁺.
2. Member States shall ensure that material reception conditions **and health care received in accordance with Article 22** provide an adequate standard of living for applicants, which guarantees their subsistence, protects their physical and mental health **and respects their rights under the Charter**.

Member States shall ensure that the adequate standard of living referred to in the first subparagraph is met in the specific situation of applicants with special reception needs as well as in relation to the situation of persons who are in detention.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

3. Member States may make the provision of all or some of the material reception conditions subject to the condition that applicants do not have sufficient means to have ***an adequate*** standard of living ***as referred to in paragraph 2.***
4. ***Without prejudice to paragraph 2,*** Member States may require applicants to cover or contribute to the cost of the material reception conditions where those ■ applicants have sufficient ***means to do so***, for example if they have been working for a reasonable period of time.

Without prejudice to paragraph 2, Member States may also require applicants to cover or contribute to the cost of the health care received, where those applicants have sufficient means to do so, except where the health care is provided free of charge to the nationals of those Member States.

5. If it transpires that an applicant had sufficient means to cover the cost of the material reception conditions *or health care received in accordance with paragraph 4* at the time *the applicant was provided with an adequate standard of living*, Member States may require the applicant to refund the cost of those material reception conditions or health care.
6. When assessing the resources of an applicant, when requiring an applicant to cover or contribute to the cost of the material reception conditions *and of the health care* received or when requiring an applicant to refund costs in accordance with paragraph 5, Member States shall *respect* the principle of proportionality. Member States shall also take into account the individual circumstances of the applicant and the need to respect his or her dignity or personal integrity, including the applicant's special reception needs. ■

7. Where Member States provide material reception conditions in the form of financial allowances or vouchers **■**, the amount thereof shall be determined on the basis of the levels established by the Member State concerned either by law or **■** practice to ensure an adequate standard of living for nationals. ***Member States shall inform the Commission and the Asylum Agency of those levels.*** Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is ***fully or*** partially provided in kind or where those levels applied for nationals aim to ensure a standard of living higher than that required for applicants by this Directive. **■**

Article 20

Arrangements for material reception conditions

1. Where **Member States** provide housing in kind, they shall ***ensure that such housing provides the applicant with*** an adequate standard of living ***in accordance with Article 19(2) as well as with necessary support to account for applicants' special reception needs. The housing provided shall*** take one or a combination of the following forms:
 - (a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones;
 - (b) accommodation centres;
 - (c) private houses, flats, hotels or other premises adapted for housing applicants.

2. Without prejudice to any specific conditions of detention as provided for in Articles 12 and 13, in relation to housing referred to in paragraph 1(a), (b) and (c) of this Article, Member States shall ensure that:
- (a) applicants are guaranteed protection of their family life;
 - (b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non-governmental organisations and bodies;
 - (c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access to the housing provided in order to assist the applicants; limits on such access may be imposed only on grounds relating to the security of the premises and of the applicants.

3. Member States shall take into consideration gender and age-specific concerns and the situation of applicants with special reception needs when providing material reception conditions.
4. ***When providing housing in accordance with paragraph 1***, Member States shall take appropriate measures to ***ensure, as far as possible, the prevention of*** assault and violence, including ***violence committed with a sexual, gender, racist or religious motive***.

5. ***Where female applicants are placed in accommodation centres, Member States shall provide separate sanitary facilities and a safe place in those centres for them and their minor children.***
6. Member States shall, as far as possible, ensure that dependent adult applicants with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them whether by the law or practice of the Member State concerned.
7. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers or counsellors of the transfer and of their new address.

8. Persons providing material reception conditions, including those ***providing health care and education*** in accommodation centres, shall be adequately trained and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.
9. Member States may involve applicants in managing the material resources and non-material aspects of life in the accommodation centre through an advisory board or council representing residents. ***Without prejudice to Article 17, Member States may also allow applicants to perform voluntary work outside the accommodation centre subject to conditions of national law.***

10. In duly justified cases and for a reasonable period of time which shall be as short as possible, Member States may exceptionally **provide** material reception conditions ■ that are **different** from those provided for in this Article where:
- (a) an assessment of special reception needs of the applicant is required, in accordance with Article 25;
 - (b) housing capacities normally available are temporarily exhausted **or, due to a disproportionate number of persons to be accommodated or a man-made or natural disaster, housing capacities normally available are temporarily unavailable.**

Different **material reception** conditions referred to in the first subparagraph of this paragraph shall in any event ensure access to health care in accordance with Article 22 and a **■** standard of living for all applicants ***in accordance with Union law, including the Charter, and international obligations.***

Where a Member State provides ***different material reception conditions in accordance with the first subparagraph of this paragraph***, that Member State shall inform ***without delay*** the Commission and the Asylum Agency ***in accordance with Article 32(2) on the activation of its contingency plan.*** That Member State shall also inform the Commission and the Asylum Agency as soon as the reasons for providing those different material conditions have ceased to exist.

Article 21

Reception conditions in a Member State other than the one in which the applicant is required to be present

From the moment applicants have been notified of a decision to transfer them to the Member State responsible in accordance with Regulation (EU) .../...⁺, they shall not be entitled to the reception conditions set out in Articles 17 to 20 of this Directive in any Member State other than the one in which they are required to be present in accordance with Regulation (EU) .../ ...⁺. This shall be without prejudice to the need to ensure a standard of living in accordance with Union law, including the Charter, and international obligations.

Unless a separate decision is issued, the transfer decision shall state that the relevant reception conditions have been withdrawn in accordance with this Article. The applicant shall be informed of his or her rights and obligations with regard to that decision.

■

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

Article 22 Health care

1. Member States shall ensure that applicants, irrespective of where they are required to be present in accordance with Regulation (EU) .../...⁺, receive the necessary health care, ***whether provided by generalists or, where needed, specialist practitioners. Such necessary health care shall be of adequate quality and*** include, at least, emergency care, essential treatment of illnesses, including of serious mental disorders, ***and sexual and reproductive health care which is essential in addressing a serious physical condition.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

2. *Member States shall ensure that the minor children of applicants and applicants who are minors receive the same type of health care as provided to their own nationals who are minors. Member States shall ensure that specific treatment provided in accordance with this Article which started before the minor reached the age of majority and is considered to be necessary, is received without interruption or delay after the minor reaches the age of majority.*
3. *Where needed for medical reasons,* Member States shall provide necessary medical or other assistance, *such as necessary rehabilitation and assistive medical devices,* to applicants who have special reception needs, including appropriate mental health care ■ .

CHAPTER III

■ REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS

Article 23

■ Reduction or withdrawal of material reception conditions

1. With regard to applicants who are required to be present on their territory in accordance with **Article 17(4) of** Regulation (EU) .../...⁺, Member States may ***reduce or withdraw the daily expenses allowance***.

If duly justified and proportionate, Member States may also:

- (a) ***reduce*** other ■ material reception conditions ■ , or
- (b) ***where paragraph 2, point (e), applies, withdraw other material reception conditions.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

2. Member States may take a decision in accordance with paragraph 1 where an applicant:
- (a) abandons *a geographical area within which the applicant is able to move freely in accordance with Article 8 or the residence in a specific place designated* by the competent authority *in accordance with Article 9* without permission, or absconds;
 - (b) does not *cooperate with the competent authorities, or does not comply with the procedural requirements established by them;*

- (c) has lodged a subsequent application as defined in Article 3, point (19), of Regulation (EU) .../...⁺;
- (d) has concealed financial resources, and has therefore unduly benefitted from material reception conditions;
- (e) has seriously ***or repeatedly*** breached the rules of the accommodation centre or ***has*** behaved in a ***violent or threatening manner in the accommodation centre***; or
- (f) fails to ***participate in*** compulsory integration measures, ***where provided or facilitated by the*** Member State, ***unless there are circumstances beyond the applicant's control***.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

3. Where *a Member State has taken a decision in a situation referred to in paragraph 2, points (a), (b) or (f), and the circumstances on which that decision was based cease to exist, it shall consider whether some or all of the material reception conditions withdrawn or reduced may be reinstated. Where not all material reception conditions are reinstated*, the Member State shall take a duly justified decision *and notify it to the applicant*.

4. Decisions ***in accordance with paragraph 1 of this Article shall be taken*** objectively and impartially on the merits of the individual case and shall state the reasons on which they are based. Decisions shall be based on the particular situation of the applicant, especially with regard to applicants with special reception needs, taking into account the principle of proportionality. Member States shall ensure access to health care ***in accordance with Article 22 and shall ensure a standard of living in accordance with Union law, including the Charter, and international obligations*** for all applicants.
5. Member States shall ensure that material reception conditions are not  withdrawn or reduced before a decision is taken in a situation referred to in paragraph 2.

CHAPTER IV
PROVISIONS FOR APPLICANTS WITH SPECIAL RECEPTION NEEDS

Article 24

Applicants with special reception needs

Member States shall take into account the specific situation of applicants with special reception needs.

Member States shall take into consideration the fact that certain applicants such as those falling within any of the following categories, are more likely to have special reception needs:

- (a) minors;*
- (b) unaccompanied minors;*
- (c) persons with disabilities;*
- (d) elderly persons;*
- (e) pregnant women;*
- (f) lesbian, gay, bisexual, trans and intersex persons;*
- (g) single parents with minor children;*
- (h) victims of trafficking in human beings;*
- (i) persons with serious illnesses;*
- (j) persons with mental disorders including post-traumatic stress disorder;*
- (k) persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, for example victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive.*

Article 25

Assessment of special reception needs

1. In order to effectively implement Article 24, Member States shall, as early as possible after an application for international protection is made, ***individually assess whether the applicant has special reception needs, using oral translation where necessary.***

The assessment referred to in the first subparagraph of this paragraph may be integrated into existing national procedures or into the assessment referred to in Article 20 of Regulation (EU) .../...⁺.

The assessment referred to in the first subparagraph of this paragraph shall be initiated by identifying special reception needs based on visible signs or on the applicants' statements or behaviour or, where applicable, statements of the parents or the representative of the applicant.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

The assessment referred to in the first subparagraph of this paragraph shall be completed within 30 days from the making of the application for international protection or, where it is integrated into the assessment referred to in Article 20 of Regulation (EU)

.../...⁺, within the timeframe set out in that Regulation, and the special reception needs identified on the basis of such assessment shall be addressed.

*Where special reception needs become apparent at a later stage in the ▯ procedure **for international protection**, Member States shall assess and address those needs.*

Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the ▯ procedure **for international protection** and shall provide for appropriate monitoring of their situation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

2. For the purposes of paragraph 1, Member States shall ensure that the staff **assessing special reception needs** in **accordance with this** Article **■** :
- (a) are trained and **continue** to be trained to detect **■** signs that an applicant has special **reception** needs and to address those needs when identified;
 - (b) include information concerning the **nature of the** applicant's special reception needs in the applicant's file **held by the competent authorities**, together with **a description of the visible signs or the applicants' statements or behaviour relevant for the assessment of the applicants' special reception needs** as well as **the measures** that **have been identified to address those needs and the authorities responsible for addressing those needs; and**

- (c) ***subject to prior consent in accordance with national law***, refer applicants to ***the appropriate medical practitioner or*** psychologist for further assessment of their psychological and physical state where there are indications that ***their*** mental ***or*** physical ***health*** could affect ***their*** reception needs; ***where necessary, oral translation shall be provided by professionals trained in translation to ensure that the applicant is able to communicate with medical staff; where the lack of such trained professionals would risk delaying the treatment, oral translation may be provided by other adult individuals, subject to the applicant's consent.***

The competent authorities shall take into account the result of ***the*** assessment ***referred to in point (c)*** when deciding on the type of special reception support which may be provided to the applicant.

3. The assessment referred to in the first subparagraph of paragraph 1 need not take the form of an administrative procedure.
4. Only applicants with special reception needs may benefit from the specific support provided in accordance with this Directive.
5. The assessment provided for in the first subparagraph of paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to Regulation (EU) .../...⁺.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

Article 26 Minors

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that ***possibly affect*** minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.
2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:
 - (a) family reunification possibilities;
 - (b) the minor's well-being and social development, taking into particular consideration the minor's background ***and the need for stability and continuity in care***;

- (c) safety and security considerations, in particular where there is a risk of the minor being a victim of ***any form of violence or exploitation, including trafficking in human beings***;
 - (d) the views of the minor in accordance with his or her age and maturity.
3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age, ***and to open-air activities*** within the premises and accommodation centres referred to in Article 20(1)(a) and (b), ***as well as to school materials where needed***.
4. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided where needed.

5. Member States shall ensure that minor children of applicants or applicants who are minors are accommodated with their parents or with the adult responsible for them and their unmarried minor siblings whether by the law or practice of the Member State concerned, provided it is in the best interests of the minors concerned.
6. Persons working with minors, including ***representatives and persons suitable to provisionally act as representatives as referred to in Article 27***, shall not have a ■ record of child-related crimes or offences, ***or of crimes or offences that lead to serious doubts about their ability to assume a role of responsibility with regard to minors***, shall receive ***initial and*** continuous ■ appropriate training concerning the rights and needs of minors, including ***those relating to*** any applicable child safeguarding standards, and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.

Article 27 Unaccompanied minors

1. Where an application is made by a person who claims to be a minor, or in relation to whom there are objective grounds to believe that that person is a minor, Member States shall designate:

(a) a person suitable to provisionally act as a representative under this Directive until a representative has been appointed;

(b) a representative as soon as possible and no later than 15 working days from the date on which the application is made.

The representative and the person suitable to provisionally act as a representative shall meet with the unaccompanied minor and take into account the minor's own views about his or her needs.

Where a Member State has assessed that an applicant who claims to be a minor is without any doubt above the age of 18 years, that Member State need not appoint a representative or designate a person suitable to provisionally act as a representative in accordance with the first or second subparagraph, respectively.

Member States shall include in their contingency plans referred to in Article 32 measures to be taken to ensure the appointment of representatives and the designation of persons suitable to provisionally act as representatives in accordance with this Article in cases where they are confronted with a disproportionate number of applications made by unaccompanied minors.

Where the implementation of measures referred to in the fourth subparagraph is insufficient in order to respond to a disproportionate number of applications made by unaccompanied minors, or in other exceptional situations, the appointment of representatives may be delayed for ten working days and the number of unaccompanied minors per representative may be increased, up to a maximum of 50 unaccompanied minors.

When applying the fifth subparagraph, Member States shall inform the Commission and the Asylum Agency accordingly.

The duties of the representative and the person suitable to provisionally act as a representative shall cease where the competent authorities, following the age assessment referred to in Article 25(1) of Regulation (EU) .../...⁺, do not assume that the applicant is a minor or consider that the applicant is not a minor, or where the applicant is no longer an unaccompanied minor.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

2. Member States shall ensure that the person suitable to provisionally act as a representative is immediately informed when an application for international protection is made by an unaccompanied minor of any relevant facts pertaining to that minor.

Persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be designated as a person suitable to provisionally act as a representative. The unaccompanied minor shall be immediately informed that a person suitable to provisionally act as a representative has been designated.

3. Where an organisation is *appointed* as *a representative or designated as a person suitable to provisionally act as a representative*, it shall appoint a *natural* person ■ to carry out the *tasks of the representative* in respect of the unaccompanied minor in accordance with this Directive.

4. The representative provided for in paragraph 1 of this Article may be the same person as provided for in Article 23(2) of Regulation (EU) .../...⁺.

5. The competent authorities shall immediately inform:

- (a) the unaccompanied minor that a representative has been appointed for him or her and how to lodge a complaint against that representative in confidence and safety in an age-appropriate manner and in a manner that ensures that the minor understands that information;*
- (b) the authority responsible for providing reception conditions that a representative has been appointed for the unaccompanied minor; and*
- (c) the representative of relevant facts pertaining to the unaccompanied minor.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

6. *The representative or the person suitable to provisionally act as a representative* shall be changed *only where* necessary, *in particular when the competent authorities consider that that representative or person has not performed his or her tasks adequately.*

Organisations *or natural persons* whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be *appointed as a representative or designated as a person suitable to provisionally act as a representative.*

7. Member States shall *place a natural person appointed as a representative or designated as a person suitable to provisionally act as a representative* in charge of a *proportionate and limited* number of unaccompanied minors *and, under normal circumstances, of no more than 30 unaccompanied minors* at the same time, in order *to ensure that that person is able* to perform tasks effectively.

8. Member States shall ***ensure that there are administrative or judicial authorities or other entities*** responsible ***to supervise the proper performance of tasks by the representatives and persons suitable to provisionally act as representatives, including by reviewing the criminal records of those appointed representatives and designated persons at regular intervals in order to identify potential incompatibilities with their role.*** Those ***administrative or judicial authorities or other*** entities shall review complaints lodged by unaccompanied ***minors*** against ***their appointed representatives or designated persons.***
9. Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory of a Member State in which the application for international protection was made or is being examined until the moment when they are obliged to leave that Member State, be placed:
- (a) with adult relatives;
 - (b) with a foster family;

- (c) in accommodation centres with special provisions for minors;
- (d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult applicants, if it is in their best interests, as provided for in Article 26(2).

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

10. Member States shall start tracing the members of the unaccompanied minor's family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting the best interests of that unaccompanied minor. Where there is a possible threat to the life or integrity of the minor or the minor's close relatives, in particular if those relatives have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.

Article 28

Victims of torture and violence

1. Member States shall ensure that persons who have been subjected to ***trafficking in human beings***, torture, rape or other serious acts of ***psychological, physical or sexual*** violence, ***including violence committed with a sexual, gender, racist or religious motive, are provided with*** necessary ***medical and psychological*** treatment ***and care, including rehabilitation services and counselling where necessary***, for the damage caused by such acts. Those persons shall be provided, where needed, with an oral translation in accordance with Article 25(2), point (c).

Access to such treatment and care shall be provided as early as possible after those persons' needs have been identified.

2. Those working with *the persons referred to in paragraph 1, including health professionals*, shall be appropriately trained and continue to receive appropriate training concerning *those persons' needs and appropriate treatments, including necessary rehabilitation services*. *They* shall *also* be bound by the confidentiality rules provided for in national law *and applicable professional ethics codes* in relation to any information they obtain in the course of their work.

CHAPTER V REMEDIES

Article 29 Appeals

1. Member States shall ensure that decisions relating to the granting, ■ withdrawal or reduction of benefits under this Directive, decisions ***refusing to grant the permission referred to in Article 8(5), first subparagraph***, or decisions taken under Article 9 which affect applicants individually may be the subject of an appeal within the procedures laid down in national law. In at least the last instance, the possibility of an appeal or a review, in fact and in law, ***shall be granted*** before a judicial authority ■ .

2. In the cases of an appeal or a review before a judicial authority referred to in paragraph 1 of this Article, ***and in the case of judicial review referred to in Article 11(3) and (5)***, Member States shall ensure that free legal assistance and representation is made available ***as*** necessary to ensure effective access to justice. ***Such legal assistance and representation shall consist of the preparation of the appeal or request for review, including***, at least, the preparation of the required procedural documents, and participation in the hearing before the judicial authorities on behalf of the applicant.

Free legal assistance and representation shall be provided by ***legal advisers or other*** suitably qualified persons, as admitted or permitted under national law, whose interests do not conflict or could not potentially conflict with those of the applicant.

3. ***Member States may decide not to grant*** free legal assistance ***and*** representation ***where:***

(a) ***the applicant has*** sufficient resources; ***or***

(b) ***the appeal or review is considered to have no tangible prospect of success, in particular if the appeal or review is at a second level of appeal or higher.***

Where a decision not to grant free legal assistance and representation ***is taken by an*** authority ***which is not a court or tribunal on the ground that the appeal or review is considered to have*** no tangible prospect of success, ***the applicant shall have the right to an effective remedy before a court or tribunal against that decision, and for that purpose shall be entitled to request free legal assistance and representation.***

Member States may also provide that free legal assistance and representation are granted only by legal advisers or other counsellors who are specifically designated under national law to assist and represent applicants or by non-governmental organisations accredited under national law to provide free legal assistance and representation.

4. Member States may also:

- (a) impose monetary **or** time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to **free** legal assistance and representation;
- (b) provide that, as regards fees **and** other costs and reimbursements, the treatment of applicants shall **be equal to but** not **■** more **favourable** than the treatment generally **given** to their nationals in matters pertaining to legal assistance.

5. ***Without prejudice to Article 19(2) of this Directive***, Member States may ***request total or partial reimbursement of*** any costs ***incurred where*** the applicant's financial situation has improved considerably ***during the procedure for international protection in accordance with Regulation (EU) .../...⁺ or where*** the decision to ***provide free legal assistance and representation*** was taken on the basis of false information supplied by the applicant.
6. ***Member States shall lay down specific procedural rules governing the manner in which requests for free*** legal assistance and representation ***are filed and processed, or apply existing rules for domestic claims of a similar nature, provided that those rules do not render access to free legal assistance and representation impossible or excessively difficult.***

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 30 Competent authorities

Each Member State shall notify the Commission of the authorities responsible for fulfilling the obligations arising under this Directive. Member States shall inform the Commission of any changes in the identity of such authorities.

Article 31

Guidance, monitoring and control system

1. Member States shall, with due respect to their constitutional structure, put in place relevant mechanisms in order to ensure that appropriate guidance, monitoring and control of the level of reception conditions are established. Member States shall take into account ***available, non-binding*** operational standards, indicators, ***guidelines or best practices on reception conditions*** developed by the Asylum Agency ■ in accordance with Article 13 of Regulation (EU) 2021/2303, ***without prejudice to Member States' competence for organising their reception systems in accordance with this Directive.***

2. Member States' reception systems shall be **subject to** the **monitoring mechanism** set out in Chapter 5 of Regulation (EU) 2021/2303.

Article 32 Contingency planning

1. Each Member State shall draw up a contingency plan **in consultation with local and regional authorities, civil society and international organisations, as appropriate. The contingency plan shall set out the** measures to be taken to ensure an adequate reception of applicants in accordance with this Directive in cases where the Member State is confronted with a disproportionate number of applicants for international protection, **including of unaccompanied minors. The contingency plan shall also include measures to address situations referred to in Article 20(10), point (b), as quickly as possible.**

2. The **■** contingency plan *referred to in paragraph 1* shall **take into account the specific national circumstances**, using a template to be developed by the Asylum Agency, and shall be notified to the Asylum Agency by ... [**ten** months from the date of entry into force of this Directive]. **That** plan shall be **reviewed when needed due to changed circumstances and at least every three years and, if updated**, shall be notified to the Asylum Agency **■**. The Member States shall inform the Commission and the Asylum Agency whenever its contingency plan is activated.
3. **Member States shall provide** the Asylum Agency, upon its request, **with information on their contingency plans referred to in paragraph 1 and the Asylum Agency shall assist Member States, with their agreement, to draw up and review their contingency plans.**

Article 33 Staff and resources

1. Member States shall take appropriate measures to ensure that the **staff of** authorities and other organisations **directly responsible for** implementing this Directive have received the necessary training with respect to the needs of applicants, **including minors**. To that end, Member States shall **include relevant core parts of** the European asylum curriculum **related to reception conditions as well as the tool for identification of applicants with special reception needs** developed by the Asylum Agency in the training of their staff **■** .
2. Member States shall allocate the necessary resources, **including the necessary staff, translators and interpreters, for the implementation of** this Directive, **taking into account seasonal fluctuations in the numbers of applicants. Where local and regional authorities, civil society or international organisations take part in the implementation of this Directive, they shall be allocated the necessary resources.**

Article 34 Monitoring and evaluation

By ... [**48 months from the date of entry into force** of this Directive], and at least every five years thereafter, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.

Member States shall, upon the request of the Commission, send the necessary information for drawing up the report by ... [**36 months from the date of entry into force** of this Directive] and every **three** years thereafter.

Article 35 Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 10, **12**, 13, 17 to 29 and 31 to 34 by ... [**24** months from the date of entry into force of this Directive]. They shall immediately communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 36 Repeal

Directive 2013/33/EU is repealed, for the Member States bound by this Directive, with effect from ... [24 months from the date of entry into force of this Directive], without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of Directive 2013/33/EU set out in Annex I .

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex II.

Article 37 Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 38 Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament

For the Council

The President

The President

ANNEX I

Time-limit for transposition into national law (referred to in Article 35)

Directive	Time-limit for transposition
2013/33/EU	20 July 2015

ANNEX II

Correlation table

Directive 2013/33/EU	This Directive
Article 1	Article 1
Article 2, introductory wording	Article 2, introductory wording
Article 2, point (a)	Article 2, point (1)
Article 2, point (b)	Article 2, point (2)
Article 2, point (c)	Article 2, point (3)
Article 2, point (d)	Article 2, point (4)
Article 2, point (e)	Article 2, point (5)
Article 2, point (f)	Article 2, point (6)
Article 2, point (g)	Article 2, point (7)
	Article 2, point (8)

Article 2, point (h)	Article 2, point (9)
Article 2, point (i)	Article 2, point (10)
—	Article 2, point (11)
—	Article 2, point (12)
Article 2, point (j)	Article 2, point (13)
Article 2, point (k)	Article 2, point (14)
Article 3	Article 3
Article 4	Article 4
Article 5(1)	Article 5(1), first and third subparagraphs
-	Article 5(1), second subparagraph

Article 5(2)	Article 5(2), first subparagraph
-	Article 5(2), second, third and fourth subparagraphs
Article 6(1) to (4)	Article 6(1)
Article 6(5)	Article 6(3)
Article 6(6)	Article 6(2)
Article 7(1)	Article 7(1), (2) and (3) and Article 8(3)
	Article 7(5) and (7)
Article 7(2)	Article 9(1), first subparagraph, and Article 8(2), first subparagraph
	Article 8(1), Article 8(2), second subparagraph, and Article 8(4), (6) and (7)

—	Article 9(1), second subparagraph
—	Article 9(2)
Article 7(3)	Article 7(4)
Article 7(4)	Article 8(5) and Article 9(3)
Article 7(5)	Article 7(6)
—	Article 9(4) and (5)
Article 8(1) and (2)	Article 10(1) and (2)
	Article 10(3)
Article 8(3), points (a) and (b)	Article 10(4), points (a) and (b)

—	Article 10(4), point (c)
Article 8(3), point (c)	Article 10(4), point (d)
Article 8(3), point (d)	Article 10(4), point (e)
Article 8(3), point (e)	Article 10(4), point (f)
Article 8(3), point (f)	Article 10(4), point (g)
Article 8(3), second subparagraph	Article 10(4), second subparagraph
Article 8(4)	Article 10(5)
Articles 9	Article 11

Article 10	Article 12
Article 11	Article 13
Article 12	Article 14
Article 13	Article 15
Article 14	Article 16
Article 15(1)	Article 17(1), first subparagraph
—	Article 17(1), second subparagraph
Article 15(2)	Article 17(2)
—	Article 17(4) to (8)

Article 15(3)	Article 17(9)
—	Article 18
Article 16	—
Article 17(1) to (4)	Article 19(1) to (5)
—	Article 19(6)
Article 17(5)	Article 19(7)
Article 18(1) to (8)	Article 20(1) to (4) and (6) to (9)
	Article 20(5)

Article 18(9), first and second subparagraphs	Article 20(10), first and second subparagraphs
—	Article 20(10), third subparagraph
—	Article 21
Article 19	Article 22 (1) and (3)
	Article 22(2)
Article 20, introductory wording	Article 23(1)
Article 20(1), first subparagraph, points (a), (b) and (c)	Article 23(2), first subparagraph, points (a), (b) and (c)
—	Article 23(2), first subparagraph, points (e) and (f)
Article 20(1), second subparagraph	Article 20(3)

Article 20(2)	—
Article 20(3)	Article 23(2), first subparagraph, point (d)
Article 20(4)	—
Article 20(5)	Article 23(4)
Article 20(6)	Article 23(5)
Article 21	Article 24
Article 22(1)	Article 25(1)
—	Article 25(2)
Article 22(2), (3) and (4)	Article 25(3), (4) and(5)

Article 23(1) to (5)	Article 26(1) to (5)
Article 24(1), first subparagraph	Article 27(1), first subparagraph, and Article 27(6)
Article 24(1), second subparagraph	—
—	Article 27(1), second to eight subparagraphs, and Article 27(2) to (5), (7) and (8)
Article 24(2) and (3)	Article 27(9) and (10)
Article 24(4)	Article 26(6)
Article 25	Article 28
Article 26	Article 29
Article 27	Article 30
Article 28	Article 31

—	Article 32
Article 29	Article 33
Article 30(1) and (2)	Article 34
Article 30(3)	—
Article 31	Article 35
Article 32	Article 36
Article 33(1)	Article 37
Article 33(2)	—
Article 34	Article 38
Annex I	—
Annex II	Annex I
Annex III	Annex II

Brussels, 18 April 2024 (OR.
en)

Interinstitutional File:
2016/0223(COD)

8580/24

CODEC 1013
ASILE 49
PE 80

INFORMATION NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

- Outcome of the European Parliament's first reading (Brussels, 10 to 11 April 2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 178) to the abovementioned proposal for a Regulation, for which Tanja FAJON (S&D, SI) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. In addition, the ID political group tabled 11 amendments (amendments number 179 to 190).

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 10 April 2024, the plenary adopted the compromise amendment (amendment number 178) to the abovementioned proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)018

Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection

European Parliament legislative resolution of 10 April 2024 on the proposal for a regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (COM(2016)0466 – C8-0324/2016 – 2016/0223(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0466),
- having regard to Article 294(2) and Articles 78(2)(a) and (b) and 79(2)(a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0324/2016),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 14 December 2016¹,
- having regard to the opinion of the Committee of the Regions of 8 February 2017²,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 8 February 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the opinion of the Committee on Employment and Social Affairs,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0245/2017),

¹ OJ C 75, 10.3.2017, p. 97.

² OJ C 207, 30.6.2017, p. 67.

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Regulation (EU) 2024/... of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC  and repealing Directive 2011/95/EU of the European Parliament and of the Council

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2), points (a) and (b), and Article 79(2), point (a), thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee¹, Having

regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 75, 10.3.2017, p. 97.

² OJ C 207, 30.6.2017, p. 67.

³ Position of the European Parliament of 10 April 2024.

Whereas:

(1) A number of substantive changes have been made to Directive 2011/95/EU of the European Parliament and of the Council ⁴ . To ensure harmonisation and more convergence in asylum decisions and as regards the content of international protection in order to reduce incentives to move within the *Union, to encourage beneficiaries of international protection to remain in the Member State that granted them protection* and to ensure equality of treatment of beneficiaries of international protection, that Directive should be repealed and replaced by a Regulation.

(2) A common policy on asylum, including a Common European Asylum System (CEAS) based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (*the ‘Geneva Convention’*), is a constituent part of the Union’s objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, among the Member States. *The Geneva Convention is the cornerstone of the international legal regime for the protection of refugees.*

⁴ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

- (3) The CEAS is based on common standards for asylum procedures, recognition and protection offered at Union level, reception conditions and a system for determining the Member State responsible for examining an application for international protection. Notwithstanding progress achieved so far in the progressive development of the CEAS, there are still significant disparities between the Member States in the procedures used, recognition rates, type of protection granted, level of material reception conditions and benefits given to applicants for, and beneficiaries of, international protection. Those divergences **could lead to** secondary movements and undermine the objective of ensuring that all applicants are equally treated wherever they apply in the Union.
- (4) In its communication of 6 April 2016 ‘Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe’, the Commission set out its options for improving the CEAS, namely to establish a sustainable and fair system for determining the Member State responsible for examining an application for international protection, to reinforce the Eurodac system, to achieve greater convergence in the Union asylum system, to prevent secondary movements within the Union and **to transform** the European Asylum **Support Office** into an agency. That communication is in line with calls by the European Council on 18-19 February 2016 to make progress towards reforming the Union's existing framework so as to ensure a humane and efficient asylum policy. ■

- (5) ***As Article 78(2) of the Treaty on the Functioning of the European Union (TFEU) calls for a uniform status of asylum and*** for a well-functioning CEAS, ■ substantial progress should be made regarding the convergence of national asylum systems with special regard to differing recognition rates and type of protection status in the Member States. ***Moreover,*** the rights granted to beneficiaries of international protection should be further clarified and harmonised.
- (6) A Regulation is therefore necessary to ensure a more consistent level of harmonisation throughout the Union and to provide a higher degree of legal certainty and transparency.
- (7) The main objective of this Regulation is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection and, on the other hand, to ensure that a common set of rights is available for ***beneficiaries of international protection*** in all Member States.

- (8) The further approximation of rules on the recognition and content of refugee status and subsidiary protection status should moreover help to limit the secondary movement of applicants for international protection and beneficiaries of international protection between Member States **■** .
- (9) International protection should be granted to ***third country nationals and stateless persons who fall under the scope of this Regulation and who qualify for international protection. International protection should not be granted to those third country nationals and stateless persons who fall outside the scope of this Regulation. National humanitarian*** statuses, where granted, ***should*** not entail a risk of confusion with international protection.
- (10) **■** The provisions of this Regulation on the content of international protection **■** , including the rules to discourage secondary ***movements, should apply to those who were granted international protection following the positive conclusion of a resettlement or humanitarian admission procedure in accordance with Regulation (EU) 2024/... of the European Parliament and of the Council***⁵⁺.

⁵ Regulation (EU) 2024/... of the European Parliament and of the Council of.....establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147 (OJ L, ..., ELI.....).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

- (11) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the ‘Charter’) **and the European Convention on Human Rights (ECHR)**. In particular, this Regulation seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of the provisions of the Charter relating to human dignity, respect for private and family life, freedom of expression and information, the right to education, freedom to choose an occupation and the right to engage in work, freedom to conduct a business, the right to asylum, **protection in the event of removal, expulsion or extradition, equality before the law**, non-discrimination, the rights of the child, and rights relating to social security, social assistance, and health care. Those provisions should therefore be implemented accordingly.
- (12) With regard to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party, including, in particular, those that prohibit discrimination.

- (13) The resources of the Asylum, Migration and **Integration** Fund, established by Regulation (EU) 2021/1147 of the European Parliament and of the Council⁶, should be used to provide adequate support to Member States in their efforts to implement the standards set by this Regulation, in particular to those Member States which are faced with specific and disproportionate pressure on their asylum systems, due in particular to their geographical or demographic situation. ***While the general principle of the prohibition of double funding should be respected, Member States should take full advantage, at all levels of governance, of the possibilities offered by funds which are not directly related to asylum and migration policy but which could be used to fund actions in that area.***

⁶ Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021, p. 1).

(14) The European Union Agency for Asylum, ***established by Regulation (EU) 2021/2303 of the European Parliament and of the Council***⁷ (the ‘Asylum Agency’), should provide adequate support in the application of this Regulation, in particular by providing, ***upon the request or with the agreement of the Member State concerned***, experts to assist that Member State’s authorities in receiving, registering and examining applications for international protection, ***and by*** providing updated information regarding third countries, including country of origin information, and relevant guidelines and tools. When applying this Regulation, Member States’ authorities should take into account operational standards, ***indicators***, guidelines and best practices developed by the [] Asylum Agency []. When assessing applications for international protection, ***and without prejudice to the case-by- case nature of those assessments***, Member States’ authorities should take [] into account the information, reports, common analysis [] on the situation in countries of origin ***and guidance notes*** developed at Union level by the Asylum Agency and the European networks on ***third***-country [] information in accordance with [] Regulation (EU) 2021/2303.

⁷ ***Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1).***

(15) When applying this Regulation the best interests of the child should be a primary consideration, in accordance with the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States' authorities should, in particular, take due account of the principle of family unity, and the minor's well-being and social development, **linguistic skills**, safety and security and the views of that minor with due regard to the minor's age and maturity.

(16) *With a view to safeguarding the best interests of the child and the minor's general well-being, and in order to encourage continuity in assistance and representation for unaccompanied minors, Member States should seek to ensure, in so far as possible, that the same natural person remains responsible for an unaccompanied minor, including during the asylum procedure and following the granting of international protection.*

(17) *An adult child should be considered dependent, on the basis of an individual assessment, only in circumstances where that child is unable to support him or herself due to a physical or mental condition linked to a serious non-temporary illness or severe disability.*

- (18) *The provisions on family unity in this Regulation do not interfere with the values and principles recognised by the Member States. In the event of a polygamous marriage, it is for each Member State to decide whether they wish to apply the provisions on family unity to polygamous households, including to the minor children of a further spouse and a beneficiary of international protection.*
- (19) *The application of the provisions on family unity should always be based on genuine family relationships and should not include forced marriages and marriages or partnerships contracted for the sole purpose of enabling the person concerned to enter or reside in the Member States. In order not to discriminate against family members based on where a family was formed, the notion of family should also include families formed outside the country of origin but before their arrival on the territory of the **Union**.*

- (20) *Where a Member State decides, for the purposes of family unity, that the best interests of a married minor lie with that minor's parents, the spouse of that minor should not derive any residence rights from that marriage under this Regulation.*
- (21) This Regulation is without prejudice to the Protocol No 24 on asylum for nationals of Member States of the European Union, annexed to the Treaty on European Union (TEU) and the TFEU.
- (22) The recognition of refugee status is a declaratory act.
- (23) Consultations with the United Nations High Commissioner for Refugees (UNHCR) could provide valuable guidance for Member States' authorities when determining whether an applicant is a refugee within the meaning of Article 1 of the Geneva Convention.

(24) *When examining whether applicants have a well-founded fear of being persecuted or face a real risk of suffering serious harm and whether stable, established non-state authorities, including international organisations, control a State or a substantial part of its territory and provide protection, and when assessing whether applicants have access to protection against persecution or serious harm in another part of the country of origin other than their home area ('internal protection alternative'), the determining authority should take into account, inter alia, relevant general information and recommendations issued by the UNHCR.*

(25) Standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.

- (26) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.
- (27) *Where one or more particular aspects of the applicant's statements are not supported by documentary or other evidence, the applicant should be given the benefit of the doubt provided that the applicant has made a genuine effort to substantiate the need for international protection, all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation has been given regarding the lack of other relevant elements, the applicant's statements are found to be coherent and plausible and general credibility has been established taking into account the moment when the applicant applied for international protection and, where appropriate, the reasons for not having applied sooner.*
- (28) *The determining authority should not conclude that the applicant lacks credibility merely because the applicant did not rely on his or her declared sexual orientation on the first occasion he or she was given to set out the ground for persecution, unless it is evident that the applicant merely intends to delay or frustrate the enforcement of a decision resulting in his or her return.*

- (29) ***Convictions, beliefs or orientations of the applicant giving rise to activities which could be a basis for a well-founded fear of being persecuted or a real risk of suffering serious harm should be taken into account even if they were fully or partially concealed while in the country of origin.***
- (30) ***Where the applicant is not available during the procedure due to circumstances beyond the applicant's control, the relevant provisions of and the relevant safeguards set out in Regulation (EU) 2024/... of the European Parliament and of the Council⁸⁺, Regulation (EU) 2024/... of the European Parliament and of the Council⁹⁺⁺ and Directive (EU) 2024/... of the European Parliament and of the Council¹⁰⁺⁺⁺ apply.***
- (31) In particular, it is necessary to introduce common concepts of protection needs arising sur place, sources of harm and protection, internal protection and persecution, including the reasons for persecution.

⁸ Regulation (EU) 2024/... of the European Parliament and of the Council of ... on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, ..., ELI:...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

⁹ Regulation (EU) 2024/... of the European Parliament and of the Council of ... establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, ..., ELI: ...).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)) and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

¹⁰ Directive (EU) 2024/... of the European Parliament and of the Council of ... laying down standards for the reception of applicants for international protection (OJ L, ..., ELI: ...).

⁺⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)) and insert the number, date, title and, OJ reference and ELI of that Directive in the footnote.

- (32) Protection can be provided either by the State or by ***stable, established non-State authorities***, including international organisations, ***that control the State or a substantial part of the territory of the State*** and that meet the conditions set out in this ***Regulation***, ***provided that they are able and willing to offer protection***. Such protection should be effective and of a non-temporary nature.
- (33) ***Where the State or agents of the State are not the actors of persecution or serious harm, the determining authority should examine, as part of the assessment of the application for international protection, whether an internal protection alternative exists once it has been established that the qualification criteria set out in this Regulation would otherwise apply to an applicant.*** An internal protection alternative against persecution or serious harm should be effectively available to applicants in a part of the country of origin to which they can safely and legally travel and gain admittance and in which they can reasonably be expected to settle. The burden of demonstrating the availability of internal protection alternative should fall on the determining authority. ***Where the determining authority demonstrates that an internal protection alternative is available, applicants should be entitled to present evidence and submit elements at their disposal.***

- (34) *When considering whether applicants can be reasonably expected to settle in another part of their country of origin, the determining authority should also take into account whether applicants would be able to cater for their own basic needs in relation to access to food, hygiene and shelter in the context of local circumstances in their country of origin.*
- (35) Where the State or agents of the State are the actors of persecution or serious harm, there should be a presumption that effective protection is not available to the applicant **and the determining authority need not examine whether an internal protection alternative exists. The determining authority should be able to examine whether an internal protection alternative exists only where it is clearly established that the risk of persecution or serious harm stems from an actor whose power is clearly limited to a specific geographical area or where the State itself only has control over certain parts of the country concerned.**

- (36) *When assessing a sur place application, the fact that the risk of persecution or serious harm is based on circumstances that do not constitute an expression or continuation of convictions or orientations held in the country of origin could serve as an indication that the sole or main purpose of the applicant was to create the necessary conditions for applying for international protection.*
- (37) *Depending on the circumstances, acts of persecution of a gender-specific or child-specific nature might include, inter alia, under-age recruitment, genital mutilation, forced marriage, child trafficking and child labour, and trafficking for sexual exploitation.*
- (38) *Acts of persecution might take the form of disproportionate or discriminatory prosecution or punishment. Such disproportionate or discriminatory prosecution or punishment might arise, inter alia, in situations where an applicant refuses to perform military service on moral, religious or political grounds or due to belonging to a particular ethnic group or holding a particular citizenship.*

(39) One of the conditions for qualification for refugee status within the meaning of Article 1(A) of the Geneva Convention is the existence of a causal link between the reasons for persecution, namely race, religion **or belief**, nationality, political opinion or membership of a particular social group, and the acts of persecution or the absence of protection against such acts.

(40) It is equally necessary to introduce a common concept of the persecution ground ‘membership of a particular social group’. For the purpose of defining a particular social group, issues arising from an applicant’s **sexual orientation or** gender, including gender identity and **gender expression**, which could be related to certain legal traditions and customs, resulting in, for example, genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant’s well-founded fear of being persecuted. ***Depending on the circumstances, disability could be a characteristic for the purpose of defining a particular social group.***

- (41) *The circumstances in the country of origin, including, for example, the existence and application of criminal laws which specifically target lesbian, gay, bisexual, transgender and intersex persons, can mean that those persons are to be regarded as forming a particular social group.*
- (42) ■ When assessing an application for international protection, the competent authorities of the Member States should use methods for the assessment of an applicant's credibility in a manner that respects that applicant's rights as guaranteed by the Charter **and the ECHR**, in particular the right to human dignity and respect for private and family life. Specifically as regards **sexual orientation and gender identity**, applicants should not be submitted to detailed questioning or tests as to their sexual practices.

- (43) The purposes and principles of the United Nations are set out in the Preamble to and Articles 1 and 2 of the Charter of the United Nations and embodied in its resolutions relating to measures countering terrorism. Those resolutions declare, *inter alia*, that ‘acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations’ and that ‘knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations’.
- (44) ***For the purpose of applying the provisions of this Regulation on exclusion from international protection where there are reasonable grounds to assume that an applicant has committed an act or acts contrary to the purposes and principles set out in Articles 1 and 2 of the Charter of the United Nations, it is not a prerequisite to establish that such an applicant has been convicted of one of the terrorist offences referred to in Article 3(1) of Directive (EU) 2017/541 of the European Parliament and of the Council¹¹.***

¹¹ ***Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).***

- (45) *For the purpose of applying the provisions of this Regulation on exclusion from international protection to an applicant for having committed acts constituting participation in the activities of a terrorist group, the fact that it has not been established that such an applicant committed, attempted to commit or threatened to commit a terrorist act as defined in the resolutions of the United Nations Security Council does not preclude Member States' authorities from regarding the conduct of the applicant as contrary to the purposes and principles of the United Nations.*
- (46) *For the purposes of the individual assessment of facts that might constitute serious reasons for considering that an applicant has been guilty of acts contrary to the purposes and principles of the United Nations, has instigated such acts or has otherwise participated in such acts, the fact the applicant was convicted by the courts of a Member State of participating in the activities of a terrorist group is of particular importance, as is a finding of a court or tribunal that the applicant was a member of the leadership of such a group, and there should be no requirement to establish that the applicant instigated a terrorist act or otherwise participated in it.*

(47) Committing a political crime is not, in principle, a ground justifying exclusion from refugee status. However, ■ particularly cruel actions, where the action in question is disproportionate to the alleged political objective, and terrorist acts which are characterised by their violence ■ , even if committed with a purportedly political objective, should be regarded as **serious** non-political crimes and therefore can give rise to exclusion from refugee status.

(48) Standards for the definition and content of subsidiary protection status should also be laid down. Subsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention. ***While the grounds for protection differ between refugee status and subsidiary protection status, the ongoing need for protection could be similar in duration. The content of the protection offered by refugee status or subsidiary protection status might only differ where explicitly provided for in this Regulation. This Regulation nevertheless allows Member States to grant the same rights and benefits under both statuses.***

- (49) It is necessary to introduce common criteria on the basis of which applicants for international protection are to be recognised as **beneficiaries of** subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.
- (50) For the purpose of assessing serious harm which could qualify applicants as **persons** eligible for subsidiary protection, the notion of indiscriminate violence ■ should include violence that might extend to people irrespective of their personal circumstances.
- (51) ■ For the purpose of assessing serious harm, situations in which a third country's armed forces confront one or more armed groups, or in which two or more armed groups confront each other, should be considered an internal armed conflict. It is not necessary for that conflict to be categorised as an 'armed conflict not of an international character' under international humanitarian law nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.

(52) As regards the proof required to establish the existence of a serious and individual threat to a ***civilian's life or person***, determining authorities should not require applicants to adduce evidence that they are specifically targeted by ■ factors ***related*** to their personal circumstances. However, the level of indiscriminate violence required to substantiate the application is lower where applicants are able to show that they are specifically affected ***due to*** factors ***related*** to their personal ***circumstances***. Moreover, the existence of a serious and individual threat should exceptionally be ***considered*** by the determining ***authority to be*** established ***where*** the degree of indiscriminate violence characterising the armed conflict ■ rises to such a high level that there are substantial grounds for believing that civilians, returned to the country ***of*** origin or to the relevant part of country of origin, would, solely on account of their presence ***there***, face a real risk of being subjected to serious harm.

- (53) *Depending on the circumstances, including the length and purpose of the stay, travel to the country of origin could serve as an indication that beneficiaries of refugee status have re-availed themselves of the protection of the country of origin or re-established themselves in their country of origin or that, for beneficiaries of subsidiary protection status, the grounds for granting that status have ceased to exist.*
- (54) *In accordance with Regulation (EU) 2024/... ⁺, Member States should ensure that applicants have access to an effective remedy before a court or tribunal against decisions by determining authorities to reject applications for international protection as unfounded or against decisions to withdraw international protection. In that respect, the reasons which led a determining authority to decide to reject an application for international protection or to withdraw international protection from a beneficiary should be subject to thorough review by a competent court or tribunal within the framework of any action brought against that rejection or withdrawal decision.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (55) The **■** travel documents issued to beneficiaries of international protection for the first time or renewed following the entry into force of this Regulation should comply with ***Council Regulation (EC) No 2252/2004¹² or with equivalent minimum standards for security features and biometrics.***
- (56) ***The residence permits issued to beneficiaries of international protection for the first time or renewed following the entry into force of this Regulation should comply with Council Regulation (EC) No 1030/2002¹³.***
- (57) ***In the period between the granting of international protection and the issuance of a residence permit, Member States should ensure that beneficiaries of international protection have effective access to all the rights laid down in this Regulation, with the exception of freedom of movement within the Union and the issuance of a travel document.***

¹² ***Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ L 385, 29.12.2004, p. 1).***

¹³ ***Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).***

(58) Family members will, due to their close relationship to **beneficiaries of international protection**, normally be vulnerable to acts of persecution **or serious harm** that could constitute the basis for the granting of international protection. ■ For the purpose of maintaining family unity, **where family members present on the territory of the same Member State do not qualify for international protection, they should be entitled to apply for a residence permit. Such residence permits should be granted, unless family members fall within the exclusion grounds or unless reasons of national security or public policy otherwise require. Family members should also be entitled to the** rights accorded to **the beneficiary of international protection once international protection** has been granted. Without prejudice to the provisions of this Regulation related to maintaining family unity, where the situation falls within the scope of Council Directive 2003/86/EC¹⁴ and the conditions for family reunification set out therein have been fulfilled, family members of the beneficiary of international protection who do not individually qualify for such protection should be granted residence permits and rights in accordance with that Directive. This Regulation **should** be applied without prejudice to Directive 2004/38/EC of the European Parliament and of the Council¹⁵.

¹⁴ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

¹⁵ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

(59) *Travel documents should be issued to family members of beneficiaries of international protection in accordance with national procedures.*

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(60) When assessing a change of circumstances in a third country, the competent authorities of the Member States **should** verify, having regard to the ■ individual situation **of a beneficiary of international protection**, that the actor or actors of protection in that country have taken reasonable steps to prevent the persecution **or serious harm**, that they therefore operate, *inter alia*, an effective legal system for the detection, prosecution and punishment of acts constituting persecution **or serious harm** and that the beneficiary of international protection will have access to such protection if the refugee **status or the subsidiary protection** status is withdrawn.

(61) *When assessing whether the grounds on which the granting of international protection was based have ceased to exist, the determining authority should take into account all relevant and available national, Union and international sources of information and guidance, including recommendations issued by the UNHCR.*

- (62) *Where an applicant falls within the scope of Article 1(D) of the Geneva Convention relating to the provision of protection or assistance by organs or agencies of the United Nations other than the UNHCR, when considering whether that protection or assistance has ceased to exist for reasons beyond the control, and independent of the volition, of the applicant, the determining authority should ascertain whether the applicant was forced to leave the area of operations of the relevant organ or agency, whether the applicant's personal safety was at serious risk and whether the relevant organ or agency was unable to ensure the applicant's living conditions in accordance with its mandate.*
- (63) Where the refugee status or the subsidiary protection status ceases to exist, ■ the decision by ■ the determining authority of a Member State ***to withdraw the status does not prevent*** the third-country national or stateless person concerned ■ from applying for residence on the basis of grounds other than those which justified the granting of international protection ***or from continuing to remain legally on the territory of that Member State on other grounds, in particular when holding a valid Union long-term residence permit,*** in accordance with relevant Union and national law.

- (64) *A decision to end international protection should not have a retroactive effect. A decision to revoke international protection should have a retroactive effect. Where a decision is based on a cessation ground, it should not have a retroactive effect. Where refugee status or subsidiary protection status is revoked on the basis that it should never have been granted, acquired rights could be retained or lost in accordance with national law.*
- (65) Beneficiaries of international protection should reside in the Member State which granted them protection. Beneficiaries of international protection who are in possession of a valid travel document and a residence permit issued by a Member State applying the Schengen *acquis* in full should be allowed to enter into and move freely within the territory of the Member States applying the Schengen *acquis* in full, ***within the authorised period of stay*** in accordance with Regulation (EU) 2016/399 of the European Parliament and of the Council¹⁶ and with Article 21 of the Convention implementing the Schengen Agreement¹⁷. Beneficiaries of international protection can equally apply to reside in a Member State other than the Member State that granted them international protection, in accordance with relevant ***Union*** and national rules. However, that does not imply any transfer of the refugee status or subsidiary protection status and related rights.

¹⁶ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

¹⁷ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).

- (66) In order to ***ensure that beneficiaries of international protection respect the authorised period of stay or residence in accordance with the relevant national, Union or international law, Council Directive 2003/109/EC¹⁸*** should be amended to provide that the five-year period after which beneficiaries of international protection are eligible for ***Union long-term resident*** status should, ***in principle***, be restarted each time a beneficiary of international protection is found in a Member State other than the Member State that granted that beneficiary international protection without a right to stay or to reside there ■ .

¹⁸ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

- (67) ***Member States' authorities retain a certain discretion with regard to public policy and national security, which should be interpreted in accordance with national, Union and international law. Subject to an individual assessment of the specific facts, public policy and national security considerations can cover cases in which a third-country national belongs to an association which supports international terrorism or supports such an association. When assessing whether a third country national or stateless person poses a risk to a Member State's national security, its authorities are entitled to take account, inter alia, of information received from other Member States or third countries.***
- (68) When deciding on entitlement to the benefits provided for in this Regulation, a competent authority should take due account of the best interests of the child and of the particular circumstances of the dependency on the beneficiary of international protection of close relatives who are already present in the Member State concerned and who are not family members. In exceptional circumstances, where a close relative of a beneficiary of international protection is a married minor but not accompanied by his or her spouse, the best interests of the minor could be seen to lie with his or her original family.

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- (69) **Member States** should be able to restrict access to employed or self-employed activities as regards posts which involve the exercise of public authority and responsibility for safeguarding the general interest of the State or other public authorities. In the context of the exercising of the right **to** equal treatment as regards membership of an organisation representing workers or engaging in a specific occupation, it should be possible to exclude beneficiaries of international protection from taking part in the management of bodies governed by public law and from holding an office governed by public law.
- (70) **Housing benefits should constitute a core benefit to the extent that they can be regarded as social assistance.**

- (71) In order to enhance the effective exercise by beneficiaries of international protection of the rights and benefits laid down in this Regulation, it is necessary to take into account their specific needs and the particular integration challenges with which they are confronted and to facilitate their access to integration-related rights, in particular as regards employment-related educational opportunities and vocational training, and access to recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications, in particular in circumstances where there is a lack of documentary evidence or an inability to meet the costs related to recognition procedures.
- (72) Beneficiaries of international protection should enjoy equal treatment with nationals of the Member State that granted them international protection as regards social security.

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- (73) Access to healthcare, including physical and mental healthcare and ***sexual and reproductive healthcare***, should be ensured for beneficiaries of international protection, ***provided that it is also ensured for nationals of the Member State that granted them international protection.***
- (74) In order to facilitate the integration of beneficiaries of international protection into society, they ***should*** have access to integration measures, ***at local, regional and national level, under conditions*** to be set by the Member States. Member States ***should consider maintaining access to*** language courses ***for beneficiaries of international protection where they had access to language*** courses ***as applicants.***
- (75) The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.

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(76) Since the objectives of this Regulation, namely to establish standards for the granting of international protection to third-country nationals and stateless persons by Member States, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

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- (77) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. ■
- (78) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I GENERAL PROVISIONS

Article 1 Subject matter

This Regulation lays down standards for:

- (a) the qualification of third-country nationals or stateless persons as beneficiaries of international protection;
- (b) a uniform status for refugees or for persons eligible for subsidiary protection;
- (c) the content of the international protection granted.

Article 2 Material scope

1. This Regulation applies to the qualification of third-country nationals or stateless persons as beneficiaries of international protection and to the content of the international protection granted.
2. This Regulation does not apply to ■ national humanitarian statuses granted by Member States to ***third country nationals and stateless persons*** who do not ***fall under the scope of this Regulation***. National humanitarian statuses, where granted, shall ■ not ■ entail a risk of confusion with international protection.

Article 3 Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘refugee status’ means the recognition by a Member State of a third-country national or a stateless person as a refugee;
- (2) ‘subsidiary protection status’ means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;
- (3) ‘international protection’ means refugee status or subsidiary protection status;
- (4) ‘beneficiary of international protection’ means a person who has been granted refugee status or subsidiary protection status;
- (5) ‘refugee’ means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

- (6) ‘person eligible for subsidiary protection’ means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that that person, if returned to his or her country of origin or, in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

- (7) ‘application for international protection’ means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status;
- (8) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (9) ‘family members’ means, in so far as the family already existed before the applicant arrived on the territory of the Member States, the following members of the family of the beneficiary of international protection who are present ***on the territory of*** the same Member State in relation to the application for international protection:
- (a) the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples ***as equivalent*** to married couples ■ ;

- (b) the minor **or adult dependent** children of the couples referred to in point (a) or of the beneficiary of international protection, provided that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as **provided for** under national law; **a minor is considered unmarried provided that, on the basis of an individual assessment, the minor's marriage would not be in accordance with the relevant national law had it been contracted in the Member State concerned, having regard, in particular, to the legal age of marriage;**
- (c) **where the beneficiary of international protection is a minor and unmarried,** the father, mother or another adult responsible for **that** beneficiary, **including an adult sibling,** whether by **the** law or **the** practice of the Member State concerned **;** **a minor is considered unmarried provided that, on the basis of an individual assessment, the minor's marriage would not be in accordance with the relevant national law had it been contracted in the Member State concerned, having regard, in particular, to the legal age of marriage;**

(10) 'minor' means a third-country national or stateless person below the age of 18 years;

- (11) ‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by *the* law or practice of the Member State concerned, and for as long as that minor is not effectively taken into the care of such *an adult*, including a minor who is left unaccompanied after he or she has entered the territory of the Member States;
- (12) ‘residence permit’ means an ■ authorisation issued by the authorities of a Member State, in a *uniform* format *as laid down by* Regulation (EC) No 1030/2002, which allows a third-country national or stateless person to reside *legally* on its territory;
- (13) ‘country of origin’ means the country or countries of nationality or, for stateless persons, of former habitual residence;
- (14) ‘withdrawal of international protection’ means a decision by *a determining authority or* a competent *court or tribunal* to revoke *or* end, *including by refusing* to renew, international protection ■ ;

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- (15) ‘determining authority’ means a quasi-judicial or administrative body in a Member State **which is** responsible for examining applications for international protection and is competent to take decisions at **the administrative stage of the procedure**;
- (16) ‘social security’ means the branches of social security set out in **Article 3(1) and (2) of** Regulation (EC) No 883/2004 of the European Parliament and of the Council¹⁹ **■** ;
- (17) ‘social assistance’ means benefits granted **■** with the objective of ensuring that the basic needs of those who lack sufficient resources are met;
- (18) ‘guardian’ means a **natural** person or an organisation, **including a public body, designated** by the competent **authorities** to assist, represent **and act on behalf of** an unaccompanied minor, **as applicable, in order to ensure that the unaccompanied minor can benefit from the rights and comply with the obligations under** this Regulation, **while safeguarding his or her** best interests **and general well-being**.

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¹⁹ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

CHAPTER II

ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

Article 4

Submission of information and assessment of facts and circumstances

1. Applicants shall submit all the elements available to them which substantiate the application for international protection. ***For that purpose***, applicants shall ***fully*** cooperate with the determining authority and ***with other competent authorities and*** shall remain present and available ***on the territory of the Member State responsible for examining their application*** throughout the procedure, ***including during the assessment of the relevant elements of the application***.
2. The elements referred to in paragraph 1 shall consist of the following:
 - (a) the applicant's statements; and
 - (b) all the documentation at the applicant's disposal regarding the following:
 - (i) ■ the applicant's ***reasons for applying for international protection***;
 - (ii) the applicant's age;
 - (iii) the applicant's background, including that of relevant ***family members and other*** relatives;
 - (iv) the applicant's identity;
 - (v) the applicant's nationality or nationalities;
 - (vi) the applicant's country or countries and place or places of previous residence;
 - (vii) previous applications ■ for international protection from the applicant;

(viii) the results of any ■ resettlement *or humanitarian admission* procedure relating to the applicant as defined by Regulation (EU) 2024/...⁺;

(ix) the applicant's travel routes; *and*

(x) the applicant's travel documents ■ .

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 18/24 (2016/0225(COD)).

3. The determining authority shall assess the relevant elements of an application ***for international protection*** in accordance with Article 34 of Regulation (EU) 2024/...⁺.
4. The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall be considered a serious indication of that applicant's well-founded fear of being persecuted or of a real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
5. Where ***one or more particular*** aspects of the applicant's statements are not supported by documentary or other evidence, no additional evidence shall be required in respect of those particular aspects where the following conditions are met:
 - (a) the applicant has made a genuine effort to substantiate his or her application ***for international protection***;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

- (b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation has been given regarding any lack of other relevant elements;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

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- (d) the general credibility of the applicant has been established, ***taking into account, inter alia, the time at which the applicant applied for international protection.***

Article 5

International protection needs arising sur place

1. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on:
 - (a) events which have taken place since the applicant left the country of origin; or
 - (b) activities which the applicant has engaged in since the applicant left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions, ***beliefs*** or orientations held in the country of origin.

2. Where the risk of persecution or ■ serious harm is based on circumstances which the applicant has created ■ since leaving the country of origin ***for the sole or main purpose of creating the necessary conditions for applying for international protection, the determining authority may refuse to grant international protection, provided that any decision taken on the application for international protection respects*** the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (***the ‘Geneva Convention’***), ***the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union.***

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Article 6

Actors of persecution or serious harm Actors of persecution or serious harm

■ can be:

- (a) the State;

- (b) parties or organisations controlling the State or a substantial part of the territory of the State;
- (c) non-State actors, if it can be demonstrated that the actors referred to in **Article 7(1)** are unable or unwilling to provide protection against persecution or serious harm ■ .

Article 7 Actors of protection

1. Only the following actors can provide protection against persecution or serious harm, provided that they are **able and** willing to **provide effective and non-temporary** protection in accordance with paragraph 2:
 - (a) the State;
 - (b) **stable, established non-State authorities**, including international organisations, **which control** the State or a substantial part of the territory of the State.

2. Protection against persecution or serious harm shall be effective and of a non-temporary nature. That protection shall be considered to be provided where the actors referred to in paragraph 1 take reasonable steps to prevent persecution or the suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and where an applicant has access to that protection.
3. When assessing whether ***stable, established non-State authorities, including*** international ***organisations, control*** a State or a substantial part of its territory and ***provide*** protection within the meaning of paragraph 2, ***the*** determining ***authority*** shall ***take into account precise and up-to-date information on countries of origin obtained from*** relevant ***and*** available ***national***, Union ***and international sources and, where available***, the common analysis ***on the situation in specific countries*** of origin ***and the guidance notes*** referred to in ***Article 11*** of Regulation (EU) 2021/2303.

Article 8

Internal protection *alternative*

1. ***Where the State or agents of the State are not the actors of persecution or serious harm***, the determining authority shall ***examine***, as part of the assessment of the application for international protection, ***whether*** an applicant is not in need of international protection ***because*** the applicant can safely and legally travel to and gain admittance to a part of the country of origin and can reasonably be expected to settle there and whether, in that part of the country, the applicant:
 - (a) has no well-founded fear of being persecuted or does not face a real risk of suffering serious harm; or
 - (b) has access to ***effective and non-temporary*** protection against persecution or serious harm.

2. *Where the State or agents of the State are the actors of persecution or serious harm, the determining authority shall presume that effective protection is not available to the applicant and no examination as referred to in paragraph 1 need be carried out.*

The determining authority may only carry out an examination as referred to in paragraph 1 where it is clearly established that the risk of persecution or serious harm stems from an actor whose power is clearly limited to a specific geographical area or where the State itself only has control over certain parts of the country.

3. The determining authority shall carry out an examination as referred to in paragraph 1 once it has established that the qualification criteria set out in this Regulation would otherwise apply to an applicant. The burden of ***demonstrating that an internal protection alternative is available to the applicant shall fall on the determining authority. The applicant shall be entitled to present evidence and submit any element which indicates that such an alternative is not available to him or her. The determining authority shall take into account the evidence presented and elements submitted by the applicant.***

4. In examining whether an applicant has a well-founded fear of being persecuted or faces a real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin concerned in accordance with paragraph 1, **the determining authority** shall, at the time of taking the decision on the application for international protection, have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant set out in Article 4. To that end, **the determining authority** shall **take into account** precise and up-to-date information obtained from relevant **and available national, Union and international** sources **and, where available**, the common analysis **on the situation in specific countries** of origin **and the guidance notes** referred to in **Article 11** of Regulation (EU) 2021/2303.

5. **For the purposes of paragraph 1, the determining authority shall take into account:**

- (a) the general circumstances prevailing in the relevant part of the country of origin, **including** the accessibility, effectiveness and durability of **the** protection **referred to in Article 7;**

(b) *the personal circumstances of the applicant in relation to factors such as health, age, gender, including gender identity, sexual orientation, ethnic origin and membership of a national minority; and*

(c) *whether the applicant would be able to cater for his or her own basic needs.*

6. *Where the applicant is an unaccompanied minor, the determining authority shall take into account the best interests of the minor and, in particular, the availability of sustainable and appropriate care and custodial arrangements.*

CHAPTER III QUALIFICATION FOR BEING A REFUGEE

Article 9

Acts of persecution

1. An act shall be regarded as an act of persecution within the meaning of Article 1(A) of the **Geneva** Convention where it is:

- (a) sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the ECHR; or
- (b) an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner to an act referred to in point (a).

2. Acts of persecution as qualified in paragraph 1 may, *inter alia*, take the form of:

- (a) acts of physical or mental violence, including acts of sexual violence;
- (b) legal, administrative, police or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- (c) prosecution or punishment which is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2);
 - (f) acts of a gender-specific or child-specific nature.
3. For an applicant to meet the definition of ‘refugee’ as set out in Article 3(1), point (5), there shall be a connection between the reasons for persecution referred to in Article 10 and the acts of persecution as qualified in paragraph 1 of this Article or the absence of protection against such acts.

Article 10 Reasons for persecution

1. The following elements shall be taken into account when assessing the reasons for persecution:
- (a) the concept of race shall, in particular, include considerations of colour, descent, or membership of a particular ethnic group;

- (b) the concept of religion shall, in particular, include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall, in particular, include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

(d) the concept of **membership of** a particular social group shall include, in particular, **membership of** a group ■ :

- (i) **whose** members share **or are perceived to share** an innate characteristic ■ or a common background that cannot be changed, or ■ a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; ■ **and**
- (ii) **which** has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

- (e) the concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

Depending on the circumstances in the country of origin, **the** concept of membership of a particular social group as referred to in point (d) of the first subparagraph shall **include membership of** a group based on a common characteristic of sexual orientation **■** . Gender related aspects, including gender identity **and gender expression**, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.

2. When assessing if an applicant has a well-founded fear of being persecuted, it is **irrelevant** whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.
3. When assessing if an applicant has a well-founded fear of being persecuted, the determining authority cannot reasonably expect that applicant to **adapt** or **change his or her behaviour, convictions or identity, or to** abstain from certain practices, where **such behaviour, convictions or practices** are inherent to his or her identity, to avoid the risk of persecution in his or her country of origin.

Article 11 Cessation

1. A third-country national or a stateless person shall cease to be a refugee where one or more of the following apply:
 - (a) the third-country national has voluntarily re-availed himself or herself of the protection of the country of nationality;
 - (b) having lost his or her nationality, the third-country national or stateless person has voluntarily re-acquired it;
 - (c) the third-country national or stateless person has acquired a new nationality and enjoys the protection of the country of that new nationality;
 - (d) the third-country national or stateless person has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to a fear of being persecuted;

- (e) the third-country national can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;
- (f) the stateless person is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

Points (e) and (f) of the first subparagraph shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

2. ***In order to assess whether*** points (e) and (f) of paragraph 1, first subparagraph, apply, the determining authority shall:

- (a) ***take into account*** precise and up-to-date information obtained from ■ relevant ***and available national, Union and international*** sources ***and, where available, the common analysis on the situation in specific countries*** of origin ***and the guidance notes*** referred to in ***Article 11*** of ■ Regulation (EU) 2021/2303;
- (b) have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of being persecuted can no longer be regarded as well-founded.

Article 12 Exclusion

1. A third-country national or a stateless person shall be excluded from being a refugee where that third-country national or stateless person:
 - (a) falls within the scope of Article 1(D) of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees; when such protection or assistance has ceased for any reason, without the position of that third-country national or stateless person being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, that third-country national or stateless person shall ipso facto be entitled to the benefits of this Regulation;
 - (b) is recognised by the competent authorities of the country in which third-country national or stateless person has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or ***equivalent*** rights and obligations ■ .

2. A third-country national or a stateless person shall be excluded from being a refugee where there are serious reasons for considering that that third-country national or stateless person:
- (a) has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (b) has committed a serious non-political crime outside the country of refuge prior to that third-country national or stateless person's admission as a refugee, which means the time of ■ granting refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;
 - (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble to and Articles 1 and 2 of the Charter of the United Nations.
3. Paragraph 2 shall apply to persons who incite or otherwise participate in the commission of the crimes or acts referred to therein.

4. *Once the determining authority has established, based on an assessment of the seriousness of the crimes or acts committed by the person concerned and of that person's individual responsibility, taking into account all the circumstances surrounding those crimes or acts and the situation of that person, that one or more of the relevant exclusion grounds laid down in paragraph 2 or 3 apply, the determining authority shall exclude the applicant from refugee status without performing a proportionality assessment linked to the fear of being persecuted.*

5. *As part of the assessment referred to in paragraph 4, when carrying out an examination under paragraphs 2 and 3 in relation to a minor, the determining authority shall take into account, inter alia, the minor's capacity to be considered responsible under criminal law had the minor committed the crime on the territory of the Member State examining the application for international protection in accordance with national law on the age of criminal responsibility.*

CHAPTER IV REFUGEE STATUS

Article 13 Granting of refugee status

The determining authority shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III.

Article 14

Withdrawal of ■ refugee status

1. The determining authority shall **withdraw** the refugee status of a third-country national or stateless person where:
 - (a) that third-country national or stateless person has ceased to be a refugee in accordance with Article 11;
 - (b) that third-country national or stateless person should have been or is excluded from being a refugee in accordance with Article 12;

- (c) that third-country national or stateless person's misrepresentation of facts, including the use of false documents, or omission of facts was decisive for the granting of refugee status;
- (d) there are reasonable grounds for regarding that third-country national or stateless person as a danger to the security of the Member State in which that third-country national or stateless person is present;
- (e) that third-country national or stateless person is convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of the Member State in which that third-country national or stateless person is present;

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2. In situations in which points (d) **and (e)** of **paragraph 1 apply**, the determining authority may decide not to grant **refugee** status **where** a decision **on the application for international protection** has not yet been taken.

3. Persons to whom points (d) **and (e)** of paragraph 1 or paragraph 2 of this Article apply shall be entitled to the rights set out in, or similar to those set out in, Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention provided that they are present in the Member State.
4. **■** The determining authority which **■** granted refugee status shall, on an individual basis, demonstrate that the **beneficiary of the refugee status** has ceased to be **a refugee, or should have** never been **granted refugee status or should no longer be a beneficiary of refugee status** for the reasons set out in paragraph 1 of this Article. **During the withdrawal procedure, Article 66 of Regulation (EU) 2024/...⁺ shall apply.**

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⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

CHAPTER V
QUALIFICATION FOR SUBSIDIARY PROTECTION

Article 15 Serious harm

Serious harm as referred to in Article 3(6) consists of:

- (a) the death penalty or execution;
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Article 16 Cessation

1. ***A beneficiary of subsidiary protection status*** shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of ***that status have ceased to exist or have changed to such a degree that protection is no longer required.***
2. ***In order to assess whether the circumstances which led to the granting of*** subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required, the determining authority ***shall:***
 - (a) ***take into account*** precise and up-to-date information obtained from **■** relevant ***and available national, Union and international*** sources ***and, where available,*** the common analysis on ***the situation in specific countries*** of origin ***and the guidance notes*** referred ***to*** in ***Article 11*** of **■** Regulation (EU) 2021/2303;
 - (b) **■** have regard ***to*** whether the change in circumstances is of such a significant and non-temporary nature that the ***beneficiary of*** subsidiary protection ***status*** no longer faces a real risk of serious harm.

3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

Article 17 Exclusion

1. A third-country national or a stateless person shall be excluded from being eligible for subsidiary protection where there are serious reasons for considering that that third-country national or stateless person:
 - (a) has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (b) has committed a serious crime ***prior to arriving on the territory of the Member State or has been convicted for a serious crime after arrival;***

- (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble to and Articles 1 and 2 of the Charter of the United Nations;
 - (d) constitutes a danger to the community or to **national** security ■ .
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2. ■ Paragraph 1 shall apply to persons who incite or otherwise participate in the commission of the crimes or acts referred to therein.

3. ***A third-country national or a stateless person may be excluded from being eligible for subsidiary protection where*** that third-country national or stateless person, prior to being admitted to the Member State concerned, has committed one or more crimes outside the scope of points (a), (b) and (c) ***of paragraph 1*** which would be punishable by imprisonment ***had*** they been committed in the Member State concerned, and if that third-country national or stateless person left the country of origin solely in order to avoid sanctions resulting from those crimes.

4. *Once the determining authority has established, based on an assessment of the seriousness of the crimes or acts committed by the person concerned and of that person's individual responsibility, taking into account all the circumstances surrounding those crimes or acts and the situation of that person, that one or more of the relevant exclusion grounds laid down in paragraph 1 or 2 apply, the determining authority shall exclude the applicant from subsidiary protection status without performing a proportionality assessment linked to the fear of serious harm.*

5. *As part of the assessment referred to in paragraph 4, when carrying out an examination under paragraphs 1 in relation to a minor, the determining authority shall take into account, inter alia, the minor's capacity to be considered responsible under criminal law had the minor committed the crime on the territory of the Member State examining the application for international protection in accordance with national law on the age of criminal responsibility or, where applicable, a conviction for a serious crime after the minor's arrival.*

CHAPTER VI SUBSIDIARY PROTECTION STATUS

Article 18

Granting of subsidiary protection status

The determining authority shall grant subsidiary protection status to a third-country national or a stateless person who is eligible for subsidiary protection in accordance with Chapters II and V.

Article 19

Withdrawal of ■ subsidiary protection status

1. The determining authority shall **withdraw** the subsidiary protection status of a third-country national or a stateless person where:
 - (a) that third-country national or stateless person has ceased to be eligible for subsidiary protection in accordance with Article 16;

- (b) after having been granted subsidiary protection status, that third-country national or stateless person should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17;
- (c) that third-country national or stateless person's misrepresentation ■ of facts, including the use of false documents, **or omission of facts** was decisive for the granting of subsidiary protection status.

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2. ***The determining authority*** which ■ granted ■ subsidiary protection status shall, on an individual basis, demonstrate that the ***beneficiary of the subsidiary protection status*** has ceased to be ■ eligible for subsidiary protection, ***or should have never been granted subsidiary protection status, or should no longer be a beneficiary of subsidiary protection status for the reasons set out in*** paragraph 1 of this Article ■ . ***During the withdrawal procedure, Article 66 of Regulation (EU) 2024/...⁺ shall apply.***

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⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

CHAPTER VII
CONTENT OF INTERNATIONAL PROTECTION RIGHTS AND OBLIGATIONS OF
BENEFICIARIES OF INTERNATIONAL PROTECTION

Section I Common provisions

Article 20 General rules

1. **■** Without prejudice to the rights and obligations laid down in the Geneva Convention, *beneficiaries of international protection shall have the rights and obligations laid down in this Chapter.*
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2. *Beneficiaries of international protection shall have access to rights provided in accordance with this Chapter once international protection is granted and for as long as refugee status or subsidiary protection status is held.*

3. *Where a residence permit is not issued to a beneficiary of international protection within 15 days of the granting of international protection, the Member State concerned shall take provisional measures, such as registration or the issuance of a document, to ensure that the beneficiary has effective access to the rights laid down in this Chapter, with the exception of those laid down in Articles 25 and 27, until such time as a residence permit is issued in accordance with Article 24.*
4. When applying this Chapter, and *where it is established that a person has* special needs due to being, for example, *a minor, an unaccompanied minor, a person with a disability, an elderly person, a pregnant woman, a single parent with a minor or an adult dependent child, a victim of* ■ *trafficking in human beings, a person with a serious illness, a person with a mental disorder or a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, the competent authorities shall take into account those special needs* ■ .

5. When applying the provisions of this Chapter that concern minors, the best interests of the child shall be a primary consideration for **competent** authorities.

Article 21 Protection from refoulement

■ The principle of non-refoulement **shall be respected** in accordance with **Union and** international **law**.

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Article 22 Information

Competent authorities shall provide beneficiaries of international protection with information on the rights and obligations relating to refugee status or subsidiary protection status as soon as possible after such **protection** has been granted. That information, **as specified in Annex I**, shall:

- (a) be provided in a language that the beneficiary can understand or is reasonably supposed to understand; and
- (b) make explicit references to the consequences of not complying with the obligations provided for in Article 27 on movement within the Union.

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Article 23 Maintaining family unity

1. The competent authorities of ***the Member State that granted international protection to a beneficiary of international protection*** shall issue, in accordance with national procedures, residence permits to the family members of that beneficiary of international protection who do not individually qualify for international protection ***and who apply for*** a residence permit in ***that Member State, where paragraph 3, 4 or 5 of this Article do not apply*** and in so far as it is compatible with the personal legal status of the family member.
2. A residence permit issued pursuant to paragraph 1 shall have the ***same date of expiry as*** the residence permit issued to the beneficiary of international protection and shall be renewable ***for as long as the residence permit issued to the beneficiary of international protection is renewed***. The period of validity of the residence permit issued to the family member shall **■** not extend beyond the date of expiry of the residence permit held by the beneficiary of international protection.

3. No residence permit shall be issued ***under this Regulation to*** a family member ***who*** is or would be excluded from international protection pursuant to Chapters III and V.
4. ***A residence permit shall not be issued under this Regulation to a spouse or unmarried partner in a stable relationship where there are strong indications that the marriage or partnership was contracted for the sole purpose of enabling the person concerned to enter or reside in the Member State concerned.***
5. Where reasons of national security or public policy ***related to the family member*** concerned so require, a residence permit shall not be issued ***to that*** family member, and such residence permits which have already been issued shall be withdrawn or shall not be renewed.

6. Family members who have been issued a residence permit pursuant to paragraph 1 of this Article shall be entitled to the rights laid down in Articles 25 to **32, 34 and 35**.
7. Member States may apply this Article ■ to other close relatives, ***including siblings***, who lived together as part of the family ■ before the applicant arrived on the territory of the Member ***State*** and who ***are*** dependent on the beneficiary of international protection ■ .
Member States may apply this Article to a married minor, provided that it is in the best interests of that minor.

Section II

Rights and obligations related to residence and stay

Article 24 Residence permits

1. ***Beneficiaries of international protection shall have the right to a residence permit for as long as they hold refugee status or subsidiary protection status.***
2. ***A residence permit shall be issued as soon as possible*** after refugee status or subsidiary protection status has been granted, ***and at the latest 90 days from the notification of the decision to grant international protection,*** using the uniform format laid down in Regulation (EC) No 1030/2002.
3. ***A residence permit shall be issued free of charge or for a fee not exceeding the fee payable by nationals of the Member State concerned for the issuing of identity cards.***
4. A residence permit shall ***have an initial*** period of validity of ***at least three*** years ***for beneficiaries of refugee status and at least one year for beneficiaries of subsidiary protection status.***

On expiry, residence permits shall be renewed for at least three years for beneficiaries of refugee status and for at least two years for beneficiaries of subsidiary protection status.

The renewal of residence permits shall be organised in such a way as to ensure continuity of the period of permitted residence, with no interruption between the period covered by the lapsing of the permit and the renewed permit, provided that the beneficiary of international protection acts in accordance with relevant national law providing for the administrative formalities for renewal.

5. The competent authorities may revoke or refuse to renew a residence permit only where *they* have **withdrawn** refugee status ■ in accordance with Article 14 **or** subsidiary protection status ■ in accordance with Article 19 ■ .

■

Article 25 Travel document

1. ***Unless compelling reasons of national security or public policy related to a beneficiary of refugee status require otherwise***, competent authorities shall issue travel documents in the form set out in the Schedule to the Geneva Convention and which comply with the minimum standards for security features and biometrics outlined in Regulation (EC) No 2252/2004 to beneficiaries of refugee status. Such travel documents shall be valid for ***more than*** one year.
2. ***Unless compelling reasons of national security or public policy related to a beneficiary of subsidiary protection require otherwise***, competent authorities shall issue travel documents which comply with the minimum standards for security features and biometrics outlined in Regulation (EC) No 2252/2004 to beneficiaries of subsidiary protection status who are unable to obtain ***or renew*** a national passport. Such ***travel*** documents shall be valid for ***more than*** one year.

3. *In the exercise of their obligations pursuant to paragraphs 1 and 2 of this Article, the competent authorities of Member States which do not take part in the Schengen acquis shall issue travel documents in the form set out in the Schedule to the Geneva Convention and which comply with minimum standards for security features and biometrics equivalent to those outlined in Regulation (EC) No 2252/2004 to beneficiaries of refugee status, taking into account the specifications of the International Civil Aviation Organisation, in particular those set out in Document 9303 on machine readable travel documents.*

In the exercise of their obligations pursuant to paragraphs 1 and 2 of this Article, the competent authorities of Member States which do not take part in the Schengen acquis shall issue travel documents that comply with minimum standards for security features and biometrics equivalent to those outlined in Regulation (EC) No 2252/2004 to beneficiaries of subsidiary protection status who are unable to obtain or renew a national passport, taking into account the specifications of the International Civil Aviation Organisation, in particular those set out in Document 9303 on machine readable travel documents.

Article 26

Freedom of movement within the Member State

Beneficiaries of international protection shall enjoy freedom of movement within the territory of the Member State that granted them international protection, including the right to choose their place of residence in that territory, under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories who are ***generally in the same circumstances***.

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Article 27 Movement within the Union

Beneficiaries of international protection shall not have the right to reside in a Member State other than the Member State that granted ***them international protection***. This is without prejudice to their right to:

- (a) apply and be admitted to reside in ***another Member State pursuant to that Member State's national law or pursuant to relevant provisions of Union law or of international agreements***;
- (b) move freely in accordance with the conditions of Article 21 of the Convention implementing the Schengen Agreement.

Section III
Rights related to integration

Article 28 Access to employment

1. Beneficiaries of international protection shall have the right to engage in employed or self-employed activities subject to the rules generally applicable to the profession concerned or to the public service, immediately after protection has been granted.
2. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that granted *them international protection* as regards:
 - (a) *terms of employment, including the minimum working age, and* working conditions, including pay and dismissal, working hours, leave and holidays, and health and safety requirements at the workplace;
 - (b) freedom of association and affiliation, and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the *rights and* benefits conferred by such organisations;

(c) employment-related educational opportunities for adults, vocational training, including training courses for upgrading skills and practical workplace experience;

(d) **information and counselling** services offered by employment offices.

3. Where necessary, competent authorities shall facilitate full access to the activities referred to in **points (c) and (d) of** paragraph 2 ■ .

Article 29 Access to education

1. Minors granted international protection shall **enjoy equal treatment with** nationals of the Member State that granted **them international protection as regards access to the education system.**

Beneficiaries of international protection shall continue to enjoy equal treatment with nationals of the Member State that granted them international protection for the completion of secondary education irrespective of whether they reach the age of majority.

2. Adults granted international protection shall ***enjoy equal treatment with nationals of the Member State that granted them international protection as regards*** access to the general education system, further training or retraining **■** .

Notwithstanding the first subparagraph, competent authorities may refuse grants and loans to adults granted international protection, where that possibility is provided for under national law.

Article 30

Access to procedures for recognition of qualifications and validation of skills

1. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that granted ***them international protection*** in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

2. Without prejudice to Article 2(2) and Article 3(3) of Directive 2005/36/EC of the European Parliament and of the Council²⁰, competent authorities shall facilitate full access to the procedures referred to in paragraph 1 of this Article for beneficiaries of international protection who cannot provide documentary evidence of their qualifications.
3. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that granted ***them international protection*** as regards access to appropriate schemes for the assessment, validation and ***recognition*** of their prior learning ***outcomes*** and experience.

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²⁰ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

Article 31

Social security and social assistance

1. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that granted ***them international protection*** as regards ***social security and*** social assistance.

Access to certain forms of social assistance specified in national law may be made conditional on the effective participation of the beneficiary of international protection in integration measures, ***where participation in such measures is compulsory, provided that they are accessible and free of charge.***

2. *Notwithstanding paragraph 1, the provision of equal treatment as regards social assistance **may be limited** for beneficiaries of subsidiary protection status to core benefits, where that possibility is provided for under national law.*

Core benefits shall include at least the following:

- (a) minimum income support;*
- (b) assistance in the case of illness or pregnancy;*
- (c) parental assistance, including child-care assistance; and*
- (d) housing benefits, in so far as those benefits are granted to nationals of the Member State concerned under national law.*

Article 32 Healthcare

1. Beneficiaries of international protection shall have access to healthcare under the same eligibility conditions as nationals of the Member State that granted ***them international protection***.
2. Beneficiaries of international protection who have special needs, such as pregnant women, ***persons with a disability***, persons who have ***been subjected to*** torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, or cruel, inhuman and degrading treatment, or who have suffered from armed conflict shall be provided ***with*** adequate healthcare, including treatment of mental disorders when needed, under the same eligibility conditions as nationals of the Member State that granted ***them international protection***.

Article 33 Unaccompanied minors

1. As soon as possible after international protection is granted in respect of an unaccompanied minor, competent authorities shall take the necessary measures, ***under national law***, to ***appoint*** a █ guardian █ .

Competent authorities may keep the same person designated as [representative under Article 23(2), point (b), of Regulation (EU) 2024/...⁺ or under Article 27(1), point (b), of Directive (EU) 2024/...⁺⁺ to act as the guardian, without the need for formal appointment.

Representatives as referred to in Article 23(2), point (b), of Regulation (EU) 2024/...⁺ or Article 27(1), point (b), of Directive (EU) 2024/...⁺⁺ shall remain responsible for unaccompanied minors until a guardian is appointed.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD)).

⁺⁺ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

Organisations or natural persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible for appointment as the guardian of that minor.

Where an organisation is appointed as guardian, it shall as soon as possible designate a ***natural*** person responsible for carrying out the duties of guardian in respect of the unaccompanied minor in accordance with this Regulation.

2. ***For the purposes of this Regulation, with a view to safeguarding the best interests of the child and the unaccompanied minor's general well-being, the*** guardian shall **■** :

- (a) ***ensure*** that the unaccompanied minor has access to all rights stemming from this Regulation;
- (b) ***assist and, where applicable, represent the unaccompanied minor in the event that the unaccompanied minor's refugee status or subsidiary protection status is withdrawn; and***

- (c) *where applicable, assist in the tracing of family as provided for in paragraph 7.*

Guardians shall:

- (a) *have the necessary expertise and receive initial and continuous appropriate training concerning the rights and needs of unaccompanied minors, including those relating to any applicable child safeguarding standards;*
- (b) *be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work;*
- (c) *not have a verified record of child-related crimes and offences or of crimes and offences that lead to serious doubts about their ability to assume a role of responsibility with regard to children.*

- 3. *The competent authorities shall appoint each guardian to represent a proportionate and sufficiently limited number of unaccompanied minors in order to ensure that guardians are able to perform their tasks effectively and that unaccompanied minors have effective access to their rights and benefits.*

4. *In accordance with national law, Member States shall ensure that there are entities, including judicial authorities, or persons that are responsible for supervising and monitoring guardians on an ongoing basis in order to ensure that they perform their tasks in a satisfactory manner.*

Entities and persons as referred to in the first subparagraph shall review the performance of guardians, in particular where there are indications that guardians are not performing their tasks in a satisfactory manner. Such entities and persons shall examine, without delay, any complaints lodged by unaccompanied minors against their guardians.

Where necessary, the competent authorities shall replace a person acting as a guardian, in particular where they consider that that person has not adequately performed his or her tasks.

The competent authorities shall explain to unaccompanied minors, in an age- appropriate manner and in such a way as to ensure that the minors understand, how to lodge a complaint against their guardians in confidence and safety.

5. *While taking into account the best interests of the child, the competent authorities shall **place** unaccompanied minors:*

- (a) with **an** adult relative;
- (b) with a foster family;
- (c) in centres specialised in accommodation for minors; or
- (d) in other accommodation suitable for minors.

The views of unaccompanied minors shall be taken into account in accordance with their age and degree of maturity.

6. As far as possible, siblings shall be kept together, taking into account the best interests of the unaccompanied minors concerned and, in particular, their age and degree of maturity. Changes of residence of unaccompanied minors shall be kept to a minimum.
7. ***Where the tracing of family members of*** an unaccompanied minor ***started before that minor*** was granted international protection, it shall continue after the granting of international protection. ***Where the tracing of family members*** has not already started, ***it*** shall start ■ as soon as possible after the granting of refugee status or subsidiary protection status, ***provided that it is in*** the minor's best interests.

■ Where there might be a threat to the life or integrity of the minor or the minor's close relatives, particularly if they have remained in the country of origin, care shall be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis ***so as to avoid jeopardising their safety.***

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Article 34

Access to accommodation

1. Beneficiaries of international protection shall have access to accommodation under conditions ***at least*** equivalent to those applicable to other third-country nationals legally resident in the ***territory*** of the Member ***State that granted them international protection*** who are ***generally in the same circumstances***.
2. National **■** practices ***for the dispersal*** of beneficiaries of international protection shall ***ensure that*** beneficiaries of international protection ***are treated equally unless different treatment is objectively justified***. ***Such national practices*** shall ensure equal opportunities regarding access to accommodation.

Article 35

Access to integration measures

1. In order to ***encourage and*** facilitate ***their*** integration ■ into ***the*** society ***of the Member State that granted them international protection***, beneficiaries of international protection shall have access to integration measures provided ***or facilitated by the Member State which take into account their specific needs and are considered appropriate by the competent authorities***, in particular language courses, civic orientation, integration programmes and vocational training ■ .
2. ***Beneficiaries of international protection shall participate in integration measures where participation is made compulsory in the Member State that granted them international protection. Such integration measures shall be accessible and free of charge.***

3. *By way of derogation from paragraph 2 of this Article and without prejudice to Article 31(1), second subparagraph, Member States may apply a fee for certain compulsory integration measures where the beneficiary of international protection has sufficient means and where such fees do not place an unreasonable burden on the beneficiary of international protection.*
4. *Competent authorities shall not apply sanctions against beneficiaries of international protection where they are unable to participate in integration measures due to circumstances beyond their control.*

Article 36 Repatriation

Assistance **may** be provided to beneficiaries of international protection who wish to be repatriated.

CHAPTER VIII ADMINISTRATIVE COOPERATION

Article 37 Cooperation

Each Member State shall appoint a national contact point for the purposes of this Regulation and communicate its address to the Commission. The Commission shall communicate that information to the other Member States.

Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

Article 38 Staff

Authorities and other organisations applying this Regulation shall have received or shall receive the necessary training and shall be bound by the principle of confidentiality ■ in relation to any *personal* information they *acquire* in the *performance* of their *duties, as laid down by national law*.

CHAPTER IX FINAL PROVISIONS

I

Article 39 Monitoring and evaluation

By ... [two years from ***the date of application of this*** Regulation] and every five years thereafter, the Commission shall report to the European Parliament and to the Council on the application of this Regulation and shall, where appropriate, propose necessary amendments.

Nine months prior to the expiry of the relevant deadline as set out in the first paragraph, at the latest, Member States shall forward to the Commission all information appropriate for the preparation of the report referred to in that paragraph.

Article 40
Amendment to Directive 2003/109/EC

Directive 2003/109/EC is amended as follows:

(1) *in Article 4(2), the third subparagraph is replaced by the following:*

‘Regarding persons to whom international protection has been granted, the period between the date of the lodging of the application for international protection on the basis of which that international protection was granted and the date of the granting of the residence permit referred to in Article 24 of Regulation (EU) 2024/...^{*,+} shall be taken into account in the calculation of the period referred to in paragraph 1.

^{*} *Regulation (EU) 2024/... of the European Parliament and of the Council of ... on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Council Directive 2011/95/EU of the European Parliament and of the Council (OJ L, ..., ELI: ...).’;*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

(2) in Article 4, the following paragraph is inserted:

‘3a. Where a beneficiary of international protection is found in a Member State other than the one that granted international protection, without a right to stay or to reside there in accordance with relevant national, Union **or international** law, the period of legal stay **in the Member State that granted international protection** preceding such a situation shall not be taken into account in the calculation of the period referred to in paragraph 1. ■

By way of derogation from the first subparagraph, in particular where the beneficiary of international protection demonstrates that the reason for the stay or residence without a right was due to circumstances beyond that beneficiary’s control, Member States may provide, in accordance with their national law, that the calculation of the period referred to in paragraph 1 shall not be interrupted.’;

(3) in **Article 26, the first paragraph is replaced by** the following **■** :

■

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with **■** this Directive by 23 January 2006 at the latest. **Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 4(2), third subparagraph, and (3a) by ... [the date of application of this Regulation] ■** . They shall immediately **communicate the text of those measures to** the Commission **■** .’.

Article 41 Repeal

Directive 2011/95/EU is repealed with effect from ... [the date of application of this Regulation]. References to the repealed Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex **II**.

To the extent that Council Directive 2004/83/EC²¹ continued to be binding upon Member States not bound by Directive 2011/95/EU, Directive 2004/83/EC is repealed with effect from the date on which those Member States are bound by this Regulation. References to the repealed Directive shall be construed as references to this Regulation.

²¹ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304, 30.9.2004, p. 12).

Article 42

Entry into force and applicability

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from ... [the first day of the twenty-fifth month following its entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament
The President

For the Council
The President

ANNEX I

INFORMATION TO BE PROVIDED TO BENEFICIARIES OF INTERNATIONAL PROTECTION

As soon as possible after the international protection has been granted, the following information shall be provided, as a minimum, to beneficiaries of international protection regarding the rights and obligations relating to their refugee status or subsidiary protection status. Where necessary, the information may be provided by different authorities, service providers or relevant contact points.

I. Information on rights and obligations related to residence and stay:

(a) Right to a residence permit for beneficiaries of international protection (Article 24):

- **How and where to apply for a residence permit and information on the competent authority or a relevant contact point;**

(b) *Right to a residence permit for family members of beneficiaries of international protection (Article 23):*

- *How and where to apply for a residence permit and information on the competent authority or a relevant contact point;*
- *Information on the rights to which family members who are issued a residence permit are entitled;*

(c) *Right to claim a travel document (Article 25):*

- *How and where to apply for a travel document and information on the competent authority or a relevant contact point;*

(d) *Right to freedom of movement within the Member State and possible restrictions on that movement (Article 26):*

- *Where applicable, the requirement to take up residence or to register within a specific municipality and information on the competent authority or a relevant contact point;*

(e) Right to freedom of movement within the Union (Article 27):

- *The obligation to reside in the Member State that granted international protection;*
- *The right to move in the Schengen area and the conditions on the exercise of such a right as specified in Article 21 of the Convention implementing the Schengen Agreement and the right to apply and be admitted to reside in another Member State pursuant to that Member State's national law or pursuant to relevant provisions of Union law or of international agreements;*
- *Possible sanctions with regard to the calculation of years in accordance with Directive 2003/109/EC and the take back procedure under Regulation (EU) 2024/...⁺ where the beneficiary of international protection does not follow the relevant rules and overstays without permission in breach of the Convention implementing the Schengen Agreement or stays or resides in another Member State without permission.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

II. Information on rights related to integration:

(a) Right to access employment (Article 28):

- *Administrative requirements for accessing employment or self-employed activities;*
- *Where applicable, the restrictions related to employment in the public service;*
- *The relevant employment office or contact point for additional information;*

(b) Right to access education for minors (Article 29(1))

- *Minimum age for compulsory schooling;*
- *Where applicable, administrative requirements for accessing the education system;*

(c) Right to access the general education system for adults (Article 29(2)):

- *The requirements, including administrative requirements, for accessing the general education system;*

- (d) *Right to access procedures for the recognition of qualifications and the validation of skills (Article 30):*
- *Competent national authorities or relevant contact points for the provision of information on regulated professions exercisable only after formal recognition of qualification and the administrative procedures to be carried out for such recognition;*
- (e) *Information on appropriate schemes for assessing, validating and recognising prior learning outcomes and experience (Article 30(3)):*
- *Where applicable, information on such schemes and a relevant contact point for further information;*
- (f) *Right to equal treatment with nationals as regards social security (Article 31)*
- *A relevant contact point for further information;*

(g) Right to social assistance (Article 31):

- *Where applicable, the list of benefits which are not provided to beneficiaries of subsidiary protection;*
- *A relevant contact point for further information;*

(h) Right to healthcare under the same eligibility conditions as nationals (Article 32):

- *General information on the conditions for access to healthcare;*
- *Where applicable, a contact point for services available to victims of abuse, exploitation, torture or cruel, inhuman and degrading treatment;*

(i) Right to access accommodation under conditions equivalent to those applicable to other third country nationals legally residing in the Member State (Article 34):

- *Where applicable, basic information on available social housing schemes;*

- *Where applicable, residency requirements in the framework of dispersal practices;*
- *A competent authority or a relevant contact point for further information;*

(j) *Right to access integration measures considered appropriate, subject to compulsory participation where applicable (Article 35):*

- *Where applicable, information on compulsory integration measures;*
- *A relevant contact point for further information.*

III. *Information on specific rights for unaccompanied minors (Article 33):*

- *Information on the right to a guardian and the guardian's duties;*
 - *The details for lodging a complaint against a guardian.*
-

ANNEX II

Correlation Table

Directive 2011/95/EU	This Regulation
Article 1	Article 1
Article 2, point (a)	Article 3, point (3)
Article 2, point (b)	Article 3, point (4)
Article 2, point (c)	-
Article 2, point (d)	-Article 3, point (5)
Article 2, point (e)	Article 3, point (1)
Article 2, point (f)	Article 3, point (6)

Article 2, point (g)	Article 3, point (2)
Article 2, point (h)	Article 3, point (7)
Article 2, point (i)	Article 3, point (8)
Article 2, point (j), introductory wording	Article 3, point (9), introductory wording
Article 2 point (j), first indent	Article 3, point (9)(a)
Article 2 point (j), second indent	Article 3, point (9)(b)
Article 2 point (j), third indent	Article 3, point (9)(c)
Article 2, point (k)	Article 3, point (10)
Article 2, point (l)	Article 3, point (11)
Article 2, point (m)	Article 3, point (12)

Article 2, point (n)	Article 3, point (13)
-	Article 3, points (14), (15), (16), (17) and (18)
Article 3	-
Article 4(1) and (2)	Article 4(1) and (2)
-	Article 4(3)
Article 4(3), points (a) to (e)	¹
Article 4(4) and (5)	Article 4(4) and (5)
Article 5	Article 5

¹ See Article 33(2) of Regulation (EU) 2024/... [OJ: Please insert the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A(COD))].

Article 6	Article 6
Article 7	Article 7
Article 8(1)	Article 8(1)
-	Article 8(2) and (3)
Article 8(2)	Article 8(4)
-	Article 8(5) and (6)
Article 9	Article 9
Article 10(1) and (2)	Article 10(1) and (2)
-	Article 10(3)
Article 11(1)	Article 11(1), first subparagraph

Article 11(2)	Article 11(2), points (a) and (b)
Article 11(3)	-
Article 12(1)	Article 12(1)
Article 12(2), points (a), (b) and (c)	Article 12(2), points (a), (b) and (c)
Article 12(3)	Article 12(3)
-	Article 12(4) and (5)
Article 13	Article 13
Article 14(1)	Article 14(1), point (a)

Article 14(2)	Article 14(4)
Article 14(3), point (a)	Articles 14(1), point (b)
Article 14(3), point (b)	Article 14(1), point (c)
Article 14(4), point (a)	Article 14(1), point (d)
Article 14(4), point (b)	Article 14(1), point (e)
Article 14(5)	Article 14(2)
Article 14(6)	Article 14(3)
-	Article 14(4)

Article 15	Article 15
Article 16(1)	Article 16(1)
Article 16(2)	Article 16(2), points (a) and (b)
Article 16(3)	Article 16(3)
Article 17(1), points (a), (b), (c) and (d)	Article 17(1), points (a), (b), (c) and (d)
Article 17(2)	Article 17(2)
Article 17(3)	Article 17(3)
	Article 17(4) and (5)
Article 18	Article 18

Article 19(1)	Article 19(1), point (a)
Article 19(2)	Article 19(1), point (b)
Article 19(3), point (a)	Article 19(1), point (b)
Article 19(3), point (b)	Article 19(1), point (c)
Article 19(4)	Article 19(2)
Article 21	Article 21
Article 20(1)	Article 20(1)
Article 22	Article 20(2)

Article 20(3)	Article 20(4)
Article 20(4)	Article 20(4)
Article 20(5)	Article 20(5)
Article 21(1)	Article 21
Article 21(2)	-
Article 21(3)	-
Article 22	Article 22
Article 23(1)	-

Article 23(2)	Article 23(1) and (4)
-	Article 23(2)
Article 23(3)	Article 23(3)
Article 23(4)	Articles 23(5)
Article 23(5)	Article 23(7)
Article 24(1), first subparagraph	Article 24(2)
Article 24(2)	Article 26(4), second subparagraph
Article 25	Article 25

Article 26(1)	Article 28(1)
Article 26(2)	Article 28(2), points (c) and (d)
Article 26(3)	Article 28(3)
Article 26(4)	Article 31
Article 27	Article 29
Article 28(1) and (2)	Article 30(1) and (2)
-	Article 30(3)
Article 29(1)	Article 31(1), first subparagraph
-	Article 31(1), second subparagraph
Article 29(2)	Article 31(2)

Article 30	Article 32
Article 31(1)	Article 33(1), first subparagraph
-	Article 33(1), second subparagraph
Article 31(2), (3), (4), (5) and (6)	Article 33(2), (3), (4), (5), (6) and (7)
Article 32	Article 34
Article 33	Article 26
Article 34	Article 35(1)
-	Article 35(2)

Article 35	Article 36
Article 36	Article 37
Article 37	Article 38
Article 38	Article 39
Article 39	-
-	Article 40
Article 40	Article 41
Article 41	Article 42
Article 42	-

REGULATIONS

REGULATION (EU) 2021/2303 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 December 2021

on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(1) and (2) thereof, Having

regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾, Whereas:

- (1) The objective of the Union's policy on asylum is to develop and establish a Common European Asylum System (CEAS) that is consistent with the values and humanitarian tradition of the Union and governed by the principle of solidarity and fair sharing of responsibility.
- (2) A common policy on asylum based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, is a constituent part of the Union's objective of establishing progressively an area of freedom, security and justice open to third-country nationals or stateless persons who seek international protection in the Union.
- (3) The CEAS is based on common minimum standards for procedures for international protection, recognition and protection offered at Union level and for reception conditions, and it establishes a system for determining the Member State responsible for examining applications for international protection. Notwithstanding the progress made on the CEAS, there are still significant disparities between the Member States as regards the granting of international protection and the form that such international protection takes. Those disparities should be addressed by ensuring greater convergence in the assessment of applications for international protection and by guaranteeing a uniform level of application of Union law, based on high protection standards, across the Union.
- (4) In its communication of 6 April 2016 entitled 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe', the Commission set out priority areas for structurally improving the CEAS, namely the establishment of a sustainable and fair system for determining the Member State responsible for asylum seekers, the reinforcement of the Eurodac system, the achievement of greater convergence in the Union asylum system, the prevention of secondary movements within the Union and the development of a new mandate for the

(1) Position of the European Parliament of 11 November 2021 (not yet published in the Official Journal) and decision of the Council of 9 December 2021.

European Asylum Support Office (EASO). That communication is in line with a call by the European Council on 18 February 2016 to make progress towards reforming the Union's existing framework so as to ensure a humane, fair and efficient asylum policy. That communication also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own-initiative report of 12 April 2016 entitled 'The situation in the Mediterranean and the need for a holistic EU approach to migration'.

- (5) EASO was established by Regulation (EU) No 439/2010 of the European Parliament and of the Council ⁽²⁾, and it took up its responsibilities on 1 February 2011. EASO enhances practical cooperation among Member States on asylum-related matters and assists Member States in implementing their obligations under the CEAS. EASO also provides support to Member States whose asylum and reception systems are under particular pressure. However, its role and function need to be further strengthened so as to not only support practical cooperation among Member States but to reinforce and contribute to ensuring the efficient functioning of the asylum and reception systems of the Member States.
- (6) Having regard to the structural weaknesses of the CEAS, which were brought to the fore by the large-scale and uncontrolled arrival of migrants and asylum seekers to the Union, and the need for an efficient, high and uniform level of application of Union law on asylum in the Member States, it is necessary to improve the implementation and functioning of the CEAS by building on the work of EASO and further developing it into a fully-fledged agency. Such an agency should be a centre of expertise on asylum. It should facilitate and improve the functioning of the CEAS by coordinating and strengthening practical cooperation and information exchange on asylum among Member States, by promoting Union and international law on asylum and operational standards in order to ensure a high degree of uniformity based on high protection standards as regards procedures for international protection, reception conditions and the assessment of protection needs across the Union, by enabling genuine and practical solidarity among Member States in order to assist the affected Member States in general and applicants for international protection in particular and in accordance with Article 80 of the Treaty on the Functioning of the European Union (TFEU), which stipulates that relevant Union acts are to contain appropriate measures to give effect to the principle of solidarity, in order to apply in a sustainable way the Union rules for determining the Member State responsible for examining applications for international protection and in order to enable convergence in the assessment of applications for international protection across the Union, by monitoring the operational and technical application of the CEAS, by supporting Member States with resettlement and the implementation of Regulation (EU) No 604/2013 of the European Parliament and of the Council ⁽³⁾ and by providing operational and technical assistance to Member States for the management of their asylum and reception systems, in particular those whose systems are subject to disproportionate pressure.
- (7) The tasks of EASO should be expanded, and in order to reflect those changes it should be replaced and succeeded by an agency entitled the European Union Agency for Asylum (the 'Agency'), with full continuity in all of its activities and procedures.
- (8) In order to guarantee that it is independent and that it can carry out its tasks properly, the Agency should be provided with sufficient financial and human resources, including a sufficient number of its own staff to form part of asylum support teams and teams of experts for the monitoring mechanism under this Regulation.
- (9) The Agency should work in close cooperation with the national authorities responsible for asylum and immigration and other relevant services, drawing on the capacity and expertise of those authorities and services, and with the Commission. The Member States should cooperate with the Agency to ensure that it is capable of fulfilling its mandate. It is important, for the purposes of this Regulation, that the Agency and the Member States act in good faith and exchange information in a timely and accurate manner. Any provision of statistical data is to respect the technical and methodological specifications laid down in Regulation (EC) No 862/2007 of the European Parliament and of the Council ⁽⁴⁾.

(2) Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ L 132, 29.5.2010, p. 11).

(3) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

(4) Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).

- (10) The Agency should gather and analyse information on the situation of asylum in the Union and in third countries insofar as it might have an impact on the Union. That gathering and analysis of information should enable the Agency to provide Member States with up-to-date information including on migratory and refugee flows, and to identify possible risks for Member States' asylum and reception systems. For that purpose, the Agency should work in close collaboration with the European Border and Coast Guard Agency, established by Regulation (EU) 2019/1896 of the European Parliament and of the Council ⁽⁵⁾.
- (11) No personal data should be stored in databases or published on web portals created by the Agency concerning legal developments in the field of asylum, including relevant case law, unless such data have been obtained from sources that are publicly accessible.
- (12) The Agency should be able to deploy liaison officers to the Member States to foster cooperation and to act as an interface between the Agency and the national authorities responsible for asylum and immigration and other relevant services. Liaison officers should facilitate communication between the Member State concerned and the Agency and share relevant information from the Agency with the Member State concerned. They should support the collection of information and contribute to promoting the application and implementation of Union law on asylum, including with regard to respect for fundamental rights. Liaison officers should regularly report on the situation of asylum in Member States to the Agency's Executive Director, and those reports should be taken into account for the purposes of the monitoring mechanism under this Regulation. Where such reports raise concerns about one or more aspects relevant for the Member State concerned, the Executive Director should inform that Member State without delay.
- (13) The Agency should provide the necessary support to the Member States in carrying out their tasks and obligations under Regulation (EU) No 604/2013.
- (14) As regards resettlement, the Agency should be able to provide the necessary support to Member States at their request. To that end, the Agency should develop and offer expertise in resettlement in order to support actions on resettlement taken by Member States.
- (15) The Agency should assist Member States with the training of experts from all national administrations, courts and tribunals, and national authorities responsible for asylum matters, including through the development of a European asylum curriculum. Member States should develop appropriate training on the basis of the European asylum curriculum with the aim of promoting best practices and common standards in the implementation of Union law on asylum. In that respect, Member States should include core parts of the European asylum curriculum in their training. It is important that those core parts cover issues related to the determination of whether applicants qualify for international protection, interview techniques and evidence assessment. In addition, the Agency should verify and, where necessary, ensure that all experts participating in asylum support teams or forming part of the asylum reserve pool established under this Regulation (the 'asylum reserve pool') receive the necessary training before their participation in operational activities it organises.
- (16) The Agency should ensure a more structured, up-to-date and streamlined production of information on relevant third countries at Union level. The Agency should gather relevant information and draw up reports providing for country information. For that purpose, the Agency should establish and manage European networks on third-country information so as to avoid duplication and create synergies with national reports. It is necessary that the third-country information refer, inter alia, to the political, religious and security situation and to violations of human rights, including torture and ill-treatment, in the third country concerned.

⁽⁵⁾ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

- (17) In order to foster convergence in the assessment of applications for international protection and the type of protection granted, the Agency should, together with the Member States, develop a common analysis on the situation in specific countries of origin (the 'common analysis') and guidance notes. The common analysis should consist of an assessment of the situation in relevant countries of origin based on country-of-origin information. The guidance notes should be based on an interpretation of that common analysis developed by the Agency and Member States. When developing the common analysis and guidance notes the Agency should take note of the most recent United Nations High Commissioner for Refugees (UNHCR) Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from specific countries of origin, and it should be able to take into account other relevant sources. Without prejudice to the competence of the Member States to decide on individual applications for international protection, Member States should take into account the relevant common analysis and guidance notes when assessing applications for international protection from applicants who originate from third countries for which a common analysis and guidance notes have been developed in accordance with this Regulation.
- (18) The Agency should assist the Commission and should be able to assist the Member States by providing information and analysis on third countries regarding the concept of safe country of origin and the concept of safe third country. When providing such information and analysis the Agency should report to the European Parliament and to the Council in accordance with this Regulation.
- (19) In order to ensure a high degree of uniformity based on high protection standards as regards procedures for international protection, reception conditions and the assessment of protection needs across the Union, the Agency should organise and coordinate activities that promote the correct and effective implementation of Union law on asylum through tools of a non-binding nature. For that purpose, the Agency should develop operational standards, indicators and guidelines on asylum-related matters. The Agency should enable and promote the exchange of best practices among Member States.
- (20) The Agency, in close cooperation with the Commission and without prejudice to the Commission's responsibility as guardian of the Treaties, should monitor the operational and technical application of the CEAS with the aim of preventing or identifying possible shortcomings in the asylum and reception systems of the Member States and of assessing their capacity and preparedness to manage situations of disproportionate pressure in order to enhance the efficiency of those systems (the 'monitoring mechanism'). The monitoring mechanism should be comprehensive, and it should be possible to base the monitoring on information provided by the Member State concerned, the information analysis on the situation of asylum developed by the Agency, on-site visits, including short-notice visits, case sampling and information provided by intergovernmental organisations or bodies, in particular the UNHCR, and other relevant organisations on the basis of their expertise. The Executive Director should provide for the possibility for the Member State concerned to comment on the draft findings of a monitoring exercise carried out as part of the monitoring mechanism and, subsequently, on the draft recommendations. The Executive Director should draw up the draft recommendations in consultation with the Commission. After taking into account the comments of the Member State concerned, the Executive Director should submit to the Management Board the findings of the monitoring exercise and the draft recommendations, outlining the measures to be taken by the Member State concerned, including with the assistance of the Agency, as necessary, to address any shortcomings or issues of capacity and preparedness. The draft recommendations should specify the time limits within which those measures should be taken. The Management Board should adopt the recommendations. The Member State concerned should be able to request assistance from the Agency for the implementation of the recommendations and can request specific financial support from relevant Union financial instruments.
- (21) The monitoring exercise should take place in close collaboration with the Member State concerned, including as regards on-site visits and case sampling, where necessary. It is appropriate that case sampling consist of a selection of positive and negative decisions that cover a particular period of time and are relevant to the aspect of the CEAS that is being monitored. It is appropriate to base case sampling on objective indications, such as recognition rates. Case sampling is without prejudice to the competence of the Member States to decide on individual applications for international protection and is to be carried out in a manner that fully respects the principle of confidentiality.
- (22) In order to focus the monitoring exercise on particular elements of the CEAS, the Agency should have the possibility to monitor thematic or specific aspects of the CEAS. Where the Agency initiates a monitoring exercise on thematic or specific aspects of the CEAS, it should ensure that all Member States are subject to that thematic or specific monitoring. However, in order to avoid duplication of the Agency's work, it would not be appropriate to subject a Member State to a monitoring exercise on thematic or specific aspects of the CEAS in a year during which the operational and technical application of all aspects of the CEAS of that Member State is being monitored.

- (23) Where the Member State concerned does not take the measures necessary to implement the recommendations adopted by the Management Board within the set time limit and, therefore, does not address the identified shortcomings in its asylum and reception systems or any issues of capacity and preparedness which result in serious consequences for the functioning of the CEAS, the Commission should, on the basis of its own assessment, adopt recommendations addressed to that Member State identifying the measures needed to remedy the situation, including, where necessary, specific measures to be taken by the Agency in support of that Member State. It should be possible for the Commission to organise on-site visits to the Member State concerned in order to verify the implementation of the recommendations. In its assessment, the Commission should consider the seriousness of the identified shortcomings in relation to their consequences for the functioning of the CEAS. Where, following the expiry of the time limit set in the recommendations, the Member State has not complied with the recommendations, the Commission should be able to make a proposal for a Council implementing act identifying measures to be taken by the Agency to support that Member State and requiring that Member State to cooperate with the Agency in the implementation of those measures.
- (24) When setting up teams of experts for carrying out the monitoring exercise, the Agency should invite an observer from the UNHCR. The absence of such an observer does not prevent the teams from performing their tasks.
- (25) To facilitate and improve the proper functioning of the CEAS and to assist Member States in implementing their obligations within the framework of the CEAS, the Agency should provide Member States with operational and technical assistance, in particular where their asylum and reception systems are subject to disproportionate pressure. Such assistance should be provided on the basis of an operational plan and through the deployment of asylum support teams. Asylum support teams should consist of experts from the Agency's own staff, experts from Member States, experts seconded by Member States to the Agency or other experts not employed by the Agency with demonstrated relevant knowledge and experience in line with operational needs. It is important that the Agency only make use of such other experts not employed by it where it cannot otherwise ensure the proper and timely exercise of its tasks due to the lack of available experts from the Member States or the Agency's own staff.
- (26) The asylum support teams should be able to support Member States with operational and technical measures, including by providing expertise relating to the identification and registration of third-country nationals, interpreting services and information on countries of origin and on the handling and management of asylum cases, by assisting national authorities competent for examining applications for international protection and by assisting with the relocation or transfer of applicants for or beneficiaries of international protection. Arrangements for asylum support teams should be governed by this Regulation in order to ensure that they can be deployed effectively.
- (27) Experts who participate in asylum support teams should complete the necessary training relevant to their duties and functions for their participation in operational activities. The Agency should, where necessary and in advance of or upon deployment, provide those experts with training specific to the operational and technical assistance provided in the Member State concerned (the 'host Member State'). In order for experts participating in asylum support teams to be involved in facilitating the examination of applications for international protection, it is important that they demonstrate relevant experience of at least 1 year.
- (28) To ensure the availability of experts for asylum support teams and to ensure that they can be immediately deployed as necessary, the asylum reserve pool should be established. The asylum reserve pool should constitute a reserve of experts from Member States amounting to a minimum of 500 persons.
- (29) Where a Member State's asylum and reception systems are subject to disproportionate pressure, the Agency should, at the request of that Member State or on its own initiative with the agreement of that Member State, be able to assist that Member State by means of a comprehensive set of measures, including the deployment of experts from the asylum reserve pool.

- (30) In order to address a situation in which the asylum or reception system of a Member State is rendered ineffective to the extent of having serious consequences for the functioning of the CEAS and is subject to disproportionate pressure that places an exceptionally heavy and urgent demand on that system and the Member State concerned does not take sufficient action to address that pressure, including by not requesting operational and technical assistance or by not agreeing to an initiative of the Agency for such assistance, or the Member State concerned does not comply with the Commission's recommendations following a monitoring exercise, the Commission should be able to propose to the Council an implementing act identifying the measures to be taken by the Agency and requiring the Member State concerned to cooperate with the Agency in the implementation of those measures. The power to adopt such an implementing act should be conferred on the Council due to the potentially politically sensitive nature of the measures to be decided and the possible impact which such measures might have on the tasks of the national authorities. The Agency should be able to intervene, on the basis of that implementing act, in support of a Member State where its asylum or reception system is rendered ineffective to the extent of having serious consequences for the functioning of the CEAS. Such an intervention by the Agency is without prejudice to any infringement procedure initiated by the Commission.
- (31) To ensure that the asylum support teams, including experts deployed from the asylum reserve pool, are able to perform their tasks effectively with the means necessary, the Agency should be able to acquire or lease technical equipment. This should not, however, affect the obligation of host Member States to supply the facilities and equipment necessary for the Agency to be able to provide the required operational and technical assistance. Prior to acquiring or leasing equipment, the Agency should conduct a thorough needs and cost-benefit analysis.
- (32) For Member States that are faced with specific and disproportionate pressure on their asylum and reception systems due, in particular, to their geographic or demographic situation, the Agency should support solidarity measures within the Union and perform its tasks and obligations with regard to the relocation or transfer of applicants for or beneficiaries of international protection within the Union, while ensuring that advantage is not taken of asylum and reception systems.
- (33) Where a Member State faces specific and disproportionate migratory challenges at particular areas of the external borders, referred to as hotspot areas, it should be able to request that the Agency provide operational and technical assistance. In such cases, the Member State can rely on increased operational and technical reinforcement by migration management support teams composed of teams of experts from Member States deployed through the Agency, the European Border and Coast Guard Agency and the European Union Agency for Law Enforcement Cooperation (Europol), established by Regulation (EU) 2016/794 of the European Parliament and of the Council ⁽⁶⁾, or other relevant Union bodies, offices and agencies, as well as experts from the Agency's staff and the European Border and Coast Guard Agency with the aim of managing such challenges. It is appropriate that the Agency assist the Commission with coordination among the different Union bodies, offices and agencies on the ground.
- (34) In hotspot areas, the Member States cooperate, under the coordination of the Commission, with relevant Union bodies, offices and agencies. Union bodies, offices and agencies are to operate in accordance with their respective mandates and powers. The Commission, in cooperation with the relevant Union bodies, offices and agencies, is to ensure that activities in hotspot areas comply with relevant Union law.
- (35) For the purpose of fulfilling its mission and to the extent required for the accomplishment of its tasks, the Agency should cooperate with Union bodies, offices and agencies, in particular the bodies, offices and agencies in the field of justice and home affairs, in matters covered by this Regulation in the framework of working arrangements concluded in accordance with Union law and policy. Those working arrangements should receive the Commission's prior approval.

(6) Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

- (36) It is important that the Agency cooperate with the European Migration Network, established by Council Decision 2008/381/EC (7), to ensure synergies and avoid duplication of activities.
- (37) The Agency should cooperate with international organisations, in particular the UNHCR, in matters covered by this Regulation in the framework of working arrangements so as to benefit from their expertise and support. To that end, the roles of the UNHCR and other relevant international organisations should be fully recognised, and those organisations should be involved in the work of the Agency. Those working arrangements should receive the Commission's prior approval.
- (38) The Agency should facilitate operational cooperation between Member States and third countries in matters related to its activities and to the extent necessary for the fulfilment of its tasks. The Agency should also be able to cooperate with the authorities of third countries in matters covered by this Regulation in the framework of working arrangements, which should receive the Commission's prior approval. The Agency should act in accordance with the Union's external policy, and it is appropriate that it integrate its external activities in broader strategic cooperation with third countries. It does not, under any circumstances, fall within the mandate of the Agency to formulate independent external policy. In their cooperation with third countries, the Agency and the Member States should respect the fundamental rights set out in the Charter of Fundamental Rights of the European Union (the 'Charter') and should comply with norms and standards which form part of Union law, including where the activities are carried out on the territory of third countries.
- (39) The Agency should be able to deploy experts from its own staff as liaison officers to relevant third countries to facilitate cooperation with third countries on asylum-related matters. Prior to the deployment of a liaison officer, the Agency should assess the human rights situation in the country concerned in order to ensure that that country complies with non-derogable human rights standards.
- (40) The Agency should maintain a close dialogue with civil society with a view to exchanging information and pooling knowledge in the field of asylum. The Agency should set up a Consultative Forum, which should constitute a mechanism for the exchange of information and the sharing of knowledge on asylum. The Consultative Forum should advise the Executive Director and the Management Board in matters covered by this Regulation. It is important that the composition and size of the Consultative Forum be determined with due regard to the efficiency of its activities, and that the Agency allocate adequate human and financial resources to the Consultative Forum.
- (41) This Regulation respects the fundamental rights and observes the principles recognised, in particular, by international and Union law, including the Charter. All activities of the Agency should be carried out in a manner that fully respects those fundamental rights and principles, in particular the right to asylum, the principle of non-refoulement, the right to respect for private and family life, including family reunification under Union law, the rights of the child, the right to protection of personal data and the right to an effective remedy and to a fair trial. The rights of the child and the special needs of persons in a vulnerable situation should always be taken into account. The Agency should therefore carry out its tasks with respect for the best interests of the child, in compliance with the United Nations Convention on the Rights of the Child, taking due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.
- (42) Where the operational and technical assistance provided by the Agency concerns persons in a vulnerable situation, that assistance should be adapted to the situation of those persons in accordance with the requirements laid down by Union and national law on asylum.
- (43) The Agency should adopt and implement a fundamental rights strategy to monitor and ensure the protection of fundamental rights.

- (44) An independent fundamental rights officer should be appointed to ensure that the Agency complies with fundamental rights in the course of its activities and to promote respect for fundamental rights within the Agency in accordance with the Charter, including by making a proposal for the Agency's fundamental rights strategy and ensuring its implementation, and by handling complaints received by the Agency under the Agency's complaints mechanism. To that end, it is important that the Agency provide the fundamental rights officer with adequate resources and staff corresponding to its mandate and size.
- (45) The Agency should establish a complaints mechanism under the responsibility of the fundamental rights officer. The aim of the complaints mechanism should be to ensure that fundamental rights are respected in all the activities of the Agency. The complaints mechanism should be an administrative mechanism. The fundamental rights officer should be responsible for handling complaints received by the Agency in accordance with the right to good administration. It is important that the complaints mechanism be effective, ensuring that complaints are properly followed up. The complaints mechanism is without prejudice to access to administrative and judicial remedies and does not constitute a requirement for seeking such remedies. The complaints mechanism should not constitute a mechanism for challenging any decision of a national authority on individual applications for international protection. It is essential that Member States conduct criminal investigations, where necessary. In order to increase transparency and accountability, the Agency should report on the complaints mechanism in its annual report on the situation of asylum in the Union. It is important that the Agency's annual report on the situation of asylum in the Union cover, in particular, the number of complaints it has received, the types of fundamental rights violations involved, the operations concerned, where possible, and the follow-up measures taken by the Agency and Member States.
- (46) The Commission and the Member States should be represented on the Agency's Management Board in order to exercise a policy and political oversight over its workings. The Management Board should give general orientation for the Agency's activities and should ensure that the Agency performs its tasks. Where possible, it is advisable that the Management Board consist of the operational heads of the Member States' asylum administrations or their representatives and that all parties represented in the Management Board make an effort to limit turnover of their representatives in order to ensure continuity of its work. The Management Board should be given the necessary powers, in particular to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision-making by the Agency and appoint an Executive Director and Deputy Executive Director. It is appropriate that the Agency be governed and operate in line with the principles of the Common Approach on Union decentralised agencies adopted on 19 July 2012 by the European Parliament, the Council and the Commission.
- (47) The Agency should be independent as regards operational and technical matters, and it should enjoy legal, administrative and financial autonomy. To that end, it is necessary and appropriate that the Agency be an agency of the Union having legal personality and exercising the powers conferred upon it by this Regulation.
- (48) The Agency should report on its activities to the European Parliament and to the Council.
- (49) In order to guarantee its autonomy, the Agency should have its own budget, most of which should come from a contribution from the Union. The financing of the Agency will be subject to an agreement by the budgetary authority as set out in point 27 of the Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources ⁽⁹⁾. The Union budgetary procedure should be applicable to the Union's contribution and to any grant chargeable to the general budget of the Union. The Court of Auditors should audit the Agency's accounts.
- (50) It is important that the consolidated annual report on the Agency's activities set out the proportion of the expenditure for each of the Agency's main activities.

- (51) Financial resources made available by the Agency in the form of grants, delegated agreements or contracts in accordance with this Regulation are not to result in double financing with other national, Union or international financial resources.
- (52) Commission Delegated Regulation (EU) 2019/715 ⁽⁹⁾ should apply to the Agency.
- (53) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ⁽¹⁰⁾ should apply without restriction to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) ⁽¹¹⁾.
- (54) Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹²⁾ should apply to the Agency.
- (55) Any processing of personal data by the Agency within the framework of this Regulation should be conducted in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽¹³⁾ and should respect the principles of necessity and proportionality. The Agency should only process personal data in order to perform its tasks relating to the provision of operational and technical assistance to Member States, to resettlement, to the facilitation of the exchange of information with Member States, the European Border and Coast Guard Agency, Europol or the European Union Agency for Criminal Justice Cooperation (Eurojust), established by Regulation (EU) 2018/1727 of the European Parliament and of the Council ⁽¹⁴⁾, and to the analysis of information on the situation of asylum, for the purpose of carrying out case sampling for the purposes of the monitoring exercise and of potentially handling applications for international protection, in the framework of information obtained in the course of performing its tasks in migration management support teams at hotspot areas, and for administrative purposes. Any processing of personal data should be strictly limited to personal data necessary for those purposes and should respect the principle of proportionality. Any processing of retained personal data for purposes other than those set out in this Regulation should be prohibited.
- (56) Any personal data that the Agency processes, except those processed for administrative purposes, should be deleted after 30 days. A longer storage period is not necessary for the purposes for which the Agency processes personal data within the framework of this Regulation.
- (57) Personal data of a sensitive nature which are necessary for assessing whether a third-country national qualifies for international protection should only be processed for the purpose of facilitating the examination of an application for international protection, for the purpose of providing the necessary assistance in a procedure for international protection or for the purposes of resettlement. Such processing should be limited to what is strictly necessary for the purpose of conducting a complete assessment of an application for international protection in the interest of the applicant.

(9) Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1).

(10) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

(11) OJ L 136, 31.5.1999, p. 15.

(12) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

(13) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

(14) Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 306, 21.11.2018, p. 138).

- (58) Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹⁵⁾ applies to the processing of personal data by the Member States carried out in the application of this Regulation unless such processing is carried out by competent authorities of the Member States for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.
- (59) Directive (EU) 2016/680 of the European Parliament and of the Council ⁽¹⁶⁾ applies to the processing of personal data by competent authorities of the Member States for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, pursuant to this Regulation.
- (60) The rules set out in Regulation (EU) 2016/679 regarding the protection of the rights and freedoms of natural persons with regard to the processing of personal data, in particular their right to the protection of personal data which concerns them, should be specified in respect of the responsibility for the processing of the data, of safeguarding the rights of data subjects and of the supervision of data protection, in particular as far as certain sectors are concerned.
- (61) Since the objectives of this Regulation, namely to facilitate the implementation and improve the functioning of the CEAS, to strengthen practical cooperation and information exchange among Member States on asylum-related matters, to promote Union law on asylum and operational standards to ensure a high degree of uniformity as regards procedures for international protection, reception conditions and the assessment of protection needs across the Union, to monitor the operational and technical application of the CEAS, and to provide increased operational and technical assistance to Member States for the management of their asylum and reception systems, in particular to Member States subject to disproportionate pressure on their asylum and reception systems, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (62) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (63) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (64) Taking into account the fact that Denmark has until now contributed to the practical cooperation between Member States within the area of asylum, the Agency should facilitate operational cooperation with Denmark. To that end, a representative of Denmark should be invited to participate in all the meetings of the Management Board, without the right to vote.
- (65) To fulfil its purpose, the Agency should be open to participation by countries which have concluded agreements with the Union by virtue of which they have adopted and apply Union law in the field covered by this Regulation, in particular Iceland, Liechtenstein, Norway and Switzerland. Consequently, and having regard to the fact that

(15) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(16) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

Liechtenstein, Norway and Switzerland participate in the activities of EASO on the basis of arrangements concluded by those countries with the Union concerning their participation in EASO, Iceland, Liechtenstein, Norway and Switzerland should be able to participate in the activities of the Agency and contribute to the practical cooperation between Member States and the Agency in accordance with the terms and conditions established by existing or new arrangements. To that end, representatives of Iceland, Liechtenstein, Norway and Switzerland should be allowed to participate in the meetings of the Management Board as observers.

- (66) This Regulation does not affect the competence of national asylum authorities to decide on individual applications for international protection.
- (67) This Regulation aims to amend and expand the provisions of Regulation (EU) No 439/2010. Since the amendments to be made are of substantial number and nature, that Regulation should, in the interests of clarity, be replaced in its entirety in relation to the Member States bound by this Regulation. The Agency, established by this Regulation, should replace and assume the functions of EASO, established by Regulation (EU) No 439/2010, which, as a consequence, should be repealed. With regard to the Member States bound by this Regulation references to the repealed Regulation should be construed as references to this Regulation.
- (68) The provisions of this Regulation on the monitoring mechanism for the operational and technical application of the CEAS are linked, inter alia, with the system for determining the Member State responsible for examining applications for international protection established by Regulation (EU) No 604/2013. Since the system as established by that Regulation might change, it is deemed necessary to defer the application of those provisions to a later date, namely 31 December 2023. Moreover, the provisions on the monitoring mechanism which relate to the adoption of recommendations addressed to the Member State concerned and the provisions on situations of disproportionate pressure or the ineffectiveness of the asylum and reception systems are more directly linked to, and affected by, the responsibility aspects of the system established by Regulation (EU) No 604/2013. Since that Regulation might be replaced by a new legal act currently under negotiation, and given the importance of the relevant aspects of such a new legal act, those provisions should only apply from the date on which that Regulation is replaced, unless that Regulation is replaced before 31 December 2023, in which case those provisions should apply from 31 December 2023.
- (69) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁷⁾ and delivered an opinion on 21 September 2016 ⁽¹⁸⁾,

HAVE ADOPTED THIS REGULATION:

CHAPTER 1

THE EUROPEAN UNION AGENCY FOR ASYLUM

Article 1

Subject-matter and scope

1. This Regulation establishes a European Union Agency for Asylum (the 'Agency'). The Agency shall replace and succeed the European Asylum Support Office (EASO), established by Regulation (EU) No 439/2010.
2. The Agency shall contribute to ensuring the efficient and uniform application of Union law on asylum in the Member States in a manner that fully respects fundamental rights. The Agency shall facilitate and support the activities of the Member States in the implementation of the Common European Asylum System (CEAS), including by enabling convergence in the assessment of applications for international protection across the Union and by coordinating and strengthening practical cooperation and information exchange.

⁽¹⁷⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

The Agency shall improve the functioning of the CEAS, including through the monitoring mechanism referred to in Article 14 and by providing operational and technical assistance to Member States, in particular where their asylum and reception systems are under disproportionate pressure.

3. The Agency shall be a centre of expertise by virtue of its independence, the scientific and technical quality of the assistance it provides and the information it collects and disseminates, the transparency of its operating procedures and methods, its diligence in performing the tasks assigned to it, and the information technology support needed to fulfil its mandate.

Article 2

Tasks

1. For the purposes of Article 1, the Agency shall perform the following tasks:
 - (a) facilitate, coordinate and strengthen practical cooperation and information exchange among Member States on their asylum and reception systems;
 - (b) gather and analyse information of a qualitative and quantitative nature on the situation of asylum and on the implementation of the CEAS;
 - (c) support Member States when carrying out their tasks and obligations in the framework of the CEAS;
 - (d) assist Member States as regards training and, where appropriate, provide training to Member States' experts from all national administrations, courts and tribunals, and national authorities responsible for asylum matters, including through the development of a European asylum curriculum;
 - (e) draw up and regularly update reports and other documents providing information on the situation in relevant third countries, including countries of origin, at Union level;
 - (f) set up and coordinate European networks on third-country information;
 - (g) organise activities and coordinate efforts among Member States to develop common analysis on the situation in countries of origin and guidance notes;
 - (h) provide information and analysis on third countries regarding the concept of safe country of origin and the concept of safe third country (the 'safe country concepts');
 - (i) provide effective operational and technical assistance to Member States, in particular when their asylum and reception systems are subject to disproportionate pressure;
 - (j) provide adequate support to Member States in carrying out their tasks and obligations under Regulation (EU) No 604/2013;
 - (k) assist with the relocation or transfer of applicants for or beneficiaries of international protection within the Union;
 - (l) set up and deploy asylum support teams;
 - (m) set up an asylum reserve pool in accordance with Article 19(6) (the 'asylum reserve pool');
 - (n) acquire and deploy the necessary technical equipment for asylum support teams and deploy experts from the asylum reserve pool;
 - (o) develop operational standards, indicators, guidelines and best practices in regard to the implementation of Union law on asylum;
 - (p) deploy liaison officers to Member States;
 - (q) monitor the operational and technical application of the CEAS with a view to assisting Member States to enhance the efficiency of their asylum and reception systems;
 - (r) support Member States in their cooperation with third countries in matters related to the external dimension of the CEAS, including through the deployment of liaison officers to third countries;

2. The Agency shall, on its own initiative, engage in communication activities in the fields within its mandate. It shall provide the public with accurate and comprehensive information about its activities. The Agency shall not engage in communication activities that are detrimental to the tasks referred to in paragraph 1 of this Article. Communication activities shall be carried out without prejudice to Article 65 and in accordance with the relevant communication and dissemination plans adopted by the Management Board.

Article 3

National contact points for communication

Each Member State shall appoint at least one national contact point for communication with the Agency on matters relating to the tasks referred to in Article 2.

CHAPTER 2

PRACTICAL COOPERATION AND INFORMATION ON ASYLUM

Article 4

Duty to cooperate in good faith and exchange information

1. The Agency and the national authorities responsible for asylum and immigration and other relevant services shall cooperate in good faith.
2. In order to perform the tasks and obligations conferred on them by this Regulation, in particular for the Agency to carry out the tasks referred to in Article 2, the Agency and the national authorities responsible for asylum and immigration and other relevant services shall exchange all necessary information in a timely and accurate manner.
3. The Agency shall work closely with the national authorities responsible for asylum and immigration and other relevant services and with the Commission. The Agency shall carry out its tasks without prejudice to those assigned to other relevant Union bodies, offices and agencies. The Agency shall cooperate with those bodies, offices and agencies, intergovernmental organisations, in particular the United Nations High Commissioner for Refugees (UNHCR), and other relevant organisations as provided for in this Regulation.
4. The Agency shall organise, promote and coordinate activities enabling the exchange of information among Member States, including through the establishment of networks, as appropriate.
5. Where, after calling upon a Member State to provide the Agency with the information necessary for it to perform its tasks in accordance with this Regulation, the Executive Director establishes that the Member State concerned has systematically failed to do so, he or she shall report that fact to the Management Board and to the Commission.

Article 5

Information analysis on the situation of asylum

1. The Agency shall gather and analyse information on the situation of asylum in the Union and in third countries insofar as it might have an impact on the Union, including up-to-date information on root causes, migratory and refugee flows, the presence of unaccompanied minors, the overall reception capacity and resettlement needs of third countries, and possible arrivals of large numbers of third-country nationals which might subject the Member States' asylum and reception systems to disproportionate pressure, with a view to providing timely and reliable information to the Member States and to identifying possible risks to the Member States' asylum and reception systems.

For the purpose set out in the first subparagraph of this paragraph, the Agency shall work in close collaboration with the European Border and Coast Guard Agency and shall, as appropriate, take into account the risk analysis carried out by the European Border and Coast Guard Agency under Article 29 of Regulation (EU) 2019/1896 so as to ensure the highest level of consistency and convergence in the information provided by the Agency and the European Border and Coast Guard Agency.

2. The Agency shall base its analysis on information provided, in particular, by Member States, relevant Union institutions, bodies, offices and agencies, the European External Action Service (EEAS) and the UNHCR, in particular the UNHCR Global Resettlement Needs reports. The Agency may also take into account information available from relevant organisations on the basis of their expertise.

3. The Agency shall ensure the rapid exchange of relevant information among Member States and with the Commission. It shall also submit, in a timely and accurate manner, the results of its analysis to the Management Board. The Agency shall report on its analysis to the European Parliament twice a year.

Article 6

Information on the implementation of the CEAS

1. The Agency shall organise, coordinate and promote the exchange of information among the Member States and between the Commission and the Member States concerning the implementation of Union law on asylum.

2. The Agency shall create databases and web portals on Union, national and international asylum instruments, making use, in particular, of existing arrangements. No personal data shall be stored in those databases or published on those web portals, unless such data has been obtained by the Agency from sources that are publicly accessible.

3. The databases and web portals referred to in paragraph 2 shall have publicly accessible parts which shall contain the following:

- (a) statistics on applications for international protection and on decisions taken by national authorities responsible for asylum matters;
- (b) information on national law and legal developments in the field of asylum, including case law;
- (c) information on relevant case law of the Court of Justice of the European Union (the 'CJEU') and of the European Court of Human Rights.

Article 7

Liaison officers in Member States

1. The Executive Director shall appoint experts from the Agency's staff to be deployed as liaison officers in Member States.

2. The Executive Director shall, in consultation with the Member States concerned, make a proposal on the nature and terms of the deployment and on the Member State or region to which a liaison officer may be deployed. The Executive Director may decide that a liaison officer covers up to four Member States which are geographically close to each other. The proposal from the Executive Director shall be subject to approval by the Management Board.

3. The Executive Director shall notify the Member State concerned of the appointment of liaison officers and shall determine, together with that Member State, the location of deployment.

4. Liaison officers shall act on behalf of the Agency and shall foster cooperation and dialogue between the Agency and the national authorities responsible for asylum and immigration and other relevant services. Liaison officers shall, in particular:

(a) act as an interface between the Agency and national authorities responsible for asylum and immigration and other relevant services;

- (b) support the collection of information referred to in Article 5 and any other information required by the Agency;
- (c) contribute to promoting the application of Union law on asylum, including with regard to respect for fundamental rights;
- (d) where requested, assist the Member States in preparing their contingency planning for measures to be taken to deal with possible disproportionate pressure on their asylum and reception systems;
- (e) facilitate communication between Member States and between the Member State concerned and the Agency, and share relevant information from the Agency with the Member State concerned, including information about ongoing assistance;
- (f) regularly provide reports to the Executive Director on the situation of asylum in the Member State concerned and its capacity to manage its asylum and reception systems effectively.

Where the reports referred to in point (f) of the first subparagraph raise concerns about one or more aspects relevant for the Member State concerned, the Executive Director shall inform that Member State without delay. Those reports shall be taken into account for the purposes of the monitoring mechanism referred to in Article 14 and shall be transmitted to the Member State concerned.

- 5. For the purposes of paragraph 4, liaison officers shall stay in regular contact with the national authorities responsible for asylum and immigration and other relevant services, keeping a point of contact designated by the Member State concerned informed.
- 6. In carrying out their duties, liaison officers shall take instructions only from the Agency.

Article 8

Training

- 1. The Agency shall establish, develop and review training for members of its own staff and members of the staff of relevant national administrations, courts and tribunals, and of national authorities responsible for asylum and reception.
- 2. The Agency shall develop training as referred to in paragraph 1 in close cooperation with Member States and, where appropriate, with the European Border and Coast Guard Agency, the European Union Agency for Fundamental Rights, established by Council Regulation (EC) No 168/2007 ⁽¹⁹⁾, and relevant training entities, academic institutions, judicial associations, training networks and organisations.
- 3. The Agency shall develop a European asylum curriculum taking into account the existing cooperation within the Union in the field of asylum in order to promote best practices and high standards in the implementation of Union law on asylum.

Member States shall develop appropriate training for their staff pursuant to their obligations under Union law on asylum on the basis of the European asylum curriculum and shall include core parts of that curriculum in that training.

- 4. The training offered by the Agency shall be of high quality and shall identify key principles and best practices with a view to ensuring greater convergence of administrative methods, decisions and legal practices, while fully respecting the independence of national courts and tribunals.

As part of the European asylum curriculum, the training offered by the Agency shall cover, in particular:

- (a) international and Union fundamental rights standards, in particular the provisions of the Charter of Fundamental Rights of the European Union (the 'Charter'), as well as international and Union law on asylum, including specific legal issues and case law;

⁽¹⁹⁾ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ L 53, 22.2.2007, p. 1).

- (b) issues related to the determination of whether an applicant qualifies for international protection and the rights of beneficiaries of international protection;
- (c) issues related to the processing of applications for international protection;
- (d) interview techniques;
- (e) evidence assessment;
- (f) relevant case law of national courts, the CJEU and the European Court of Human Rights and other relevant developments in the field of asylum law;
- (g) issues related to fingerprint data, including data protection aspects, data quality and data security requirements;
- (h) the use of expert medical and legal reports in the procedure for international protection;
- (i) issues related to the production and use of information on third countries;
- (j) reception conditions;
- (k) issues related to minors, in particular unaccompanied minors, as regards the best interests of the child assessment, specific procedural safeguards such as respect of the child's right to be heard and other child protection aspects, age assessment techniques, and reception conditions for children and families;
- (l) issues related to applicants in need of special procedural guarantees, applicants with special reception needs and other persons in a vulnerable situation, with particular attention to victims of torture, to victims of human trafficking and to related gender-sensitive issues;
- (m) issues related to interpretation and cultural mediation;
- (n) issues related to resettlement;
- (o) issues related to the handling of relocation procedures;
- (p) resilience and stress-management skills, in particular for staff in managerial positions.

5. The Agency shall provide general, specific or thematic training as well as ad hoc training activities, including by using the 'train the trainers' methodology and e-learning.

6. The Agency shall take the initiatives necessary to verify and, where appropriate, ensure that the experts, including experts not employed by it, who participate in asylum support teams have received the training relevant to their duties and functions that is necessary for their participation in the operational activities organised by the Agency.

The Agency shall, where necessary and in advance of or upon deployment, provide the experts referred to in the first subparagraph with training which is specific to the operational and technical assistance provided in the Member State concerned (the 'host Member State').

7. The Agency may organise training activities on the territory of a Member State or a third country in cooperation with that Member State or third country.

CHAPTER 3

COUNTRY INFORMATION AND GUIDANCE

Article 9

Information on third countries at Union level

1. The Agency shall be a centre for gathering relevant, reliable, objective, accurate and up-to date information on relevant third countries in a transparent and impartial manner, making use of relevant information, including child-specific and gender-specific information, and targeted information on persons belonging to vulnerable and minority groups. The Agency shall draw up and regularly update reports and other documents providing information on relevant third countries at Union level, including on thematic issues specific to relevant third countries.

2. The Agency shall, in particular:

- (a) make use of all relevant sources of information, including information gathered from international organisations, in particular the UNHCR and other relevant organisations, including members of the Consultative Forum referred to in Article 50, Union institutions, bodies, offices and agencies and the EEAS, and through the networks referred to in Article 10 and fact-finding missions;
- (b) manage and further develop a web portal for gathering and sharing information on relevant third countries, which shall include a public section for general users and a restricted section for users who are employees of the national authorities responsible for asylum and immigration or any other body mandated by a Member State to carry out research on third-country information;
- (c) develop a common format and a common methodology including terms of reference, in accordance with the requirements of Union law on asylum, for developing reports and other documents with information on relevant third countries at Union level.

Article 10

European networks on third-country information

1. The Agency shall ensure the coordination of national initiatives producing information on third countries by establishing and managing networks among Member States on third-country information. Such networks may, where appropriate and on a case-by-case basis, involve external experts with relevant expertise from the UNHCR or other relevant organisations.
2. The purpose of the networks referred to in paragraph 1 shall be for Member States to, in particular:
 - (a) exchange and update national reports, other documents and other relevant information on third countries, including on thematic issues;
 - (b) submit queries to the Agency and assist in responding to queries related to specific questions of fact that might arise from applications for international protection, without prejudice to privacy rules, data protection rules and, as established in national law, confidentiality rules;
 - (c) contribute to the development and update of Union-level documents providing information on relevant third countries.

Article 11

Common analysis on the situation in countries of origin and guidance notes

1. To foster convergence in applying the assessment criteria established in Directive 2011/95/EU of the European Parliament and of the Council ⁽²⁰⁾, the Agency shall coordinate efforts among Member States to develop a common analysis on the situation in specific countries of origin (the 'common analysis') and guidance notes to assist Member States in the assessment of relevant applications for international protection.

In the development of the common analysis and guidance notes, the Agency shall take note of the most recent UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from specific countries of origin.

2. The Executive Director shall, after consulting the Commission, submit guidance notes to the Management Board for endorsement. Guidance notes shall be accompanied by the common analysis.

(20) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

3. Member States shall take into account the common analysis and guidance notes when examining applications for international protection, without prejudice to their competence to decide on individual applications for international protection.
4. The Agency shall ensure that the common analysis and guidance notes are regularly reviewed and are updated as necessary. Such a review and update shall be carried out where there is a change in the situation in a country of origin or where there are objective indications that the common analysis and guidance notes are not being used. Any review or update of the common analysis and guidance notes shall require consultation of the Commission and endorsement by the Management Board as referred to in paragraph 2.
5. Member States shall submit to the Agency any relevant information indicating that a review or an update of the common analysis and guidance notes is necessary.

Article 12

Information and analysis on safe countries of origin and safe third countries

1. The Agency may assist the Member States in applying the safe country concepts in accordance with Directive 2013/32/EU of the European Parliament and of the Council ⁽²¹⁾ by providing information and analysis.
2. The Agency shall assist the Commission in the context of its tasks regarding the safe country concepts in accordance with Directive 2013/32/EU by providing information and analysis.
3. When providing the information and analysis under paragraphs 1 and 2 of this Article, the Agency shall follow the general principles provided for in Article 9.
4. The Agency shall submit the information and analyses it provides under paragraphs 1 and 2 to the European Parliament and to the Council, both on a regular basis and upon request.

CHAPTER 4

OPERATIONAL STANDARDS AND GUIDELINES

Article 13

Operational standards, indicators, guidelines and best practices

1. The Agency shall organise and coordinate activities promoting a correct and effective implementation of Union law on asylum, including through the development of operational standards, indicators, guidelines or best practices on asylum-related matters, and the exchange of best practices in asylum-related matters among Member States.
2. The Agency shall, on its own initiative or at the request of the Management Board or the Commission, develop operational standards, indicators, guidelines and best practices related to the implementation of Union law on asylum.
3. In the development of the operational standards, indicators, guidelines and best practices referred to in paragraph 2, the Agency shall consult the Commission, the Member States and, where appropriate, the UNHCR. The Agency may also, based on relevant expertise, consult intergovernmental or other organisations as well as judicial associations and expert networks.

⁽²¹⁾ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

4. The Management Board shall adopt the operational standards, indicators, guidelines and best practices referred to in paragraph 2. After their adoption, the Agency shall communicate those operational standards, indicators, guidelines and best practices to the Member States and to the Commission.
5. The Agency shall assist Member States, at their request, in applying the operational standards, indicators, guidelines and best practices referred to in paragraph 2 to their asylum and reception systems by providing the necessary expertise or operational and technical assistance.
6. The Agency shall take into account the operational standards, indicators, guidelines and best practices referred to in paragraph 2 of this Article for the purposes of the monitoring mechanism referred to in Article 14.

CHAPTER 5

MONITORING

Article 14

Monitoring mechanism for the operational and technical application of the CEAS

1. The Agency, in close cooperation with the Commission, shall establish a monitoring mechanism for the purpose of monitoring the operational and technical application of the CEAS in order to prevent or identify possible shortcomings in the asylum and reception systems of Member States and to assess their capacity and preparedness to manage situations of disproportionate pressure so as to enhance the efficiency of those systems.
2. The Management Board shall, on a proposal of the Executive Director and in consultation with the Commission, establish a common methodology for the monitoring mechanism set out in this Chapter. The common methodology shall include objective criteria against which the monitoring shall be carried out, a description of the methods, processes and tools for the monitoring mechanism such as practical arrangements for on-site visits, including short-notice visits, and rules and principles for the establishment of teams of experts.
3. The monitoring shall cover the operational and technical application of all aspects of the CEAS, in particular:
 - (a) the system for determining the Member State responsible for examining applications for international protection established by Regulation (EU) No 604/2013, procedures for international protection, the application of criteria for assessing the need for protection and the type of protection granted, including as regards respect for fundamental rights, child protection safeguards and the specific needs of persons in a vulnerable situation;
 - (b) the availability and capacity of staff in terms of translation and interpretation and the capacity of staff to handle and manage asylum cases efficiently, including handling appeals, without prejudice to judicial independence and with full respect for the organisation of the judiciary of each Member State;
 - (c) reception conditions, capacity, infrastructure and equipment and, to the extent possible, financial resources for reception.
4. The monitoring may be carried out, in particular, on the basis of the information provided by the Member State concerned, the information analysis on the situation of asylum referred to in Article 5 and case sampling.

The Agency may take into account information available from relevant intergovernmental organisations or bodies, in particular the UNHCR, and other relevant organisations on the basis of their expertise.

5. The Agency may carry out on-site visits for the purposes of the monitoring exercise. The Agency shall carry out short-notice visits only for the purposes of Article 15(2).

6. Member States shall, at the request of the Agency, provide it with information on the aspects of the CEAS referred to in paragraph 3.

Member States shall, at the request of the Agency, provide it with information on their contingency planning for measures to be taken to deal with possible disproportionate pressure on their asylum or reception system. The Agency shall, with the agreement of the Member State concerned, assist Member States in preparing and reviewing their contingency planning.

7. The Member States shall cooperate with the Agency, including by facilitating any on-site visit carried out for the purposes of the monitoring exercise. The Executive Director shall notify the Member States concerned sufficiently in advance of any such visit. In the case of short-notice visits, the Executive Director shall notify the Member State concerned 72 hours in advance.

Article 15

Procedure and follow-up

1. The Management Board shall, on the basis of a proposal of the Executive Director and in consultation with the Commission, adopt a programme for the purposes of the monitoring mechanism referred to in Article 14 (the 'monitoring programme'), which shall cover:

- (a) the operational and technical application of all aspects of the CEAS in each Member State; and
- (b) thematic or specific aspects of the CEAS with regard to all Member States.

The monitoring programme shall indicate which Member States' asylum and reception systems are to be monitored in a particular year. The monitoring programme shall ensure that each Member State is monitored at least once in every 5-year period.

2. Where the information analysis on the situation of asylum referred to in Article 5 raises serious concerns regarding the functioning of a Member State's asylum or reception system, the Agency shall initiate a monitoring exercise either on its own initiative in consultation with the Commission or at the request of the Commission.

3. The Executive Director shall send the findings of a monitoring exercise to the Member State concerned for comments, including, as appropriate, indications of its needs. Member States shall have 1 month from the date of receipt of the findings to submit comments.

4. The Executive Director shall, on the basis of the findings referred to in paragraph 3 and taking into account the comments of the Member State concerned, and in consultation with the Commission, draw up draft recommendations. The draft recommendations shall outline the measures to be taken by the Member State concerned, including with the assistance of the Agency, as necessary, and a time limit by which any necessary measures need to be taken by the Member State concerned to address the shortcomings or issues of capacity and preparedness identified in the monitoring exercise. The Executive Director shall send the draft recommendations to the Member State concerned. The Member State concerned shall have 1 month from the date of receipt of the draft recommendations to submit comments thereon. In the cases referred to in paragraph 2, the Member State concerned shall submit its comments within 15 days.

After taking into account the comments of the Member State concerned, the Executive Director shall submit the findings and draft recommendations to the Management Board. The Management Board shall, by a decision of two-thirds of its members with the right to vote, adopt the recommendations. The Agency shall transmit the recommendations to the European Parliament. The Agency shall inform the Commission about the implementation of the recommendations.

5. Where a Member State does not implement the measures outlined in the recommendations of the Agency referred to in paragraph 4 within the set time limit, resulting in serious consequences for the functioning of the CEAS, the Commission shall, on the basis of its own assessment, adopt recommendations addressed to that Member State identifying the measures

needed to remedy the shortcomings and, where necessary, specific measures to be taken by the Agency to support that Member State.

6. The Commission may, taking into account the seriousness of the shortcomings, organise on-site visits to the Member State concerned. The Commission shall notify the Member State concerned sufficiently in advance of any such visit.

7. The Member State concerned shall report to the Commission on the implementation of the recommendations referred to in paragraph 5 of this Article within the time limit set in those recommendations. Where, after that time limit, the Member State concerned has not complied with those recommendations, the Commission may make a proposal for a Council implementing act in accordance with Article 22(1).

8. The Commission shall inform the European Parliament and the Council of any follow-up to a monitoring exercise that it carries out. The Commission shall transmit the recommendations referred to in paragraph 5 to the European Parliament and to the Council, and shall inform them on a regular basis about the progress made by the Member State concerned in the implementation of those recommendations.

CHAPTER 6

OPERATIONAL AND TECHNICAL ASSISTANCE

Article 16

Operational and technical assistance by the Agency

1. The Agency shall provide operational and technical assistance to a Member State in accordance with this Chapter:

- (a) at the request of the Member State with regard to the implementation of its obligations under the CEAS;
- (b) at the request of the Member State where its asylum or reception system is subject to disproportionate pressure;
- (c) where the Member State faces disproportionate migratory challenges and requests operational and technical reinforcement through the deployment of migration management support teams in accordance with Article 21;
- (d) on its own initiative with the agreement of the Member State where the Member State's asylum or reception system is subject to disproportionate pressure;
- (e) where it provides operational and technical assistance in accordance with Article 22.

2. The Agency shall organise and coordinate the appropriate operational and technical assistance, which may entail taking one or more of the following operational and technical measures in a manner that fully respects fundamental rights:

- (a) assist Member States with the identification and registration of third-country nationals, as appropriate, in close cooperation with other Union bodies, offices and agencies;
- (b) assist Member States with receiving and registering applications for international protection;
- (c) facilitate the examination by the competent national authorities of applications for international protection or provide those authorities with the necessary assistance in the procedure for international protection;
- (d) facilitate joint initiatives of Member States for the processing of applications for international protection;
- (e) assist with the provision of information on the procedure for international protection;
- (f) advise on, assist with or coordinate the setting up or the provision of reception facilities by Member States, in particular emergency accommodation, transport and medical assistance;

- (h) assist with the relocation or transfer of applicants for or beneficiaries of international protection within the Union;
- (i) provide interpretation services;
- (j) assist Member States in ensuring that all the necessary safeguards with respect to the rights of the child and child protection are in place, in particular as regards unaccompanied minors;
- (k) assist Member States in identifying applicants in need of special procedural guarantees or applicants with special reception needs, or other persons in a vulnerable situation, including minors, in referring those persons to the competent national authorities for appropriate assistance on the basis of national measures and in ensuring that all the necessary safeguards for those persons are in place;
- (l) form part of the migration management support teams at hotspot areas referred to in Regulation (EU) 2019/1896 in close cooperation with other relevant Union bodies, offices and agencies;
- (m) deploy asylum support teams;
- (n) deploy technical equipment for asylum support teams, as appropriate.

3. The Agency shall finance or co-finance the operational and technical measures set out in paragraph 2 from its budget in accordance with the financial rules applicable to the Agency.

4. The Executive Director shall evaluate the result of the operational and technical measures set out in paragraph 2 of this Article. Within 60 days of the end of the provision of those measures, the Executive Director shall transmit to the Management Board detailed evaluation reports, together with the observations of the fundamental rights officer, in accordance with the reporting and evaluation scheme provided for in operational plans as referred to in Article 18(2), point (k). The Agency shall make a comprehensive comparative analysis of those results, which shall be included in the annual report on the situation of asylum in the Union referred to in Article 69.

Article 17

Procedure for providing operational and technical assistance

1. Member States shall address requests for assistance under Article 16(1), point (a), (b) or (c), to the Executive Director. Such requests shall describe the situation and the purpose of the request and shall be accompanied by a detailed assessment of needs and, as appropriate, a description of the measures already taken at national level.
2. Where a Member State agrees to the assistance proposed on the initiative of the Agency under Article 16(1), point (d), the Member State concerned shall submit to the Agency a detailed assessment of needs and, as appropriate, a description of the measures already taken at national level.
3. The Executive Director shall evaluate, approve and coordinate requests for assistance, including the deployment of asylum support teams. The Executive Director shall immediately notify the Management Board of the receipt of a request for assistance under Article 16(1), point (a), (b) or (c), or of a proposal by the Agency to provide assistance on its own initiative under Article 16(1), point (d). The Executive Director shall examine the detailed assessment of needs submitted by the Member State concerned under paragraph 1 or 2 of this Article.
4. The Agency shall subject each request for assistance under Article 16(1), point (a), (b) or (c), and proposal to provide assistance on its own initiative under Article 16(1), point (d), to a thorough and reliable assessment, enabling it to identify and propose one or more of the measures referred to in Article 16(2) in order to meet the needs of the Member State concerned. Where necessary, the Executive Director may send experts from the Agency to assess the situation of the Member State requiring assistance.

5. The Executive Director shall take a decision on the provision of operational and technical assistance, including on the deployment of asylum support teams:

- (a) within 3 working days of the date of receipt of a request under Article 16(1), point (a), (b) or (c); or
- (b) within 3 working days of the date on which the Member State concerned provides its agreement to a proposal of the Agency to provide assistance on its own initiative under Article 16(1), point (d).

Where the Executive Director sends experts to the Member State concerned under paragraph 4, the Executive Director shall take a decision as referred to in the first subparagraph within 5 working days of the date referred to in point (a) or (b), as appropriate.

At the same time as taking a decision under the first subparagraph, the Executive Director shall notify the Member State concerned and the Management Board of his or her decision in writing stating the main reasons on which the decision is based.

Article 18

Operational plan

1. Where operational and technical assistance is to be provided, the Executive Director shall draw up an operational plan in cooperation with the host Member State. The Executive Director and the host Member State shall agree on the operational plan:

- (a) within 10 working days of the date on which a decision as referred to in Article 17(5) is taken in the case of a request for assistance under Article 16(1), point (a);
- (b) within 5 working days of the date on which a decision as referred to in Article 17(5) is taken in the case of a request for assistance under Article 16(1), point (b); or
- (c) within 5 working days of the date on which the Member State provides its agreement to a proposal by the Agency to provide assistance on its own initiative under Article 16(1), point (d).

The Agency shall consult participating Member States, where necessary, on the operational plan through the national contact points referred to in Article 24.

2. An operational plan shall be binding on the Agency, the host Member State and the participating Member States. It shall set out in detail the conditions for the deployment of asylum support teams within the framework of the operational and technical assistance to be provided and organisational aspects, including the following:

- (a) a description of the situation, and the modus operandi and objectives of the deployment of the asylum support teams, including the operational objective;
- (b) the foreseeable duration of the deployment of the asylum support teams;
- (c) the location in the host Member State to which the asylum support teams are to be deployed;
- (d) logistical arrangements, including information on working conditions, for the asylum support teams;
- (e) a detailed and clear description of the tasks and responsibilities of the asylum support teams, including with regard to fundamental rights;
- (f) instructions for the asylum support teams, including as regards the national and European databases that they are authorised to consult and the equipment that they may use or carry in the host Member State;
- (g) the composition of the asylum support teams in terms of profiles and number of experts;
- (h) technical equipment, including specific provisions such as conditions of use, transport and other logistics and financial provisions;

- (j) regarding assistance with applications for international protection, including regarding the examination of such applications, and without prejudice to the competence of Member States to decide on individual applications for international protection, specific information on the tasks that the asylum support teams may perform and a clear description of their responsibilities and of the applicable Union, national and international law, including the liability regime;
- (k) a reporting and evaluation scheme containing benchmarks for an evaluation report and the date of submission of the final evaluation report;
- (l) where appropriate, the conditions for cooperation with third countries, other Union bodies, offices and agencies, or international organisations within their respective mandates;
- (m) measures for referring persons in need of international protection, victims of trafficking in human beings, minors and any other persons in a vulnerable situation to the competent national authorities for appropriate assistance;
- (n) practical arrangements related to the complaints mechanism referred to in Article 51.

3. In Member States where the UNHCR operates and has the capacity to contribute to responding to a request for operational and technical assistance under Article 16(1), the Agency shall coordinate with the UNHCR as regards the implementation of the operational plan, where appropriate and with the agreement of the Member State concerned.

4. As regards paragraph 2, point (f), the host Member State shall authorise experts participating in asylum support teams to consult European databases, and it may authorise them to consult its national databases in accordance with relevant Union and national law on access to and consultation of those databases and as necessary to achieve the objectives and perform the tasks outlined in the operational plan.

5. Any amendments to or adaptations of an operational plan shall require the agreement of the Executive Director and the host Member State, after consulting the participating Member States, where necessary. The Agency shall immediately send a copy of the amended or adapted operational plan to the national contact points of the participating Member States referred to in Article 24.

6. The Executive Director shall, after informing the host Member State, suspend or terminate, in whole or in part, the deployment of asylum support teams where:

- (a) the conditions for taking operational and technical measures as referred to in Article 16(2) are no longer fulfilled;
- (b) the host Member State does not respect the operational plan;
- (c) after consulting the fundamental rights officer, the Executive Director considers that there are violations of fundamental rights or international protection obligations by the host Member State that are of a serious nature or are likely to persist.

Article 19

Composition of asylum support teams

1. The Executive Director shall determine the composition of each asylum support team. Asylum support teams shall consist of:

- (a) experts from the Agency's own staff;
- (b) experts from Member States;
- (c) experts seconded by Member States to the Agency; or
- (d) other experts not employed by the Agency.

When determining the composition of an asylum support team, the Executive Director shall take into account the particular circumstances of the Member State concerned. An asylum support team shall be constituted in accordance with the relevant operational plan.

2. On a proposal of the Executive Director, the Management Board shall decide on the profiles and the overall number of experts to be made available for an asylum support team. The same procedure shall apply to any subsequent changes in the profiles and the overall number of experts.

3. Member States shall contribute to asylum support teams by nominating national experts who correspond to the required profiles as decided upon by the Management Board in accordance with paragraph 2. The number of experts to be made available by each Member State for the following year shall be established on the basis of annual bilateral negotiations and agreements between the Agency and the Member State concerned.

In accordance with the agreements referred to in the first subparagraph, Member States shall make their own experts or experts they have seconded to the Agency available for deployment at the request of the Agency. However, where a Member State is faced with an exceptional situation substantially affecting the discharge of national tasks, it shall not be required to make those experts so available.

4. The Agency shall contribute to asylum support teams with experts from its own staff, including experts employed and trained for field work and interpreters with at least basic training or proven experience who may be recruited in the host Member States, or with other experts not employed by the Agency with demonstrated relevant knowledge and experience in accordance with operational needs.

5. As part of the asylum support teams, the Agency shall set up a list of interpreters. Member States shall assist the Agency in identifying interpreters for the list of interpreters, including individuals who do not form part of the national administration of Member States. Interpretation assistance may be provided through the deployment of interpreters in the Member State concerned or, where appropriate, via video-conferencing.

6. An asylum reserve pool of a minimum of 500 experts shall be set up for the purposes of deploying asylum support teams in the framework of requests for assistance under Article 16(1), point (b), proposals by the Agency to provide assistance on its own initiative under Article 16(1), point (d), and assistance provided by the Agency under Article 22. The asylum reserve pool shall constitute a reserve of experts placed at the immediate disposal of the Agency. For that purpose, each Member State shall make available to the asylum reserve pool the number of experts set out in Annex I. The Management Board shall, on a proposal of the Executive Director, decide by a majority of three-fourths of its members with the right to vote on the profiles of experts to be included in the asylum reserve pool. The same procedure shall apply to any subsequent changes to the profiles of experts.

7. The Executive Director may verify whether the experts made available to the asylum reserve pool by Member States in accordance with paragraph 6 correspond to the profiles decided by the Management Board under that paragraph. In advance of deployment the Executive Director may request that a Member State remove an expert from the asylum reserve pool where that expert does not correspond to the required profile and replace him or her with an expert that corresponds to one of the required profiles.

8. Without prejudice to Article 22(5) and when faced with an exceptional situation substantially affecting the discharge of national tasks as evidenced by the information analysis on the situation of asylum referred to in Article 5, a Member State may request the Management Board in writing to be temporarily exempted from its obligation to make experts available to the asylum reserve pool. Such a request shall provide comprehensive reasons and information on the situation in that Member State. The Management Board shall decide by a majority of three-fourths of its members with the right to vote whether to temporarily exempt that Member State from part of its contribution set out in Annex I.

Article 20

Deployment of asylum support teams

¹ The Agency shall deploy asylum support teams to Member States to provide operational and technical assistance under Article 16(1).

2. As soon as an operational plan is agreed upon in accordance with Article 18(1) or Article 22(2), the Executive Director shall request the Member States to deploy their experts within 10 working days. The request shall be sent, in writing, together with a copy of the operational plan, to the national contact points referred to in Article 24 and shall specify the scheduled date of deployment.
3. The Executive Director shall deploy asylum support teams from the asylum reserve pool in the framework of a request for assistance under Article 16(1), point (b), a proposal by the Agency to provide assistance on its own initiative under Article 16(1), point (d), or assistance provided by the Agency under Article 22. The deployment of experts from the asylum reserve pool shall take place within 7 working days from the date on which the operational plan is agreed in accordance with Article 18(1) or Article 22(2).
4. Member States shall, without undue delay, make the experts from the asylum reserve pool available for deployment as determined by the Executive Director. The host Member State shall not deploy experts forming part of its fixed contribution to the asylum reserve pool. If there is a shortage of experts for deployment in the asylum reserve pool, the Management Board shall, on a proposal of the Executive Director, decide how that shortage is to be filled. The Executive Director shall inform the European Parliament, the Council and the Commission accordingly.
5. The Member State from which the expert is deployed (the 'home Member State') shall determine the duration of deployment. The duration of deployment shall not be less than 45 days, unless the operational and technical assistance in question is required for a shorter duration.
6. The Executive Director shall request that a Member State remove an expert from an asylum support team in the event of misconduct or an infringement of the applicable deployment rules. In such cases, the expert concerned shall not be considered for future deployments.
7. The Agency shall inform the European Parliament by means of its annual report on the situation of asylum in the Union referred to in Article 69 of the number of experts committed and deployed to the asylum support teams in accordance with this Article. That report shall list the Member States that have invoked the exceptional situation referred to in Article 19(3) or (8) in the previous year. It shall also include the reasons for invoking the exceptional situation and the information provided by the Member State concerned.

Article 21

Migration management support teams

1. Where a Member State requests operational and technical reinforcement by migration management support teams under Article 40 of Regulation (EU) 2019/1896 or where migration management support teams are deployed at hotspot areas under Article 42 of that Regulation, the Executive Director shall work closely with the European Border and Coast Guard Agency when, as provided for in Article 40(2) of that Regulation, he or she examines, in coordination with other relevant Union bodies, offices and agencies, a Member State's request for reinforcement and the assessment of its needs for the purpose of defining a comprehensive reinforcement package consisting of various activities coordinated by the relevant Union bodies, offices and agencies to be agreed upon by the Member State concerned.
2. The Commission shall, in cooperation with the host Member State and the relevant Union bodies, offices and agencies, establish the terms of cooperation at the hotspot area and be responsible for the coordination of the activities of the migration management support teams.
3. The Executive Director shall, in the cases referred to in paragraph 1, launch the procedure for deployment of asylum support teams as part of migration management support teams, including experts from the asylum reserve pool as appropriate. The operational and technical reinforcement provided by the asylum support teams in the framework of the migration management support teams may include:

(a) assistance in the screening of third-country nationals, including their identification, registration and, where requested by the host Member State, fingerprinting, and the provision of information on the purpose of those procedures;

- (b) the provision of initial information to third-country nationals who wish to make an application for international protection and the referral of those third-country nationals to the competent national authorities;
- (c) the provision of information to applicants for international protection on the procedure for international protection, on reception conditions as appropriate and on relocation, as well as the provision of necessary assistance to applicants or potential applicants that could be subject to relocation;
- (d) the registration of applications for international protection and, where requested by the host Member State, the facilitation of the examination of such applications.

Article 22

Situation of disproportionate pressure or ineffectiveness of the asylum and reception systems

1. The Council, on the basis of a proposal from the Commission under Article 15(7), may adopt without delay a decision by means of an implementing act, identifying one or more of the measures set out in Article 16(2) to be taken by the Agency to support a Member State and requiring that Member State to cooperate with the Agency in the implementation of those measures, where the asylum or reception system of that Member State is rendered ineffective to the extent of having serious consequences for the functioning of the CEAS and where:

- (a) the asylum or reception system of that Member State is subject to disproportionate pressure that places an exceptionally heavy and urgent demand on that system and that Member State does not take sufficient action to address that pressure, including by not requesting operational and technical assistance under Article 16(1), point (a), (b) or (c), or by not agreeing to a proposal of the Agency to provide such assistance on its own initiative under Article 16(1), point (d); or
- (b) that Member State does not comply with recommendations of the Commission referred to in Article 15(5).

The Council shall transmit decisions as referred to in the first subparagraph to the European Parliament.

2. The Executive Director shall, within 3 working days of the date of adoption of a Council decision as referred to in paragraph 1, determine the details of the practical implementation of that Council decision. In parallel, the Executive Director shall draw up an operational plan and submit it to the Member State concerned. The Executive Director and the Member State concerned shall agree on the operational plan within 3 working days of the date of its submission.

3. The Agency shall deploy the necessary experts from the asylum reserve pool and experts from its own staff in accordance with Article 20(3). The Agency may deploy additional asylum support teams as necessary.

4. The Member State concerned shall comply with the Council decision referred to in paragraph 1. For that purpose, it shall cooperate with the Agency and immediately take the action necessary to facilitate the implementation of that decision and the practical execution of the measures set out in that decision and in the operational plan, without prejudice to its competence to decide on individual applications for international protection.

5. For the purposes of this Article, the Member States shall make the experts from the asylum reserve pool available for deployment as determined by the Executive Director and shall not invoke the exceptional situation referred to in Article 19(3) or (8). The host Member State shall not deploy experts forming part of its fixed contribution to the asylum reserve pool.

*Article 23***Technical equipment**

1. Without prejudice to an obligation of the host Member State to supply the facilities and equipment necessary for the Agency to be able to provide the required operational and technical assistance, the Agency may deploy its own equipment to the host Member State, including at its request, to the extent that such equipment might be needed by asylum support teams and insofar as such equipment might complement equipment already made available by the host Member State or other Union bodies, offices and agencies.
2. The Agency may acquire or lease technical equipment by decision of the Executive Director, in consultation with the Management Board. Any acquisition or leasing of technical equipment shall be preceded by a thorough needs and cost-benefit analysis. Any expenditure in connection with such acquisition or leasing shall be provided for in the Agency's budget and in accordance with the financial rules applicable to the Agency.
3. The Agency shall ensure the security of its own equipment throughout the life cycle of the equipment.

*Article 24***National contact point**

Each Member State shall appoint a national contact point for communication with the Agency on all matters relating to operational and technical assistance as referred to in Articles 16 and 22.

*Article 25***Coordinating officer of the Agency**

1. The Agency shall ensure the operational implementation of all organisational aspects, including the presence of staff members of the Agency, related to the deployment of asylum support teams throughout the provision of operational and technical assistance under Article 16 or 22.
2. The Executive Director shall appoint one or more experts from the Agency's staff to act or to be deployed as a coordinating officer for the purposes of paragraph 1. The Executive Director shall notify the host Member State of such appointments.
3. The coordinating officer shall foster cooperation and coordination between the host Member State and the participating Member States. In particular, the coordinating officer shall:
 - (a) act as an interface between the Agency, the host Member State and experts participating in asylum support teams, providing assistance, on behalf of the Agency, on all issues relating to the experts' conditions of deployment;
 - (b) monitor the correct implementation of the operational plan;
 - (c) act on behalf of the Agency as regards all aspects of the deployment of asylum support teams and report to the Agency on all those aspects;
 - (d) report to the Executive Director where the operational plan is not adequately implemented.
4. The Executive Director may authorise the coordinating officer to assist in resolving any disputes concerning the implementation of the operational plan and the deployment of asylum support teams.

*Article 26***Civil liability**

1. The host Member State shall be liable in accordance with its national law for any damage caused by experts participating in an asylum support team operating on its territory during their operations.
2. Where such damage is caused by gross negligence or wilful misconduct on the part of experts participating in an asylum support team, the host Member State may request the home Member State or the Agency to reimburse it for any sums that it has paid to injured parties or persons entitled to receive such sums on their behalf.
3. Without prejudice to the exercise of its rights vis-à-vis third parties, each Member State shall waive all its claims against the host Member State or any other Member State for any damage it has sustained, except in cases of gross negligence or wilful misconduct.
4. Any dispute between Member States or between a Member State and the Agency relating to the application of paragraphs 2 and 3 of this Article which cannot be resolved by negotiations between them shall be submitted by them to the CJEU in accordance with Article 273 TFEU.
5. Without prejudice to the exercise of its rights vis-à-vis third parties, the Agency shall bear the costs of damage to its equipment during deployment, except in cases of gross negligence or wilful misconduct.

*Article 27***Criminal liability**

During the deployment of an asylum support team, the deployed experts shall be treated in the same way as officials of the host Member State with regard to any criminal offences that might be committed against them or by them.

*Article 28***Costs**

1. The Agency shall bear the costs incurred by experts participating in asylum support teams, in particular:
 - (a) costs related to travel from the home Member State to the host Member State, travel from the host Member State to the home Member State and travel within the host Member State for the purposes of deployment;
 - (b) costs related to vaccinations;
 - (c) costs related to special insurance needs;
 - (d) costs related to health care;
 - (e) daily subsistence allowances, including accommodation costs;
 - (f) costs related to the Agency's technical equipment;
 - (g) experts' fees;
 - (h) transportation costs, including car rental costs and all related costs such as insurance, fuel and tolls;
 - (i) telecommunication costs.

2. The Management Board shall establish detailed rules and update them as necessary as regards the payment of costs incurred by experts in accordance with paragraph 1.

CHAPTER 7

INFORMATION EXCHANGE AND DATA PROTECTION

*Article 29***Information exchange systems**

1. The Agency shall facilitate the exchange of information relevant to its tasks with the Commission, the Member States and, where appropriate, the relevant Union bodies, offices and agencies.
2. The Agency shall, in cooperation with the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), established by Regulation (EU) 2018/1726 of the European Parliament and of the Council ⁽²²⁾, develop and operate an information system capable of exchanging classified information in accordance with Council Decision 2013/488/EU ⁽²³⁾ and Commission Decision (EU, Euratom) 2015/444 ⁽²⁴⁾ and personal data as referred to in Articles 31 and 32 of this Regulation with the actors referred to in paragraph 1 of this Article.

*Article 30***Data Protection**

1. The Agency shall apply Regulation (EU) 2018/1725 when processing personal data.
2. The Management Board shall take measures for the application of Regulation (EU) 2018/1725 by the Agency, including measures concerning the appointment of the Agency's data protection officer. Those measures shall be taken after consulting the European Data Protection Supervisor.
3. Without prejudice to Articles 31 and 32, the Agency may process personal data for necessary administrative purposes related to personnel.
4. The transfer of personal data processed by the Agency and the onward transfer by Member States of personal data processed in the framework of this Regulation to authorities of third countries or to third parties, including international organisations, shall be prohibited.
5. By way of derogation from paragraph 4, the Agency may transfer, subject to the informed and freely given consent of a third-country national identified for the sole purpose of conducting a resettlement procedure, his or her full name, information on the course of the resettlement procedure involving him or her and information on the outcome of such a resettlement procedure to relevant international organisations to the extent necessary for that purpose. Such personal data shall not be further processed for any other purpose or transferred onwards.
6. Where experts participating in asylum support teams process personal data under the instructions of the host Member State during the provision of operational and technical assistance to that Member State, Regulation (EU) 2016/679 shall apply.

(22) Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

(23) Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

(24) Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

*Article 31***Purposes of processing personal data**

1. The Agency shall process personal data only to the extent necessary and for the following purposes:
 - (a) providing operational and technical assistance in accordance with Article 16(2) and Article 21(2) and (3);
 - (b) carrying out case sampling for the purposes of monitoring as referred to in Article 14;
 - (c) facilitating the exchange of information with the competent national authorities, the European Border and Coast Guard Agency, Europol or Eurojust in accordance with Article 37 and in the framework of information obtained when performing the tasks listed in Article 21(3) where necessary for the performance of their tasks in accordance with their respective mandates;
 - (d) analysing information on the situation of asylum as referred to in Article 5;
 - (e) assisting Member States with their actions on resettlement.
2. Any processing of personal data shall respect the principle of proportionality and be strictly limited to personal data necessary for the purposes referred to in paragraph 1.
3. Member States or other Union bodies, offices and agencies providing personal data to the Agency shall only transfer data to the Agency for the purposes referred to in paragraph 1. Any processing of retained personal data for purposes other than those referred to in paragraph 1 shall be prohibited.
4. Member States or other Union bodies, offices and agencies providing personal data to the Agency may indicate, at the moment of transferring personal data, any restriction on access or use, in general or specific terms, including as regards transfer, erasure or destruction. Where the need for such restrictions becomes apparent after the transfer of personal data, the Member State or Union body, office or agency concerned shall inform the Agency accordingly. The Agency shall comply with such restrictions.

*Article 32***Processing of personal data for the provision of operational and technical assistance and for the purposes of resettlement**

1. The processing by the Agency of personal data collected by or transmitted to it by the Member States or by its own staff when providing operational and technical assistance to Member States and for the purposes of resettlement shall be limited to the following data on third-country nationals:
 - (a) full name;
 - (b) date and place of birth;
 - (c) place of residence or stay;
 - (d) gender;
 - (e) age;
 - (f) nationality;
 - (g) profession;
 - (h) education;
 - (i) family members;
 - (j) date and place of arrival;
 - (k) fingerprint data;
 - (l) facial image data; and

2. The Agency may process the personal data referred to in paragraph 1 where necessary for one of the following purposes:

- (a) to take an operational and technical measure under Article 16(2), point (a), (b), (c), (g) or (h);
- (b) to transmit those personal data to the European Border and Coast Guard Agency, Europol or Eurojust for the performance of their tasks in accordance with their respective mandates and in accordance with Article 30;
- (c) to transmit those personal data to the national authorities responsible for asylum and immigration and other relevant services in accordance with national law and national and Union data protection rules;
- (d) to analyse information on the situation of asylum as referred to in Article 5;
- (e) to assist Member States with their actions on resettlement.

3. Where strictly necessary for an operational and technical measure under Article 16(2), point (c), or for the purpose referred to in paragraph 2, point (e), of this Article, the Agency may, in relation to a specific case, process personal data necessary for the assessment of whether a third-country national qualifies for international protection and personal data concerning the health or specific vulnerabilities of a third-country national. Those personal data shall be made accessible only to staff who, in the specific case, need knowledge of them. Those staff shall safeguard the confidentiality of that data. Such personal data shall not be further processed or transferred onwards.

4. The Agency shall delete personal data as soon as it has transmitted them to the European Border and Coast Guard Agency, Europol or Eurojust or to the competent national authorities or as soon as they have been used to analyse information on the situation of asylum as referred to in Article 5. In any event, the data storage period shall not exceed 30 days from the date on which the Agency collects or receives those personal data. The Agency shall anonymise personal data in the information analysis on the situation of asylum referred to in Article 5.

5. The Agency shall delete personal data obtained for the purpose referred to in Article 31(1), point (e), as soon as they are no longer necessary for the purpose for which they were obtained and, in any event, no later than 30 days from the date on which the third-country national was resettled.

6. Without prejudice to other rights provided for in Regulation (EU) 2016/679 and in addition to the information referred to in Article 13 of that Regulation, experts participating in asylum support teams transmitting personal data pursuant to paragraph 1 of this Article shall provide third-country nationals, at the time of the collection of their personal data, with the contact details of the relevant supervisory authority responsible for monitoring and enforcing compliance with that Regulation.

Article 33

Cooperation with Denmark

The Agency shall facilitate operational cooperation with Denmark, including the exchange of information and best practices in matters covered by its activities.

Article 34

Cooperation with associated countries

- 1. The Agency shall be open to the participation of Iceland, Liechtenstein, Norway and Switzerland.
- 2. The nature, extent and manner in which Iceland, Liechtenstein, Norway and Switzerland are to participate in the Agency's work shall be set out in relevant arrangements. Those arrangements shall include provisions relating to participation in initiatives undertaken by the Agency, financial contributions, participation in the meetings of the Management Board and staff. As regards staff, the arrangements shall comply with the Staff Regulations of Officials of the European Union (the 'Staff Regulations') and the Conditions of Employment of Other Servants of the Union (the 'Conditions of Employment') laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽²⁵⁾.

*Article 35***Cooperation with third countries**

1. In matters related to its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate and encourage operational cooperation between Member States and third countries, within the framework of the Union's external policy, including with regard to the protection of fundamental rights, and in cooperation with the EEAS. The Agency and the Member States shall promote and comply with norms and standards which form part of Union law, including when carrying out activities on the territory of third countries.
2. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation with the support of and in coordination with Union delegations, in particular with a view to promoting Union standards on asylum, assisting third countries as regards expertise and capacity building for their own asylum and reception systems, and implementing regional development and protection programmes and other actions. The Agency may carry out such cooperation within the framework of working arrangements concluded with those authorities in accordance with Union law and policy. The Management Board shall decide on those working arrangements, which shall be subject to prior approval by the Commission. The Agency shall inform the European Parliament and the Council before a working arrangement is concluded.
3. Within the framework of cooperation with third countries, the Agency may support a Member State in the implementation of resettlement schemes, at the request of that Member State.
4. Within the framework of the Union's external policy, the Agency shall, where appropriate, participate in the implementation of international agreements concluded by the Union with third countries regarding matters covered by this Regulation.
5. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the Union's external policy. The Agency may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation.
6. The Agency shall inform the European Parliament of activities conducted pursuant to this Article by means of its annual report on the situation of asylum in the Union referred to in Article 69. That report shall also include an assessment of the cooperation with third countries.

*Article 36***Liaison officers in third countries**

1. The Agency may deploy experts from its own staff as liaison officers. Liaison officers shall enjoy the highest possible protection when carrying out their duties in third countries. Liaison officers shall only be deployed to third countries whose migration and asylum management practices comply with non-derogable human rights standards.
2. Within the framework of the Union's external policy, priority for the deployment of liaison officers shall be given to those third countries which, on the basis of the information analysis on their situation of asylum referred to in Article 5, constitute countries of origin or transit regarding asylum-related migration. The deployment of liaison officers shall be subject to approval by the Management Board.
3. The tasks of the liaison officers shall include, in compliance with Union law and in a manner that fully respects fundamental rights, establishing and maintaining contacts with the competent authorities of the third country to which they are deployed with a view to gathering information, contributing to the establishment of protection-sensitive migration management and, as appropriate, facilitating access to legal pathways to the Union for persons in need of protection, including by means of resettlement. The liaison officers shall coordinate closely with Union delegations and, where appropriate, international organisations and bodies, in particular the UNHCR.

4. The decision of the Agency to deploy liaison officers to third countries shall be subject to receiving the prior opinion of the Commission. The European Parliament shall be kept fully informed accordingly without delay.

Article 37

Cooperation with Union bodies, offices and agencies

1. The Agency shall cooperate with the Union bodies, offices and agencies which carry out activities relating to its field of activity, in particular the bodies, offices and agencies in the field of justice and home affairs which are competent in matters covered by this Regulation.
2. Cooperation as referred to in paragraph 1 shall take place, subject to the Commission's prior approval, within the framework of working arrangements concluded with the Union bodies, offices and agencies referred to in that paragraph. The Agency shall inform the European Parliament and the Council of any such working arrangements.
3. Cooperation as referred to in paragraph 1 shall create synergies among the relevant Union bodies, offices and agencies, and any duplication of effort in the work carried out by each Union body, office or agency pursuant to its mandate shall be avoided.

Article 38

Cooperation with the UNHCR and other international organisations

The Agency shall cooperate with international organisations, in particular the UNHCR, in areas governed by this Regulation, within the framework of working arrangements concluded with such organisations, in accordance with the Treaties and the instruments setting out the competence of such organisations. The Management Board shall decide on the working arrangements, which shall be subject to prior approval by the Commission. The Agency shall inform the European Parliament and the Council of any such working arrangements.

CHAPTER 8

ORGANISATION OF THE AGENCY

Article 39

Administrative and management structure

The Agency's administrative and management structure shall comprise:

- (a) a Management Board, which shall exercise the functions set out in Article 41;
- (b) an Executive Director, who shall exercise the responsibilities set out in Article 47;
- (c) a Deputy Executive Director, as established in Article 48;
- (d) a fundamental rights officer, as established in Article 49; and
- (e) a Consultative Forum, as established in Article 50.

Article 40

Composition of the Management Board

1. The Management Board shall be composed of one representative of each Member State and two representatives of the Commission. Each of those representatives shall have the right to vote.

3. Each member of the Management Board shall have an alternate. An alternate shall represent a member of the Management Board in his or her absence.
4. Members of the Management Board and their alternates shall be appointed in the light of their knowledge and expertise in the field of asylum, taking into account relevant managerial, administrative and budgetary skills. All parties involved shall aim to achieve a balanced representation between men and women on the Management Board.
5. The term of office for members of the Management Board shall be 4 years. That term shall be renewable. On the expiry of their term of office or in the event of their resignation, members shall remain in office until their term of office is renewed or until they are replaced.

Article 41

Functions of the Management Board

1. The Management Board shall give general orientation for the Agency's activities and shall ensure that the Agency performs its tasks. In particular, the Management Board shall:
 - (a) adopt the annual budget of the Agency by a majority of two-thirds of its members with the right to vote and exercise other functions in respect of the Agency's budget pursuant to Chapter 9;
 - (b) adopt a consolidated annual report on the Agency's activities, send it, by 1 July each year, to the European Parliament, to the Council, to the Commission and to the Court of Auditors, and make it public;
 - (c) adopt the financial rules applicable to the Agency in accordance with Article 56;
 - (d) take all decisions for the purpose of fulfilling the Agency's mandate as laid down in this Regulation;
 - (e) adopt an anti-fraud strategy, which shall be proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented as part of that strategy;
 - (f) adopt rules for the prevention and management of conflicts of interest in respect of its members;
 - (g) adopt and regularly update the communication and dissemination plans referred to in Article 2(2) on the basis of a needs analysis;
 - (h) adopt its rules of procedure;
 - (i) exercise, in accordance with paragraph 2, with respect to the Agency's staff, the powers conferred by the Staff Regulations on the appointing authority and by the Conditions of Employment on the authority empowered to conclude a contract of employment (the 'appointing authority powers');
 - (j) adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment in accordance with Article 110 of the Staff Regulations;
 - (k) appoint the Executive Director and Deputy Executive Director, exercise disciplinary authority over them and, where necessary, extend their terms of office or remove them from office in accordance with Articles 46 or 48, as appropriate;
 - (l) appoint the fundamental rights officer, subject to the Staff Regulations and the Conditions of Employment, from a selection of candidates proposed by the Executive Director;
 - (m) appoint an accounting officer, subject to the Staff Regulations and the Conditions of Employment, who shall be completely independent in the performance of his or her duties;
 - (n) adopt an annual report on the situation of asylum in the Union in accordance with Article 69;
 - (o) take all decisions on the development of the information systems provided for in this Regulation, including the information portal referred to Article 9(2), point (b);

- (q) take measures for the application of Regulation (EU) 2018/1725 by the Agency, including measures concerning the appointment of the Agency's data protection officer;
- (r) adopt the Agency's staff policy in accordance with Article 60;
- (s) adopt each year the Agency's programming document in accordance with Article 42;
- (t) take all decisions on the establishment of the Agency's internal structures and, where necessary, their modification;
- (u) ensure adequate follow-up to findings and recommendations stemming from internal or external audit reports and evaluations, as well as from investigations by the European Anti-Fraud Office (OLAF);
- (v) adopt the operational standards, indicators, guidelines and best practices developed by the Agency in accordance with Article 13(2);
- (w) endorse the guidance notes concerning country-of-origin information and any review or update of those guidance notes in accordance with Article 11(2) and (4);
- (x) adopt a decision establishing a common methodology for the monitoring mechanism referred to in Article 14;
- (y) adopt the programme for monitoring the operational and technical application of the CEAS in accordance with Article 15(1);
- (z) adopt the recommendations following a monitoring exercise in accordance with Article 15(4);
- (aa) decide on the profiles and overall numbers of experts to be made available for asylum support teams and for the asylum reserve pool in accordance with Article 19(2) and (6);
- (ab) adopt a strategy for relations with third countries or international organisations concerning matters for which the Agency is competent, as well as a working arrangement with the Commission for its implementation;
- (ac) authorise and approve the conclusion of working arrangements in accordance with Articles 35, 37 and 38.

2. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment, delegating relevant appointing authority powers to the Executive Director and establishing the conditions under which that delegation of appointing authority powers can be suspended. The Executive Director shall be authorised to sub-delegate the appointing authority powers.

Where exceptional circumstances so require, the Management Board may, by way of a decision, temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the Executive Director and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

3. The Management Board may establish a small-sized Executive Board to assist it and the Executive Director with regard to the preparation of the decisions, programmes and activities to be adopted by the Management Board. Where necessary, the Executive Board may take certain provisional, urgent decisions on behalf of the Management Board, in particular on administrative management matters. The Executive Board shall not take decisions that are required to be passed by a majority of either two-thirds or three-fourths of the members of the Management Board. The Management Board may delegate certain clearly defined tasks to the Executive Board, in particular where such a delegation would improve the efficiency of the Agency. The Management Board shall not delegate to the Executive Board tasks related to decisions that are required to be passed by a majority of either two-thirds or three-fourths of the members of the Management Board. For the purposes of establishing the Executive Board, the Management Board shall adopt its rules of procedure. Those rules of procedure shall, in particular, cover the composition and functions of the Executive Board.

Article 42

Multi-annual programming and annual work programmes

1. The Management Board shall send a draft version of a programming document containing the multi-annual and annual programming, based on a draft put forward by the Executive Director, to the European Parliament, to the Council and to the Commission by 31 January each year. The Management Board shall likewise send any later updated draft versions of the programming document to the European Parliament, to the Council and to the Commission.

By 30 November each year, the Management Board shall adopt, by a majority of two-thirds of its members with the right to vote, the programming document, taking into account the opinion of the Commission and, in the case of the multi-annual programming, after consulting the European Parliament. The Management Board shall forward the programming document to the European Parliament, to the Council and to the Commission.

The programming document shall become final after the definitive adoption of the general budget of the Union and, if necessary, shall be adjusted accordingly.

2. The multi-annual programming shall set out the overall strategic programming in the medium and long-term including objectives, expected results and performance indicators. The multi-annual programming shall also set out resource programming, including a multi-annual budget and staff numbers.

The multi-annual programming shall set the strategic areas of intervention and explain what needs to be done to achieve the objectives set out therein. The multi-annual programming shall include the strategy for relations with third countries and international organisations referred to in Articles 35 and 38, respectively, the actions linked to that strategy and a specification of the associated resources.

The multi-annual programming shall be implemented by means of annual work programmes. The multi-annual programming shall be updated annually and where appropriate, in particular to address the outcome of the evaluation referred to in Article 70.

3. The annual work programme shall comprise detailed objectives and expected results including performance indicators. The annual work programme shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each activity, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be consistent with the multi-annual programming referred to in paragraph 2. The annual work programme shall clearly indicate the tasks that have been added, changed or deleted in comparison with the previous financial year.

4. The Management Board shall amend the annual work programme when the Agency is given a new task.

Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

Article 43

Chairperson of the Management Board

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from its members with the right to vote. The Chairperson and the Deputy Chairperson shall be elected by a majority of two-thirds of the members of the Management Board with the right to vote.

The Deputy Chairperson shall automatically replace the Chairperson if he or she is prevented from attending to his or her duties.

2. The term of office of the Chairperson and the Deputy Chairperson shall be 4 years, renewable once. If, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date.

Article 44

Meetings of the Management Board

1. The Chairperson shall convene meetings of the Management Board.

3. The representative of the UNHCR shall not take part in any meetings during which the Management Board performs the functions laid down in Article 41(1), point (e), (f), (i), (j), (k), (p), (r), (s), (t) or (u), or in Article 41(2), and when the Management Board decides to make financial resources available for financing UNHCR activities as provided for in Article 52 to enable the Agency to benefit from the UNHCR's expertise.
4. The Management Board shall hold at least two ordinary meetings a year. In addition, the Management Board shall meet on the initiative of its Chairperson, at the request of the Commission or at the request of one-third of its members.
5. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer.
6. Denmark shall be invited to send a representative to attend the meetings of the Management Board.
7. The members and the alternates of the Management Board may, subject to its rules of procedure, be assisted at the meetings by advisers or experts.
8. The Agency shall provide the secretariat for the Management Board.

Article 45

Voting rules of the Management Board

1. Unless otherwise provided, the Management Board shall take its decisions by an absolute majority of its members with the right to vote.
2. Each member with the right to vote shall have one vote. In the absence of a member with the right to vote, his or her alternate shall be entitled to exercise his or her right to vote.
3. The Chairperson shall take part in the voting.
4. The Executive Director shall not take part in the voting.
5. Representatives of Member States that do not fully participate in the Union *acquis* in the field of asylum shall not vote where the Management Board is called on to adopt operational standards, indicators, guidelines or best practices which relate exclusively to a Union asylum instrument by which the Member States they represent are not bound.
6. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member.

Article 46

Executive Director

1. The Executive Director shall be a member of staff and shall be recruited as a temporary agent of the Agency in accordance with Article 2, point (a), of the Conditions of Employment.
2. The Commission shall propose at least three candidates for the post of executive director based on a list following publication of the post in the *Official Journal of the European Union* and, as appropriate, other press or internet sites.
3. The Management Board shall appoint the Executive Director on the grounds of merit, documented high-level administrative and management skills and senior professional experience in the field of migration and asylum. Before appointment, the candidates proposed by the Commission shall be invited to make a statement before the competent committee or committees of the European Parliament and answer questions put by the members of that committee or those committees.

Following such a statement, the European Parliament shall adopt an opinion setting out its views and may indicate a preferred candidate.

The Management Board shall appoint the Executive Director, taking the opinion of the European Parliament referred to in the second subparagraph into account.

If the Management Board takes a decision to appoint a candidate other than the candidate whom the European Parliament indicated as its preferred candidate, the Management Board shall inform the European Parliament and the Council in writing of the manner in which the opinion of the European Parliament was taken into account.

For the purpose of concluding the contract with the Executive Director, the Agency shall be represented by the Chairperson of the Management Board.

4. The term of office of the Executive Director shall be 5 years. By the end of that period, the Commission shall undertake an assessment that takes into account an evaluation of the Executive Director's performance and the Agency's future tasks and challenges.

5. The Management Board, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 4, may extend the term of office of the Executive Director once for no more than 5 years.

6. The Management Board shall inform the European Parliament if it intends to extend the Executive Director's term of office. Within the 1-month period before any such extension, the Executive Director may be invited to make a statement before the competent committee or committees of the European Parliament and answer questions put by the members of that committee or those committees.

7. An Executive Director whose term of office has been extended shall not participate in another selection procedure for the same post at the end of the overall period.

8. The Executive Director may be removed from office only upon a decision of the Management Board acting on a proposal from the Commission.

9. The Management Board shall take decisions on the appointment, extension of the term of office or removal from office of the Executive Director by a two-thirds majority of its members with the right to vote.

Article 47

Responsibilities of the Executive Director

1. The Executive Director shall manage the Agency. The Executive Director shall be accountable to the Management Board.

2. Without prejudice to the powers of the Commission and the Management Board, the Executive Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government, institution, person or other body.

3. The Executive Director shall report to the European Parliament on the performance of his or her duties when invited to do so. The Council may invite the Executive Director to report on the performance of his or her duties.

4. The Executive Director shall be the legal representative of the Agency.

5. The Executive Director shall be responsible for the implementation of the tasks assigned to the Agency by this Regulation. In particular, the Executive Director shall be responsible for:

- (a) the day-to-day administration of the Agency;
- (b) implementing decisions adopted by the Management Board;
- (c) preparing programming documents referred to in Article 42 and submitting them to the Management Board after consulting the Commission;
- (d) implementing programming documents referred to in Article 42 and reporting to the Management Board on their implementation;

(e) preparing consolidated annual reports on the Agency's activities and presenting them to the Management Board for adoption;

- (f) preparing an action plan following-up conclusions of internal or external audit reports and evaluations, as well as investigations by OLAF, and reporting on progress twice a year to the Commission and regularly to the Management Board and, if applicable, to the Executive Board;
- (g) without prejudice to the investigative competence of OLAF, protecting the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative and financial penalties;
- (h) preparing an anti-fraud strategy for the Agency and presenting it to the Management Board for approval;
- (i) preparing the draft financial rules applicable to the Agency;
- (j) drawing up provisional draft statements of estimates of the Agency's revenue and expenditure in accordance with Article 53, and implementing its budget;
- (k) exercising the powers laid down in Article 60 in respect of the Agency's staff;
- (l) taking all decisions on the management of the information systems provided for in this Regulation, including the information portal referred to in Article 9(2), point (b);
- (m) taking all decisions on the management of the Agency's internal structures;
- (n) drafting reports on the situation in third countries as referred to in Article 9;
- (o) submitting the common analysis and guidance notes to the Management Board in accordance with Article 11(2);
- (p) setting up teams of experts for the purpose of Articles 14 and 15 which shall be composed of experts from the Agency's own staff, the Commission and, where necessary, the Member States and, as observers, the UNHCR;
- (q) initiating a monitoring exercise in accordance with Article 15(2);
- (r) submitting the findings and draft recommendations in the context of a monitoring exercise to the Member State concerned and subsequently to the Management Board in accordance with Article 15(3) and (4);
- (s) reporting to the Management Board and to the Commission in accordance with Article 4(5);
- (t) evaluating, approving and coordinating requests for operational and technical assistance in accordance with Article 16(1) and Article 20;
- (u) ensuring the implementation of operational plans as referred to in Article 18;
- (v) ensuring coordination of the Agency's activities in the migration management support teams with the Commission and other relevant Union bodies, offices and agencies in accordance with Article 21(1);
- (w) ensuring the implementation of Council decisions as referred to in Article 22(2);
- (x) deciding, in consultation with the Management Board, on the acquisition or lease of technical equipment in accordance with Article 23(2);
- (y) proposing a selection of candidates for appointment as the fundamental rights officer in accordance with Article 49(1);
- (z) appointing a coordinating officer of the Agency in accordance with Article 25(2).

Article 48

Deputy Executive Director

1. A Deputy Executive Director shall assist the Executive Director in the management of the Agency and in the performance of the tasks referred to in Article 47(5). If the Executive Director is absent or indisposed, the Deputy Executive Director shall take his or her place.

2. The Management Board shall appoint the Deputy Executive Director on a proposal of the Executive Director. The Deputy Executive Director shall be appointed on the grounds of merit, appropriate administrative and management skills, and relevant professional experience in the field of asylum. The Executive Director shall propose at least three candidates for the post of Deputy Executive Director. The Management Board shall have the power to extend the term of office of the Deputy Executive Director or to remove the Deputy Executive Director from office acting on the proposal from the Executive Director. Article 46(1), (4), (7) and (9) shall apply *mutatis mutandis* to the Deputy Executive Director.

Article 49

Fundamental rights officer

1. The Management Board shall appoint a fundamental rights officer from a selection of candidates proposed by the Executive Director. The fundamental rights officer shall have the necessary qualifications and experience in the field of fundamental rights and asylum.
2. The fundamental rights officer shall be independent in the performance of his or her duties and shall report directly to the Management Board.
3. The fundamental rights officer shall be responsible for ensuring the Agency's compliance with fundamental rights in all of its activities and promoting respect by the Agency of fundamental rights. The fundamental rights officer shall also be responsible for implementing the complaints mechanism referred to in Article 51.
4. The fundamental rights officer shall cooperate with the Consultative Forum.
5. The fundamental rights officer shall be consulted on, *inter alia*, operational plans as referred to in Article 18, evaluation of the Agency's operational and technical assistance, the code of conduct referred to in Article 58 and the European asylum curriculum referred to in Article 8(3). The fundamental rights officer shall have access to all information concerning respect for fundamental rights in relation to all the Agency's activities, including by organising visits, with the consent of the Member State concerned, to the places where the Agency carries out operational activities.

Article 50

Consultative Forum

1. The Agency shall maintain a close dialogue with relevant civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, Union or international level. For that purpose, the Agency shall set up a Consultative Forum.
2. The Consultative Forum shall constitute a mechanism for the exchange of information and the sharing of knowledge. The Consultative Forum shall ensure a close dialogue between the Agency and relevant organisations and bodies referred to in paragraph 1.
3. The Agency shall invite the European Union Agency for Fundamental Rights, the European Border and Coast Guard Agency, the UNHCR and other relevant organisations and bodies referred to in paragraph 1 to be members of the Consultative Forum.

On a proposal of the Executive Director, the Management Board shall decide on the composition of the Consultative Forum, including on thematic or geographically focused consultation groups, and on the conditions for transmitting information to the Consultative Forum. The Consultative Forum shall, after consulting the Management Board and the Executive Director, establish its working methods, including thematic or geographically focused working groups as deemed necessary and useful.

4. The Consultative Forum shall advise the Executive Director and the Management Board on asylum-related matters in accordance with the Agency's specific needs in areas identified as a priority for its work. MAS/kc

5. The Consultative Forum shall, in particular:

- (a) make suggestions to the Management Board on the annual and multi-annual programming referred to in Article 42;
- (b) provide feedback to the Management Board and suggest measures as follow-up to the annual report on the situation of asylum in the Union referred to in Article 69; and
- (c) communicate to the Executive Director and the Management Board the conclusions and recommendations of conferences, seminars and meetings, and the findings from studies or field work carried out by any of the member organisations or bodies of the Consultative Forum which is relevant to the work of the Agency.

6. The Consultative Forum shall be consulted on the preparation, adoption and implementation of the fundamental rights strategy referred to in Article 57(3) and the code of conduct referred to in Article 58, the setting up of the complaints mechanism referred to in Article 51 and the development of the European asylum curriculum referred to in Article 8(3).

7. The Consultative Forum shall meet in full session at least once a year and shall organise meetings for the thematic or geographically focused consultation groups as necessary.

Article 51

Complaints mechanism

1. The Agency shall set up a complaints mechanism to ensure that fundamental rights are respected in all of the Agency's activities.

2. Any person who is directly affected by the actions of an expert participating in an asylum support team, and who considers that his or her fundamental rights have been violated due to those actions, or any party representing such a person, may submit a complaint in writing to the Agency.

3. Only substantiated complaints involving concrete fundamental rights violations shall be admissible. Complaints which challenge a national authority's decision on an individual application for international protection shall be inadmissible. Complaints which are anonymous, abusive, malicious, frivolous, vexatious, hypothetical or inaccurate shall also be inadmissible.

4. The fundamental rights officer shall be responsible for handling complaints received by the Agency and shall do so in accordance with the right to good administration. For that purpose, the fundamental rights officer shall:

- (a) review the admissibility of a complaint;
- (b) register admissible complaints;
- (c) forward all registered complaints to the Executive Director;
- (d) forward complaints concerning experts participating in an asylum support team to the home Member State;
- (e) inform the relevant authority or body competent for fundamental rights in a Member State of a complaint; and
- (f) register and ensure follow-up by the Agency or the Member State concerned.

5. In accordance with the right to good administration, where a complaint is admissible, the complainant shall be informed that a complaint has been registered, that an assessment has been initiated and that a response may be expected as soon as it becomes available. Where a complaint is forwarded to a national authority or body, the complainant shall be provided with the contact details of that authority or body. Where a complaint is inadmissible, the complainant shall be informed of the reasons for the inadmissibility and, where possible, provided with further options for addressing his or her concerns. Any decision shall be in writing and reasoned.

6. In the case of a registered complaint concerning a staff member of the Agency, the Executive Director shall ensure appropriate follow-up, in consultation with the fundamental rights officer, including disciplinary measures as necessary. The Executive Director shall report within a determined timeframe to the fundamental rights officer on the findings and follow-up made by the Agency in response to a complaint, including any disciplinary measures.

7. Where a complaint is related to data protection issues, the Executive Director shall involve the Agency's data protection officer. The fundamental rights officer and the data protection officer shall establish, in writing, a memorandum of understanding specifying the division of tasks between them and the way in which they cooperate as regards complaints received.

8. In the case of a complaint concerning an expert of a Member State, including seconded national experts, the home Member State shall ensure appropriate follow-up, including disciplinary measures as necessary or other measures in accordance with national law. The home Member State shall report to the fundamental rights officer on the findings and follow-up made in response to a complaint within a determined time period and, if necessary, at regular intervals thereafter. The Agency shall follow the matter up where no report is received from the home Member State.

9. Where an expert deployed by a Member State, including seconded national experts, is found to have violated fundamental rights or international protection obligations, the Executive Director shall request the Member State to remove that expert or seconded national expert immediately from the activities of the Agency. Where an expert deployed by the Agency is found to have violated fundamental rights or international protection obligations, the Executive Director shall remove that expert from the activities of the Agency.

10. The fundamental rights officer shall report to the Executive Director and to the Management Board on the findings and follow-up made by the Agency and the Member States concerned in response to a complaint. The Agency shall include information on the complaints mechanism in its annual report on the situation of asylum in the Union referred to in Article 69.

11. The Agency, including the fundamental rights officer, shall handle and process any personal data contained in a complaint in accordance with Regulation (EU) 2018/1725. Member States shall handle and process any personal data contained in a complaint in accordance with Regulation (EU) 2016/679 or Directive (EU) 2016/680, as appropriate. When a complainant submits a complaint, that complainant shall be deemed to have consented to the processing of his or her personal data by the Agency and the fundamental rights officer within the meaning of Article 5(1), point (d), of Regulation (EU) 2018/1725. In order to safeguard the interests of complainants, the fundamental rights officer shall deal confidentially with complaints in accordance with national and Union law unless the complainant explicitly waives his or her right to confidentiality. Where a complainant waives his or her right to confidentiality, that complainant shall be deemed to have consented to the disclosure, where necessary, by the fundamental rights officer or the Agency of his or her identity to the competent authorities or bodies in relation to the subject of the complaint.

CHAPTER 9

FINANCIAL PROVISIONS

Article 52

Budget

1. Estimates of the revenue and expenditure of the Agency shall be prepared each financial year, corresponding to the calendar year, and shall be shown in the Agency's budget.

2. The Agency's budget shall be balanced in terms of revenue and of expenditure.

3. Without prejudice to other resources, the Agency's revenue shall comprise:

(a) a contribution from the Union entered in the general budget of the Union;

(b) Union funding under indirect management or in the form of ad hoc grants in accordance with the financial rules applicable to the Agency and with the provisions of the relevant instruments supporting the policies of the Union;

- (c) any voluntary financial contribution from Member States;
 - (d) any contribution from associated countries;
 - (e) charges for publications and any service provided by the Agency.
4. The expenditure of the Agency shall include staff remuneration, administrative and infrastructure expenses, and operating expenditure.

Article 53

Establishment of the budget

1. Each year the Executive Director shall draw up a provisional draft statement of estimates of the Agency's revenue and expenditure for the following financial year, including the establishment plan, and send it to the Management Board.
2. The Management Board shall, on the basis of the provisional draft statement of estimates referred to in paragraph 1, adopt a draft statement of estimates of the Agency's revenue and expenditure for the following financial year.
3. The draft statement of estimates of the Agency's revenue and expenditure referred to in paragraph 2 shall be sent to the Commission, the European Parliament and the Council by 31 January each year.
4. The Commission shall send the statement of estimates to the budgetary authority together with the draft general budget of the Union.
5. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution from the Union to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 TFEU.
6. The budgetary authority shall authorise the appropriations for the contribution from the Union to the Agency.
7. The budgetary authority shall adopt the Agency's establishment plan.
8. The Management Board shall adopt the Agency's budget. The Agency's budget shall become final following the definitive adoption of the general budget of the Union. Where necessary, the Agency's budget shall be adjusted accordingly.
9. For any building project likely to have significant implications for the budget of the Agency, Delegated Regulation (EU) 2019/715 shall apply.

Article 54

Implementation of the budget

1. The Executive Director shall implement the Agency's budget.
2. Each year the Executive Director shall send to the budgetary authority all information relevant to the findings of evaluation procedures.

Article 55

Presentation of accounts and discharge

1. By 1 March of financial year N + 1, the Agency's accounting officer shall send the provisional accounts for financial year N to the Commission's accounting officer and to the Court of Auditors.

By 31 March of financial year N + 1, the Commission's accounting officer shall send the Agency's provisional accounts for financial year N, consolidated with the Commission's accounts, to the Court of Auditors.

3. On receipt of the Court of Auditors' observations on the Agency's provisional accounts pursuant to Article 246 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽²⁶⁾, the Executive Director shall draw up the Agency's final accounts for financial year N under his or her own responsibility and submit them to the Management Board for an opinion.
4. The Management Board shall deliver an opinion on the Agency's final accounts for financial year N.
5. The Executive Director shall, by 1 July of financial year N + 1, send the final accounts for financial year N, together with the Management Board's opinion, to the European Parliament, to the Council, to the Commission and to the Court of Auditors.
6. The final accounts for financial year N shall be published in the *Official Journal of the European Union* by 15 November of financial year N + 1.
7. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September of financial year N + 1. The Executive Director shall also send that reply to the Management Board.
8. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 261(3) of Regulation (EU, Euratom) 2018/1046.
9. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of financial year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for financial year N.

Article 56

Financial rules

1. The Management Board shall adopt the financial rules applicable to the Agency after consulting the Commission. The financial rules shall comply with Delegated Regulation (EU) 2019/715, except where a derogation from that Regulation is specifically required for the Agency's operation and the Commission has given its prior consent.
2. The Agency may award grants related to the fulfilment of the tasks referred to in Article 2 of this Regulation and make use of framework contracts in accordance with this Regulation or by delegation of the Commission pursuant to Article 62(1), point (c)(iv), of Regulation (EU, Euratom) 2018/1046. The relevant provisions of Regulation (EU, Euratom) 2018/1046 shall apply.

(26) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

CHAPTER 10

GENERAL PROVISIONS

*Article 57***Protection of fundamental rights and the fundamental rights strategy**

1. The Agency shall guarantee the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, including the Charter, and relevant international law, in particular the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.
2. The best interests of the child shall be a primary consideration when applying this Regulation.
3. The Agency shall, on a proposal of the fundamental rights officer, adopt and implement a fundamental rights strategy to ensure respect for fundamental rights in all the Agency's activities.

*Article 58***Code of conduct**

The Agency shall develop, adopt and implement a code of conduct applicable to all experts participating in asylum support teams. The code of conduct shall lay down procedures intended to guarantee the principles of the rule of law and respect for fundamental rights with a particular focus on children, unaccompanied minors and other persons in a vulnerable situation.

*Article 59***Legal status**

1. The Agency shall be an agency of the Union. The Agency shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. The Agency may, in particular, acquire and dispose of movable and immovable property and be a party to legal proceedings.
3. The Agency shall be independent as regards operational and technical matters.
4. The Agency shall be represented by its Executive Director.
5. The seat of the Agency shall be Malta.

*Article 60***Staff**

1. The Staff Regulations, the Conditions of Employment and the rules adopted by agreement between the institutions of the Union for giving effect to the Staff Regulations and the Conditions of Employment shall apply to the Agency's staff.
2. The Management Board shall adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment pursuant to Article 110 of the Staff Regulations.
3. The Agency shall exercise the appointing authority powers in respect of its own staff.

4. The Agency may make use of seconded national experts or other staff not employed by it. The Management Board shall adopt a decision laying down rules on the secondment of national experts to the Agency.

5. The Agency may employ staff to work in the field in Member States.

Article 61

Privileges and immunities

Protocol No 7 on the Privileges and Immunities of the European Union annexed to the TEU and to the TFEU shall apply to the Agency and its staff.

Article 62

Language arrangements

1. Council Regulation No 1 ⁽²⁷⁾ shall apply to the Agency.
2. Without prejudice to decisions taken on the basis of Article 342 TFEU, the consolidated annual report on the Agency's activities and programming documents as referred to in Article 42 shall be produced in all official languages of the institutions of the Union.
3. The Translation Centre of the bodies of the European Union shall provide the translation services required for the functioning of the Agency.

Article 63

Transparency

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Agency.
2. The Agency may communicate on its own initiative on matters falling within the scope of its tasks. The Agency shall make public the consolidated annual report on the Agency's activities and ensure, in particular, that the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.
3. The Management Board shall, within 6 months of the date of its first meeting, adopt detailed rules for the application of paragraphs 1 and 2.
4. Any natural or legal person shall be entitled to address the Agency in writing in any official language of the institutions of the Union. He or she shall have the right to receive an answer in the same language.
5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to a complaint being lodged with the European Ombudsman or an action before the CJEU, under the conditions laid down in Articles 228 and 263 TFEU respectively.

Article 64

Combating fraud

1. In order to combat fraud, corruption and other unlawful activities Regulation (EU, Euratom) No 883/2013 shall apply without restriction. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF and adopt appropriate provisions applicable to all the employees of the Agency using the template set out in the Annex to that Agreement.
2. The Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot checks and inspections, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.

⁽²⁷⁾ Council Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community (OJ 17, 8580/24, 6.10.1958, p. 385).

3. OLAF may carry out investigations, including on-the-spot checks and inspections in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96 ⁽²⁸⁾ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded by the Agency.

4. Without prejudice to paragraphs 1, 2 and 3, working arrangements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the Court of Auditors and OLAF to conduct such audits and investigations, in accordance with their respective competences.

Article 65

Security rules on the protection of classified information and sensitive non-classified information

1. The Agency shall apply the Commission's rules on security as set out in Commission Decisions (EU, Euratom) 2015/443 ⁽²⁹⁾ and (EU, Euratom) 2015/444. Those rules shall apply, in particular, to the exchange, processing and storage of classified information.

2. The Agency shall apply the security principles relating to the processing of non-classified sensitive information as set out in Decisions (EU, Euratom) 2015/443 and (EU, Euratom) 2015/444 and as implemented by the Commission. The Management Board shall establish measures for the application of those security principles.

3. Classification shall not preclude information from being made available to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament in accordance with this Regulation shall comply with the rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission.

Article 66

Liability

1. The Agency's contractual liability shall be governed by the law applicable to the contract in question.

2. The CJEU shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.

3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.

4. The CJEU shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.

5. The personal liability of the Agency's staff towards it shall be governed by the provisions of the Staff Regulations or Conditions of Employment applicable to them.

⁽²⁸⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

⁽²⁹⁾ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 92, 17.3.2015, p. 41).

*Article 67***Administrative monitoring**

The activities of the Agency shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 TFEU.

*Article 68***Headquarters agreement and operating conditions**

1. The necessary arrangements concerning the accommodation to be provided to the Agency in the Member State in which the Agency has its seat, the facilities to be made available by that Member State and the specific rules applicable in that Member State to members of the Management Board, Agency staff and members of their families shall be laid down in a Headquarters Agreement between the Agency and that Member State. The Headquarters Agreement shall be concluded after obtaining the approval of the Management Board.
2. The Member State in which the Agency has its seat shall provide the Agency with the conditions necessary to ensure its proper functioning, including multilingual, European-oriented schooling and appropriate transport connections.

*Article 69***Annual report on the situation of asylum in the Union**

The Agency shall draw up an annual report on the situation of asylum in the Union. The Agency shall transmit that report to the Management Board, to the European Parliament, to the Council and to the Commission, and the Executive Director shall present it to the European Parliament. The annual report on the situation of asylum in the Union shall be made public.

*Article 70***Evaluation and review**

1. Three months following the replacement of Regulation (EU) No 604/2013, the Commission shall report to the European Parliament and to the Council on the results of its evaluation of whether this Regulation needs to be amended for the purpose of ensuring the coherence and internal consistency of the Union legal framework, in particular as regards the provisions on the monitoring mechanism referred to in Article 14, and shall present the necessary proposals to amend this Regulation, as appropriate.
2. By 20 January 2025, and every 5 years thereafter, the Commission shall commission an independent external evaluation to assess, in particular, the Agency's performance in relation to its objectives, mandate and tasks. That evaluation shall cover the Agency's impact on practical cooperation on asylum-related matters and on facilitating the implementation of the CEAS. The evaluation shall take due regard of progress made within the Agency's mandate, including an assessment of whether additional measures are necessary to ensure effective solidarity and sharing of responsibilities with Member States subject to particular pressure.

The evaluation referred to in the first subparagraph shall, in particular, address the possible need to modify the mandate of the Agency and the financial implications of any such modification. It shall also examine whether the management structure is appropriate for carrying out the Agency's tasks. The evaluation shall take into account the views of stakeholders at both Union and national level.

3. The Commission shall send the report that is the result of the evaluation referred to in paragraph 2, together with its conclusions on that report, to the European Parliament, to the Council and to the Management Board.

4. On the occasion of every second evaluation referred to in paragraph 2, the Commission shall consider whether continuation of the Agency is justified with regard to its objectives, mandate and tasks, and it may propose that this Regulation be amended accordingly or repealed.

Article 71

Transitional provision

The Agency shall succeed EASO as regards all ownership, agreements, legal obligations, employment contracts, financial commitments and liabilities. In particular, this Regulation shall not affect the rights and obligations of the staff of EASO whose continuity of career shall be ensured in all respects.

Article 72

Replacement and repeal

Regulation (EU) No 439/2010 is replaced with regard to the Member States bound by this Regulation. Therefore, Regulation (EU) No 439/2010 is repealed.

With regard to the Member States bound by this Regulation, references to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex II.

Article 73

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 2(1), point (q), Article 14 and Article 15(1), (2) and (3) shall apply from 31 December 2023, and Article 15(4) to (8) and Article 22 shall apply from the date on which Regulation (EU) No 604/2013 is replaced, unless that Regulation is replaced before 31 December 2023, in which case those provisions shall apply from 31 December 2023.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 15 December 2021.

For the European Parliament The President
D. M. SASSOLI

For the Council The President
A. LOGAR

ANNEX I

NUMBER OF EXPERTS TO BE PROVIDED TO THE ASYLUM RESERVE POOL REFERRED TO IN ARTICLE 19(6)

Belgium	15
Bulgaria	8
Czechia	8
Germany	86
Estonia	6
Greece	25
Spain	46
France	80
Croatia	5
Italy	40
Cyprus	3
Latvia	5
Lithuania	6
Luxembourg	4
Hungary	10
Malta	4
Netherlands	24
Austria	15
Poland	40
Portugal	7
Romania	20
Slovenia	5
Slovakia	10
Finland	9
Sweden	19
Total	500/500

ANNEX II

Correlation table

Regulation (EU) No 439/2010	This Regulation
Article 1	Article 1(1) and(2)
Article 2(1)	Article 2(1), point (a)
Article 2(2)	Article 2(1), point (i)
Article 2(3)	-
Article 2(4)	Article 1(3)
Article 2(5)	Article 4(3)
Article 2(6)	-
-	Article 2(1), except points (a), (e), (i), (k), (l), (r) and (s)
-	Article 2(2)
-	Article 3
Article 3	Article 4(4)
-	Article 4(1), (2) and (5)
Article 4, points (a) to (d)	Article 2(1), point (e), and Article 9
Article 4, point (e)	Article 11(1)
Article 5	Article 2(1), point (k)
Article 6	Article 8
Article 7, first paragraph	Article 2(1), point (r)
Article 7, second paragraph	Article 2(1), point (s), and Article 35(3)
Article 7, third paragraph	Article 35(2)
-	Article 7
-	Article 10
-	Article 11(2) to (5)
-	Article 12
-	Article 13(4), (5) and (6)
-	Article 14
-	Article 15
Article 8	Article 16(1), point (b)
Article 9	Article 5
Article 10	Article 16
Article 11	Article 6
Article 12(1)	Article 69
Article 12(2)	Article 13(1), (2) and(3)
Article 13(1)	Article 16(1), point (b), and Article 17(1)
Article 13(2)	Article 16(2), introductory wording

Regulation (EU) No 439/2010	This Regulation
Article 14	Article 16(2), points (e) and (i)
-	Article 16(1), except point (b)
-	Article 16(2), except points (e) and (i)
-	Article 16(3) and (4)
-	Article 17(2) to (5)
Article 15	Article 2(1), point (l), and Article 19(2), (3) and (5)
Article 16	Article 19(1), (2) and (3)
-	Article 19(4), (6), (7) and (8)
Article 17	Article 20
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Article 34	Article 53
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**Brussels, 18 April 2024 (OR.
en)**

**Interinstitutional File:
2016/0225(COD)**

8583/24

**CODEC 1016
ASILE 52
RELEX 478
PE 82**

INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL establishing a Union Resettlement Framework and amending Regulation
(EU) No 516/2014 of the European Parliament and the Council
- Outcome of the European Parliament's first reading (Brussels, 10 to 11 April
2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 121) to the abovementioned proposal for a Regulation, for which Malin BJÖRK (The Left, SE) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. In addition, the ID political group tabled 14 amendments (amendments number 122 to 136).

¹ OJ C 145, 30.6.2007, p. 5.

When it voted on 10 April 2024, the plenary adopted the compromise amendment (amendment number 121) to the abovementioned proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)0184**Union Resettlement Framework**

European Parliament legislative resolution of 10 April 2024 on the proposal for a regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council (COM(2016)0468 – C8-0325/2016 – 2016/0225(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0468),
- having regard to Article 294(2) and Article 78(2), points (d) and (g), of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0325/2016),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 25 January 2017¹,
- having regard to the opinion of the Committee of the Regions of 8 February 2017²,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 8 February 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the opinions of the Committee on Foreign Affairs and the Committee on Budgets,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0316/2017),

¹ OJ C 125, 21.4.2017, p. 40.

² OJ C 207, 30.6.2017, p. 67.

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Regulation (EU) 2024/... of the European Parliament and of the Council establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 125, 21.4.2017, p. 40.

² OJ C 207, 30.6.2017, p. 67.

³ Position of the European Parliament of 10 April 2024.

Whereas:

- (1) In its conclusions on ‘Taking action to better manage migratory flows’ of 10 October 2014, the Council acknowledged that, while taking into account the efforts carried out by Member States affected by migratory flows, all Member States should give their contribution to ■ resettlement ■ in a fair and balanced manner.
- (2) *This Regulation is based on the full and inclusive application of the United Nations Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (the ‘Geneva Convention’).*
- (3) *A Union Resettlement and Humanitarian Admission Framework (the ‘Union Framework’) should be established to complement other legal pathways. The Union Framework should offer the most vulnerable third-country nationals or stateless persons in need of international protection access to a durable solution in accordance with Union and national law.*

- (4) ***On 19 September 2016, the United Nations (UN) General Assembly urged States to scale up resettlement efforts and envisaged a comprehensive refugee response framework in which States aim to provide resettlement places and other legal pathways on a scale that would enable the annual resettlement needs identified by the Office of the United Nations High Commissioner for Refugees (UNHCR) to be met. The Global Compact on Refugees adopted by the UN General Assembly on 17 December 2018 provides that voluntary contributions will be sought from States to establish or enlarge the scope, size, and quality of resettlement programmes.***
- (5) In its communication of 13 May 2015 on a European Agenda on Migration, the Commission set out the need for a common approach to granting protection to displaced persons in need of protection through resettlement.

- (6) In its Recommendation to the Member States of 8 June 2015 on a European Resettlement Scheme, the Commission recommended that resettlement should be based on an equitable distribution key. This was followed by conclusions of the Representatives of the Governments of the Member States meeting within the Council of 20 July 2015 to resettle, through multilateral and national schemes, 22 504 persons in clear need of international protection. The resettlement places were distributed among Member States and Iceland, Liechtenstein, Norway and Switzerland in accordance with the commitments set out in the Annex to those conclusions.
- (7) On 15 December 2015, the Commission addressed a Recommendation for a voluntary humanitarian admission scheme with Turkey to the Member States and associated States, recommending that participating States admit persons displaced by the conflict in Syria who are in need of international protection. ■

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- (8) In its communication of 6 April 2016 entitled ‘Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe’, the Commission announced that it would set out a proposal for a structured resettlement system framing the Union’s policy on resettlement and providing a common approach to safe and legal arrival to the Union for persons in need of international protection.

- (9) In its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the European Parliament underlined the need for a permanent Union-wide resettlement programme which provides resettlement for a meaningful number of refugees, having regard to the overall number of refugees seeking protection in the Union.
- (10) ***On 27 September 2017, the Commission addressed a Recommendation to the Member States on enhancing legal pathways for persons in need of international protection. In response, Member States pledged to offer 50 039 resettlement places.***
- (11) Building on existing initiatives, ***and in the context of the existing international architecture***, a stable and reliable Union Framework should be established for the ***admission of third-country nationals or stateless persons who are*** in need of international protection to be implemented in accordance with ***a Union Resettlement and Humanitarian Admission Plan (the ‘Union Plan’), which should fully respect Member States’ concrete indications with regard to their*** commitments.

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- (12) *The Union Framework should be placed in the context of international resettlement and humanitarian admission efforts. The contribution of the Union Framework to meeting global resettlement and humanitarian admission needs should help strengthen the Union's partnership with third countries with the objective of showing solidarity with countries in regions to which a large number of persons in need of international protection has been displaced by helping to alleviate the pressure on those countries, fostering those countries' capacity to improve reception and international protection conditions, and reducing irregular and dangerous onward movements of third-country nationals and stateless persons in need of international protection, in the context of migration.*
- (13) In order to *contribute to increasing resettlement and humanitarian admission efforts and* reduce divergences among the national resettlement practices and procedures, *a common procedure together with* common eligibility criteria and grounds for *refusal of admission* should be laid down, as well as a common *principles regarding the* status to be granted to persons *admitted*.

- (14) The common **admission procedure** should build on the existing resettlement **and humanitarian admission** experience and standards of the Member States **and, if applicable, of the UNHCR**.
- (15) *The admission of family members of third-country nationals or stateless persons who are legally residing in a Member State, or of Union citizens, should be without prejudice to the rights laid down in Council Directive 2003/86/EC⁴, Directive 2004/38/EC of the European Parliament and of the Council⁵ or to national law concerning family reunification. Such admission should therefore focus on the family members who fall outside the scope of those Directives or relevant national law, or who could not be reunited with their families for other reasons.*
- (16) *In order to ensure family unity, all family members in relation to whom a Member State intends to conduct an admission procedure, who are eligible and who do not fall under the grounds for refusal should, as a rule and to the extent possible, be admitted together. Should this not be possible, family members not admitted together should be admitted as soon as possible at a later stage. In the process of determining the parameters of a given family on whom a third-country national or stateless person is dependent, as referred to in this Regulation, Member States should recognise that the extended relations may be the last line of defence for individuals who rely exclusively on the family for survival, psychological support, and emotional care.*

⁴ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

⁵ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

- (17) *Member States should be able to choose in relation to whom to conduct an admission procedure, including on the basis of considerations relating to family composition. When making that choice, Member States should respect the principle of family unity. Member States should be able to require third-country nationals or stateless persons to demonstrate the existence of a family relationship.*
- (18) *The concept of danger to public health is understood as a disease with epidemic potential within the meaning of the International Health Regulations of the World Health Organization.*
- (19) *An admission procedure consists of the following stages: referral, where applicable, identification, registration, assessment and a conclusion on admission, as well as, in the case of resettlement, a decision on granting international protection or, in the case of humanitarian admission, a decision on granting international protection or humanitarian status under national law.*
- (20) *A positive conclusion on admission means that a person in relation to whom an admission procedure has been carried out for the purpose of resettlement or humanitarian admission has been accepted for admission by the Member State that reached that conclusion. A negative conclusion on admission means that such a person has not been accepted for admission by the Member State concerned.*

- (21) ***Before granting international protection***, a full assessment of the international protection needs of ***the*** third-country ***national*** or stateless ***person should be carried out***.

- (22) ***In the case of an emergency admission, the assessment of the admission requirements established under this Regulation should be accelerated. Emergency admission should not necessarily be linked to the regions or third countries from which admission is to occur pursuant to this Regulation. All Member States should be encouraged to offer emergency admission places.***

- (23) An ***admission*** procedure should be concluded as soon as possible, ***while ensuring*** that Member States have sufficient time for ***an*** adequate examination of each case. ***Member States should*** make ***every effort to ensure that a third-country national or stateless person in relation to whom a positive conclusion on admission was reached enters their territory no later than twelve months from the date of that conclusion.***

- (24) **Any personal data of persons granted international protection or a national humanitarian status in accordance with this Regulation should be stored for five years from the date of registration at national level. That five-year period should be considered to be sufficient for the purposes of the admission procedure, given that the majority of such persons will have resided for several years in the Union and will have obtained citizenship of a Member State. Given that third-country nationals or stateless persons who, during the three years before admission, were refused admission to a Member State because there were reasonable grounds for considering that they would be a danger to the community, public policy, security or public health of the Member State examining the admission file or on the ground that an alert has been issued in the Schengen Information System or in a national database of a Member State for the purposes of refusing entry should be refused admission pursuant to this Regulation their data should be stored for a period of three years from the date on which the negative conclusion on admission was reached. Given that third-country nationals who, during the three years before admission, have not given or have withdrawn their consent to be admitted to a particular Member State could be refused admission under the terms of this Regulation, the data should be stored for a period of three years from the date of discontinuation. The storage period should be shorter in certain special situations where there is no need to keep personal data for that length of time. Personal data belonging to a third-country national or to a stateless person should be erased immediately and permanently once that person obtains citizenship of a Member State.**

- (25) There is no right to ***request admission or to be admitted by a Member State. Moreover, there is no obligation on Member States to admit a person pursuant to this Regulation.***
- (26) ***Resettlement should be the primary type of admission, complemented by humanitarian admission and emergency admission, as appropriate, to address specific circumstances.***
- (27) ***The Union Framework should aim to have all Member States contributing to the implementation of the Union Plan and scaling up their resettlement and humanitarian admission efforts with a view to contributing significantly to meeting the Global Resettlement Needs, including emergency cases.***
- (28) ***To that end, the Asylum, Migration and Integration Fund established by Regulation (EU) 2021/1147 of the European Parliament and of the Council⁶ should provide targeted assistance in the form of financial incentives for each person admitted in accordance with the Union Framework, as well as for actions to establish appropriate infrastructure and services for the implementation of the Union Framework.***

⁶ ***Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021, p. 1).***

- (29) *The European Union Agency for Asylum (the ‘Asylum Agency’) established by Regulation (EU) 2021/2303 of the European Parliament and of the Council⁷ should support Member States, on their request and in accordance with its mandate, in implementing the Union Plan, such as by assisting them in the implementation of certain elements of the admission procedure and by coordinating technical cooperation and facilitating the sharing of infrastructure between them.*
- (30) *The sharing of good practices among resettlement and humanitarian admission actors in relevant fora, including in the Consultations on Resettlement and Complementary Pathways, should be promoted.*

⁷ Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1).

- (31) In order to ensure uniform conditions for the implementation of the Union Framework, implementing powers should be conferred on the Council for establishing **and amending** the **two-year** Union **Plan**, fixing the **■** total number of persons to be **admitted and indicating what part of that number should be dedicated to resettlement, humanitarian admission and emergency admission**, details about the participation of the Member States in the Union Plan and their contributions to the total number of persons to be **admitted, a description of the specific group or groups of persons to which the Union Plan should apply, and the specification of the regions or third countries from which admission is to occur**.
- (32) **Conferring such implementing powers on the Council is justified in view of the fact that those implementing powers relate to national executive powers regarding the admission of third-country nationals on the territory of the Member States.**
- (33) **Amendments to the Union Plan to address new circumstances could include contributions to new regions or third countries that fully respect indications on a voluntary basis made by Member States at the High-Level Resettlement and Humanitarian Admission Committee (High-Level Committee) through the reallocation of existing or new contributions.**

- (34) ***Those implementing*** powers should be exercised on a proposal from the Commission on the **■** total number of persons to be ***admitted*** and ***the specification of the regions or third countries from which admission is to occur fully respecting indications on a voluntary basis made by Member States before the proposal at the High-Level Committee***. The Commission should make its proposal ***for the Union Plan*** simultaneously with its proposal on the draft Union annual budget ***in the year before the two-year period in which the Union Plan is to be implemented. The Commission should make its proposal for an amendment to the Union Plan simultaneously with a corresponding proposal on the draft amending budget, where necessary***. The Council should aim to adopt the proposal within two months. **■**

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- (35) ***The*** provisions on the content of international protection contained in the asylum *acquis* should apply from the moment when a person admitted ***who is granted international protection*** arrives on the territory of the Member State concerned ***or, where international protection is granted after the person concerned arrives on the territory of the Member State, from the moment when that person is granted international protection***.

- (36) *The integration of persons admitted in their host society is important for a successful admission procedure. Persons admitted should have the same access to integration measures as beneficiaries of international protection in accordance with Regulation (EU) 2024/... of the European Parliament and of the Council ⁸⁺. Member States should be able to require participation in such integration measures only if those integration measures are easily accessible, available and free of charge. Member States should also offer, where considered to be feasible, a pre-departure orientation programme to third-country nationals or stateless persons. Such a programme could include information about their rights and obligations, language classes, and information about the social, cultural and political situation in the Member State. Such information could also be provided after entry to the territory of the Member State concerned or be included in integration measures, taking into account the particular vulnerabilities of the person admitted.*

⁸ Regulation (EU) 2024/... of the European Parliament and of the Council of on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, ..., ELI).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

Member States should also be able to arrange post-arrival orientation programmes tailored to the needs of persons admitted in order to provide those persons with guidance concerning, in particular, the learning of the language of the host Member State, education and access to the labour market, taking account of their specific vulnerabilities. In arrangements to be set by Member States the bodies and persons concerned, such as local authorities and persons who have already been admitted, should, as far as possible, be involved in implementing such programmes.

- (37) *The secondary movement of all persons who have been admitted under this Regulation, including where humanitarian status under national law has been granted, should be discouraged. Member States, within the framework of Union law and policy, should cooperate effectively and without undue delay readmit persons who have been admitted in accordance with this Regulation and found in a Member State where they have no right to stay.*
- (38) *Without prejudice to the right to apply for international protection, Member States may, in the case of humanitarian admission, reach a conclusion on the admission of a third-country national or stateless person to its territory based on an initial evaluation and grant that person humanitarian status under national law.*

- (39) ***The humanitarian status under national law should provide for rights and obligations equivalent to those of Articles 20 to 26 and 28 to 35 of Regulation (EU) 2024/...⁺ for beneficiaries of subsidiary protection. Such a status should be withdrawn only in the event that new circumstances or new evidence arise concerning the person's eligibility following the decision on granting the status.***
- (40) In accordance with the Regulation (EU) 2024/... of the European Parliament and of the Council⁹⁺⁺, in order to comprehensively reflect the efforts of each Member State, the number of third-country nationals admitted by the Member States through Union and national resettlement or humanitarian admission schemes should be taken into account in the assessment of the overall situation of the Union as part of the European Annual Asylum and Migration Report.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

⁹ Regulation (EU) 2024/... of the European Parliament and of the Council of ... on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, ..., ELI:...).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) and insert the title, number, date, OJ reference and ELI of that Regulation in the footnote.

- (41) Given the expertise of the UNHCR in facilitating the different forms of admission of persons in need of international protection from third countries, to which they have been displaced, to Member States willing to admit them, the UNHCR should continue to play a key role under the Union Framework. ***It should be possible to call upon*** international actors in addition to the UNHCR, such as the International Organization for Migration, to assist Member States in the implementation of ***the*** Union Framework.
- (42) A High-Level Committee should be established to ***consult*** with stakeholders on the implementation of the Union Framework. ***The High-Level Committee should advise the Commission on issues related to the implementation of the Union Framework, including on a recommended number of persons to be admitted and the regions or third countries from which admission should be undertaken, taking into account the UNHCR Projected Global Resettlement Needs. The High-Level Committee should be able to make recommendations. The Commission should invite Member States to indicate, on a voluntary basis, at the meeting of the High-Level Committee, the details of their participation, including the type of admission and the countries from which admission is to take place, and their contributions to the total number of persons to be admitted under the Union Plan.***
- (43) Resettlement ***and humanitarian admission*** efforts by Member States under this Regulation should be supported by appropriate funding from the Union's ***general*** budget. In order to enable a proper and sustainable functioning of the ***Union Framework***, Regulation (EU) 2021/1147 ***should be amended***.
- (44) This Regulation does not affect the ability of the Member States to adopt or implement national resettlement schemes for example where they contribute an additional number of ***admission*** places to the ***total*** number of persons to be ***admitted*** under the Union ***Plan***.

- (45) Complementarity with ongoing resettlement and humanitarian admission initiatives undertaken in the Union framework should be ensured.
- (46) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and should therefore be applied in a manner consistent with those rights and principles, in particular as regards the rights of the child, the right to respect for family life and the general principle of non-discrimination.
- (47) Any processing of personal data by the authorities of the Member States within the framework of this Regulation should be conducted in accordance with Regulation (EU) **2016/679** of the European Parliament and of the Council¹⁰.

¹⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (48) Any processing of personal data by █ the Asylum Agency █ within the framework of this Regulation should be conducted in accordance with Regulation (EU) 2018/1725 of the **European Parliament and of the Council¹¹** as well as █ with Regulation (EU) 2021/2303 and should respect the principles of necessity and proportionality.
- (49) ***Since the objective of this Regulation, namely to establish a Union Framework, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the Union Resettlement Framework, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.***
- (50) █ In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the Treaty on the Functioning of the European Union (TFEU), and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. █
- █
- (51) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

¹¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 1 Subject matter

1. This Regulation:

- (a)** establishes a Union Resettlement **and Humanitarian Admission** Framework (the ‘Union Framework’) for the admission of third-country nationals **or** stateless persons to the territory of the Member States with a view to granting them, **in accordance with this Regulation:**
- (i)** international **protection; or**
- (ii)** *humanitarian status under national law which provides for rights and obligations equivalent to those established in Articles 20 to 26 and 28 to 35 of Regulation (EU) .../...⁺ for beneficiaries of subsidiary protection; and*
- (b)** *lays down rules on the admission, by means of resettlement or humanitarian admission, of third-country nationals or stateless persons to the territory of the Member States for the purpose of implementing this Regulation.*

⁺ OJ: Please insert in the text the number of the Regulation in document PE-CONS 70/23 (2016/0223(COD)).

2. ***This Regulation does not establish a right of third-country nationals or stateless persons to request admission, or to be admitted, to the territory of a Member State.***
3. ***This Regulation does not impose an obligation on Member States to admit a third-country national or a stateless person.***
4. ***Member States shall contribute to the Union Resettlement and Humanitarian Admission Plan (the ‘Union Plan’) referred to in Article 8 on a voluntary basis. The indications made by the Member States in the High-Level Resettlement and Humanitarian Admission Committee, established pursuant to Article 11, in relation to the details of their participation, including the type of admission and the regions or third countries from which admission is to take place, and of their contribution to the total number of persons to be admitted under the Union Plan, shall be voluntary.***

Article 2

Definitions

For the purposes of this Regulation ***the following definitions apply:***

- (1) ‘resettlement’ means the admission to the territory of a Member State, ***following a referral from the United Nations High Commissioner for Refugees (UNHCR)***, of a third-country national ***or*** a stateless person, from a third country to which that person has been displaced, ***who:***
- (a) ***is eligible for admission pursuant to Article 5(1);***
 - (b) ***does not fall under the grounds for refusal set out in Article 6; and***
 - (c) ***is granted international protection in accordance with Union and national law and has access to a durable solution;***
- (2) ‘international protection’ means international protection as defined in Article 3, point (3), of Regulation (EU) .../...⁺;
- (3) ‘humanitarian admission’ means the admission to the territory of a Member State, ***following, where requested by a Member State, a referral from the European Union Agency for Asylum (the ‘Asylum Agency’), from the UNHCR, or from another relevant international body, of a third-country national or a stateless person*** from a third country to which ***■*** that person has been ***forcibly*** displaced ***and, at least on the basis of an initial evaluation, who:***
- (a) ***is eligible for admission pursuant to Article 5(2);***
 - (b) ***does not fall under the grounds for refusal set out in Article 6; and***

⁺ OJ: Please insert in the text the number of the Regulation in document PE-CONS 70/23 (2016/0223(COD)).

(c) *is granted international protection in accordance with Article 9(17) of this Regulation or humanitarian status under national law, which provides for rights and obligations equivalent to those established in Article 20 to 26 and 28 to 35 of Regulation (EU) .../...⁺ for beneficiaries of subsidiary protection;*

(4) *‘emergency admission’ means the admission by means of resettlement or humanitarian admission of persons with urgent legal or physical protection needs or with immediate medical needs.*

Article 3

Union Resettlement *and Humanitarian Admission* Framework

The Union Framework shall:

(a) provide for the legal and safe arrival to the territory of a Member State of third-country nationals *or* stateless persons *who are eligible for admission and who do not fall under the grounds for refusal under this Regulation with a view to granting them* international protection *in accordance with this Regulation or humanitarian status under national law referred to in Article 2, point (3)(c), and encourage all* Member States *to scale up their efforts to that end;*

⁺ OJ: Please insert in the text the number of the Regulation in document PE-CONS 70/23 (2016/0223(COD)).

- (b) contribute to *increasing the Union's contribution to* international resettlement *and humanitarian admission* initiatives *with a view to increasing the overall number of available places for resettlement and humanitarian admission*;
- (c) *contribute to strengthening the Union's partnerships with third countries in regions to which a large number of persons in need of international protection has been displaced.*

Article 4

Determination of regions or third countries from which ***Union*** resettlement ***or humanitarian admission*** is to occur

The determination of the regions or third countries from which ***Union*** resettlement ***or humanitarian admission*** occurs ***shall primarily have as a basis:***

- (a) the ***UNHCR Projected Global Resettlement Needs***;
- (b) ***the scope for improving the protection environment and increasing the protection space in*** third countries **■** ;
-
- (c) the scale and content of commitments to resettlement ***or humanitarian admission*** undertaken by third countries ***with a view to collectively contributing to meeting the UNHCR Global Resettlement Needs.***

Article 5 Eligibility *for admission*

1. ***For the purpose of resettlement, the*** following third-country nationals or stateless persons shall be eligible for ***admission, provided that they also fall within at least one of the categories referred to in paragraph 3, point (a):***

- (a) ■ third-country nationals ■ who, ***owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, as defined in Article 10 of Regulation (EU).../...⁺***, are outside their country of nationality ***and are unable or, owing to such a fear, are unwilling to avail themselves of the protection*** of that country ■, or stateless persons, who, ***being*** outside the country of former habitual residence ***for the same reasons, are unable or, owing to such a fear, are unwilling to return to that country; or***

⁺ OJ: Please insert in the text the number of the Regulation in document PE-CONS 70/23 (2016/0223(COD)).

- (b) *third-country nationals who are outside the country of nationality or stateless persons who are outside the country of their former habitual residence* and in respect of whom substantial grounds have been shown for believing that they, if returned to ■ their country of origin or, in the case of stateless persons, to their country of former habitual residence, would face a real risk of suffering serious harm *as defined in Article 15 of Regulation (EU) .../...⁺*, and are unable ■ or, owing to such risk, ■ are unwilling to avail themselves of the protection of that country ■ .

Persons whose protection or assistance from organs or agencies of the UN other than the UNHCR has ceased for any reason without their position being definitively settled in accordance with the relevant resolutions adopted by the UN General Assembly shall be deemed to meet the eligibility criteria set out in this paragraph.

⁺ OJ: Please insert in the text the number of the Regulation in document PE-CONS 70/23 (2016/0223(COD)).

2. *For the purpose of humanitarian admission, the following third-country nationals or stateless persons shall be eligible for admission, provided that, at least on the basis of an initial evaluation, they also fall within at least one of the categories referred to in paragraph 3:*

- (a) *third-country nationals who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, as defined in Article 10 of Regulation (EU) .../...⁺ are outside the country of nationality and are unable or, owing to such a fear, are unwilling to avail themselves of the protection of that country, or stateless persons who, being outside the country of former habitual residence for the same reasons, are unable or, owing to such a fear, unwilling to return to it; or*

⁺ OJ: Please insert in the text the number of the Regulation in document PE-CONS 70/23 (2016/0223(COD)).

- (b) *third-country nationals who are outside the country of nationality or stateless persons who are outside the country of former habitual residence, and in respect of whom substantial grounds have been shown for believing that they, if returned to their country of origin or, in the case of stateless persons, to their country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 of Regulation (EU) 2024/...⁺, and are unable or, owing to such risk, are unwilling to avail themselves of the protection of that country.*

Persons whose protection or assistance from organs or agencies of the UN other than the UNHCR has ceased for any reason without their position being definitively settled in accordance with the relevant resolutions adopted by the UN General Assembly, shall be deemed to meet the eligibility criteria set out in this paragraph.

⁺ OJ: Please insert in the text the number of the Regulation in document PE-CONS 70/23 (2016/0223(COD)).

3. ***To be eligible for admission pursuant to this Article, a third-country national or stateless person shall also fall within at least one of the following categories:***

- (a) vulnerable persons, comprising:
 - (i) women and girls at risk;
 - (ii) ***minors***, including unaccompanied ***minors***;
 - (iii) survivors of violence ■ or torture, including on the basis of gender ***or sexual orientation***;
 - (iv) persons with legal and/or physical protection needs, ***including as regards protection from refoulement***;
 - (v) persons with medical needs ■, ***including where life-saving treatment is unavailable in the country to which they have been forcibly displaced***;
 - (vi) ***persons with*** disabilities;
 - (vii) persons ***who lack a foreseeable alternative durable solution, in particular those in a protracted refugee situation***;

- (b) *in the case of humanitarian admission, the* family members, as referred to *in paragraph 4*, of third-country nationals or stateless persons **■** legally residing in a Member State, *or of Union citizens*.

4. *In order to ensure family unity, the following family members of third-country nationals or stateless persons to be admitted shall also be eligible for admission:*

- (a) the spouse or unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to that of married couples under its law relating to third-country nationals or stateless persons;
- (b) the minor children **■** on the condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted *or recognised* as defined under national law;
- (c) the father, mother or another adult responsible for *an* unmarried minor **■**, whether by law or by the practice of the Member State *concerned*;
- (d) the sibling or siblings **■** ;

- (e) third-country nationals or stateless persons ■ who are dependent on their child, parent **or other family member** for assistance as a result of pregnancy, a new-born child, serious mental or physical illness, severe disability or old age, provided that family ties existed in the country of origin, that the child, parent **or other family member** is able to take care of the dependent person, and that the persons concerned expressed their desire in writing.

When applying this paragraph, Member States shall take due account of the best interests of the child. Where the third-country national or stateless person is a married minor but not accompanied by his or her spouse, the best interests of the minor may be seen to lie with the minor's original family.

Article 6

Grounds for *refusing admission*

1. The following third-country nationals or stateless persons shall be *refused admission under this Regulation*:
 - (a) ■ persons ■ who are recognised by the competent authorities of the country in which they ■ have taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or *equivalent* rights and obligations ■ ;
 -
 - (b) persons in relation to whom there are reasonable grounds for considering that they have:
 - (i) committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (ii) committed a serious crime;

(iii) been guilty of acts contrary to the purposes and principles of the UN as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;

(c) persons for whom there are reasonable grounds for considering that they are a danger to the community, public policy, security or public health ■ of the Member State examining the admission file ■ ;

(d) persons for whom an alert has been issued in the Schengen Information System or in a national database of a Member State for the purpose of refusing entry;

■

(e) persons who have ■ been ***granted international protection by Member States or humanitarian status under national law as referred to in Article 2, point (3)(c);*** ■

(f) persons whom a Member State has, during the **three** years before **admission**, refused **admission** pursuant to **point (c) or (d) of** this subparagraph.

Point (b) of the first subparagraph shall also apply to persons who incite, or who otherwise participate in, the commission of the crimes or acts mentioned therein.

2. The following third-country nationals or stateless persons may be **refused admission**:

- (a) *persons who, during the three years before admission, have not given or have withdrawn consent to be admitted to a particular Member State, as referred to in Article 7, provided that they have been informed of the consequences of such withdrawal in accordance with Article 9(4), point (b);*
- (b) *persons who have committed one or more crimes outside the scope of paragraph 1, first subparagraph, point (b), which would be punishable with a maximum sentence of at least one year of imprisonment had they been committed in the Member State examining the admission file, unless the prosecution or the punishment would have been statute-barred or, in the case of a conviction for such a crime, an entry relating to that conviction would have been removed from the national criminal record, according to the law of the Member State examining the admission file;*

(c) *persons who refuse to participate in a pre-departure orientation programme referred to in Article 9(22);*

(d) *persons in relation to whom a Member State cannot provide the adequate support needed on the basis of those persons' vulnerability.*

3. *The grounds provided for in this Article shall apply provided that they are implemented without discrimination on the basis of, inter alia, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.*

Article 7 Consent

- 1. The admission procedure laid down in Article 9 shall apply to third-country nationals or stateless persons who have given their consent to be admitted and who have not subsequently withdrawn their consent, including by refusing admission to a particular Member State.**
- 2. Where a third-country national or a stateless person fails to provide available data or information essential to the conduct of the procedure provided for in Article 9(3) or fails to attend the personal interview provided for in Article 9(6) that person may be considered to have implicitly withdrawn consent to be admitted as referred to in paragraph 1 of this Article, unless the person was not informed in accordance with Article 9(4), complies with the obligations within a reasonable period of time, or can demonstrate that the failure to provide data or information or to attend the personal interview was due to circumstances beyond that person's control.**

Article 8

Union *Resettlement and Humanitarian Admission Plan*

1. On the basis of a proposal from the Commission, the Council shall adopt, ***by means of an implementing act, a two-year Union *Resettlement and Humanitarian Admission Plan* (Union Plan)*** in the year before ***the two-year period*** in which it is to be implemented.

The Commission shall inform the European Parliament of its proposed draft Union Plan without delay, and the Council shall keep the European Parliament regularly informed of progress relating to the adoption of the Union Plan.

The Council shall inform the European Parliament and the Commission of the final draft Union Plan without delay. The Council shall transmit the Union Plan to the European Parliament without delay upon its adoption.

2. ***When implementing this Article, the Council and the Commission shall take due account of the outcome of meetings of the High-Level Resettlement and Humanitarian Admission Committee established pursuant to Article 11 and of the UNHCR Projected Global Resettlement Needs.***

3. The Union Plan shall include:

- (a) the total number of persons to be admitted to the territory of the Member States, indicating, respectively, the proportion of persons who are to be subject to resettlement, to humanitarian admission and to emergency admission, the proportion of persons subject to resettlement being not less than approximately 60 % of the total number of persons to be admitted;**
- (b) details about the participation of the Member States and their contributions to the total number of persons to be admitted and the proportion of the persons who are to be subject to resettlement, to humanitarian admission and to emergency admission in accordance with point (a) of this paragraph, fully respecting the indications made by Member States at the High-Level Resettlement and Humanitarian Admission Committee established pursuant to Article 11;**
- (c) a specification of the regions or third countries from which resettlement or humanitarian admission is to occur pursuant to Article 4.**

4. The [] Union ***Plan may, where necessary,*** include:

(a) ***a description of the specific group or groups of third-country nationals or stateless persons to whom the Union Plan is to apply;***

(b) ***local coordination, as well as practical cooperation arrangements among Member States, supported by the Asylum Agency in accordance with Article 10, [] and with third countries, the UNHCR and other relevant partners [].***

5. ***Emergency admission shall be applied irrespective of the regions or third countries from which resettlement or humanitarian admission is to occur.***

6. *Where required by new circumstances, such as an unforeseen humanitarian crisis outside the regions or third countries referred to in the Union Plan, the Council, on a proposal from the Commission, shall, where appropriate, amend the Union Plan such as by adding regions or third countries to those from which admission is to occur pursuant to Article 4.*

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Article 9

Admission procedure

1. *In the case of resettlement, for the purpose of implementing the Union Plan, Member States shall request the UNHCR to refer third-country nationals or stateless persons to them.*

In the case of humanitarian admission, for the purpose of implementing the Union Plan, Member States may request that the Asylum Agency, the UNHCR, or another relevant international body refer third-country nationals or stateless persons to them I .

2. **A Member State shall** assess whether a third-country national or a stateless person as referred to in paragraph 1 falls within the scope of **the Union Plan**.

A Member State may give preference ■ to a third-country national or a stateless person who has ■ :

- (a) family links with third-country nationals or stateless persons legally residing in a Member State or with Union citizens;
- (b) **demonstrated** social ■ links ■ or other characteristics that can facilitate integration in the ■ Member State **conducting an admission procedure, including appropriate** language **skills** or **previous residence in that Member State**;
- (c) particular protection needs or vulnerabilities.

3. After identifying a third-country national or a stateless person **who falls within the scope of the Union Plan and in relation to** whom it intends to conduct an **admission** procedure, a Member State shall register the following information in relation to that person:

- (a) the third-country national's or the stateless person's name, date of birth, gender and nationality ■ ;

■

(b) the type and number of any identity or travel document of the third-country national **or stateless person**; and

(c) the date and place of the registration and the authority making the registration.

Additional data necessary for the implementation of paragraphs 6 and 9 may be collected at the time of registration.

4. Member States shall **inform** the third-country nationals or ■ stateless persons **in relation to whom they conduct an admission procedure of:**

(a) **the objectives of and the different steps in the admission procedure;**

(b) **the consequences of withdrawing consent as referred to in Article 7, and of a refusal to participate in any pre-departure orientation programme as referred to in paragraph 22 of this Article.**

5. ***Member States shall provide the third-country nationals or stateless persons in relation to whom they conduct an admission procedure, at the time when personal data are collected, in writing, and, where necessary, orally, with the information that they are required to provide under Regulation (EU) 2016/679. That information shall be provided in a concise, transparent, intelligible and easily accessible form, using clear and plain language, adapted to the needs of minors and of persons with specific needs and in a language that the third-country nationals or stateless persons understand or are reasonably supposed to understand.***
6. ***Member States shall assess whether the third-country nationals or the stateless persons in relation to whom they conduct an admission procedure meet the eligibility criteria set out in Article 5 and do not fall under the grounds for refusal set out in Article 6 .***

Member States shall make that assessment ***in particular*** on the basis of documentary evidence, including, where applicable, information from the UNHCR on whether the third- country nationals or the stateless persons qualify as refugees, on the basis of a personal interview, or a combination of both.

7. *In the case of resettlement*, Member States shall **request that the UNHCR conduct a full assessment of whether the third-country nationals or the stateless persons subject to an admission procedure:**

- (a) *fall within the scope of the Union Plan;*
- (b) *fall under one of the categories of vulnerability set out in Article 5(3), point (a) or have family links in accordance with Article 5(4), and the reasons for such an assessment;*
- (c) *qualify as refugees within the meaning of Article 1 of the Geneva Convention.*

Member States may request that the criteria set out in paragraph 2, second subparagraph, be taken into account.

8. *In the case of humanitarian admission, Member States may request that the UNHCR assess whether the third-country nationals or stateless persons referred to them by the UNHCR:*

- (a) *qualify as refugees within the meaning of Article 1 of the Geneva Convention;*

- (b) fall under one of the categories of vulnerability set out in Article 5(3), point (a) or have family links in accordance with Article 5(3), point (b);*

Member States may request that the criteria set out in paragraph 2, second subparagraph, be taken into account.

9. *Member States shall reach a conclusion on the admission of third-country nationals or stateless persons on the basis of the assessment referred to in paragraph 6 as soon as possible and no later than **seven** months from the date of registration. Member States may extend that time-limit by up to **three** months in the event of complex issues of fact or law.*
10. *In the case of an emergency admission, Member States shall reach a conclusion as soon as possible and endeavour to do so no later than one month from the date of registration.*

11. Member States shall discontinue an admission procedure in which third-country nationals or stateless persons have withdrawn their consent as referred to in Article 7.

A Member State may discontinue an admission procedure in the following circumstances:

- (a) where it has concluded that the total number of third-country nationals or stateless persons admitted exceeds its contribution set out in the Union Plan;***
- (b) where it has concluded to give preference to the third-country nationals or stateless persons in accordance with paragraph 2, point (c);***
- (c) where it has concluded that it is not able to comply with the time limits referred to in paragraph 9 for reasons beyond its control.***

Subject to Chapter V of Regulation (EU) 2016/679, the reason for discontinuation shall be communicated to the UNHCR where necessary to enable the UNHCR to carry out its tasks regarding referrals of third-country nationals or stateless persons to Member States or to third countries in accordance with this Regulation or with its mandate, unless there are overriding reasons of public interest for not doing so.

12. Member States shall store the data of persons to whom they grant international protection or humanitarian status under national law in accordance with this Regulation for five years from the date of registration. In the case of persons who have been refused admission on any of the grounds referred to in Article 6(1), first subparagraph, point (f), such data shall be stored for a period of three years from the date on which the negative conclusion on admission was reached.

Upon expiry of **the applicable period, the** Member States shall erase the data. Member States shall erase **the** data relating to a person who has acquired citizenship of any Member State before the expiry of that period as soon as **■** they **become** aware that the person concerned has acquired such citizenship.

Where a Member State discontinues an admission procedure pursuant to paragraph 11, first subparagraph, the Member State shall store the data related to the person concerned for three years from the date of that discontinuation. Where a Member State discontinues an admission procedure pursuant to paragraph 11, second subparagraph, the Member State shall erase the data relating to the person concerned on the date of that discontinuation.

13. *Where a Member State's conclusion pursuant to paragraph 9 is negative* ■ , the third-country national or stateless person concerned shall not be admitted to that **Member State**.

Subject to Chapter V of Regulation (EU) 2016/679, the reason for a negative conclusion shall be communicated to the UNHCR, where necessary to enable the UNHCR to carry out its tasks regarding referrals of third-country nationals or stateless persons to Member States or to third countries in accordance with this Regulation or with its mandate, unless there are overriding reasons of public interest for not doing so.

Any Member State that has reached a negative conclusion as referred to in the first subparagraph may require that it be consulted by another Member State during that other Member State's examination of the admission file.

14. *Where a Member State's conclusion pursuant to paragraph 9 is positive paragraphs 15 to 22 shall apply before or after the entry of the person concerned to its territory.*
15. *Pursuant to paragraph 14 of this Article, a Member State as referred to therein shall take a decision to grant refugee status where the third-country national or the stateless person concerned qualifies as a refugee, or subsidiary protection status where the third-country national or the stateless person concerned is eligible for subsidiary protection.* ■

Such a decision shall have the same effect as a decision **granting** refugee status or **■** subsidiary protection status as referred to in Articles 13 **or** 18 of Regulation (EU) .../... **■** ⁺, after the person concerned has entered the territory of a Member State.

Member States may issue residence permits of permanent or unlimited validity on terms that are more favourable in accordance with Article 13 of Council Directive 2003/109/EC¹².

16. **Pursuant to paragraph 14 of this Article, a Member State as referred to therein shall take a decision to issue a residence permit in the case of a family member of the third-country national or stateless person concerned, pursuant to Article 5(4), who does not qualify individually for international protection.**

Such a decision shall have the same effect as a decision to issue a residence permit as referred to in Article 23(1) of Regulation (EU) .../...⁺, after the person concerned has entered the territory of a Member State.

⁺ OJ: Please insert in the text the number of the Regulation in document PE-CONS 70/23 (2016/0223(COD)).

¹² **Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).**

17. Pursuant to paragraph 14 of this Article, a Member State as referred to therein may, in the case of humanitarian admission, grant international protection or, without prejudice to the right to apply for international protection, humanitarian status under national law that provides for rights and obligations equivalent to those of Articles 20 to 26 and 28 to 35 of Regulation (EU) .../...⁺ for beneficiaries of subsidiary protection.

Such a decision shall take effect after the person concerned has entered the territory of the Member State.

18. Pursuant to paragraph 14 of this Article, a Member State as referred to therein shall take a decision to issue a residence permit in the case of a family member of the third-country national or stateless person concerned, pursuant to Article 5(4), who does not qualify individually for international protection or for humanitarian status under national law as referred to in Article 2, point (3)(c).

Such a decision shall have the same effect as a decision to issue a residence permit as referred to Article 23(1) of Regulation (EU) .../...⁺, after the person concerned has entered the territory of a Member State.

⁺ OJ: Please insert in the text the number of the Regulation in document PE-CONS 70/23 (2016/0223(COD)).

19. ***Pursuant to paragraph 14 of this Article, a Member State as referred to therein, or the relevant partner on behalf of the Member State in accordance with Article 10(3) shall notify the third-country nationals or stateless persons concerned of any decision pursuant to paragraphs 15 and 17 of this Article.***

Where such a decision was taken before the person concerned entered the territory of the Member State, that a notification may take place after such entry.

20. ***Pursuant to paragraph 14, a Member State as referred to therein shall make every effort to ensure entry to its territory as soon as possible and no later than 12 months from the date of the conclusion.***

In the case of an emergency admission, the Member State shall ensure the swift transfer of the third-country national or the stateless person after the date of the positive conclusion pursuant to paragraph 9.

21. ***Pursuant to paragraph 14, a Member State as referred to therein shall offer, where necessary, to make travel arrangements, including fit-to-travel medical checks and provide transfer to their territory free of charge, including, where necessary, the facilitation of exit procedures in the third country from where the third-country national or the stateless person concerned is admitted.***

Where a Member State organises travel arrangements pursuant to the first subparagraph, it shall take into account the specific needs of the persons concerned with regard to any vulnerabilities that they may have.

22. ***Pursuant to paragraph 14, a Member State as referred to therein shall, where feasible, offer ■ pre-departure orientation programmes to the third-country nationals or stateless persons concerned, which shall be free of charge and easily accessible and may include information about their rights and obligations, language classes, and information about the Member State's social, cultural and political situation.***

Where it is not feasible to provide such orientation programmes, Member States shall provide at least information about their rights and obligations to third-country nationals or stateless persons.

23. ***Personal data processed by a Member State pursuant to this Article shall not be transferred or made available to any third country, international body or private entity established in the Union or in a third country in cases other than those provided for in this Article.***
24. ***Member States shall transmit the data of the persons falling within the scope of this Regulation in accordance with Article 18 of Regulation (EU) 2024/.... of the European Parliament and of the Council ¹³⁺.***

¹³ Regulation (EU) 2024/... of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) ■ 2024/... ■ and (EU) ■ 2024/... of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third- country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ ..., .., ELI: ...).

⁺ OJ: Please insert in the text the number of the Regulation in document PE-CONS 15/24 (2016/0132(COD)), and insert the number, date, OJ reference and ELI of that Regulation in the footnote.

25. *At all stages of the procedure, Member States shall not discriminate against persons on grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.*

Article 10 Operational cooperation

1. To facilitate the implementation of the  Union **Plan**, Member States shall appoint national contact points and may decide to appoint liaison officers in third countries.

2. The Asylum Agency **■** may support Member States ***upon their request in accordance with Article 9(1) of this Regulation, or where provided for in a Union Plan in accordance with Article 8(4), point (b), of this Regulation. That support may include*** coordinating technical cooperation between ***Member States***, assisting ***Member States*** in the implementation of **■** the Union ***Plan, the training of personnel conducting admission procedures, providing information to third-country nationals or stateless persons as referred to in Article 9(4), (5) and (25) of this Regulation,*** facilitating the sharing of infrastructure, ***and assisting Member States in cooperating with third countries for the purpose of conducting admission procedures*** pursuant to Regulation (EU) 2021/2303.

The Asylum Agency may also coordinate an exchange of good practices between Member States for the purpose of the implementation of this Regulation and the integration of resettled persons in their host society.

3. For the purpose of implementing **the Union Plan**, and in particular **of notifying the third-country nationals or stateless persons concerned of the decision taken by Member States in accordance with Article 9(15) and (17) and of** conducting pre-departure orientation programmes, fit-to-travel medical checks, travel arrangements and other practical arrangements, Member States may be assisted by **relevant** partners **upon the request of the Member State or** in accordance with local coordination and practical cooperation arrangements for **a Union Plan** established in accordance with Article 8(4), point (b).

Article 11

High-Level Resettlement **and Humanitarian Admission** Committee

1. A High-Level Resettlement **and Humanitarian Admission** Committee (High-Level Committee) shall be established. It shall be composed of representatives of the European Parliament, the Council, the Commission ■ and the Member States. ■

The Asylum Agency, ■ the UNHCR ■ and the International Organization for Migration **shall be invited to attend the meetings of the High-Level Committee.**

Other relevant organisations, including civil society organisations, may be invited to attend the meetings of the High-Level Committee in areas of their expertise.

Representatives of Iceland, Liechtenstein, Norway, and Switzerland shall be invited to attend the meetings of the High-Level Committee where they have indicated their intention to be associated with the implementation of the ■ Union Plan.

2. The High-Level Committee shall be chaired by the Commission. It shall meet at least once a year and whenever necessary at the invitation of the Commission or at a request of a Member State **or of the European Parliament.**

3. The **High-Level Committee** *shall advise the Commission* on issues related to the implementation of the Union Framework, *including on a recommended number of persons to be admitted and the regions or third countries from which such admission is to be undertaken, taking into account the UNHCR Projected Global Resettlement Needs. It may make recommendations.*

The Commission shall publish the minutes of the meetings of the High-Level Committee, unless such publication would undermine the protection of any public or private interest as provided for in Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹⁴.

4. *The Commission shall consult the High-Level Committee and shall take into account the outcome of the meetings of the High-Level Committee with regard to issues related to the implementation of the Union Framework.*

¹⁴ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

5. *Following the outcome of the meetings of the High-Level Committee pursuant to this Article, the Commission shall invite Member States to indicate the details of their participation and of their contribution on a voluntary basis to the total number of persons to be admitted including the type of admission and the regions or third countries from which admission shall take place in accordance with Articles 4 and 8.*
6. *The Commission, on its own initiative or following a recommendation by one or more Member States or the European Parliament, shall convene a meeting of the High-Level Committee for the purpose of discussing the possible admission of persons pursuant to Article 8(6), with a view to responding to new circumstances, such as an unforeseen humanitarian crisis in regions or third countries that are not included in the Union Plan.*
7. *The High-Level Committee may, if necessary, establish its rules of procedure.*

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Article 12

Association with Iceland, Liechtenstein, Norway, and Switzerland

Iceland, Liechtenstein, Norway, and Switzerland shall be invited to be associated with the implementation of **the Union Plan**. Such association shall duly take this Regulation into account, in particular with regard to the **procedure laid down in Article 9** and the rights and obligations of persons **admitted**.

Article 13 Financial support

Financial support to the Member States for resettlement and humanitarian admission shall be implemented in accordance with Regulation (EU) 2021/1147.

Article 14

Amendments to Regulation (EU) **2021/1147**

Regulation (EU) **2021/1147** is amended as follows:

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(1) Article 2 is amended as follows:

(a) point (5) is replaced by the following:

‘(5) ‘humanitarian admission’ means humanitarian admission as defined in Article 2, point (3), of Regulation (EU) 2024/... of the European Parliament and of the Council;**

* Regulation (EU) 2024/... of the European Parliament and the Council of ... establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147 (OJ L ..., ELI: ..).’;

(b) point (8) is replaced by the following:

‘(8) ‘resettlement’ means  resettlement as defined in Article 2, point (1), of Regulation (EU) 2024/... **’;

⁺ OJ: Please insert in the text the number of this Regulation contained in document PE-CONS 18/24 (2016/0225(COD)) and insert the number, date, title, OJ reference and ELI of that Regulation in the footnote.

⁺⁺ OJ: Please insert in the text the number of the Regulation in document PE-CONS 18/24 (2016/0225(COD)).

(2) in Article 19, paragraphs (1), (2) and (3) are replaced by the following:

‘1. Member States shall receive, in addition to their allocation under Article 13(1), point (a), of this Regulation an amount of EUR 10 000 for each person admitted through resettlement under the Union Resettlement and Humanitarian Admission Framework established by Regulation (EU) 2024/...⁺.

2. Member States shall receive, in addition to their allocation under Article 13(1), point (a) of this Regulation, an amount of EUR 6 000 for each person admitted through humanitarian admission under the Union Resettlement and Humanitarian Admission Framework established by Regulation (EU) 2024/...⁺ or admitted under a national resettlement scheme.

⁺ OJ: Please insert in the text the number of this Regulation contained in document PE-CONS 18/24 (2016/0225(COD)).

3. The amount referred to in paragraph 2 shall be increased to EUR 8 000 for each person admitted through humanitarian admission or admitted under a national resettlement scheme who belongs to one or more of the following vulnerable groups:

(a) women and children at risk;

(b) unaccompanied minors;

(c) persons having medical needs that can be addressed only through humanitarian admission;

(d) persons in need of humanitarian admission for legal or physical protection needs, including victims of violence or torture.’

Article 15 Evaluation and Review

1. ***By ... [four years from the date of entry into force of this Regulation], the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation, including Article 9(2), point (b), and on the contributions made by Member States to the implementation of the Union Plan, in accordance with Article 8, and on the efforts of all Member States to scale up their resettlement and humanitarian admission efforts with a view to significantly contributing to meeting the global resettlement needs. The report shall be accompanied, where appropriate, by proposals to achieve that aim.***
2. Member States shall provide the Commission and the Asylum Agency with the necessary information for drawing up the Commission's report for the purpose of paragraph 1.
3. The European Parliament and the Council shall, on the basis of a proposal of the Commission, review this Regulation ***within two years of submission of the Commission report pursuant to paragraph 1, taking into account the content of that report.***

Article 16 Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. **Article 9(24) shall apply from ... [the date on which Article 18 of Regulation (EU) 2024/...⁺ becomes applicable].**

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done ...,

For the European Parliament
The President

For the Council
The President

⁺ OJ: Please insert in the text the number of the Regulation in document PE-CONS 15/24 (2016/0132(COD)).