



Council of the
European Union

Brussels, 15 October 2018
(OR. en)

Interinstitutional File:
2016/0224(COD)

12701/18
ADD 1

LIMITE

ASILE 66
CODEC 1582

NOTE

From:	Presidency
To:	Delegations
No. Cion doc.:	11317/16
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

This document contains compromise proposals suggested by the Presidency in relation to Article 41 and Recital (40), taking into account the outcome of the JHA Council on 11-12 October 2018.

Suggested modifications are indicated as follows:

- new text compared to the Commission proposal is in **bold**;
- new text compared to the previous version is in **bold underline**;
- deleted text compared to the Commission proposal is in [...]
- deleted Presidency text compared to the previous version is in **~~bold strikethrough~~**.

Comments made by delegations in relation to the articles orally and in writing, as well as explanations given by the Commission and the Presidency appear in the footnotes of the Annex.

2016/0224 (COD)

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/EU¹

[...]

- (40) Many applications for international protection are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to provide for an examination on admissibility or an examination on the merits which would make it possible for such applications to be decided upon at those locations in well-defined circumstances. The border procedure should not take [...] ~~more than~~ [...] ~~eight~~ **twelve** weeks and after that period applicants should be allowed entry to the territory of the Member State. [...] A border procedure may be applied to unaccompanied minors only within the limited circumstances set out in this Regulation. ~~Proximity to the external border or transit zone should be defined by Member States according to their~~ **Member States that wish to examine applications made at the border in locations in proximity to the external border or transit zone should define such locations in national law taking into account factors such as the geographical situation of the external border and taking into account elements such as distance to the necessary infrastructures. Member States that wish to examine applications made at the external border or in transit zones at other locations in the event of arrivals involving a disproportionate number of third-country nationals or stateless persons making applications for international protection should also define the such other locations in national law which would have the status of the external border or transit zones.**² **The conditions of the Reception Conditions Directive apply to border procedures.**

¹ HU, IT, NL: parliamentary reservation. BE, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IT, LT, NL, PL, PT, SE, SI: scrutiny reservation. FR, PL, SK: Directive instead of a Regulation.

² ES, FR: 4 weeks for determining authority (8 weeks for appeal procedure, 12 weeks in case of disproportionate pressure)

[...]

HAVE ADOPTED THIS REGULATION:

[...]

SECTION IV

SPECIAL PROCEDURES

[...]

Article 41

Border procedure³

1. [...] **Without prejudice to Article 20(3), ~~Member States shall, in accordance with national law, provide for a border procedure whereby the determining authority may shall examine~~ [...] applications at the external border or in the transit zones of the Member State and take decisions on:**⁴

³ **BG, CZ, DE, HU:** scrutiny reservation. **EL, HU, LU:** reservation. **NL:** the current APD states that a decision on the application must be taken on the application within four weeks (Article 43(2)). This article in the APD does not refer to a 'final decision', hence this means that it only refers to the decision of the determining authority. This provision is also in Article 41(2). The new provision in Article 41(3) adds that a final decision in the border procedure must be taken within 8 weeks. This means that in the four remaining weeks there must be a decision on first instance appeal and decision on second appeal. This is unfeasible. We note that even the smallest exceedance of the time-limit will lead to entry to the territory. The applicant has an interest to delay the appeal procedure. In these cases, it would not be in the interest of border control to grant the applicant access to the territory of the EU and it would even be disproportional if the decision on appeal is one or two days late.

⁴ **NL:** a rejection of an asylum application in a border procedure has to be followed by a refusal to enter the country. A rejected asylum application is not such a refusal in itself, which is not efficient. Therefore redraft as follows: add "*or (2)*" in point (a) and add a second sub-para along the following lines: "*Such a decision shall, pursuant to article 8, paragraph 3, under d, of [the Reception Conditions Directive] be considered as a refusal to enter the territory.*" **IT:** prefers the previous version (10973/18).

- (a) [...]; [...]
- (b) the merits of an application **made at such locations** in the cases subject to the accelerated examination procedure **based on the grounds** referred to in Article 40 (1) (a), (b) and (f).

~~When, on the basis of evidence available, the determining authority prima facie considers that the application is neither inadmissible nor subject to the accelerated examination procedure based on the grounds referred to in Article 40(1)(a), (b) or (f), the assessment of the application need not be carried out at the external border or in the transit zone.~~

- 1a. The competent authority may also decide on explicit withdrawal pursuant to Article 38 or implicit withdrawal pursuant to Article 39 or examine and take decisions on applications made at the external border or in the transit zones in the case of inadmissibility of an application pursuant to Article 36 and in cases subject to accelerated procedure on the other grounds mentioned in Article 40 (1) at such locations.⁵

When, on the basis of evidence available, the determining authority prima facie considers that the application is neither inadmissible nor subject to the accelerated examination procedure based on the grounds referred to in Article 40(1), the assessment of the application shall not be carried out at the external border or in the transit zone.

⁵ CZ: the reference should be "36 (2)" to reflect current renumbering; is it possible to issue a decision on withdrawal in the framework of a border procedure?

2. A decision referred to in paragraph 1 shall be taken **following an adequate and complete examination of the application** as soon as possible [...], and no [...] **later** than [...] **eight** weeks from when the application is lodged.⁶

[2a. **The competent authorities may/shall carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) No XXX/XXX (Dublin Regulation) at the external border or in the transit zone of the Member State for the applications made at the external border or in the transit zones.**]

3. Where a [...] decision ~~on the application~~ **by a court or tribunal of first instance on an appeal** is not taken within [...] ~~eight~~ **twelve** weeks **from when the application is lodged** [...], the applicant shall no longer be kept at the border or **in the** transit zones and shall be granted entry to the territory of the Member State for his or her application to be processed in accordance with the other provisions of this Regulation.⁷

⁶ **EE:** scrutiny reservation. **PL:** sometimes the responsibility for not concluding the procedure within 4 weeks belongs to the applicant (e.g. in cases of ID fraud, new document submitted very late etc); in such cases it should be possible to extend the period by another four weeks. **CZ:** delete "following an adequate and complete examination of the application".

HR: longer deadlines.

⁷ **IT:** scrutiny reservation. **CZ:** deadline too short for the courts.

4. **Applications made at the external border or transit zone** ~~The border procedure~~ may also be ~~applied~~ **examined** at locations in proximity to the external border or transit zone. In the event of arrivals involving a disproportionate number of third-country nationals or stateless persons **making** [...] applications for international protection at the **external** border or in ~~a~~ **the** transit zone, making it difficult in practice to apply the provisions of paragraph 1 at such locations, the border procedure may also be applied at **other** locations [...].⁸
5. The border procedure may be applied to unaccompanied minors, in accordance with Articles 8 to 11 of Directive (EU) No XXX/XXX (Reception Conditions Directive) **only in the cases referred to in Article 36(1a)(a) and (b) as well as in Article 40(5)**. [...]⁹
- (a) [...]
- (b) [...]
- (c) [...]
- (d) [...]
- [...]

⁸ **BG, NL:** add "*closed*" before "*locations*".

⁹ **DE, LU:** scrutiny reservation. **EL:** reservation on para (5), prioritising the examination of application from UAM is a good approach but it is doubtful that their best interest can be safeguarded in the accelerated or border procedure; clarify that in such cases it should be applied only if it is in the best interest of the child.