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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

008 Emergency assistance

009 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
