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From: General Secretariat of the Council  
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Subject: Amended 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  
- Comments from the delegations

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Following the Informal meeting of the Asylum Working Party on 1 December 2021, delegations will find attached a revised compilation of replies received from Member States on the abovementioned subject.

**Written comments submitted by the Member States**

**Amended 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**

**and following informal videoconference of the members of**

**Asylum Working Party on 1 December 2021**

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## **AUSTRIA**

Please find below the Austrian comments on Articles 35a and 41g, 41h, 53 and 54 of the Asylum Procedures Regulation proposal covered by the meeting of the Asylum Working Party (AWP) on 1 December 2021 accompanying the statements made during the AWP meeting.

In addition, we would like to emphasise our proposal for broadening the concept of safe third countries.

### ***Article 45 – The concept of safe third country***

The safe third country concept may currently only be applied in cases where a connection between the applicant and the country in question can be established. There have been no attempts in the proposals in the New Pact to redefine or widen the scope of the concept of safe third countries, despite their crucial role to migration management.

In order to expand safe third country concepts, Austria believes that the following factors should be taken into account:

- The EU acquis sets much higher standards on the use of the “safe third country concept” than required by international law.
- There is a clear need to abandon the notion of a “*connection*” requirement as articulated in the current APR proposal.

What is required for an effective application of the safe third country concept:

- The safe third country concept should be recognised as an element of the “comprehensive approach to asylum and migration management” in the Asylum and Migration Management Regulation.
- It should be mandatory to assess the existence of a potential safe third country as part of any admissibility procedure/ during the mandatory border procedure.
- Application of the safe third country concept to any third country. This position should be defended and extended in the upcoming trilogues with the European Parliament on the Return Directive and future APR.

### **Proposal Article 45 paragraph 2b:**

2b. The concept of safe third country may only be applied provided that:

- (a) an [...] individual assessment of the particular circumstances of the applicant has [...] been carried out taking into account elements submitted by the applicant explaining why the concept of safe third country would not be applicable to him or her;

~~(b) — there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for that person to go to that country or if there is no such connection, the applicant consents to go there;~~

(c) in case of unaccompanied minors, where there are clear indications that the applicant will be admitted or readmitted by the third country.

#### *Article 35a – Rejection of an application and issuance of a return decision*

AT took note of the need for flexibility raised by some Member States due to the current structure of national asylum and return systems.

In this context, AT once again would like to highlight the necessity of swift and efficient asylum and return procedures in all Member States for reaching a fully functioning and resilient common asylum and migration system. Streamlined asylum and return procedures play a key role in this regard.

Therefore, AT still advocates for going back to the version presented by the Commission in September 2020 (“*as part of the decision*” or “*as a separate act [...] at the same time and together*”).

Notwithstanding the aforementioned general position, clear wording and ensuring efficient systems in the case of the return decision being a separate act would be needed. As discussed during the AWP meeting, consequences of adding “*as a general rule*” are not sufficiently clear. In case of a more flexible wording, AT calls to incorporate a narrower formulation instead of the deleted “*without undue delay*” and delete the ambiguous wording “*as a general rule*”.

#### **Proposal Article 35a:**

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~~ where required by Directive XXX/XXX/EU [Recast Return Directive] unless a return decision, has already been ~~adopted~~ issued prior to the lodging of an application for international protection. 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, as a general rule, be issued and notified-delivered ~~at the same time and together~~ with the decision rejecting the application for

international protection; ~~without undue delay or immediately after.~~ This Article is without prejudice to Articles 2(2) and 6 (3) of Directive 2008/115.

#### **Article 41g – Border procedure for carrying out return**

Efficient restrictions of movement are essential for ensuring the added value of border procedures. AT prefers the former wording of Art 41 g (2) “*shall be kept*” in order to enable the respective authorities to conduct the return procedure in an effective manner and also to avoid secondary migration. AT would like to refer to its proposal on streamlined provisions on the restriction of movement in the Screening-Regulation, Asylum Procedures Regulation and Asylum and Migration Management Regulation. In addition, the deadlines for return border procedures should be expanded. We also want to ensure that voluntary returns should be possible at any time (as currently foreseen in the text of paragraph 4).

#### **Proposal Art. 41g(2):**

2. Persons referred to in paragraph 1 shall be ~~kept required to reside~~ for a period not exceeding ~~120~~ weeks in locations at ~~or in proximity to~~ the external border or transit zones ~~by applying detention according to Article 41g or where conditions for detention provided for in Article 41g are not met or no longer met by requiring them to reside at the external border or transit zones~~; where a Member State cannot accommodate them in those locations, it can resort to the use of other locations ~~in proximity to the external border or transit zones within its territory~~. The ~~120~~-week period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain.

#### **Article 41h – Detention**

Supporting interventions by other delegations during the AWP meeting on 1 December, AT would welcome the deletion of Article 41h and refer to the respective provision in the Recast Return Directive (Article 18), given the list of grounds for detention remains non-exhaustive (“*in particular*”).

In case the specific provision in Article 41h is kept, the grounds for detention in Article 41h (2) should also be grounds for detention under Article 41h (1). Moreover, there should be a possibility

to detain persons, whose application is rejected in the context of the asylum border procedure for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process also if they were not detained during the asylum border procedure. The last sentence of 41h paragraph 2 is superfluous as it is a principle already incorporated in the legal system.

**Proposal Article 41h paragraphs 1 and 2:**

1. Persons referred to in Article 41g(1) who have been detained during the procedure referred to in Articles 41-41f and who no longer have a right to remain and are not allowed to remain may continue to be detained for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process, or if there is a risk of absconding within the meaning of Directive XXX/XXX/EU [Return Directive], if they avoid or hamper the preparation of return or the removal process or they pose a risk to public policy, public security or national security.
2. Persons referred to in [...]Article 41g(1) who no longer have a right to remain and are not allowed to remain, and who were not detained during the procedure referred to in Articles 41-41f, may be detained for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process, if there is a risk of absconding within the meaning of Directive XXX/XXX/EU [Return Directive], if they avoid or hamper the preparation of return or the removal process or they pose a risk to public policy, public security or national security. Detention may only be imposed as a measure of last resort when it proves necessary on the basis of an individual assessment of each case and if other less coercive measures cannot be applied effectively.

***Article 53 – The right to an effective remedy***

With regard to the wording “*as a general rule*” in paragraph 1, we refer to our comments on Article 35a, aiming at ensuring streamlined and efficient asylum and return procedures throughout the European Union in all instances.

AT calls for shortened and effective procedures. Therefore, AT would welcome a further shortening of the deadline in para 7 letter b). The pertinent provision in the current AMR proposal (Art. 33(2) AMR) provides for a time limit “*of at least one week but no more than three weeks*” and should be adapted to the time limit in paragraph 7(a) (5-10 days).

AT opposes the deletion of Article 53 paragraph 9, having in mind the overall objective of the real added value of border procedures. With regard to the new cut-off date presented by the European Commission, AT maintains a scrutiny reservation.

**Article 54 - Suspensive effect of appeal**

The decision which rejects an application as inadmissible because a country is considered to be a safe third country for the applicant should be added to the list of grounds in paragraph 3, where the applicant shall not have the right to remain.

**Proposal Article 54 paragraph 3:**

The applicant shall not have the right to remain pursuant to paragraph 2 where the competent authority has taken one of the following decisions:

- (a) a decision which rejects an application as unfounded or manifestly unfounded if at the time of the decision any of the circumstances listed in Article 40(1) and (5) apply [including safe country of origin] or in the cases subject to the border procedure;
- (b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) [first country of asylum] or (1aa), point a [subsequent applications without new elements];
- (c) a decision which rejects an application as inadmissible pursuant to Article 36 (1aa), point b.**
- (d)** a decision which rejects an application as implicitly withdrawn;
- (e)** a decision which rejects a subsequent application as unfounded or manifestly unfounded;
- (f)** a decision to withdraw international protection in accordance with Article 14(1), points (b), (d) and (e), and Article 20(1), point (b), of Regulation No XXX/XXX (Qualification Regulation).

AT welcomes the deletion of the last words of paragraph 6. However, the detailed wording and the relation to Article should be further clarified. In this context we refer to our comprehensive comments provided during the previous reading.

## **BELGIUM (new)**

General remark: BE maintains its scrutiny reservation on the APR proposal and in particular on the below mentioned articles, including in their new version.

General remark: The main concern of Belgium with regard to the return-related articles is that their scope is unclear in cases where Member States apply Article 2(2)a of the Return Directive and issue refusals of entry. BE asks that it be clarified throughout the text.

Article 35a :

- The introduction of the words ‘where required by’ is positive but does not allow for the deletion of the last sentence of the article (‘This Article is without prejudice to Articles 2(2) and 6 (3) of Directive 2008/115.’). While we agree this language might cover article 6(3) [to 6(6)], BE suggests to maintain an explicit reference to Article 2(2) of the Return Directive.
- If the intention of this provision is to cover both return decisions and refusals of entry (when taken *after* the decision rejecting the application for international protection), which seems to be the case, then refusals of entry should also be mentioned *in extenso* besides return decisions.
- BE suggests to delete the words ‘issued and’. A common notification of both decisions is sufficient and easier to implement in practice (BE has two different authorities involved).
- At the AWP of 02/06, BE raised the following issue: if a very long time elapses between the refusal of entry (issued before a request for international protection) and the final decision on the refusal of protection, the person has had access to the territory. In this case, a new return decision should be issued. Therefore, there is a gap despite the sentence “unless a return decision, has been adopted prior to the lodging of an application for international protection”, which the Commission confirmed. Could you please make sure this gap is filled?

Article 41g :

- The interplay between Article 41g and Article 2(2) of the Return Directive should be clearly foreseen in the text.
- §2 : With regards the newly added last sentence, it should be clear that the purpose of the requirement to reside at a particular place in accordance with this § is to prevent entry.
- §4: The concept of ‘absconding’ is not defined in APR. We suggest to include a reference to the text/provision that defines it and which shall be used to understand that concept.

Article 41h:

- The interplay between Article 41g and Article 2(2) of the Return Directive should be clearly foreseen in the text.
- §3: a word is missing in the newly added sentence “where a consecutive detention order is issued...”
- This Article should be clarified (conditions, grounds, when to take a new decision on which ground,...). We could also envisage to delete the article since it echoes the dispositions of the Return Directive. The deletion would also solve our problem with the link to Article 2(2)a.

Article 41i:

- We understand that where a refusal of entry is issued a following the rejection of an application only articles 41g(2) et 41h(3) will apply. Therefore, 41g(4) on voluntary return, for example, will not be applicable. Is our interpretation correct ?

Article 53:

- The interplay between Article 41g and Article 2(2) of the Return Directive should be clearly foreseen in the text.
- §1, subparagraph 2: BE national legislation provides for a full and ex nunc examination of decisions to refuse international protection. However, the examination of an appeal against return decisions and refusals of entry is limited (annulment) and ex tunc. For this reason, the words ‘within the same judicial proceedings’ in §1, subparagraph 2 are problematic to BE. The addition of “as a general rule” does not alleviate this problem.

Explanation: When a return decision has to be treated in a full and ex nunc examination, then in cases where the appeal is not suspensive according to Article 54, the current Belgian system to request the suspensive effect can no longer be applied. BE will therefore have to create a completely new procedure, which is not desirable. The suspensive effect is currently requested as an accessory to the annulment appeal. It will just make the system more complex: two different claims for suspension, depending on the type of return decision.

- Independently from the previous comment and the way §1, subparagraph 2 may be modified: Following the explanations of the Commission and the Council Legal Service, a recital should be added to explain that there is no discrimination among illegally staying third country nationals (TCN) : on the one hand, illegally staying TCN whose application for international protection was rejected who would benefit from a full and ex nunc examination (article 53, §3, APR) and on the other hand, illegally staying TCN who did not apply for international protection and who will not benefit from the same judicial review (article 16 return directive recast: ex tunc examination).

Without such a justification, BE thinks that there could be a risk that the CJEU would rule that any illegally staying TCN should be entitled to a full and ex nunc remedy towards *any* return decision.

- BE can support the deletion of §9.

Article 54:

- The interplay between Article 41g and Article 2(2) of the Return Directive should be clearly foreseen in the text.

## **BULGARIA**

### **Чл. 53 The right to an effective remedy**

In the second subparagraph of para 1, “a may clause” as follows:

„Return decisions may be, , appealed before the same court or tribunal and within the same judicial proceedings and the same time-limits as decisions referred to in points (a), (b), (c) and (d).“

### **Art. 41g Border procedure for carrying out return**

We suggest the following amendment:

1. Third-country nationals and stateless persons whose application is rejected in the context of the procedure referred to in Articles 41-41f shall not be allowed to enter the territory of the Member State.

In the second paragraph we suggest the following changes, including the deletion of the last sentence. The text of the last sentence infact is a repetition of the refusal of entry in the first paragraph..

2. Member States shall require the pPersons referred to in paragraph 1 ~~shall be [...]~~required to reside for a period not exceeding 12 weeks in locations, designated at the discretion of the Member States, and may be situated at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it can may resort to the use of other locations within its territory. The 12-week period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain. .

We suggest the deletion of paragraph 3 and the new paragraph 3a, whose text is confusing and redundant. The explicit reference to the provisions of the Return Directive raises the question of whether the other texts of the Directive are applicable. Our understanding is that when it comes to return procedure, the only legal basis is the provisions of the Return Directive. The proposal for a Procedural Regulation, which is an acqui of the asylum, should not narrow the scope of the Return Directive, which is part of the Schengen acqui.

In paragraph 4 we suggest the deletion of „*without the right to enter the territory of the Member State*“.

## **Art. 41h Detention**

In paragraph 1 we ask for the deletion of the wording „*for the purpose of preventing entry into the territory of the Member State*“. The norm contradicts the factual situation disregarding the fact that the person is physically on the territory of the Member State. It is not taken into account that according to SBC the refusal of entry is issued only at the BCP before the person has physically crossed the border and entered the MS' territory.

Concerning paragraph 1, we agree with the question asked by several member states during the meeting as to what detention regime actually applies. Does the wording '*may continue to be detained for the purpose of preventing entry into the territory of the Member State*' not create a third detention regime in the framework of the draft proposal for a Procedural Regulation.

On para 2, we have concerns that a quasi-detention regime is being established, differing from the one under the Return Directive. In order to avoid misinterpretation we prefer the simplest possible text to refer to the fact that in certain cases the person is detained under the Return Directive.

## **Art. 41i Refusal of entry**

Refusal of entry is issued under certain conditions specified in the SBC and the rejection of an application for international protection is not among them. This raises the question whether the APR proposal does not create a new ground for refusing entry.

After the last discussions, the question whether the refusal of entry within the meaning of the SBC could be applied after a certain period of time and not immediately, remains pending, probably because it's in contradiction with the Schengen Borders Code norm. In this regard, we would like a legal interpretation. In this context, we also raise another question - whether the competent authority could apply the derogation under Art. 2 (2) (a) of the Return Directive at a later stage and whether it is subsequently possible for the authority to decide to issue a refusal of entry instead of enforcing the return decision.

The link of this provision with the return procedure, foreseen in the Return Directive is unclear and confusing. The provisions brings uncertainty as to which act applies – the SBC or the Return Directive. The concept of refusal of entry is regulated by the SBC and the Return Directive and the APR should not establish rules concerning an activity regulated by the SBC.

Based on the above mentioned, without pretending for exhaustiveness, we suggest the deletion of the text.

### **Art. 35a Rejection of an application and issuance of a return decision**

We keep reservation on the provision, as we have not received an answer that brings explicit clarity on the cases when a refusal of entry, a return decision or both shall be issued. This issue remains valid, including the first amendment “*where required*”.

The expression “*as a general rule*” and the lack of grounds for its derogation are rather confusing. If the rule to issue a rejection of an application and issuing return of a return decision at the same time can be derogated, what are the reasons for such derogation.

In the second and third sentence we suggest “a may” clause as follows:

„The return decision may 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 may , , be issued and ~~delivered~~ notified ~~at the same time~~ and together with the decision rejecting the application for international protection.“

## **CZECH REPUBLIC**

### **General comments**

The Czech Republic welcomes that the Asylum Procedure Regulation is again on agenda of the Asylum Working Party. However, it ought to be mentioned that we still have a general scrutiny reservation on the whole amended proposal.

### **Article 53 par. 1 and 9**

In paragraph 1, we cannot see how the added text (...*in accordance with*...) is related to the right to an effective remedy.

We have a reservation on the deletion of the paragraph 9. This provision would make a border procedure more effective. On the other hand, we understand that in some national systems this might be a problem, therefore we propose to preserve paragraph 9 with *may* instead of *shall*.

Finally, we appreciate the Commission's clarification that even with the deletion of paragraph 9, we are still allowed to apply this provision.

### **Article 35a**

We appreciate the clarification on the added phrase *as a general rule* that it provides MSs with greater flexibility. Nevertheless, we would like to know how the necessary consistency among national systems will be achieved.

### **Article 41g**

In paragraph 2, we prefer previous wording (“*member states shall*”) to the new one. Therefore, we propose to incorporate possibility to proceed in accordance with article 41h (detention). We support addition of the last sentence of this paragraph.

### **Article 41i**

We strongly prefer the deletion of this article, because the refusal of entry is regulated by other legislation (Schengen border code). As a minimum, we would like to incorporate the wording of the article 14 par. 1 of the screening regulation into the text.

## **DENMARK**

### **General comments:**

Denmark support the border procedure and generally thinks that the exceptions to the border procedure are too wide.

### **Technical comments:**

In regards to article 45 paragraph 2b point b we support the suggestion from AT to delete the connection criteria, because this is not an obligation under international law.

Alternatively, we support the proposal from AT and NL to add a new point.

## **FINLAND**

### **Article 53**

- **Para 1: We support the idea of having a reference to the basic principles and guarantees provided for the applicant in this Article. We also agree with delegations pointing that not all the principles and guaranties mentioned in Chapter II are relevant in the appeals procedure. Only the relevant ones should be stated here.**

- **Para 7 (a): The proposed deadline is too short for us.**

We see the proposed maximum of 10 days too short and support the commission's proposal of a deadline of at least a week. The given deadlines should in practice give the applicant sufficient time to, for example, find a lawyer and an interpreter and prepare the appeal. If there is enough time to prepare the appeal so that it is actually well prepared, it also serves the court and shortens the examination of the appeal in the court. In general as the appeals procedures differ quite a lot between Member States it should be carefully considered how much really should be harmonized.

- **Para 9 (combined with Article 41c(2): See comment in Article 41c. It is very important for us that this remains deleted.**

### **Article 54**

- **Para 7: We still have a reservation on this para.**

The scope of the right to remain cannot be limited, as in practice this could mean that if enforcement could not be refused on grounds other than non-refoulment could become ineffective, ie in a way create a disguised prohibition on further appeal.

## **Article 35a Rejection of an application and issuance of a return decision**

- **As already mentioned before we strongly support the Commission's proposal of a combined decision to asylum and return.**
- **We can also support the amendments proposed by the Precedency to the Article. We find that adding the wording "as a general rule" gives enough flexibility needed by some Member States.**

## **GREECE**

EL Comments on the amended 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

Ref: 13884/21

Without prejudice to the reservations expressed by EL during Asylum WGs, especially as regards the mandatory character of the border procedure, its linkage to the Screening Regulation, and the applicability of the legal fiction of non-entry, EL wishes to submit the following written comments.

### **Article 35a**

Greece is against the deletion of the last sentence of the provision. It should be made clear that States retain the power to issue decisions under Article 2 (2) of the Directive 2008/115, especially where such decisions are made prior to the lodging of an application.

### **Alternatively, we propose the following text:**

“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 in accordance with Directive XXX/XXX/EU [Return Directive], unless a return decision in accordance with Articles 2(2)a and 6(3) of Directive 2008/115 has been adopted prior to the lodging of an application for international protection. 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 and delivered together with the decision rejecting the application for international protection.”

#### **Article 41g (par. 4)**

Greece requires a clarification on the implementation of paragraph 4 associated with our reservation on the operation of the legal fiction of non-entry. In the Greek context, granting voluntary departure to a third country national (which should be distinguished from participation in an assisted voluntary return scheme), who is present on one of the Greek islands with a RIC, means that such person has to be allowed to travel to the mainland to voluntarily depart due to the lack of airline connections from the islands. Is it the case that these persons will be considered *not to have entered the territory of the State*?

#### **Article 41h (par.2)**

We propose to repeal the phrase “risk to public policy” and insert the phrase “risk to public order”

*Justification*

Harmonisation with proposal for a Return Directive (recast).

#### **Article 53 (par. 1)**

In the light of the discussions in the Asylum WG, we would like to propose the following wording:

“Return decisions may be appealed before the same court or tribunal and within the same judicial proceedings and the same time limits as decision referred to in points (a), (b), (c ) and (d).”

*Justification*

The normative scope and implications of the phrase “as a general rule” is not clear.

## **HUNGARY**

### **General comments**

We maintain a scrutiny reservation on the whole proposal and the amendments made.

### **Article 53**

We support all the provisions that make the border procedure faster and more efficient, so we do not support the deletion of paragraph 9. Otherwise, we reiterate our previous position regarding the rest of the text.

### **Article 54**

We maintain our previous position.

## **IRELAND**

### **Article 53**

We welcome and thank the Presidency for the deletion of paragraph 6. However the requirement for return decisions to be appealed before the same court or tribunal as the protection decision in paragraph 1 and the requirement in paragraph 3 for an effective remedy against a return decision which provides for a full and ex nunc examination of both facts and point of law is still an issue for us. Because of the different authorities responsible for issuing the two decisions, it would not be possible under our system for the decisions to be appealed to the same court or tribunal.

### **Article 35a**

We appreciate the efforts of the Presidency to try to accommodate the different systems in Member State by including the wording ‘as a general rule’. However, this Article is still problematic for Ireland. Ireland does not take part in the Return Directive and under our national law a person has a period of time (currently 5 days) following the issuing of a negative protection decision to opt to return voluntarily before a deportation order is made. As we do not take part in the Return Directive the reference to the Return Directive in the first sentence is also of concern to us and would suggest including a reference to national law here also.

### **Article 41g**

There are many cross-references in this Article to the Return Directive which Ireland does not take part in therefore it is difficult to see how the return border procedure could be applied in Ireland. The suggestion of Malta that matters relating to the return border procedure should be included in the Return Directive and not in the APR would also provide a solution for Ireland in this regard.

## ITALY

### Article 35a

#### 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 where required by Directive XXX/XXX/EU [Recast Return Directive] unless a return decision, has already been adopted-issued prior to the lodging of an application for international protection. 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, as a general rule, where possible, be issued and delivered-notified at the same time and together with the decision rejecting the application for international protection, without undue delay. This Article is without prejudice to Articles 2(2) and 6 (3) of Directive 2008/115.

*Comment: Keeping two separate acts is a red line for Italy, taking into account the Italian current legal system (but the same goes for many other MS). The issuance of a single act, or of two separate but simultaneous acts, should stand as an aim to be reached but not as an obligation.*

#### *Article [...] 41g*

#### **Border procedure for carrying out return**

- 1. Third-country nationals and stateless persons whose application is rejected in the context of the procedure referred to in Articles 41-41f shall not be authorised to enter the territory of the Member State.**
- 2. Member States shall require the pPersons referred to in paragraph 1 shall be [...] required 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 them in those locations, it can may resort to the use of other locations within its territory. The 12-week period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain. The requirement to reside at a particular place in accordance with this paragraph shall not be regarded as authorisation to enter into and stay on the territory of a Member State.**
- 3. For the purposes of this Article, Article 3, Article 4(1), Articles 5 to 7, Article 8(1) to (5), Article 9(2) to (4), Articles 10 to 13, Article 15, Article 17(1), Article 18(2) to (4) and Articles 19 to 21 of Directive XXX/XXX/EU [recast Return Directive] shall apply.**

- 3a. When the return decision cannot be enforced within the maximum period referred to in paragraph 2, Member States shall continue return procedures in accordance with Directive XXX/XXX/EU [Recast Return Directive].**
- 4. Without prejudice to the possibility to return voluntarily at any moment, persons referred to in paragraph 1 may be granted a period for voluntary departure. The period for voluntary departure shall be granted only upon request and shall not exceeding 15 days without the right to enter the territory of the Member State. For the purpose of this provision, the person shall surrender any valid travel document in his possession to the competent authorities for as long as necessary to prevent absconding.**

*Comment: Italy keeps its substantive reservation on the mandatory nature of the BP for carrying out returns and on the legal fiction contained in para. 2.*

#### **Article 41h** **Detention**

- [...]1. Persons referred to in [...] Article 41g(1) who have been detained during the procedure referred to in Articles 41-41f and who no longer have a right to remain and are not allowed to remain may continue to be detained for the purpose of preventing entry into the territory of the Member State, preparing the return or carrying out the removal process.**
- [...]2. Persons referred to in [...]Article 41g(1) who no longer have a right to remain and are not allowed to remain, and who were not detained during the procedure referred to in Articles 41-41f, may be detained if there is a risk of absconding within the meaning of Directive XXX/XXX/EU [Return Directive], if they avoid or hamper the preparation of return or the removal process or they pose a risk to public policy, public security or national security. Detention may only be imposed as a measure of last resort when it proves necessary on the basis of an individual assessment of each case and if other less coercive measures cannot be applied effectively.**
- [...]3. Detention shall be maintained for as short a period as possible, as long as removal arrangements are in progress and executed with due diligence. The period of detention shall not exceed the period referred to in [...]Article 41g(2) and shall be included in the maximum periods of detention set in Article [...] 18 (5) and (6) of Directive XXX/XXX/EU [Recast Return Directive] where a consecutive detention is issued immediately following the detention under this Article.**

*Comment: this article has no added value since detention is provided for by the Return Directive. Therefore it could be deleted.*

#### **Article 41i** **Refusal of entry**

- [...] 1. Member States that, following the rejection of an application in the context of the procedure referred to in Articles 41-41f, issue a refusal of entry in accordance with Article 14 of Regulation (EU) 2016/399, and that have decided not to apply Directive XXX/XXX/EU [Return Directive] in such cases pursuant to Article 2(2), point (a), of that Directive, shall ensure that the treatment and level of protection of the third-country nationals and stateless persons subject to a refusal of entry are in accordance with Article 4(4) of Directive XXX/XXX/EU [Return Directive] and are equivalent to the treatment and level of protection ones set out in Articles 41g(2) and 41h(3). paragraphs 2, 4 and 7 of this Article.**

**Comment:** *This article seems inconsistent with the scope and nature of return BP. A scrutiny reservation is entered.*

### **Article 53**

#### **The right to an effective remedy**

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

- (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 35a of this Regulation.**

Return decisions **referred to in point (e)**, shall be, **as a general rule, where possible,** appealed before the same court or tribunal and within the same judicial proceedings and the same time-limits as decisions referred to in points (a), (b), (c) and (d).

**Where a return decision is challenged by a separate appeal, elements already gathered during the asylum appeal may be used in the return appeal.**

**Member States shall provide for only one level of appeal in the merit.**

**A decision taken pursuant to article 43(b) following a final decision shall not be challengeable.**

**2. Without prejudice to paragraph 1, p**Persons recognised as eligible for subsidiary protection shall have the right to an effective remedy against a decision considering their application unfounded in relation to refugee status. Where subsidiary protection status granted by a Member State offers the same rights and benefits as refugee status under Union and national law, the appeal against that decision in that Member State may be considered as inadmissible where provided for in national law.

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

**4. Applicants shall be provided with interpretation for the purpose of a hearing before the competent court or tribunal where such a hearing takes place and where appropriate communication cannot otherwise be ensured.**

**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 33(4). Alternatively, translations of those relevant documents may be provided by other entities and paid for from public funds in accordance with national law. Other than in the cases covered by the border procedure referred to in Articles 41-41f, Member States may require an applicant to provide translations of the documents he/she intends to submit in support of the remedies pursuant to this Article.**

6. If the documents are not submitted in due time as determined by the court or tribunal, where the translation is to be provided by the applicant, or in time for the court or tribunal to ensure their translation where the translation is ensured by the court or tribunal, the court or tribunal may ~~refuse~~ **reevaluate the situation and conclude that to take those documents into account [...] are no longer necessary to decide the case.**

7. Member States shall lay down the following time-limits in their national law for applicants to lodge appeals against the decisions referred to in paragraph 1:

(a) between a minimum of ~~five~~ **seven** days and a maximum of ~~10~~ **15** 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 listed in Article 40(1) or (5) 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 when the decision of the determining authority is notified to the applicant or his or her representative or legal adviser **in accordance with Article 35(1) of this Regulation.** The procedure for notification shall be laid down in national law.

**9. Member States shall provide for only one level of appeal in relation to a decision taken in the context of the border procedure.**

Comment: *the amendment in para. 1 is consistent with the Italian (and other MS) system where one level of appeal and separate competences in appeals against return decisions and rejection of asylum are foreseen.*

*The reference, in the first subparagraph, to return decisions issued in accordance with article 35a of this Regulation, is necessary in order to limit the scope of this provision to that specific category of return decisions.*

*Furthermore, it is proposed to add that, where a return decision is challenged separately, some guarantees, such as the right to a personal (written or oral) interview, may be limited, in consideration of the elements already gathered in the asylum appeal.*

*Finally, the last added subparagraph is intended to explicitly exclude the right to appeal an inadmissibility decision in the case of second or further subsequent application. This is not clearly ruled out in any article (only argued by the Commission in a AWP meeting during PT presidency) but more clarity is needed in order to facilitate interpretation and avert litigation.*

*Amendments in para. 7 aims at providing reasonable time limits to find a legal representative and set a defense line.*

*Furthermore, the word “unfounded” in para. 7 (a) should be deleted. Actually, it is impossible to understand the difference between a) and b) if we insert in letter a) the cases of rejection for (simple) unfoundedness, in addition to manifest unfoundedness since any rejection, in principle, is based on unfoundedness.*

*It is certainly logical to speed up cases, identified as manifestly unfounded. On the other hand, it is neither logical nor clear when the unfoundedness leads to accelerated procedure and when to the ordinary procedure.*

## Article 54

### Suspensive effect of appeal

1. The effects of a return decision shall be automatically suspended for as long as an applicant has a right to remain or is allowed to remain in accordance with this Article.
2. Applicants shall have the right to remain on the territory of the Member States until the time-limit within which to exercise their right to an effective remedy before a court or tribunal of first instance has expired and, where such a right has been exercised within the time-limit, pending the outcome of the remedy.
3. The applicant shall not have the right to remain pursuant to paragraph 2 where the competent authority has taken one of the following decisions:
  - (a) a decision which rejects an application as ~~unfounded~~ or manifestly unfounded if at the time of the decision any of the circumstances listed in Article 40(1) and, **where applicable, Article 40**(5) apply [including safe country of origin] or in the cases subject to the border procedure;
  - (b) a decision which rejects an application as inadmissible pursuant to Article 36(1a)(a) [...] (f), (g) or (1aa)(a);
  - (c) a decision which rejects an application as implicitly withdrawn;
  - (d) a decision which rejects a subsequent application as unfounded or manifestly unfounded;
  - (e) a decision to withdraw international protection in accordance with Article 14(1), points (b), (d) and (e), and Article 20(1), point (b), of Regulation No XXX/XXX (Qualification Regulation).

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

5. For the purpose of paragraph 4, the following conditions shall apply:

- (a) the applicant shall have a time-limit of at least 5 days from the date when the decision is notified to him or her to request to be allowed to remain on the territory pending the outcome of the remedy;
- (b) the applicant shall be provided with interpretation in the event of a hearing before the competent court or tribunal, where appropriate communication cannot otherwise be ensured;
- (c) the applicant shall be provided, upon request, with free legal assistance and representation in accordance with Article 15a[...];
- (d) the applicant 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 has requested to be allowed to remain within the set time-limit, pending the decision of the court or tribunal on whether or not the applicant shall be allowed remain on the territory.

6. In cases of subsequent applications, by way of derogation from paragraph [...] 5, point (d) of this Article, Member States may provide in national law that the applicant shall ~~not have a right to remain~~ **be removed from their territory**, without prejudice to the respect of the principle of non-refoulement, **where no new elements or findings have been submitted in the appeal so that it is clear to the Court or Tribunal that** if the appeal has been made merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State, ~~in cases where it is immediately clear to the court that no new elements or findings have been presented in accordance with Article 42(4).~~
7. An applicant who lodges a further appeal against a first or subsequent appeal decision shall not have a right to remain on the territory of the Member State, without prejudice to the possibility for a court or tribunal to allow the applicant to remain upon the applicant's request or acting ex officio in cases where the principle of *non-refoulement* is ~~invoked~~ **applied according to the judicial assessment**.

**Comment:** *In para. 3(a), the added wording (“where applicable”) is necessary since article 40.5 (concerning minors) contains a “may clause”.*

*In para. 3(a), the word “unfounded” is deleted consistently with Article 53.7(a), for the same reasons explained in the relevant comment (see above).*

*In para. 4 the added wording is necessary in order for the Court or Tribunal to take account of the opinion of the competent authority on the possible removal of an applicant, in accordance with para. 3.*

*In para. 6, the words “right to remain” have been replaced in order to align the text to para. 5 (d) which is referred to here.*

*In the same para. 6 the added text clarifies that the Court or Tribunal infers the instrumental character of an appeal from objective elements, including the absence of them.*

*In para. 7, the non-refoulement principle is applied following an assessment. Invoking it is not sufficient.*

## **POLAND**

### **I. (art. 35a, 41g, 41h, 41i, 53, 54)**

#### ***Article 35a Rejection of an application and issuance of a return decision***

Ultimately, PL opts for issuing one decision regarding: inadmissible / unfounded / manifestly unfounded asylum application or withdrawal of the asylum application implicitly or explicitly or issuing a negative decision as to its substance, altogether with a return decision, which is to make the administrative proceedings effective. The current wording of the article provides for such a possibility.

The return decision is 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 is, as a rule, issued and notified together with the decision rejecting the asylum application.

In the previous written comments of PL, it was questioned whether the effectiveness of the border procedure would be affected by the fact that two separate decisions would result in two appeals, despite the fact that in art. 53 it is mentioned that the decision rejecting the asylum application and the return decision are to be examined before the same court / tribunal in one appeal proceeding.

As for the time being, as in the case of MT, SK, IT, ES, in PL asylum and return decisions are issued by different authorities at two different moments. It is therefore not possible to issue and notify them jointly. In view of the above, PL maintains the reservations raised.

#### ***Article 41g Border procedure for carrying out return***

Para 2 – PL maintains its position and is in favor of restricting the freedom of movement in the case of both asylum and return border procedures. In our opinion, this is the only way to effectively carry out the border procedure with the aim to effectively counteract secondary migratory movements and ensure proper internal security to the whole UE. Therefore we should avoid granting access to the territory of Member States to third country nationals or stateless persons in the border procedure.

### **Article 41h *Detention***

Para 2 - As follows from the wording of para 2, there is a possibility (under certain conditions) to place in detention for purpose of return border procedure a person who was previously excluded from detention as a person belonging to exception categories in the asylum border procedure (e.g. families with children). The designed regulations should ensure consistency as regards the treatment of families with children in the context of the border procedure. Therefore, we re-emphasize the need not to exclude families with children from border procedures.

### **Article 53 *The right to an effective remedy***

PL maintains a reservation to art. 53. Polish administrative appeals system is different than foreseen in the APR. In our case the key issue will be to adapt if necessary the existing solutions as to the requirements for providing such an appeal body that could be considered as a court or tribunal. The current appeal body in the proceedings for granting an international protection (The Board for Refugees) does not have such status. Moreover, return decisions, which - according to the para 1 subpara 2 - shall be, as a general rule, appealed before the same court or tribunal and within the same judicial proceedings and the same time-limits as decisions about: rejecting an application as inadmissible; rejecting an application as unfounded or manifestly unfounded in relation to both refugee and subsidiary protection status; rejecting an application as unfounded or manifestly unfounded in relation to both refugee and subsidiary protection status; withdrawing international protection – are appealed before another administrative authority.

## II. Remarks to other parts of the text

### **Art. 24(1) *Age assessment of minors***

In the opinion of PL, one cannot agree with the provision that a medical examination should be used as a last resort, especially in a situation where we have doubts about the minor's age and the foreigner does not have any identity document. Especially since giving a false age is a common example of abuses in the asylum procedure. Determining the age of a minor is essential for the entire asylum and return procedure.

### **Art. 27(3) *Registering applications for international protection***

We join the position of other HR, EL, ES and IT with regard to extending the deadline for registering an asylum application in the event of a mass influx of foreigners.

### **Art. 28(3) *Lodging of an application for international protection***

We join IT and ES position: no deadline, "as soon as possible" instead. It would be appropriate in the face of a massive influx of migrants applying for asylum.

### **Art. 28(6aa)**

We suggest the deletion of „provided that the administrative measures set out in Article 2(3) of Regulation (EU) No XXX/XXX (Eurodac Regulation) have been exhausted”. In our opinion, the introduction of this provision is a fiction. There are no such effective administrative measures, especially in relation to EU transit countries, that can be applied to foreigners instrumentally using the asylum procedure to enter EU countries.

**Art. 30(3) subpara. 2 *Access to the procedure in detention facilities and at border crossing points***

We suggest the deletion of „provided that access is not severely restricted or rendered impossible” and rewording of the proposed subpara into: „In addition, Member States may impose limits to such access [...], by virtue of national law, where they are necessary for the security, public order or administrative management of a border crossing point, including transit zones, or of a detention facility. In the absence of a threat to safety, public order or health protection, access is granted as soon as possible. In the absence of a threat to security, public order, health protection, access is provided as soon as possible”.

In the present situation, on the Polish-Belarusian section of the state border, we have a similar situation, where access is severely limited or prevented.

## **ROMANIA**

In general, we maintain the scrutiny reservation previously introduced on Articles 53 and 54, provided that a response / position from the national judicial authorities is also required.

Article 53, para. 1, subpara. 1- we can agree with the proposed changes.

Art. 53, para. 1, subpara. 2 - we reiterate the scrutiny reservation regarding the judgment of the two decisions by the same court for the reasons previously stated, especially considering that the joint judgment of the two decisions by the same court would not reduce the burden and would not speed up the examination; the issuance of the return decision and the asylum decision, as well as their concurrent judgment, could even be a burden (return analysis carried out before the end of the asylum procedure) for both the administrative authorities and the courts, given that there is the possibility that the final decision may be to grant a form of protection, and the return analysis is unnecessary and ultimately inapplicable.

Article 53, para. 2- we can agree with the proposed changes.

Article 53, para. 5- we can agree with the proposed changes.

Article 53, para. 8- we can agree with the proposed changes.

Article 53, para. 9- we introduce a scrutiny reservation regarding the deletion of the provision regarding a single appeal, taking into account the specificity of the border procedure, as well as those stipulated in the Return Directive (which provides for a single appeal). At the same time, we ask for clarification on the reason for the removal.

Article 54, para. 6- we can agree with the proposed changes.

## SLOVAKIA

**Art. 53(1)** - It is not clear to us whether the reference *to return decision which is issued in accordance with the art. 35a* means the return decision taken within border procedure or does it mean all return decisions which can be taken together with any rejected decision of an administrative authority?

If it is the latter than we are of the opinion that the appeal should be in line with the relevant provisions on appeal laid down in return directive with the possibility to appeal against the decision before competent judicial *or administrative authority*. If this provision relates only to return decision within the border procedure than this should be stated here explicitly.

Therefore we would like to have clarified, which of the mentioned cases are regulated by this provision?

**Art. 35a** – a reservation. We are not in favour of this new change with adding “as a general rule” into the text. We are of the opinion that this term does not provide sufficient flexibility as regards the possibility of delay in issuing those decisions. We are aware of the aim of this provision to have effective and streamlined procedure, however due to the fact that in Slovakia there are two different administrative authorities responsible for issuance of these decisions and that from a practical point of view it is quite difficult to issue and notify those decisions together and in the same time, we need more room for possible delay in issuing those decisions.

Therefore we offer again our two proposals for consideration:

*„Where the return decision is issued as a separate act, it shall be issued, **if possible**, at the same time and together with the decision rejecting the application for international protection.“* or

*„Where the return decision is issued as a separate act, it shall be issued **without undue delay** with the decision rejecting the application for international protection.“*

**Art. 41g** – We maintain our comment that we disagree with determination of the deadline of 12 weeks for carrying out the return as it cannot be guaranteed that the removal/return will be carried out within this period. If Member States are to process effectively, they should have enough time to complete all necessary steps for successful implementation of removal or return of an applicant. Therefore we would like to extend this deadline.

**Art. 41h** – in relation to the detention of applicants (in the context of border procedure) we are still of an opinion that the detention of applicant should be given as an obligation and not as an option.

## **SWEDEN**

### **Article 53 - The right to an effective remedy**

#### ***Paragraph 1***

Sweden strongly supports the notion in the proposal that return decisions shall be appealed before the same court and within the same judicial proceedings and the same time-limits as the underlying asylum decisions as far as applicable. However, it became clear during the last AWP meeting that the meaning of “as a general rule” needs further clarification.

Also, as mentioned during the meeting, the addition of the reference to the basic principles and guarantees of Chapter II needs to be adjusted since Chapter II mainly refers to the administrative process.

#### ***Paragraph 7 (a)***

Scrutiny reservation. Sweden prefers the Commission proposal, which gives more flexibility for the Member States to provide for reasonable time limits within the proposed minimum and maximum time frames. Sweden is examining the consequences of the previous compromise proposal, which is setting a more fixed time limit for lodging appeals. As a rule, Swedish Administrative Law stipulates a general time limit of three weeks for lodging appeals, including in the asylum procedures and applications subjected to accelerated procedures. We are of course assessing this proposal in terms of what time limit would be feasible with regard to the time limit of 12 weeks for the border procedures.

#### ***Paragraph 8***

Sweden would like to thank the Presidency for accommodating our request to include the reference to Article 35.1 in the compromise proposal. Swedish Administrative Law requires that the legal advisor is also a representative with a power of attorney if he or she is to be notified. The previous wording could be interpreted as meaning that the legal advisor always can be notified without also being a representative with power of attorney.

***Paragraph 9***

As stated during the AWP-meeting, Sweden welcomes and strongly supports the deletion of the proposal that Member States shall provide for only one level of appeal in relation to a decision taken in the context of the border procedure.

**Article 54 - Suspensive effect of appeal**

***Paragraph 7***

As raised during the last AWP-meeting, Sweden thinks that the current wording is unclear and needs clarification on how the term "invoked" should be understood. I.e. whether the possibility for the court to ex officio allow the applicant to stay refers to the possibility of issuing such a decision regardless of whether the applicant has requested to stay or not, not regardless of whether the principle of non-refoulement has been explicitly invoked. From our point of view it should be clarified in the text that the principle of non-refoulement shall constitute an obstacle to removal as soon as the court or tribunal concludes that an enforcement could be in conflict with the principle, whether or not it has been explicitly invoked.

*Text proposal in red*

**7. An applicant who lodges a further appeal against a first or subsequent appeal decision shall not have a right to remain on the territory of the Member State, without prejudice to the possibility for a court or tribunal to allow the applicant to remain upon the applicant's request or acting ex officio in cases where a removal would be in conflict with the principle of non-refoulement ~~is invoked~~.**

## **Article 41g - Border procedure for carrying out return**

### ***Paragraph 2***

Sweden would like to reiterate its support for the deletion of ‘shall be kept’ and support for the present wording ‘shall require persons ... to reside’.

### ***Paragraph 4***

Sweden is generally positive about the possibility of promoting voluntary departure, even in border proceedings although the scope for granting a period for voluntary departure within these procedures probably will be very limited. The proposal in general raises several questions on the application in practice and Sweden also need to analyse the consequences of the compromise proposal in more detail, including that a period for voluntary departure should only be granted upon request. Currently, where applicable and without prejudice to situations where there is a risk of absconding, or a security threat etc., Swedish authorities grant period for a voluntary departure ex officio since this entails less administrative burden.

## **Article 41h - Detention**

### ***Paragraph 1***

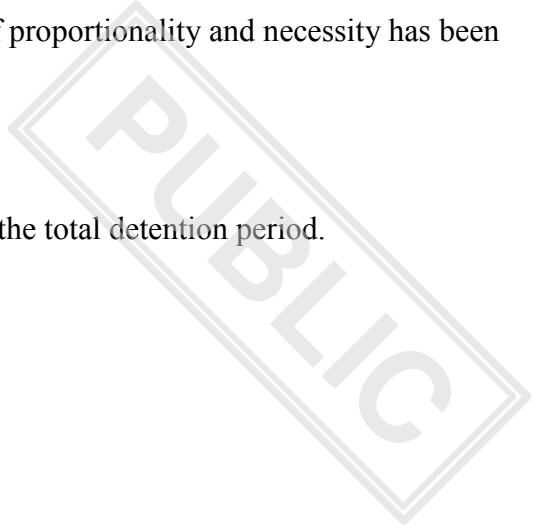
Sweden retains a scrutiny reservation for this Article, and in particular regarding paragraph 1. It is still not clear to us why an independent and separate detention ground is required in the APR for the situation in paragraph 1, in contrast to the situation in paragraph 2. It is also unclear which criteria and conditions for detention shall apply in paragraph 1 and if a new decision has to be issued since the Reception Conditions Directive no longer applies. We are also wondering why not a reference to the principles of proportionality and necessity has been added to this paragraph, like the addition made in paragraph 2.

***Paragraph 2***

Sweden welcomes that a reference to the principles of proportionality and necessity has been added to the paragraph.

***Paragraph 3***

Sweden welcomes the clarification on the calculation of the total detention period.



## NORWAY

In reference to the request for written contributions following the above-mentioned meeting, please find the following input from Norway regarding the return related issues that were discussed.

We appreciate being involved in the discussion of the return related elements of the EU asylum procedure regulation. This enables us in making the relevant assessments and keeping informed about the advancement of the negotiations.

We agree with the Commission that the return related part of the border procedure, merely compliments the asylum border procedure, in a form of Lex Specialis on return of those who go through the border procedure. Hence, the question of how to regulate the asylum part of the procedure seems to be the fundamental element.

Norway is generally positive to rapid procedures on return and asylum, and we have a longstanding practice of such procedures, for instance our 48-hour procedure. Efficient processing is an administrative measure that does not necessarily require particular legal safeguards/legal remedies, apart from possibly relating to detention measures - in our experience, the key is to define the appropriate cases, invest sufficient resources to handle those cases immediately, and to remove any obstacles to a streamlined process. In regulating such procedures we believe a simple approach focusing on the definition of the group of applicants in question, and the relevant deadlines. As was mentioned by some member states in the meeting, it is important to refrain from adding comprehensive references to general legal safeguards that can cause challenges when implementing the regulation. It is essential to keep in mind that these should be the “easy” cases. Individual cases that turn out not to be suited for a rapid procedure should be moved to a normal procedure, rather than the border procedure being designed so as to include those cases as well. In our view, it is also unnecessary to repeat elements or requirements that are already stated in other relevant instruments, such as the Schengen Border Code and the Return Directive. Such references can often cause doubts, and raise new questions relating to interpretation.

On our side, we stand ready to consider possible adaptations of our national system to a border procedure, in particular where we see possibilities for improvements and increased efficiency.

We look forward to future discussions on return relevant topics.

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