

Asylum Procedure Regulation

2016/0224A(COD) - 10/04/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 301 votes to 269, with 51 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Subject matter and scope

This Regulation should apply to all applications for international protection made in the territory of the Member States, including at the external border, on the territorial sea or in the transit zones of the Member States, and to the withdrawal of international protection. Persons seeking international protection who are present on the territorial sea of a Member State should be disembarked on land and have their applications examined in accordance with this Regulation.

Competent authorities

Each Member State should designate in accordance with national law a determining authority to carry out the tasks, in particular: (i) receiving and examining applications for international protection; (ii) taking decisions on applications for international protection; (iii) taking decisions on the withdrawal of international protection.

Each Member State should provide the determining authority and the other competent authorities designated pursuant to this Article with appropriate means, including sufficient competent staff to carry out their tasks under this Regulation.

General guarantees for applicants

The determining authority or, where applicable, other competent authorities or organisations tasked by Member States for that purpose should inform applicants, in a **language which they understand** or are reasonably supposed to understand, of the following: (i) the right to lodge an individual application; (ii) the time limits and stages of the procedure to be followed; (iii) their rights and obligations during the procedure; (iv) the right to **free legal counselling** for the lodging of the individual application and to legal assistance and representation at all stages of the procedure.

Obligations of applicants

The applicant should fully cooperate with the competent authorities and present all elements available to him or her which substantiate the application or are relevant for the procedures in accordance with this Regulation to the competent authorities. The applicant should comply with obligations to report to the competent authorities at a specified time or at reasonable intervals or to remain in a designated geographical area on its territory, as imposed by the Member State in which he or she is required to be present. Where it is necessary and duly justified for the examination of an application, the competent authorities may require that the applicant be searched or that his or her items be searched in accordance with national law.

Right to remain during the administrative procedure

Applicants should have the right to remain on the territory of the Member State in which they are required to be present until the determining authority has taken a decision on the application. Where, following a thorough assessment by the competent national authorities, it is concluded that the applicant constitutes a danger to national security or public order, especially in relation to serious crimes or terrorism, a Member State should have the possibility to make an exception to the right of the applicant to remain on its territory during the administrative procedure, provided that applying such an exception does not result in the applicant being removed to a third country in violation of the principle of non-refoulement.

Personal interview

The applicant should, subject to limited exceptions, enjoy **the right to be heard** through a personal interview on the admissibility or on the merits of his or her application, as appropriate. If the applicant is unfit to attend his or her personal interview, the authorities could ask for a medical certification to be provided by the applicant. For the right to a personal interview to be effective, the applicant should be assisted by an **interpreter** where necessary and should be given sufficient time to prepare and consult with his or her legal adviser or other counsellor admitted or permitted as such under national law to provide legal advice. The presence of a cultural mediator may be provided during the personal interviews.

Special guarantees

Certain applicants may be in need of special procedural guarantees due, *inter alia*, to their age, gender, sexual orientation, gender identity, disability, serious physical or mental illness or disorders. The relevant staff of the competent authorities of Member States as well as the medical practitioner or psychologist assessing the need for special procedural guarantees should be adequately trained to detect signs of vulnerability of applicants who may need special procedural guarantees and address those needs when identified.

The determining authority should organise a personal interview for a minor taking into account in particular his or her age and maturity. Where a minor is accompanied, the personal interview should be conducted in the presence of an adult responsible for him or her whether by the law or practice of the Member State concerned and, where one has been appointed, of a legal adviser. Unaccompanied minors should be represented and assisted in such a way as to enable them to benefit from the rights set out in the regulations.

In all cases, age assessments should be carried out in a manner that gives primary consideration to the **best interests of the child** throughout the procedure. Such an assessment should be carried out by professionals with expertise in age estimation and child development.

Representatives or a person suitable to provisionally act as a representative should be placed in charge of a proportionate and limited number of unaccompanied minors, and under normal circumstances of no more than **30 unaccompanied minors**, at the same time.

Border procedure

Following the screening and provided that the applicant has not yet been authorised to enter Member States' territory, a Member State may examine an application in a border procedure where that application has been made by a third-country national or stateless person who does not fulfil the conditions for entry to the territory of a Member State.

Member States should assess applications in a border procedure: (i) where the applicant is a **danger to national security or public order**, (ii) where the applicant, after having been provided with the full opportunity to show good cause, is considered to have intentionally misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or

her identity or nationality that could have had a negative impact on the decision and (iii) where it is likely that the application is unfounded because the applicant is of a nationality for whom the proportion of decisions granting international protection is **20% or lower** of the total number of decisions for that third country.

In this context, a border procedure should not be applied, or should cease to apply, where necessary support cannot be provided to applicants in need of special procedural guarantees or where justified on health grounds, including reasons pertaining to a person's mental health. Equally, having regard to the importance of the rights of the child and the need to take into account the best interests of the child, **unaccompanied minors** should not, as a rule, be subject to the border procedure unless there are reasonable grounds to consider the minor represents a danger to the national security or public order of the Member State.

The duration of the border procedure for the examination of applications for international protection **should not exceed 12 weeks** and may be applied at or near the EU's external borders or transit zones. Asylum seekers whose applications are rejected must be returned within less than 12 weeks.

Member States should ensure that families with minors reside in **reception facilities appropriate to their needs** after assessing the best interests of the child, and should ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.

Safe third country concept

Members managed to include safeguards for the application of the safe third country concept, which can only be applied when the applicant cannot provide evidence to justify why the safe country of origin concept does not apply to him or her, as part of an individual assessment. The applicant must always have a **reasonable link** with a safe third country.

Effective protection in the country of first asylum should include permission to remain on the territory of the third country, access to adequate means of subsistence and access to healthcare and education. While Member States will continue to use national lists of safe countries, in the longer term there should be convergence towards a European list of safe third countries and safe countries of origin.

Adequate capacity

This is defined as the capacity required at any given moment to carry out the asylum border procedure, and the return border procedure. Under the new Regulation, the adequate capacity at EU level is considered to be **30 000**. The Commission should calculate, by means of implementing acts, the number corresponding to the adequate capacity of each Member State. The adequate capacity should be gradually increased over the three years following the entry into force of the new rules. Once the maximum capacity has been reached, asylum seekers will be directed towards the ordinary asylum procedure.