

Establishing a return border procedure

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

The European Parliament adopted by 329 votes to 253, with 40 abstentions, a legislative resolution 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.

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

The objective of this Regulation is to **streamline, simplify and harmonise the procedural arrangements** of the Member States by establishing a return border procedure. The Regulation applies to third-country nationals and stateless persons whose application has been rejected in the context of the asylum border procedure provided for in the [Regulation](#) establishing a common procedure for international protection in the Union.

Temporary measures adopted pursuant to this Regulation should 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.

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.

Return border procedure

The Regulation states that third-country nationals and stateless persons whose application has been rejected in the context of the asylum border procedure should not be authorised to enter the territory of the Member State concerned. These persons should reside for a **period not exceeding 12 weeks** in locations at or in proximity to the external border or transit zones. The 12-week period should 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.

Without prejudice to the possibility for them to return voluntarily at any time, persons concerned should 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 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.

Detention

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.

Third-country nationals 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.

Third-country nationals 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, 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.

Detention should 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 should not exceed 12 weeks.

Measures applicable to the return border procedure in a situation of crisis

The border return procedure should facilitate, in a crisis situation, the return of illegally staying third-country nationals or stateless persons whose application has been rejected in the context of the asylum procedure at the border, who have no right to remain and who are not allowed to remain, by providing the competent national authorities with the necessary tools and sufficient time to carry out the return procedures with due diligence.

In order to be able to respond effectively to crisis situations, it will be possible to apply the return procedure at the border in a crisis situation 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 and who have no right to remain and who are not allowed to remain after the adoption of that Implementing Decision.

Contribution by the Union budget

It is provided to amend Regulation (EU) 2021/1148 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (BMVI), 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.

Monitoring and evaluation

By two years from the date of application of this Regulation and every five years thereafter, the Commission should report to the European Parliament and to the Council on the application of this Regulation in the Member States and should, where appropriate, propose any amendments.