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LIMITE

ASILE 23

NOTE

From:	Presidency
To:	Delegations
Subject:	Theme: 'Limiting abuse and secondary movements' - Asylum Procedures Regulation

In the framework of the theme "Limiting abuse and secondary movements", delegations will find attached modifications suggested by the Presidency in relation to Articles 7, 36, 39 and 40 of the Asylum Procedures Regulation (limiting secondary movements). Articles 9(3), 41, 42, 43 and 54(2)-(4) of the Asylum Procedures Regulation (limiting abuse) are also put forward for discussion.

The changes in the text are marked as follows: new text is marked in **bold** and underline and text deleted from the original Commission proposal is marked in **bold** and single ~~strikethrough~~.

Comments made by delegations on the Commission proposal text, orally and in writing, appear in the footnotes of the Annex.

Limiting secondary movements:

Article 7

Obligations of applicants¹

1. The applicant shall make his or her application in the Member State of first entry or, where he or she is legally present in a Member State, he or she shall make the application in that Member State as provided for in Article 4(**1**) of Regulation (EU) No XXX/XXX (Dublin Regulation).²

¹ **BE, DE, FI, FR, SE:** scrutiny reservation. **ES:** reservation; the rights should be listed first and then the obligations. **BG:** this article refers to Article 4 of the Dublin Regulation, concerning the applicant's obligation to make an application in the Member State of first entry, or in case of legal stay – in the Member State of residence. This approach places the frontline Member States in a position of inequality. **DE:** any breaches of the obligations laid down in Article 7 constitute the grounds for sanctions also in other pieces of legislation (Dublin Regulation, RCD). The obligations and sanctions should respect the principle of proportionality. Sanctions following breaches by the applicant should be imposed only if he/she has been informed of such obligations and the possible consequences of any breaches beforehand.

² **BE,** supported by **NL:** replace "*The applicant shall make his or her application*" by "*The applicant lodges an application*". **COM:** this issue ("making"/"lodging") should be discussed further in the framework of Art. 25-27; it should be made by the same MS. **CZ:** superfluous; the link with Dublin and with Art. 14 APR is unclear. **EL, FR:** reservation on the changes to the Dublin Reg. **ES:** not always "*of first entry*": there could be a change of circumstances, a conflict that may arise after entry.

2. The applicant shall cooperate with the **responsible competent** authorities³ for them to establish his or her identity **and nationality** as well as to register, enable the lodging of and examine the application by:⁴
- (a) providing the data referred to in points (a) and (b) of the second paragraph of Article 27(1)⁵;
 - (b) providing **fingerprints and facial image biometric data** as referred to in Regulation (EU) No XXX/XXX (Eurodac Regulation).⁶
 - (c) lodging his or her application in accordance with Article 28 ~~within the set time limit~~ and **eventually** submitting all elements at his or her disposal needed to substantiate his or her application⁷;

³ **BE**, supported by **LU**: this obligation to cooperate should apply to all parts of the asylum procedure; therefore insert "*in all matters covered by this Regulation*" after "*responsible authorities*". **FR**: clarify if para (2) applies to some authorities or to all authorities. **COM**: para (2) refers to all authorities mentioned in Art. 5. **LU**: further obligations for the applicant should be added, e.g. the obligation to be submitted to a medical examination, to a linguistic test, etc.

⁴ **ES**: para (2) should be more detailed.

⁵ **DE**: the provision refers to a general clause "*and other personal details of the applicant*" in Article 27 (1) (a) which seems problematic in conjunction with the sanction to reject an application specified in para (3). The data to be provided by the applicant should be listed in detail.

⁶ OJ L [...], [...], p. [...].

⁷ **DE**: unclear if the phrase "*within the set time-limit and submitting all elements at his or her disposal needed to substantiate his or her application*" also means that within a deadline of ten working days the applicant must fully substantiate the reasons for his/her flight. This would probably go too far and could also contradict the requirement of a personal interview and the possibility laid down in Art. 28 (4), second sentence. **EL**: reservation on the deadlines according to Art. 28(3). **SE**: redraft letter (c) as follows: "*(c)submitting all elements at his or her disposal needed to substantiate his or her application and, if applicable, lodging his or her application in accordance with Article 28 within the set time-limit and;*".

(d) hand over any documents in his or her possession relevant to the examination of the application.

3. **Where the [competent authorities] have properly informed the applicant of his or her obligations referred to in this Regulation and have ensured that he or she has had an effective opportunity to comply with them, and he or she** ~~Where an applicant~~ refuses to cooperate by not providing the **data referred to in points (a) and (b) of the second paragraph of Article 27(1) details necessary for the examination of the application and** ~~or~~ by not providing his or her ~~fingerprints and facial image~~ **biometric data**, ~~and the responsible authorities have properly informed that person of his or her obligations and has ensured that that person has had an effective opportunity to comply with those obligations~~, his or her application shall be rejected ~~as abandoned~~ in accordance with the procedure referred to in Article 39⁸.

⁸ **BE:** prefers the wording in para (2) (c). The obligation to cooperate should be linked with the ability to lodge an application. **DE:** the breach “*refuses to cooperate by not providing the details necessary for the examination*” is unclear. Does it refer to the obligation to cooperate within the meaning of Article 7 (2) (a) and/or the obligation to substantiate an application specified in (c)? **SE:** delete para (3).

4. The applicant shall inform the determining authority of the Member State in which he or she is ~~required to be~~ present of his or her place of residence and ~~or~~ address, ~~or~~ and a telephone number where he or she may be reached by the determining authority or other responsible authorities. He or she shall notify that determining authority of any changes. The applicant shall accept any communication at the most recent place of residence or address which he or she indicated accordingly, in particular when he or she lodges an application in accordance with Article 28⁹.
5. The applicant shall remain on the territory of the Member State where he or she is required to be present, or where he or she is present pending the implementation of a transfer decision in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation).¹⁰

⁹ **CZ:** add the following before the last sentence: "*The change of place of residence may be subject to previous approval by the determining authority*". Delete the last part of the para, from "*in particular when...*" (the meaning and purpose of this provision are unclear). **DE:** para (4) second sentence: clarification needed whether that public notification pursuant to the national law of the MS remains admissible. **ES:** difficult to oblige someone to do that; the consequences in case of failure to meet this obligation need to be clarified. **HU:** the obligation of notification of any changes makes sense only if the place of residence/address have not been appointed by the authority. **SE:** delete "*in particular when he or she lodges an application in accordance with Article 28*".

¹⁰ **ES:** clarify the consequences in case of failure to meet this obligation.

6. The applicant shall comply with obligations to report regularly to the competent authorities or to appear before them in person without delay or at a specified time or to remain in a designated area on its territory in accordance with Directive XXX/XXX/EU (Reception Conditions Directive), as imposed by the Member State in which he or she is ~~required to be present in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation)~~¹¹.
7. Where it is necessary for the **examination processing** of an application, the applicant may be required by the **responsible [competent authorities]** to be searched or have his or her items searched. Without prejudice to any search carried out for security reasons, a search of the applicant's person under this Regulation shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity.¹²

¹¹ **ES:** clarify this provision, in particular the consequences in case of failure to comply with the obligations. **RO:** using "or" may be interpreted as meaning that the applicant should comply with only one of these requirements, making it difficult for the determining authority to fulfil their duties. The solution may be listing them. **SE:** scrutiny reservation; provision to clarify. **COM:** "or" is meant to be "and" in this context.

¹² **BE:** clarify "*Where it is necessary for the examination of an application*". **CZ:** this paragraph should be looked at in relation to Art. 13(2)(d); add "*in particular*" after "*Where it is necessary*" (the current text is too narrow. Similar text is missing in the new Dublin proposal). **NL:** replace "*examination*" by "*processing of the application*". **SE:** scrutiny reservation; add "*in accordance with national legislation*", after "*the applicant may*".

Decision on the admissibility of the application¹³

- 21.** The determining authority shall assess the admissibility of an application, in accordance with the basic principles and guarantees provided for in Chapter II, and **shall may** reject an application as inadmissible where any of the following grounds applies:¹⁴
- (a) a country which is not a Member State is considered to be a first country of asylum for the applicant pursuant to Article 44, ~~unless it is clear that the applicant will not be admitted or~~ **provided that he or she shall be** readmitted to that country;
 - (b) a country which is not a Member State is considered to be a safe third country for the applicant pursuant to Article 45, ~~unless it is clear that the applicant will not~~ **provided that he or she shall be** admitted or readmitted to that country;

¹³ **FR, IE, SE:** scrutiny reservation. **BG, CY, EL, IT:** reservation; despite the effort to streamline procedures, the end result might be the opposite (too many procedures under Dublin and APR + appeals). **SE:** major administrative burden (assessment to be done following an interview? in written? how about appeals?). In practice, 3rd countries will have to be ready to take back the rejected persons so there will be few rejections on this ground. **IE:** link with articles on first country of asylum or safe third country (not yet discussed), relation with Article 3 of the Dublin Regulation.

¹⁴ **DE:** scrutiny reservation on para (1). **SE:** the obligation to assess inadmissibility grounds in Art. 36 may lead to a considerable administrative burden for the authorities if an assessment needs to be made in every case and the short time limits may be difficult to uphold. Besides, it is likely that only few applications will be found inadmissible since few countries are likely to fulfil the criteria of safe third countries and since it requires third countries to accept return and protection of persons that are not their citizens. Therefore, it should be clearly stated that an admissibility assessment only needs to be done if there are indications that there is a first country of asylum or a safe third country that the applicant could be returned to. This would limit the administrative burden but not the general applicability of the provision. Hence, add "*Upon indications*" in the beginning. **AT:** add a new point (c) as follows and renumber the following points: "*(c) the applicant prevents his or her return by setting actions such as absconding or using a false identity if a Member State is considered to be a first country of asylum for the applicant pursuant to Article 44 or a country which is not a Member State is considered to be a safe third country for the applicant pursuant to Article 45.*"

- (c) [the application is a subsequent application, where no new relevant elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation) or relating to the inadmissibility ground previously applied, have arisen or have been presented by the applicant;¹⁵]
- (d) [a spouse or partner or accompanied minor lodges an application after he or she had consented to have an application lodged on his or her behalf, and there are no facts relating to the situation of the spouse, partner or minor which justify a separate application.¹⁶]

¹⁵ **CZ:** there is almost no difference between Art. 36 (1) (c) and Art. 40 (1) (h). It is easier to reject an application as inadmissible, as there is no merit for examination (cf. 36 (1) (c)). Art. 40 (1) (h) means there will be an examination of the application on its merits which most likely will lead to rejection. Delete Art. 40 (1) (h) - red line for this MS. **SE:** the provisions regarding the subsequent applications should be streamlined; the current proposal provides for several possible outcomes of the initial examination of a subsequent application which leads to uncertainty. Delete point (c).

¹⁶ **AT, CZ:** reservation in relation to Art. 31; delete this point. **IE:** scrutiny reservation linked to Art. 31 (not yet discussed). Under Irish national legislation all adults must make their own application for international protection. It is very important to ensure that all of the facts and circumstances can be presented by the applicant to substantiate their application. A spouse may wish to privately disclose information, for example domestic violence or assault, which would have a bearing on the outcome of their application. Having to take an admissibility decision on whether or not to accept a separate application from a spouse would require an initial examination of the facts anyway. This has the potential to increase the administrative workload of the determining authority. **NL:** add a new ground for inadmissibility as follows: "*(x) an application is lodged on behalf of a child who was born shortly before or after the application of the parents was rejected, and there are no facts relating to the situation of the new born child which justify a separate application.*" **BG, FR, SE, SI, SK:** reservation, delete point (d), not acceptable to lodge applications on behalf of other adults (Art. 31).

12. An application shall not be examined on its merits in the cases where:

(a) ~~another Member State is responsible an application is not examined~~ in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation), including when another Member State has granted international protection to the applicant; ~~or where~~

(b) an application is rejected as inadmissible in accordance with paragraph ~~21~~¹⁷.

3. Paragraph ~~21~~(a) and (b) shall not apply to a beneficiary of subsidiary protection who has been resettled ~~under an expedited procedure~~ in accordance with Regulation (EU) No XXX/XXX (Resettlement Regulation).^{18 19}

¹⁷ **SK:** scrutiny reservation on para (2). **BG, ES:** reservation on para (2). **EL:** this para should be drafted using the positive form; delete last sentence, it is redundant. **CZ:** para (2) should be a new letter under para (1). **SE:** unclear wording, redraft para (2) as follows: "*Where an application is rejected as inadmissible in accordance with paragraph 1 or another Member State is responsible in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation) an application shall not be examined on its merits.*" **NL:** it should be clarified that it is still possible to conclude the normal (non-accelerated) procedure within those time limits; therefore, the following sub-paragraph could be added: "*This is without prejudice to the possibility to conclude the examination procedures in other cases within these time limits.*"

¹⁸ OJ L [...], [...], p. [...].

¹⁹ **AT, PL:** delete para (3). **CZ, FR, NL, SI:** reservation (link to the expedited procedure of the Resettlement Regulation). **BE, DE, LV:** scrutiny reservation linked to Resettlement Regulation. **IE:** scrutiny reservation linked to ongoing discussions on the Resettlement Framework proposal (no support for the expedited procedure or for the fact that a MS who wishes to voluntarily participate under the Framework must automatically participate in the expedited procedure). **SE:** delete "(a) and (b)".

4. Where ~~after examining an application in accordance with Article 3(3)(a) of Regulation (EU) No XXX/XXX (Dublin Regulation)~~, the first Member State in which ~~the an~~ application ~~is was~~ lodged has examined the admissibility of the application in accordance with Article 3(3)(a) of Regulation (EU) No XXX/XXX (Dublin Regulation) and considerededs it to be admissible, the provision of paragraph ~~21~~(a) and (b) need not be applied again by the Member State responsible for the examination of the application in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation)²⁰.
5. Where the determining authority *prima facie* considers that an application may be rejected as manifestly unfounded in accordance with Article 37(3), it shall not be obliged to pronounce itself on the admissibility of the application.²¹

²⁰ **BG, NL:** reservation. **NL:** unclear if the paragraph only concerns cases where the application is made or lodged in the MS which is not responsible, or if it also applies to cases where an application was made or lodged in the transfer state before. **PL:** delete para (4). **RO** (supported by **DE, ES, LV**): the following aspects need further clarification: how are the acts made by another MS recognised in practice? from where it results what the other MS has achieved? an official statement from the MS who performed this procedure is enough? who established that the application is admissible? The communication of the acts drafted or at least of the decisions could lead to problems regarding legislation differences, the need to translate documents etc. **COM:** if one MS decides the application is not admissible, there will be no transfer; the transfer implies that the application is admissible. **SE:** delete "(a) and (b)". **BE, DE:** scrutiny reservation linked to Dublin. **ES, SI:** reservation linked to Dublin.

²¹ **SE:** a wider margin of appreciation is necessary. Delete para (5) if para (1) becomes a "may" provision. **BE, FR, SI:** unclear how this articulates with Dublin. **COM:** this para proposes that MS move directly to the examination of the application on its merits.

Implicit withdrawal of applications²²

1. The determining authority shall reject²³ an application as **abandoned implicitly withdrawn** where:²⁴
 - (a) **after making an application as referred to in Article 25** the applicant ~~has~~ **does** not lodge his or her application in accordance with Article 28, ~~despite having had an effective opportunity to do so;~~²⁵

²² **HU:** the wording should be clarified - in case of withdrawal of the application, the procedure should be terminated, the application cannot be rejected. **BG, DE, IE, IT, PT, SE:** scrutiny reservation. **SI:** reservation.

²³ **SE:** prefers a case being “dismissed”, as opposed to being “rejected as abandoned”. This would clarify the difference between cases that have been examined on the merits and cases that have been closed on administrative grounds. Para (1) should be redrafted as follows: *"The determining authority may discontinue the examination of an application if there is reasonable cause to consider that the applicant has implicitly withdrawn or abandoned the application where:"*

²⁴ **ES, FR:** reservation on para (1). **RO:** the cases provided in para (1) are mandatory and are related to the applicant’s behaviour and to the failure of respecting certain obligations, which does not necessary mean that the application is unfounded. The rejection of the application seems a sanction for not respecting certain obligations, which can not be legally justified. What if the applicant fulfils the conditions for granting international protection and at the same time finds himself in at least one of the cases stipulated in this paragraph? Therefore, replace "*shall*" with "*may*". A possibility to consider that the application was withdrawn could also be provided (no assessment on the merits). **SE:** at this first stage the authority may discontinue the examination in order to determine whether the case should be dismissed or not at a later stage. It should also be clarified that the article is focusing on persons who no longer have an interest in having their application examined.

²⁵ **IE:** scrutiny reservation, difficult to accept that a person who has not lodged his/her application is an applicant. **NL:** reservation, does not support an obligation to take a decision if the application has not yet been lodged as it will lead to extra administrative burden. **FI:** lodging doesn't exist in this MS; the provision is problematic (also valid for (b)).

- (b) [a spouse, partner or minor has not lodged his or her application after the applicant failed to lodge the application on his or her own behalf as referred to in Article 31(3) and (8)];²⁶
- (c) the applicant refuses to cooperate by not providing the ~~necessary details for the application to be examined and~~ data referred to in points (a) and (b) of the second paragraph of Article 27(1) or by not providing his or her ~~fingerprints and facial image~~ biometric data pursuant to Article 7(3);²⁷
- (d) the applicant has not appeared for a personal interview although he was required to do so pursuant to Articles 10 to 12;²⁸

²⁶ **HU:** if a person doesn't lodge an application there is nothing to reject, delete point (b) as it is useless. **IE:** scrutiny reservation pending discussions on Art. 31. **FR, NL, SK:** reservation related to reservations on Art. 31 (3) and (8). **SE:** delete point (b).

²⁷ **IE:** scrutiny reservation, difficult to accept that a persons who has not consented to having their fingerprints taken is an applicant. **SK:** the conditions mentioned in that paragraph should not be met cumulatively; redraft as follows: “*the applicant refuses to cooperate by not providing the necessary details for the application to be examined ~~and~~ or by not providing his or her fingerprints and facial image pursuant to Article 7(3)*”.

²⁸ **SE:** it should not be enough that the applicant has missed one single appointment for an interview in order to consider an application abandoned. Hence add “*repeatedly and without due cause*” after “*the applicant has*”.

- (e) the applicant has, without authorisation, left the assigned area or abandoned the specific his place of residence designated by the competent authorities of the Member State in accordance with Article 7(1) and (2) of Directive (EU) XXX/XXX (Reception Conditions Directive), ~~without informing the competent authorities or without authorisation as provided for in Article 7(4),~~²⁹
- (f) the applicant has repeatedly not complied with reporting duties imposed on him or her in accordance with Article 7(~~35~~) of Directive (EU) XXX/XXX (Reception Conditions Directive).³⁰

²⁹ **SE:** as there is no general obligation for an asylum seeker to stay at a certain place of residence, the MS does not agree with the possibility to reject an application as abandoned for the sole reason that the applicant has left his or her place of residence without informing the authorities. The uncertain housing situation faced by asylum seekers needs to be taken into consideration. Redraft as follows: "*(e) the applicant has clearly abandoned his or her application;*".

³⁰ **SE:** this could be deleted as it may fall under point (e). **DE:** difficult to understand "*repeatedly*". **AT:** delete "*repeatedly*" and add "*twice*" after "*not complied*". **COM:** it means more than once; it should be clear that there is a will from the applicant to obstruct the procedure.

2. In the circumstances referred to in paragraph 1, the determining authority shall **discontinue suspend** the **examination administrative procedure. To that effect it shall of the application and** send a written notice to the applicant at the place of residence or address referred to in Article 7(4), informing him or her that the **examination of his or her application has been discontinued administrative procedure has been suspended, including the reasons for that suspension,** and that the application **shall will** be **definitely** rejected as **abandoned implicitly withdrawn** unless the applicant reports to the determining authority within a period of **one month two weeks** from the date when the written notice is sent.³¹

³¹ **AT:** the determining authority should not be obliged to send a written notice to the applicant. The applicant should get a similar information as proposed in the written notice when he or she makes the application as a pre-emptive measure. Hence, delete everything after "examination of the application" and replace with the following: "given that the applicant has already received the information as mentioned in Art. 8 (1) lit i." Furthermore, add point (i) in Art. 8 as follows: "i) The applicant's right to report to the determining authority and to demonstrate that his or her failure was due to circumstances beyond his or her control as soon as possible, if circumstances as described in Art. 39 (1) occur." **CZ:** reservation, delete this para, too complicated in practice; does the grace period of one month also apply in case of repeated absconding? **HU** (also valid for para (3)): delete the paragraph. **NL:** reservation, this provision can lead to abuse and obstruction of the admissibility procedure and the accelerated procedure as it would mean that an applicant who does not cooperate will get an extra month before the application can be rejected. It should suffice that MS make it clear right at the beginning of the procedure that it is crucial for the applicant to cooperate and what the consequences are of not cooperating. It is important that MS can reject these applications immediately, or at least within one week. **SE:** if the applicant has a representative he or she should also be notified. **SK:** not acceptable to prolong the procedure in cases where the applicant has no genuine need for international protection; the time limits for making a decision on the application should not run during this period (especially in case of accelerated procedure). **LV:** reservation. **COM:** discontinuation exists on the basis of APD; however, the current system (application open for 9 months) does not work; Art. 39 attempts to strike a balance between the rights and the guarantees for the applicant and the need to be efficient and strict regarding the consequences.

3. Where the applicant reports to the determining authority within ~~that one month~~ the two-week period and demonstrates that his or her failure was due to circumstances beyond his or her control, the determining authority shall resume the ~~examination of the application~~ administrative procedure.³²
4. Where the applicant does not report to the determining authority within ~~this one month~~ the two-week period and does not demonstrate that his or her failure was due to circumstances beyond his or her control, the determining authority shall ~~consider that the application has been implicitly withdrawn~~ reject the application as implicitly withdrawn or as unfounded where the determining authority has, at that stage, already established that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).³³
5. ~~Where an application is implicitly withdrawn, the determining authority shall take a decision to reject the application as abandoned or as unfounded where the determining authority has, at the stage that the application is implicitly withdrawn, already found that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).~~

³² **AT:** replace the time limit by "*as soon as possible*" (also valid for para (5)) and delete "*and demonstrates*". **CZ:** reservation. **PL:** the applicant should not have the right to resume his/her procedure more than once. **RO:** the lack of circumstances beyond the applicant's control for the failure of respecting certain obligations does not automatically imply the inexistence of a need for international protection and it should not lead to a rejection of an application only for this reason; the procedure should be resumed from where it was discontinued (comment valid for paras (3) to (5)). **SK:** the language is too vague, difficult to assess that the situation was beyond of his/her control. **EL, FR:** "*or*" instead of "*and*". **ES, LV:** reservation. **LU:** paras (3) and (4) will lead to an increased administrative burden.

³³ **CZ:** reservation, replace "*and*" with "*or*" ("*Where the applicant does not report to the determining authority within this one-month period or does not demonstrate that...*"). **LV:** reservation.

5a. Where the determining authority suspends the administrative procedure, the time-limits referred to in Articles 34, 40(2) and 41(2) shall start to run from the moment that the applicant reports back to the determining authority.

Article 40

Accelerated examination procedure³⁴

1. The determining authority shall, in accordance with the basic principles and guarantees provided for in Chapter II, accelerate the examination on the merits of an application for international protection, in the cases where:³⁵
 - (a) the applicant, in submitting his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation);
 - (b) the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict ~~sufficiently verified~~ **relevant and available** country of origin information, thus making his or her claim clearly unconvincing in relation to whether he or she qualifies as a beneficiary of international protection by virtue of Regulation (EU) No XXX/XXX (Qualification Regulation);³⁶

³⁴ **IE, IT:** scrutiny reservation. **LU, SI:** reservation. **SE:** It should also be clarified what happens if the time limits cannot be upheld. Having an obligation to accelerate procedures in all cases that meet the criteria may involve a considerable burden for the authorities; besides, the grounds for accelerated procedures may not always be obvious already at the time of lodging. Delete references to subsequent applications. **FI:** unclear what is covered by the accelerated procedure.

³⁵ **NL:** the determining authority should have the possibility to decide whether an accelerated procedure should be applied, based on the merits of the individual case. Either it should not be obligatory to apply the accelerated procedure, or the applicable (short) time limits should be extendable. Flexibility is needed to be able to cope with a high influx of manifestly unfounded cases.

³⁶ **CZ:** delete last part from "in relation to..." as it is too restrictive and inflexible.

(c) the applicant has 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;³⁷

(ca) it is likely that, in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality;

(d) the applicant is making an application merely to delay or frustrate the enforcement of ~~an earlier or imminent~~ decision ~~resulting in~~for his or her removal from the territory of a Member State;³⁸

(e) a third country may be considered as a safe country of origin for the applicant within the meaning of this Regulation;³⁹

(f) the applicant may, for serious reasons, be considered a danger to the national security or public order of the Member States, **or the applicant has been forcibly expelled for serious reasons of public security or public order under national law;**⁴⁰

³⁷ **CZ:** delete "*that could have had a negative impact on the decision*". **NL:** redraft as follows: "*documents with respect to his or her identity, nationality, travel route or reasons for applying for international protection...*". **SE:** it cannot always be presumed that a person does not have protection needs due to e.g. providing false documents.

³⁸ **HU:** redraft as follows: "*decision by the authority or judicial decision*".

³⁹ **NL:** "*is considered*" instead of "*may be*".

⁴⁰ **AT:** define "*serious reasons*"; if not delete point (f). **EL:** this should be looked at as a priority not under the accelerated procedure.

- (g) the applicant does not comply with the obligations set out in Article 4(1) and Article ~~204~~(3) of Regulation (EU) No XXX/XXX (Dublin Regulation), unless he or she demonstrates that his or her failure was due to circumstances beyond his or her control;⁴¹
- (h) [the application is a subsequent application, where the application is so clearly without substance or abusive that it has no tangible prospect of success.⁴²]
2. The determining authority shall conclude the accelerated examination procedure within ~~two~~ **three** months from the lodging of the application. By way of exception, in the cases set out in paragraph (1)(d), the determining authority shall conclude the accelerated examination procedure within ~~eight~~ **fifteen** working days.⁴³

⁴¹ **BG, EL, ES:** reservation linked to Dublin. **NL:** delete point (g); this might not lead to using the accelerated procedure in all cases. As this is not related to the asylum motives, this could also lead to an accelerated granting of a status. Also, if the case is complex it simply cannot be concluded within the short time limits of the accelerated procedure. Besides, the Dublin Regulation does not provide for the possibility for the applicant to demonstrate that his or her failure was due to circumstances beyond his or her control. **SE:** using accelerated procedures as a sanction may also not be an appropriate tool. For persons with protection needs it may be positive to have a shorter procedure. In addition, there will be an administrative burden for the determining authority to process also more complicated applications with very short time limits.

⁴² **HU:** not in line with Art. 42 (2); the current wording of APD is preferable. **PL:** delete point (h).

⁴³ **CZ:** reservation; problematic deadline for the applications lodged by persons who are in prison, who may be removed from the territory on the basis of a criminal court decision. In these cases, there is no need for such a strict deadline. **HU:** the deadline is not acceptable. **IE:** the deadline could be challenging. **NL:** scrutiny reservation regarding the time limits.

3. Where an application is subject to the procedure laid down in Regulation (EU) No XXX/XXX (Dublin Regulation), the time-limits referred to in paragraph 2 shall start to run from the moment ~~the Member State responsible is determined in accordance with that Regulation,~~ the applicant is on the territory of ~~that~~ the Member State responsible ~~and he or she has been taken in charge~~ in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation) and has reported to the determining authority of that Member State.⁴⁴
4. Where the determining authority considers that the examination of the application involves issues of fact or law that are complex to be examined under an accelerated examination procedure, it may continue the examination on the merits in accordance with Articles 34 and 37. In that case, or where otherwise a decision cannot be taken within the time-limits referred to in paragraph 2, the applicant concerned shall be informed of the change in the procedure.⁴⁵

⁴⁴ **BG, ES:** reservation linked to Dublin. **CZ:** redraft as follows for better clarity: "*Where an application is subject to the procedure laid down in Regulation (EU) No XXX/XXX (Dublin Regulation), the time-limits referred to in paragraph 2 shall start to run from the moment the applicant is on the territory of the Member State responsible in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation).*" **HU:** after "*determined*", add "*and the responsibility of the Member State was legally set out*". **NL:** unclear what "*has been taken in charge*" means; it is not logical that the time limits should start to run right after the applicant has reached the territory of the responsible Member State. Besides, there are many applicants who (after the transfer to the responsible Member State) do not report to the authorities. Suggestion: the time limit should start after the applicant has reported him or herself at a specified place and has confirmed that he or she wishes his application to be examined by the responsible authorities.

⁴⁵ **CZ:** delete para (4) as it is superfluous and will lead to an increased administrative burden. **HU:** clarify if the procedure should be formally divided or not. **NL:** if the accelerated procedure cannot be concluded within the time limits mentioned here, it should still be possible to declare the application manifestly unfounded; redraft as follows: "*(4) Without prejudice to Article 37(3), where the determining authority considers that the examination of the application involves issues of fact or law that are too complex to be examined under an accelerated examination procedure, it may continue the examination on the merits in accordance with Articles 34 and 37.*" **SK:** para (4) has no added value; not acceptable to have an obligation to inform the applicant about the change of the procedure, since it implies obligation to also inform the applicant that his/her application is examined in accelerated procedure - additional administrative burden; the last sentence should be removed.

5. The accelerated examination procedure may be applied to unaccompanied minors only where:⁴⁶
- (a) the applicant comes from a third country considered to be a safe country of origin in accordance with the conditions set out in Article 47;
 - (b) the applicant may for serious reasons be considered to be a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law;
- (ba) [the application is a subsequent application, where the application is so clearly without substance or abusive that it has no tangible prospect of success.]**

⁴⁶ **IE:** scrutiny reservation on para (5). **AT:** delete (a) and (b) and redraft para (5) as follows: "*5. The accelerated examination procedure may be applied to unaccompanied minors for the reasons as mentioned in para. 1 provided that special consideration is given to their vulnerability and special needs.*"

Limiting abuse:

Article 9

Right to remain pending the examination of the application⁴⁷

3. The responsible authorities of Member States may revoke the applicant's right to remain on their territory during administrative procedure where⁴⁸:
- (a) a person makes a subsequent application in accordance with Article 42 and in accordance with the conditions laid down in Article 43;⁴⁹

⁴⁷ **ES, IT, PL, PT:** scrutiny reservation. **FR:** reservation. **FI:** the provision needs to be clarified; the safe third country of origin should also be taken into account.

⁴⁸ **BE:** clarify "revoke". **BG:** the provisions of para (3) must be clarified, considering the various judicial and administrative bodies, which participate in the processing of applications. **CZ** (supported by **SI**): the "may" clause should be justified; modify this as follows: "~~The responsible authorities of Member States may revoke the applicant's right to remain on their~~ the territory of Member States may be considered as revoked during administrative procedure where:" (the aim of this modification is to keep the mechanism of the current APD, where it is possible to revoke the right to remain ex lege and no decision is necessary). **FR:** add "may refuse or revoke". **IT:** should be a "*shall*" clause. **AT:** reservation on "revoke" and on the relation between "*shall*" and "*may*". **PT:** scrutiny reservation on "revoke". **RO:** it is necessary to clarify the legal situation of the asylum procedure of the applicant when the right to remain on the territory is revoked and the alien is removed from the territory of the Member State. Also, clarifications are needed regarding the provisions of letter (b) in terms of both the legal consequences of extradition / surrender and re-extradition procedure. **COM:** "revoke": the right to remain exists as soon as application is made.

⁴⁹ **ES:** reservation on the reference to Art. 42. **IT:** this must be better coordinated with Art. 19 (2) (c) of RCD. **NL:** include public order. **SE:** clarify this provision; can the decision be appealed? **COM:** reference is made to Art. 42 and 43 because they set out the exceptions to the right to remain.

- (b) a person is surrendered or extradited, as appropriate, to another Member State pursuant to obligations in accordance with a European arrest warrant⁵⁰ or to a third country or to international criminal courts or tribunals.⁵¹

Article 41

Border procedure

1. The determining authority may, in accordance with the basic principles and guarantees provided for in Chapter II, take a decision on an application at the border or in transit zones of the Member State on:
 - (a) the admissibility of an application made at such locations pursuant to Article 36(1); or
 - (b) the merits of an application in the cases subject to the accelerated examination procedure referred to in Article 40.
2. A decision referred to in paragraph 1 shall be taken as soon as possible without prejudice to an adequate and complete examination of the application, and not longer than four weeks from when the application is lodged.
3. Where a final decision is not taken within four weeks referred to in paragraph 2, the applicant shall no longer be kept at the border or transit zones and shall be granted entry to the territory of the Member State for his or her application to be processed in accordance with the other provisions of this Regulation.

⁵⁰ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

⁵¹ **DE:** reservation: it must be up to the MS to decide which authority examines the prerequisites of paragraph (4). **IT:** add a letter (c) that would read as follows: "*(c) a person is a danger for public security, without prejudice to art. 12 and 18 of the Regulation [...] on standards for the qualification [...].*" **PL:** add a point (c): a person poses a clear danger to public security.

4. In the event of arrivals involving a disproportionate number of third-country nationals or stateless persons lodging applications for international protection at the border or in a transit zone, making it difficult in practice to apply the provisions of paragraph 1 at such locations, the border procedure may also be applied at locations in proximity to the border or transit zone.
5. The border procedure may be applied to unaccompanied minors, in accordance with Articles 8 to 11 of Directive (EU) No XXX/XXX (Reception Conditions Directive) only where:
 - (a) the applicant comes from a third country considered to be a safe country of origin in accordance with the conditions set out in Article 47;
 - (b) the applicant may for serious reasons be considered to be a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law;
 - (c) there are reasonable grounds to consider that a third country is a safe third country for the applicant in accordance with the conditions of Article 45;
 - (d) the applicant has 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.

Point (d) shall only be applied where there are serious grounds for considering that the applicant is attempting to conceal relevant elements which would likely lead to a decision refusing to grant international protection and provided that the applicant has been given an effective opportunity to provide substantiated justifications for his actions.

Article 42

Subsequent applications

1. After a previous application had been rejected by means of a final decision, any further application made by the same applicant in any Member State shall be considered to be a subsequent application by the Member State responsible.
2. A subsequent application shall be subject to a preliminary examination in which the determining authority shall establish whether relevant new elements or findings have arisen or have been presented by the applicant which significantly increase the likelihood of the applicant qualifying as a beneficiary of international protection by virtue of Regulation (EU) No XXX/XXX (Qualification Regulation) or which relate to the reasons for which the previous application was rejected as inadmissible.
3. The preliminary examination shall be carried out on the basis of written submissions and a personal interview in accordance with the basic principles and guarantees provided for in Chapter II. The personal interview may be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to relevant new elements or findings or that it is clearly without substance and has no tangible prospect of success.
4. A new procedure for the examination of the application for international protection shall be initiated where:
 - (a) relevant new elements or findings as referred to in paragraph 2(a) have arisen or have been presented by the applicant;
 - (b) the applicant was unable, through no fault on his or her own part, to present those elements or findings during the procedure in the context of the earlier application, unless it is considered unreasonable not to take those elements or findings into account.

5. Where the conditions for initiating a new procedure as set out in paragraph 4 are not met, the determining authority shall reject the application as inadmissible, or as manifestly unfounded where the application is so clearly without substance or abusive that it has no tangible prospect of success.

Article 43

Exception from the right to remain in subsequent applications

Without prejudice to the principle of *non-refoulement*, Member States may provide an exception from the right to remain on their territory and derogate from Article 54(1), where:

- (a) a subsequent application has been rejected by the determining authority as inadmissible or manifestly unfounded;
- (b) a second or further subsequent application is made in any Member State following a final decision rejecting a previous subsequent application as inadmissible, unfounded or manifestly unfounded.

Article 54

Suspensive effect of appeal

2. A court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State responsible, either upon the applicant's request or acting *ex officio*, where the applicant's right to remain in the Member State is terminated as a consequence of any of the following categories of decisions:
- (a) a decision which considers an application to be manifestly unfounded or rejects the application as unfounded in relation to refugee or subsidiary protection status in the cases subject to an accelerated examination procedure or border procedure;

- (b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) and (c);
 - (c) a decision which rejects an application as explicitly withdrawn or abandoned in accordance with Article 38 or Article 39, respectively.
3. A court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State responsible provided that:
- (a) the applicant has the necessary interpretation, legal assistance and sufficient time to prepare the request and submit to the court or tribunal the arguments in favour of granting him or her the right to remain on the territory pending the outcome of the remedy; and
 - (b) in the framework of the examination of a request to remain on the territory of the Member State responsible, the court or tribunal examines the decision refusing to grant international protection in terms of fact and law.
4. Member States shall allow the applicant to remain on their territory pending the outcome of the procedure to rule on whether or not the applicant may remain on the territory. That decision shall be taken within one month from the lodging of the appeal.

