



Council of the
European Union

Brussels, 7 May 2018
(OR. en)

8673/18

**Interinstitutional File:
2016/0224 (COD)**

LIMITE

**ASILE 19
CODEC 709**

NOTE

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|----------------|--|
| From: | Presidency |
| To: | Delegations |
| No. Cion doc.: | 11317/16 |
| Subject: | 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 (First reading) |

The third examination of the proposal was finalised during three meetings of the Asylum Working Party (29-30 January, 13-14 February and 5-6 March 2018).

This document contains compromise proposals suggested by the Presidency in relation to Articles 51 - 62.

Taking into account that the examination of the Dublin Regulation has been resumed, the compromise proposals should be read in conjunction with the compromise proposals made in relation to the Dublin Regulation.

Suggested modifications are indicated as follows:

- new text compared to the Commission proposal is in **bold**;
- new text compared to the previous version is in **bold underline**;
- deleted text is in ~~strikethrough~~.

Comments made by delegations orally and in writing, as well as explanations given by the Commission and the Presidency appear in the footnotes of the Annex.

2016/0224 (COD)

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/EU¹

[...]

CHAPTER IV

PROCEDURES FOR THE WITHDRAWAL OF INTERNATIONAL
PROTECTION²

Article 51

Withdrawal of international protection³

The determining authority shall start the examination to withdraw international protection from a **third-country national or stateless particular** person when new elements or findings arise indicating that there are reasons to reconsider ~~the validity of his or her international protection, and in particular in those instances referred to in Articles 15 and 21 of Regulation (EU) No XXX/XXX (Qualification Regulation)~~ **whether he or she qualifies for international protection.**⁴

¹ HU, NL, PL, SI: parliamentary reservation. BE, CZ, EE, EL, ES, FI, FR, HU, IE, IT, LT, NL, PL, PT, SE, SI: scrutiny reservation.

² DE, SI: scrutiny reservation.

³ SE: scrutiny reservation.

⁴ DE: add "*The review must be made within 3 years of the decision becoming incontestable, at least in cases where refugee protection was granted*". PRES: according to the Council mandate for the Qualification Regulation the status has to be reviewed when EASO's common analysis of the situation in countries of origin and the guidance notes show there are significant changes in the country of origin which are relevant for the protection needs of the beneficiary (Articles 15 and 21). The obligation to review is therefore not linked to a certain calendar date, but depends the way the situation in the CoO evolves. FR: add "*serious*" before "*reasons*". PRES: this could be interpreted as a new ground for withdrawal. SK: add "*in particular*" before "*when new elements*".

Procedural rules for withdrawal of international protection⁵

1. Where the ~~competent~~ **determining authority or, if provided for by national law, a competent court or tribunal** is ~~considering withdrawing~~ **starts the examination to withdraw** international protection from a third-country national or a stateless person, including in the context of a regular status review referred to in Articles 15 and 21 of Regulation (EU) No XXX/XXX (Qualification Regulation), the person concerned shall enjoy the following guarantees, in particular:⁶
 - (a) he or she shall be informed in writing that ~~the competent authority is reconsidering~~ his or her qualification as a beneficiary of international protection **is being reconsidered** and the reasons for such a reconsideration; and
 - (aa) **he or she shall be informed of the obligation to cooperate fully with the determining authority and other competent authorities, as provided for in Article 14(4) and Article 20(2) of Regulation (EU) No XXX/XXX (Qualification Regulation), and of whether he or she shall be required to make a written statement or appear for a personal interview or a hearing as well as of the consequences of not cooperating with the determining authority and other competent authorities.**⁷

⁵ **DE:** scrutiny reservation.

⁶ **SE:** add "*at least*". **CZ, HU, HR:** no support for mentioning courts or tribunals **DE:** it must be clear from the addition "*or court or tribunal*" that judicial remedy is possible also in those States (including DE) in which the withdrawal procedure is conducted by an authority (for DE this is covered by Article 53(1)(b)). **PRES:** "*or court or tribunal*" is the wording used in the definition in QR supported by the Council mandate and agreed during the Trilogue. In order to find compromise proposal the text now specifies "*if provided for by national law*". So, either the determining authority or the court or tribunal. **SK:** keep deleted part. **PRES:** as regular status reviews do not exist anymore in QR the text cannot be reintroduced.

⁷ **FR:** scrutiny reservation; replace "*whether*" with "*the fact that*"; add "*and*/" before "*or appear for*". **RO:** refer to QR instead.

- (b) he or she shall be given the opportunity to submit, within ~~reasonable time~~ **21 working days**, by means of a written statement ~~and~~, **or** in a personal interview **or hearing at a date set by the determining authority or the competent court or tribunal, respectively**, reasons as to why his or her international protection should not be withdrawn.⁸

In relation to point (aa), the third-country national or stateless person shall be informed that failure to submit the written statement or to attend the personal interview or the hearing without due justification shall not prevent the determining authority or the competent court or tribunal from taking a decision to withdraw international protection.

⁸ **SK:** reservation. **DE, EL:** is this related to ECJ decisions? Redraft as follows: "*he or she shall be given the opportunity to submit, within reasonable time, by means of a written statement or in a personal interview, reasons as to why his or her international protection should not be withdrawn. As far as necessary to review the protection status, the person concerned shall be obliged, at the request of the competent authority, to appear for a personal interview and/or respond in writing within one month. Before the beneficiary of international protection is requested to appear for a personal interview and/or respond in writing, or together with such a request, he or she shall be sufficiently instructed as to his or her obligation to cooperate and the specific consequences of wilful failure to cooperate. If the person concerned does not comply with this request, he or she shall be informed in writing of the time limit of one month and the legal consequences of failure to comply. If no response is received within this time limit with an adequate excuse, the competent authority shall decide in accordance with national law on how to consider, and the effects of, the failure to cooperate.*" **PRES:** a similar text exists already in paragraph 1 (aa) and paragraph 4a. The texts are separated from a legal point of view in order to differentiate guarantees from consequences. **SE:** scrutiny reservation; even if an interview in most cases will be the best way to give the person opportunity to state why a status should not be withdrawn, and especially considering that the authority has the burden of proof, there may be exceptions. Perhaps it must not be stated as clearly how this should be done and just focus on the persons right to give reasons against a withdrawal. **PRES:** the text provides for alternative either by written statement, or in a personal interview or hearing. **FR:** move the deadline after "*a written statement*". **PRES:** the deadline is a balanced compromised proposal addressing different comments on that issue among the MS.

2. For the purposes of paragraph 1, **the determining authority or the competent court or tribunal Member States shall ensure that:**

- (a) ~~the competent authority is able to~~ **shall** obtain **relevant**, precise and up-to-date information from **relevant and available national, Union and international** ~~various~~ sources, ~~such as,~~ **and** where appropriate, ~~available,~~ **the common analysis on the situation in specific country of origin and the guidance notes referred to in Article 10 of Regulation No XXX/XXX** ~~[from the Regulation on the European Union Agency for Asylum]~~ and the United Nations High Commissioner for Refugees, as to the general situation prevailing in the countries of origin of the persons concerned;⁹ and
- (b) ~~where information on an individual case is collected for the purposes of reconsidering international protection,~~ it is **shall** not obtained **information** from the actors of persecution or serious harm in a manner that would result in such actors being directly informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration, or jeopardise the physical integrity of the person or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

⁹ **IT:** keep reference to UNHCR. **SE:** use the same wording as in Article 33. **PRES:** the reference to UNHCR was deleted here and in Article 33 because it was deleted in the Qualification Regulation. Article 33 refers to taking a decision on the application and here the purpose is to withdraw protection so wording cannot be completely the same. **EE:** move "available" before "precise".

3. The decision of ~~the competent authority~~ to withdraw international protection shall be given in writing. The reasons in fact and in law shall be stated in the decision and information on the manner in which to challenge the decision shall be given in writing.¹⁰
4. Where the determining authority has taken the decision to withdraw international protection, the provisions of Article ~~8(3)5b, and~~ Articles 15a to ~~48~~ **17** and **Article 53 (4a)** shall apply.¹¹

¹⁰ **DE:** do the translation requirements pursuant to Art. 35 (1) apply here accordingly? **PRES:** there aren't the same requirement of translation as in Article 35 because it is assumed that during the time as a beneficiary the individual has learnt the language. **IT:** information on the manner in which to challenge the decision should be included in the negative decision itself. **PRES:** there is nothing to exclude that the modalities to challenge the decision be provided in the decision itself – the only requirement is that it be given in writing.

¹¹ **CZ, DE, EL:** scrutiny reservation. **RO:** cf position on Articles 5b, 15 and 17. **DE:** Art 53(4a) is no longer in the current version. It is in any case unclear why this reference is made, since the with-drawal decision is dealt with in Art. 54 (1). **PRES:** Article 53(4a) still exists.

- 4a. Where the third country national or stateless person does not cooperate by not submitting a written statement or by not attending the personal interview or the hearing without due justification, the absence of the written statement or the personal interview or hearing shall not prevent the determining authority or the competent court or tribunal from taking a decision to withdraw international protection provided there are sufficient elements to consider that that person no longer qualifies for international protection.¹²
5. By way of derogation from paragraphs 1 to 4 of The procedure set out in this Article shall not apply; Member States' international protection shall lapse where the third country national or stateless persons beneficiary of international protection¹³:

¹² **SE:** scrutiny reservation. **NL, SK:** reservation on para (5). **EL:** is there a possibility to request the postponement of the date of the personal interview? **HU, RO:** clarify "*due justification*"; does it also covers the situation where the beneficiary to whom the review process is required is not on the territory of the MS concerned, and the authorities are aware of this. If so, can the competent authority initiate the reassessment procedure for the beneficiary? If this procedure can not be started, what should be the measures adopted by the MS? **PRES:** due justification covers justified reasons such as illness, objective impossibility, etc. **DE:** scrutiny reservation. Some points concerning unaccompanied minors within the framework of the APR still remain unclear. We would therefore like to examine the proposed text more carefully with regard to unaccompanied minors, especially if there are any adjustments needed for special cases. However, it is beyond doubt that unaccompanied minors should not be generally excluded from obligations to cooperate. Add "*If no response is received within this time limit with an adequate excuse, the competent authority shall decide in accordance with national law on how to consider, and the effects of, the failure to cooperate*" and "*If the person concerned does not comply with this request, he or she shall be informed in writing of the time limit of one month and the legal consequences of failure to comply*". **PRES:** the Presidency proposal provides for harmonization in compliance with QR by setting the rule that provided there are sufficient elements to consider that the person no longer qualifies for international protection the authorities may take a decision in case of failure to comply with the obligations to cooperate. The status can be withdrawn on grounds which are clearly defined in QR, regardless of whether the person cooperates or not. **FI:** add "*personally with an authority*". **IT:** replace "*Where the third country national or stateless person*" with "*Where the beneficiary of international protection*".

¹³ **DE:** scrutiny reservation on the amendments. Why were these made? **PRES:** MS asked for more clear text. These cases are not grounds for withdrawal. **NL, SK:** reservation.

- (a) has explicitly unequivocally¹⁴ renounced, **in writing**, his or her recognition as beneficiary **of international protection** such. International protection shall also lapse where the beneficiary of international **or**
- (b) where he or she protection has become a national of the **a** Member State that had granted international protection.¹⁵

¹⁴ **FI:** add "*personally with an authority*" after "*in writing*". This is an important measure and there should be no room for misuse.

¹⁵ **DE:** scrutiny reservation on para (5). **EL, NL:** unclear what procedure should be followed if withdrawal is not applied. **PRES:** this is not a ground for withdrawal so there is no obligation to use the withdrawal procedure; MS enjoy discretion as to how they choose to deal with such cases.

CHAPTER V

APPEAL PROCEDURE¹⁶

Article 53

The right to an effective remedy¹⁷

1. Applicants 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,~~¹⁸ against the following:
 - (a) a decision taken on their application for international protection ~~including a decision:~~
 - (i) rejecting an application as inadmissible ~~referred to in Article 36(1);~~

¹⁶ **FR:** reservation. **CZ, DE, EL, ES, FI, IE, LU, PT, SK:** scrutiny reservation. **DE:** how are these provisions related to the Dublin IV Regulation? are the following provisions, including precluding provisions, applicable if the Dublin Regulation does not provide for anything more specific? **PRES:** the provisions on remedies in APR apply only for decisions taken with regard to the examination of the application or for decisions to withdraw international protection. The provisions on remedy in Dublin apply only for Dublin transfers. **DE:** Does Article 53 only govern legal remedies concerning decisions on application or decisions to withdraw international protection? Is the list in paragraph 1 exhaustive? **PRES:** This article only governs legal remedies against decisions on applications or decisions to withdraw international protection; the list of decisions for which there is an obligation based on this Regulation to provide an effective remedy is exhaustive; it is not excluded that MS at national level open a right to an effective remedy against different types of decisions taken during the asylum procedure or with regard to matters linked to this procedure provided that rules in other asylum instruments (RCD, Dublin) are respected. **EL:** is the second instance procedure only a written one? Is there a possibility to conduct a personal hearing when complex issues of fact and law so require? **PRES:** the appeal is not necessarily only a written procedure; in the Sacko case the Court defined the conditions under which an oral hearing during an appeal before a court or tribunal of first instance may be dispensed with.

¹⁷ **HU:** scrutiny reservation. **PL:** guarantees of an independent court or tribunal should be mentioned; can MS create an intermediate administrative instance between the determining authority and a court/tribunal? **PRES:** independence is a one of the conditions identified by the Court of Justice of the EU for considering a body to be a court or tribunal within the meaning of EU law.

¹⁸ **DE, EL:** why was this deleted? **PRES:** the reference to Chapter II is deleted because only some and not all the Articles in that Chapter are relevant.

- (ii) rejecting an application as unfounded or manifestly unfounded in relation to refugee status or subsidiary protection status ~~referred to in Article 37(2) and (3) or Article 42(4);~~
- (iii) rejecting an application as ~~explicitly~~ **implicitly** withdrawn ~~or as abandoned referred to in Articles 38 and 39;~~
- ~~(iv) taken following a border procedure as referred to in Article 41.~~

(b) a decision to withdraw international protection ~~pursuant to Article 52.~~¹⁹

2. Persons recognised as eligible for subsidiary protection have the right to an effective remedy against a decision considering ~~an~~ **the** application unfounded in relation to refugee status. **Without prejudice to paragraph 1(b), 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.**²⁰
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).²¹

¹⁹ **DE, EL:** another category of cases should be added, covering disputes between member states and beneficiaries of protection as to whether protection status pursuant to Art. 52 (5) of the Asylum Procedures Regulation has expired by law, i.e. not due to an administrative decision

²⁰ **EL:** scrutiny reservation. **CZ:** add "*by the court or tribunal*" in the end. **DE:** does "*may*" refer to a legislative option for MS?

²¹ **CZ, HU, PL:** it should not mean that the court will have the power to grant international protection itself. **CZ, EL, RO:** clarify "*including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX / XXX (Qualification Regulation)*", in the context of the preliminary references to the rulings of the European Court of Justice in cases C-586/17 and C-652/16. **PRES:** the court or tribunal should be able to pronounce itself on the international protection needs but it is not required that the court or tribunal formally issues the decision granting international protection if under national law that competence is reserved to the determining authority.

~~The applicant may only bring forward new elements which are relevant for the examination of his or her application and which he or she could not have been aware of at an earlier stage or which relate to changes to his or her situation.²²~~

- 3a. The court or tribunal of first instance may exclude from the examination of the appeal any elements related to the examination of the application which the applicant could have already brought forward during the administrative procedure even though the applicant had been aware of them at the time of the administrative procedure, unless the applicant had been duly informed and provides sufficient justification for not presenting those elements earlier at the time of the administrative procedure.²³**
- ~~4. The courts or tribunals shall, through the determining authority, the applicant or otherwise, have access to the general information referred to in Article 33(2)(b) and (c).²⁴~~
- 4a. Applicants shall be provided with interpretation at least 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.²⁵**
- 5. Where the court or tribunal considers as relevant documents which have not already been translated in accordance with Article 33(4) Documents relevant for the examination of applications by the courts or tribunals shall where necessary ensure their translation unless the applicant agrees that the translation is not needed or the documents are not submitted on time for the court or tribunal to ensure their translation. In the latter case, the court or tribunal may refuse to take those documents into account if they are not accompanied by a translation provided by the applicant in the appeal procedure shall be translated where necessary, if they were not already translated in accordance with Article 33(4).²⁶**

²² CZ, HU, IE, SK: keep this para.

²³ HR, HU, IE, SK: "shall" instead of "may". EE, NL: scrutiny reservation. FI: delete this para.

²⁴ EL: against deletion.

²⁵ RO, SE, SK: scrutiny reservation.

²⁶ BE, FR, HR, NL: reservation. RO: scrutiny reservation. FI, SE: delete this para. NL: there is a risk of abuse, for instance by repeatedly submitting untranslated document at a very late stage. Add that if the applicant is culpable of submitting documents too late, the determining authority may refuse to take them into account if they are not submitted with a translation.

6. Applicants shall lodge a ~~Appeals~~ against any ~~a~~ decision referred to in paragraph 1 **shall be lodged**.²⁷
- (a) ~~within one week in the case of a decision rejecting a subsequent application as inadmissible or manifestly unfounded;~~
 - (b) ~~within two weeks~~ **10 working days** ~~in the case of a decision rejecting an application as inadmissible, or in the case of a decision rejecting an application as explicitly withdrawn or as abandoned, or in the case of a decision rejecting an application as unfounded or manifestly unfounded in relation to refugee or subsidiary protection status following an accelerated examination procedure or border procedure or while in cases where the applicant is held in detention or kept at the border;~~²⁸
 - (c) ~~within one month~~ **20 working days** ~~in the case of a decision rejecting an application as unfounded in relation to the refugee or subsidiary protection status if the examination is not accelerated or in the case of a decision withdrawing international protection.~~²⁹

~~For the purposes of point (b),~~ Member States may provide for an *ex officio* review of decisions taken pursuant to a border procedure.³⁰

²⁷ **SK:** reservation on para (6). **EL:** scrutiny reservation on the time-limits. **DE:** this delegation is in favour of time limits for lodging appeals and applications which correspond to those in national law: for appeals, in principle two weeks; time limits of one week for lodging appeals and applications in case of rejection as inadmissible or manifestly unfounded. **HU, SE, SK:** replace para (6) with the following text: "*Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy. The time limits shall not render such exercise impossible or excessively difficult.*" **BE, FR, NL:** deadlines should be in calendar days and could be shortened. **PRES:** in this case the deadlines will run during weekends and holidays but the authorities will not be able to receive the appeal. The right to lodge an appeal is not guaranteed.

²⁸ **LV:** scrutiny reservation.

²⁹ **CZ, HU, RO:** deadline too long. **IE:** 15 working days. **PRES:** this is a balanced compromise.

³⁰ **BE, ES, HU:** reservation on the *ex officio* reviewing procedure. **EL:** an *ex officio* review is not possible. **PRES:** it is a "may" clause. **SE:** scrutiny reservation on the reference to a border procedure.

The time-limits provided for in this paragraph shall start to run from the date when the decision of the determining authority is notified to the applicant ~~or from the moment the legal adviser or counsellor is appointed if the applicant has introduced a request for free legal assistance and representation.~~³¹ **The procedure for notification shall be laid down in national law.**

Article 54

Suspensive effect of appeal³²

1. ~~The Member State responsible shall allow a~~Applicants **shall have the right** to remain on ~~the~~ **its territory of the Member State responsible at least** 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, when such a right has been exercised within the time limit, pending the outcome of the remedy.³³

³¹ **DE:** reservation. **SE:** delete this para.

³² **DE, LT, IT, RO, SI:** scrutiny reservation. **ES:** reservation. **IT:** scrutiny reservation related to newly adopted legislation at national level. **EL:** the case-by-case examination of the right to remain should not be part of the asylum procedure but rather part of the return procedure. We risk overburdening the authorities dealing with second instance examination.

³³ **NL:** reservation; in case of a return decision and/or a decision on removal and/or entry ban has been adopted in accordance with Article 6(6) of Directive 2008/115/EC, this decision shall be suspended accordingly. **FI:** add "*Without prejudice to Article 43 (1)*" in the beginning.

2. **Paragraph 1 shall not apply** ~~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~~ **in the case any of the following categories of decisions by the determining authority:**³⁴
- (a) a decision which ~~considers~~ **rejects** an application ~~to be~~ **as** manifestly unfounded or, **in the cases subject to an accelerated examination procedure or border procedure**, 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;~~³⁵
 - (b) a decision which rejects an application as inadmissible pursuant to Article 36(1a)(a) and ~~(e)~~ **(1aa)(a) and (b);**³⁶
 - (c) a decision which rejects an application as ~~explicitly~~ **implicitly** withdrawn ~~or abandoned~~ in accordance with Article 38 or Article 39, respectively;³⁷
 - (ca) **a decision to withdraw international protection in accordance with Article 14(1)(b), (d) and (e) and Article 20(1)(b) of Regulation No XXX/XXX (Qualification Regulation).**

³⁴ **DE:** redraft this para as follows: "*The applicant's right to remain on the territory of the Member State in accordance with paragraph 1 shall be excluded: a) in cases where the application is rejected as inadmissible or as manifestly unfounded, b) in cases where international protection is withdrawn pursuant to Article 52 for the following reasons: (i) Article 14 paragraph 1 letter b) in conjunction with Article 12 paragraph 2 of the [Qualification Regulation], (ii) Article 14 paragraph 1 letters d) to f) of the [Qualification Regulation], (iii) Article 20 paragraph 1 letter b) in conjunction with Article 18 paragraph 1 of the [Qualification Regulation] or (iv) Article 20 paragraph 1 letter d) of the [Qualification Regulation]. In cases under sentence 1, 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.*"

³⁵ **SE:** delete "*in the cases subject to an accelerated examination procedure or border procedure.*" **NL:** add a new point covering cases where the applicant is a danger to national security or public order. **PRES:** this is covered under point (ca) and accelerated procedure.

³⁶ **IT:** reservation.

³⁷ **DE:** scrutiny reservation on the categories in (a) - (c). **SE:** scrutiny reservation on point (c).

- 2a. In the case of the decisions referred to in paragraph 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 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*. The competent court or tribunal shall rule on whether the applicant may remain following an examination of both facts and law.³⁸
3. For the purpose of the procedure referred to in paragraph 2a, the following conditions shall apply:³⁹ ~~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 shall have~~ ~~has the necessary interpretation, legal assistance and sufficient time~~ **at least 5 working days** to prepare the request and submit to the court or tribunal ~~the arguments in favour of granting him or her the right to~~ be allowed to remain on the territory pending the outcome of the remedy;⁴⁰ ~~and~~
 - (aa) **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;**⁴¹
 - (ab) **the applicant shall be provided, upon request, with free legal assistance and representation, where he or she lacks sufficient resources**⁴²

³⁸ **SK:** reservation. **RO:** scrutiny reservation. **DE:** must the request be made within a specific time limit? Does Art. 53 (6) apply here? It must be clarified whether a statutory order by the authority is needed for the immediate enforcement or whether the suspensive effect is omitted ipso iure. **PRES:** the deadline is specified in Paragraph 3 of this Article. Art. 53 (6) does not apply here. Suspensive effect is non – automatic. **DE:** are we correct in assuming that the examination by the competent court or tribunal as to whether a suspensory effect is to be ordered is under-taken only at the request of the applicant and additionally ex officio only if provided for in national law? **PRES:** yes. **CZ:** delete the second sentence (comment valid for para 4 as well).

³⁹ **CZ:** delete para (3).

⁴⁰ **CZ:** scrutiny reservation. **EE:** add "*from the decision referred to in para 2*" after "*working days*".

⁴¹ **DE, SI:** scrutiny reservation. **FI:** delete this point. **SK:** add "*where relevant*" in the beginning.

⁴² **CZ:** scrutiny reservation. **FI:** delete this point. **IT:** add reference to national law.

- (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 (ba) the applicant shall **be allowed** to remain on ~~their~~ **the** territory of the Member State responsible:~~⁴³

- (i) **until the time limit for requesting a court or tribunal to be allowed to remain has expired; and**
- (ii) **where the applicant has requested to be allowed to remain within the set time limit,** ~~pending the outcome of the procedure to rule~~ **decision of the court or tribunal** 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.~~⁴⁴

5. **Where national law provides for the possibility of a** ~~An applicant who lodges a further appeal against a first or subsequent appeal, an applicant who lodges an appeal from a decision of a court or tribunal of first instance shall not have a right to remain on the territory of the Member State unless a court or tribunal decides otherwise upon the applicant's request or acting *ex officio* in accordance with national law. That decision shall be taken within one month from the lodging of that further appeal.~~⁴⁵

⁴³ **NL:** redraft as follows: "*the applicant shall not be removed from the territory of the Member State responsible until:*"

⁴⁴ **SE:** scrutiny reservation on the sub-para. **CZ:** add "*on condition the request has been submitted together with the appeal*" after "*on the territory*". **DE:** reservation on the deletion; replace with the following: "*That decision should regularly be taken within one month from the lodging of the appeal.*" **NL:** reservation, concern regarding the consequences for subsequent applications

⁴⁵ **EL:** reservation on *ex officio*. **IT, SK:** scrutiny reservation. **SK:** add a new para as follows: "*Despite the common provisions set out in this regulation, the appeal procedure is conducted according to national law.*" **DE:** scrutiny reservation; it should be left up to the MS whether the appeal against the court's decision by law grants a right to remain or whether a court decision is required. Is it correct to assume that para (5) does not require a further appeal under national law against the court's decision in interim legal protection? Germany does not provide for any further appeal against the court's decision, which the decisions of the ECJ have allowed in principle (ECJ judgment of 28 July 2011, C-69/10, Samba Diouf). **CZ, SE, SK:** delete this para.

Article 55

Duration of the first level of appeal

1. **Member States shall lay down in their national law time limits for the court or tribunal to to examine the decision of the determining authority.** ~~Without prejudice to an adequate and complete examination of an appeal, the courts or tribunals shall decide on the first level of appeal within the following time limits from when the appeal is lodged:~~
 - ~~(a) within six months in the case of a decision rejecting the application as unfounded in relation to refugee or subsidiary protection status if the examination is not accelerated or in the case of a decision withdrawing international protection;~~
 - ~~(b) within two months in the case of a decision rejecting an application as inadmissible, or in the case of a decision rejecting an application as explicitly withdrawn or as abandoned or as unfounded or manifestly unfounded in relation to refugee or subsidiary protection status following an accelerated examination procedure or a border procedure or while the applicant is held in detention;~~
 - ~~(c) within one month in the case of a decision rejecting a subsequent application as inadmissible or manifestly unfounded.~~
2. ~~In cases involving complex issues of fact or law, the time limits set out in paragraph 1 may be prolonged by an additional three month period.~~

CHAPTER VI

FINAL PROVISIONS

Article 56

Challenge by public authorities

This Regulation does not affect the possibility for public authorities to challenge the administrative or judicial decisions as provided for in national legislation.

Article 57

Cooperation⁴⁶

1. Each Member State shall appoint a national contact point and send its address to the Commission. The Commission shall send that information to the other Member States.
2. Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the responsible authorities.
3. When resorting to the measures referred to in Article 27(3), Article 28(3) and Article 34(1) and (3), Member States shall inform the Commission and the European Union Agency for Asylum as soon as the reasons for applying those exceptional measures have ceased to exist and at least on an annual basis. That information shall, where possible, include data on the percentage of the applications for which derogations were applied to the total number of applications processed during that period.⁴⁷

⁴⁶ **DE:** scrutiny reservation.

⁴⁷ **SK:** scrutiny reservation. **RO:** delete reference to Article 34.

Article 58

Committee Procedure⁴⁸

1. The Commission shall be assisted by the committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.⁴⁹
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. ~~Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.~~

Article 59

Delegated acts⁵⁰

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in paragraph 1 shall be conferred on the Commission for a period of five years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

⁴⁸ **MT:** scrutiny reservation. **NL:** delete this article.

⁴⁹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁵⁰ **DE, ES, MT:** scrutiny reservation.

3. The delegation of power may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts such a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. Such a delegated act and its extensions shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month from notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.⁵¹

Article 60

Monitoring and evaluation⁵²

By [two years from ~~entry into force~~ **the date of application** of this Regulation] and every five years thereafter, the Commission shall report to the European Parliament and the Council on the application of this Regulation in the Member States and shall, where appropriate, propose any amendments.

Member States shall, at the request of the Commission, send it the necessary information for drawing up its report not later than nine months before that time-limit expires.

⁵¹ **FR:** this delegation strongly opposes the suggestion of the EP to resort to emergency procedures in case of sudden changes in a country that is on the lists of safe countries of origin: in our view, the one-month time-limit is already very short, which makes it a balanced compromise between the need to act quickly and the need to respect the powers of the co-legislators.

⁵² **SE:** add the following: "*By [18 months after entry into force], the Commission shall review the application of the lists of safe countries.*"

Article 61

Repeal

Directive 2013/32/EU is repealed.

References to the repealed Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex 2.

Article 62

Entry into force and application⁵³

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall start to apply from [~~six months~~ **two years** from its entry into force].⁵⁴

This Regulation shall apply to the procedure for granting international protection in relation to applications lodged as from the date of application of this Regulation. Applications for international protection lodged before that date shall be governed by Directive 2013/32/EU.
This Regulation shall apply to the procedure for withdrawing international protection where the examination to withdraw international protection started as from the date of application of this Regulation. Where the examination to withdraw international protection started before the date of application of this Regulation the procedure for withdrawing international protection shall be governed by Directive 2013/32/EU.

⁵³ **RO:** scrutiny reservation.

⁵⁴ **DE:** scrutiny reservation.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
