

III

(Preparatory acts)

COMMITTEE OF THE REGIONS

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Opinion of the European Committee of the Regions – A New Pact on Migration and Asylum

(2021/C 175/06)

Rapporteur:	Antje GROTHEER (DE/PES), Vice-President of Bremen City Parliament
Reference documents:	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum (COM(2020) 609 final) Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] (COM(2020) 610 final) 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 (COM(2020) 611 final) Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (COM(2020) 612 final) Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum (COM(2020) 613 final) Amended proposal for a Eurodac Regulation (COM(2020) 614 final) (at the time of translation available in EN only) Commission Recommendation on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathway (C(2020) 6467 final) Commission Recommendation of 23.9.2020 on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities (C(2020) 6468 final)

Commission Recommendation on an EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint)

(C(2020) 6469 final)

Communication from the Commission — Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence

(C(2020) 6470 final)

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an Action plan on Integration and Inclusion 2021-2027

(COM(2020) 758 final)

I. RECOMMENDATIONS FOR AMENDMENTS

Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]

Amendment 1

COM(2020) 610 final, Recital 26

Text proposed by the European Commission	CoR amendment
<p>Only persons who are more likely to have a right to stay in the Union should be relocated. Therefore, the scope of relocation of applicants for international protection should be limited to those who are not subject to the border procedure set out in Regulation (EU) XXX/XXX [Asylum Procedure Regulation].</p>	<p>Only persons who are more likely to have a right to stay in the Union should be relocated. Therefore, the scope of relocation of applicants for international protection should be limited to those who are not subject to the border procedure set out in Regulation (EU) XXX/XXX [Asylum Procedure Regulation]. The European Commission shall draw up and regularly update a list of safe countries for the purposes of any return procedures.</p>

Reason

In order to apply this criterion correctly, provision should be made for the Commission to draw up and regularly update a list of safe countries for any return procedures that arise.

Amendment 2

COM(2020) 610 final, Recital 36

Text proposed by the European Commission	CoR amendment
<p>This Regulation should apply to applicants for subsidiary protection <i>and</i> persons eligible for subsidiary protection in order to ensure equal treatment for all applicants and beneficiaries of international protection, and consistency with the current Union asylum acquis, in particular with Regulation (EU) XXX/XXX [<i>Qualification Regulation</i>].</p>	<p>This Regulation should apply to applicants for subsidiary protection, persons eligible for subsidiary protection and applicants for and beneficiaries of the other forms of protection provided for by the Member States in order to ensure equal treatment for all applicants and beneficiaries of international protection, and consistency with the current Union asylum acquis, in particular with Regulation (EU) XXX/XXX [<i>Qualification Regulation</i>].</p>

Reason

The scope of the Regulation needs to be widened so that it applies not only to applicants for and beneficiaries of international and subsidiary protection, but also to applicants for and beneficiaries of the other forms of protection provided for by the Member States.

Amendment 3

COM(2020) 610 final, Recital 47

Text proposed by the European Commission	CoR amendment
<p>The definition of a family member in this Regulation should include the sibling or siblings of the applicant. Reuniting siblings is of particular importance for improving the chances of integration of applicants and hence reducing unauthorised movements. The scope of the definition of family member should also reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The definition should therefore include families formed outside the country of origin, but before their arrival on the territory of the Member State. This limited and targeted enlargement of the scope of the definition is expected to reduce the incentive for some unauthorised movements of asylum seekers within the EU.</p>	<p>The definition of a family member in this Regulation should include the sibling or siblings of the applicant. Reuniting siblings is of particular importance for improving the chances of integration of applicants and hence reducing unauthorised movements. The scope of the definition of family member should also reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The definition should therefore include families formed outside the country of origin, before and after their arrival on the territory of the Member State. This limited and targeted enlargement of the scope of the definition is expected to reduce the incentive for some unauthorised movements of asylum seekers within the EU.</p>

Reason

Families are often formed in the host Member State, so the right to family unity must be guaranteed in relocations regardless of when and where the family was formed. Otherwise, there is a risk of provisions being discriminatory.

Amendment 4

COM(2020) 610 final, Recital 63

Text proposed by the European Commission	CoR amendment
<p>To support Member States who undertake relocation as a solidarity measure, financial support from the Union budget should be provided. In order to incentivise Member States to give priority to the relocation of unaccompanied minors a higher incentive contribution should be provided.</p>	<p>To support Member States who undertake relocation as a solidarity measure, financial support from the Union budget should be provided. In order to incentivise Member States to give priority to the relocation of minors and women travelling alone, a higher incentive contribution should be provided.</p>

Reason

Greater financial incentive should be provided for the reception of *all* children (together with their parents and siblings), not only for refugees who are unaccompanied minors. This should also apply to women travelling alone. Women and girls are frequently reported to be at high risk of gender-based violence in reception centres. Overcrowding in some of the Greek hotspots has significantly increased the risk of sexual and gender-based violence, especially for single women, who are often not accommodated separately. In addition, according to the Commission, particularly vulnerable migrant and refugee women and unaccompanied minors are at a higher risk of being victims of human trafficking. In order to minimise these risks, there should therefore also be greater financial incentives to take particular care of women.

Amendment 5

COM(2020) 610 final, Article 2(w)

Text proposed by the European Commission	CoR amendment
<p>‘migratory pressure’ means a situation where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries which generate migratory movements that place a burden even on well-prepared asylum and reception systems and requires immediate action;</p>	<p>‘migratory pressure’ means a situation at local, regional and/or national level where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State or a region and the specific developments in third countries which generate migratory movements that place a burden even on well-prepared asylum and reception systems and requires immediate action;</p>

Reason

Where there are migratory movements that do not affect the entire national asylum and reception system, there may nevertheless be regions and places that are under particular pressure and are at risk of being overwhelmed.

Amendment 6

COM(2020) 610 final, Article 6(3)

Text proposed by the European Commission	CoR amendment
<p>Member States shall have national strategies in place to ensure sufficient capacity for the implementation of an effective asylum and migration management system in accordance with the principles set out in this Part. Those strategies shall include contingency planning at national level, taking into account the contingency planning pursuant to Regulation (EU) XXX/XXX [European Union Asylum Agency], Regulation (EU) 2019/1896 (European Border and Coast Guard Agency) and Directive XXX/XXX/EU [Reception Conditions Directive] and the reports of the Commission issued within the framework of the Migration Preparedness and Crisis Blueprint. Such national strategies shall include information on how the Member State is implementing the principles set out in this Part and legal obligations stemming therefrom at national level. They shall take into account other relevant strategies and existing support measures notably under Regulation (EU) XXX/XXX [Asylum and Migration Fund] and Regulation (EU) XXX/XXX [European Union Asylum Agency] and be coherent with and complementary to the national strategies for integrated border management established in accordance with Article 8(6) of Regulation (EU) 2019/1896. The results of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, of the evaluation carried out in accordance with Council Regulation No 1053/2013 as well as those carried out in line with Article 7 of Regulation (EU) XXX/XXX [Screening Regulation], should also be taken into account in these strategies.</p>	<p>Member States shall endeavour to put national strategies in place to ensure sufficient capacity for the implementation of an effective asylum and migration management system in accordance with the principles set out in this Part. Those strategies should include contingency planning at local, regional and national level, taking into account the contingency planning pursuant to Regulation (EU) XXX/XXX [European Union Asylum Agency], Regulation (EU) 2019/1896 (European Border and Coast Guard Agency) and Directive XXX/XXX/EU [Reception Conditions Directive] and the reports of the Commission issued within the framework of the Migration Preparedness and Crisis Blueprint. Such national strategies should be based on multilevel cooperation between the relevant stakeholders within local and regional authorities, the public and private sectors and civil society, and should include information on how the Member State is implementing the principles set out in this Part and legal obligations stemming therefrom at national level. They should take into account other relevant strategies and existing support measures notably under Regulation (EU) XXX/XXX [Asylum and Migration Fund] and Regulation (EU) XXX/XXX [European Union Asylum Agency] and be coherent with and complementary to the national strategies for integrated border management established in accordance with Article 8 (6) of Regulation (EU) 2019/1896. The results of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, of the evaluation carried out in accordance with Council Regulation No 1053/2013 as well as those carried out in line with Article 7 of Regulation (EU) XXX/XXX [Screening Regulation], should also be taken into account in these strategies.</p>

Reason

In the CoR's view, an obligation to introduce national strategies may raise problems as regards the proportionality of the measure. At the same time, more emphasis should be placed on the local and regional dimension, as practical implementation of the strategies has to occur at this level.

Amendment 7

COM(2020) 610 final, Article 11(h)

Text proposed by the European Commission	CoR amendment
that the competent authorities of Member States and the Asylum Agency will process personal data of the applicant including for the exchange of data on him or her for the sole purpose of implementing their obligations arising under this Regulation;	that the competent authorities of Member States and the Asylum Agency will process personal data of the applicant including for the exchange of data on him or her for the sole purpose of implementing their obligations arising under this Regulation and that that data will not be communicated to the country of origin;

Reason

Provision should be made to prohibit the sending of data relating to applicants — data which should be subject to the strictest privacy — to the countries of origin.

Amendment 8

COM(2020) 610 final, Article 12(6)

Text proposed by the European Commission	CoR amendment
The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. The summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.	The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. The summary may either take the form of a report or a standard form on the basis of a checklist. The Member State shall ensure that the applicant or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.

Reason

Clarifies the text.

Amendment 9

COM(2020) 610 final, Article 21

Text proposed by the European Commission	CoR amendment
<p style="text-align: center;">Article 21</p> <p style="text-align: center;">Entry</p> <p>1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [Eurodac Regulation], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the first Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than 3 years after the date on which that border crossing took place.</p> <p>2. The rule set out in paragraph 1 shall also apply where the applicant was disembarked on the territory following a search and rescue operation.</p> <p>3. Paragraphs 1 and 2 shall not apply if it can be established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [Eurodac Regulation], that the applicant was relocated pursuant to Article 57 of this Regulation to another Member State after having crossed the border. In that case, that other Member State shall be responsible for examining the application for international protection.</p>	

Reason

The proposed solidarity mechanism and increased operational responsibility of the European Border and Coast Guard (Frontex) in the new asylum and migration pact, as well as the burden that the mandatory border procedures place on local and regional authorities in border regions, mean that there is no longer justification for allocating responsibility for asylum applications based on the criterion of irregular entry via an external border. On the contrary, it is likely that the criterion would hinder solidarity-based distribution. Moreover, allocation of responsibility to the Member State of entry for people disembarked following search and rescue operations is likely to jeopardise the effectiveness of search and rescue operations, as Member States have already refused disembarkation in the past so as to avoid responsibility. Deletion of Article 21 of the proposal (according to which 'the first Member State (...) entered shall be responsible') would not change the responsibility of the State on the external border in most cases of irregular entries that are detected. Article 9(1) of the proposal obliges applicants for protection to apply for protection in the Member State of first entry. According to Article 8(2) of the proposal, this State remains responsible for the asylum procedure if no other criterion for determining the Member State responsible for the protection procedure applies. However, deletion of the article would reduce the burden on national administrations and reduce costs by removing unnecessary administrative burdens. Already at this stage, return attempts have very little chance of success if irregular entry cannot be demonstrated based on Eurodac data. These would be removed by deleting Article 21 of the proposal.

Amendment 10

COM(2020) 610 final, Article 29(1)

Text proposed by the European Commission	CoR amendment
<p>If a Member State where an application for international protection has been registered considers that another Member State is responsible for examining the application, it shall, without delay and in any event within two months of the date on which the application was registered, request that other Member State to take charge of the applicant. Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Articles 13 and 14a of Regulation (EU) XXX/XXX [<i>Eurodac Regulation</i>] or of a VIS hit with data recorded pursuant to Article 21 of Regulation (EC) No 767/2008, the request to take charge shall be sent within one month of receiving that hit. Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State where the application was registered. Where the applicant is an unaccompanied minor, the determining Member State may, where it considers that it is in the best interest of the minor, continue the procedure for determining the Member State responsible and request another Member State to take charge of the applicant despite the expiry of the time limits laid down in the first and second subparagraphs.</p>	<p>If a Member State where an application for international protection has been registered considers that another Member State is responsible for examining the application, it shall, without delay and in any event within two months of the date on which the application was registered, request that other Member State to take charge of the applicant. Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Articles 13 and 14a of Regulation (EU) XXX/XXX [<i>Eurodac Regulation</i>] or of a VIS hit with data recorded pursuant to Article 21 of Regulation (EC) No 767/2008, the request to take charge shall be sent within one month of receiving that hit. Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State where the application was registered. Where the applicant is an unaccompanied minor, the determining Member State may, where it considers that, <i>having heard the minor wherever possible</i>, it is in the best interest of the minor, continue the procedure for determining the Member State responsible and request another Member State to take charge of the applicant despite the expiry of the time limits laid down in the first and second subparagraphs.</p>

Reason

With regard to the procedure for determining the Member State responsible, the terminology used in the Article appears too discretionary and it would be preferable to provide for ensuring, wherever possible, that the unaccompanied minor is heard.

Amendment 11

COM(2020) 610 final, Article 55(2)

Text proposed by the European Commission	CoR amendment
<p>Where a Member State commits to provide return sponsorship and the illegally staying third-country nationals who are subject to a return decision issued by the benefitting Member State do not return or are not removed within 8 months, the Member State providing return sponsorship shall transfer the persons concerned onto its own territory in line with the procedure set out in Articles 57 and 58. This period shall start from the adoption of the implementing act referred to in Article 53(1) or, where applicable, in Article 49(2).</p>	<p>Where a Member State commits to provide return sponsorship and the illegally staying third-country nationals who are subject to a return decision issued by the benefitting Member State do not return or are not removed within 8 months, the Member State providing return sponsorship, after consulting the local and/or regional authority in whose area the transfer is to take place as regards feasibility, shall transfer the persons concerned onto its own territory in line with the procedure set out in Articles 57 and 58. This period shall start from the adoption of the implementing act referred to in Article 53(1) or, where applicable, in Article 49(2).</p>

Reason

The aim of the proposed amendment is to ensure that local and/or regional authorities, which have to accommodate people arriving under the return sponsorship arrangements, are able to prepare themselves as well as possible for this task.

Amendment 12

COM(2020) 610 final, Article 55(4)

Text proposed by the European Commission	CoR amendment
<p>The measures referred to in paragraph 1 shall include one or more of the following activities carried out by the sponsoring Member State:</p> <p>a) providing counselling on return and reintegration to illegally staying third-country nationals;</p> <p>b) using the national programme and resources for providing logistical, financial and other material or in-kind assistance, including reintegration, to illegally staying third-country nationals willing to depart voluntarily;</p> <p>c) leading or supporting the policy dialogue and exchanges with the authorities of third countries for the purpose of facilitating readmission;</p>	<p>The measures referred to in paragraph 1 shall include one or more of the following activities carried out by the sponsoring Member State, where appropriate after consulting the competent local and/or regional authority of the benefitting Member State:</p> <p>a) providing counselling on return and reintegration to illegally staying third-country nationals;</p> <p>b) using the national programme and resources for providing logistical, financial and other material or in-kind assistance, including reintegration, to illegally staying third-country nationals willing to depart voluntarily;</p> <p>c) leading or supporting the policy dialogue and exchanges with the authorities of third countries for the purpose of facilitating readmission;</p>

Text proposed by the European Commission	CoR amendment
<p>d) contacting the competent authorities of third countries for the purpose of verifying the identity of third-country nationals and obtaining a valid travel document;</p> <p>e) organising on behalf of the benefitting Member State the practical arrangements for the enforcement of return, such as charter or scheduled flights or other means of transport to the third country of return.</p> <p>These measures shall not affect the obligations and responsibilities of the benefitting Member State laid down in Directive 2008/115/EC.</p>	<p>d) contacting the competent authorities of third countries for the purpose of verifying the identity of third-country nationals and obtaining a valid travel document;</p> <p>e) organising on behalf of the benefitting Member State the practical arrangements for the enforcement of return, such as charter or scheduled flights or other means of transport to the third country of return.</p> <p>These measures shall not affect the obligations and responsibilities of the benefitting Member State laid down in Directive 2008/115/EC.</p>

Reason

The aim of the proposed amendment is to ensure that local and/or regional authorities, which know the transferred people because of having received them, are also involved in return sponsorship measures in order to ensure that the rights of these people are respected and the transfer of responsibilities goes smoothly.

Amendment 13

COM(2020) 610 final, Article 57(9)

Text proposed by the European Commission	CoR amendment
<p>The transfer of the person concerned from the benefitting Member State to the Member State of relocation shall be carried out in accordance with the national law of the benefitting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within 4 weeks of the confirmation by the Member State of relocation or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3).</p>	<p>The transfer of the person concerned from the benefitting Member State to the Member State of relocation shall be carried out in accordance with the national law of the benefitting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within 4 weeks of the confirmation by the Member State of relocation or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3). Steps must be taken to ensure that the local and regional authorities responsible for the proposed place of relocation are informed and consulted at an early stage.</p>

Reason

In order to ensure proper reception, the competent local and regional authorities must also be directly informed and consulted so that they can prepare for reception accordingly.

Amendment 14

COM(2020) 610 final, Article 72

Text proposed by the European Commission	CoR amendment
<p>1. Article 16 is replaced by the following:</p> <p>[...]</p> <p>2. Where appropriate, Member States may also be eligible for an additional amount of EUR 10 000 for family members of persons referred to in paragraph 1, if the persons are admitted to ensure family unity.</p> <p>2. Article 17 is replaced by the following:</p> <p>[...]</p> <p>7. Within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to adjust, if deemed appropriate, the amounts referred to in paragraphs 1, 2 and 3 of this Article to take into account the current rates of inflation, relevant developments in the field of transfer of applicants for international protection and of beneficiaries of international protection from one Member State to another, as well as factors which can optimise the use of the financial incentive brought by those amounts.</p>	<p>1. Article 16 is replaced by the following:</p> <p>[...]</p> <p>2. Where appropriate, Member States may also be eligible for an additional amount of EUR 10 000 for family members of persons referred to in paragraph 1, if the persons are admitted to ensure family unity. <i>In particular, it is necessary to ensure that part of this amount is paid directly to the local or regional authority in whose area the persons concerned are being received through resettlement or humanitarian admission arrangements.</i></p> <p>2. Article 17 is replaced by the following:</p> <p>[...]</p> <p>7. Within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to adjust, if deemed appropriate, the amounts referred to in paragraphs 1, 2 and 3 of this Article to take into account the current rates of inflation, relevant developments in the field of transfer of applicants for international protection and of beneficiaries of international protection from one Member State to another, as well as factors which can optimise the use of the financial incentive brought by those amounts. <i>In particular, it is necessary to ensure that part of this amount is paid directly to the local or regional authority in whose area the persons concerned are being received.</i></p>

Reason

The proposed additions are intended to ensure that the competent local or regional authorities receive the necessary financial support.

Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU

Amendment 15

COM(2020) 611 final, point (2)

Text proposed by the European Commission	CoR amendment
<p>Recital 31 is replaced by the following:</p> <p>(31) In order to guarantee the rights of the applicant, a decision concerning his or her application should be given in writing. Where the decision does not grant international protection, the applicant should be given reasons in fact and in law, information on the consequences of the decision and the modalities for challenging it.</p> <p>(31a) In order to increase the efficiency of procedures and to reduce the risk of absconding and the likelihood of unauthorised movements, there should be no procedural gaps between the issuance of a negative decision on an application for international protection and of a return decision. A return decision should immediately be issued to applicants whose applications are rejected. Without prejudice to the right to an effective remedy, the return decision should either be part of the negative decision on an application for international protection or, if it is a separate act, be issued at the same time and together with the negative decision.'</p>	<p>i) Recital 10 is replaced by the following:</p> <p>(10) <i>The resources of the Asylum, Migration and Integration Fund should be mobilised to provide adequate support to Member States' efforts in applying this Regulation, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum and reception systems. Adequate resources should be made available also to local and regional authorities, including the possibility to access the Asylum, Migration and Integration Fund directly. The EU also needs to allocate specific funds to enable regions under higher migration pressure, primarily those at the EU's external borders, to accommodate and assist unaccompanied minors who arrive on their territory.</i></p> <p>ii) Recital 31 is replaced by the following:</p> <p>(31) In order to guarantee the rights of the applicant, a decision concerning his or her application should be given in writing. Where the decision does not grant international protection, the applicant should be given reasons in fact and in law, information on the consequences of the decision and the modalities for challenging it.</p> <p>(31a) In order to increase the efficiency of procedures and to reduce the risk of absconding and the likelihood of unauthorised movements, there should be no procedural gaps between the issuance of a negative decision on an application for international protection and of a return decision. A return decision should immediately be issued to applicants whose applications are rejected and to whom the Member State has not decided to grant an autonomous residence permit or other authorisation offering a right to stay on grounds of hardship, humanitarian or other reasons. Without prejudice to the right to an effective remedy, the return decision should either be part of the negative decision on an application for international protection or, if it is a separate act, be issued at the same time and together with the negative decision.'</p>

Reason

This recommendation strengthens regional and local structures and responds to previous CoR requests in this area. Moreover, it is essential that the EU earmark specific funds for regions with higher migratory pressure.

Amendment 16

COM(2020) 611 final, point (5), Recital 40(h)

Text proposed by the European Commission	CoR amendment
<p>When applying the border procedure for carrying out return, certain provisions of the [recast Return Directive] should apply as these regulate elements of the return procedure that are not determined by this Regulation, notably those on definitions, more favourable provisions, non-refoulement, best interests of the child, family life and state of health, risk of absconding, obligation to cooperate, period for voluntary departure, return decision, removal, postponement of removal, return and removal of unaccompanied minors, entry bans, safeguards pending return, detention, conditions of detention, detention of minors and families and emergency situations. To reduce the risk of unauthorised entry and movement of illegally staying third-country nationals subject to the border procedure for carrying out return, a period for voluntary departure not exceeding 15 days may be granted to illegally staying third-country nationals, without prejudice for the possibility to voluntarily comply with the obligation to return at any moment.</p>	<p>When applying the border procedure for carrying out return, certain provisions of the [recast Return Directive] should apply as these regulate elements of the return procedure that are not determined by this Regulation, notably those on definitions, more favourable provisions, non-refoulement, best interests of the child, family life and state of health, risk of absconding, obligation to cooperate, period for voluntary departure, return decision, removal, postponement of removal, return and removal of unaccompanied minors, entry bans, safeguards pending return, detention, conditions of detention and emergency situations. To reduce the risk of unauthorised entry and movement of illegally staying third-country nationals subject to the border procedure for carrying out return, a period for voluntary departure not exceeding 15 days may be granted to illegally staying third-country nationals, without prejudice for the possibility to voluntarily comply with the obligation to return at any moment.</p>

Reason

The CoR is committed to a complete halt to the detention of children.

Amendment 17

COM(2020) 611 final, point (13), Article 35a

Text proposed by the European Commission	CoR amendment
<p>Rejection of an application and issuance of a return decision</p> <p>Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States shall issue a return decision that respects Directive XXX/XXX/EU [Return Directive]. The return decision shall be issued as part of the decision rejecting the application for international protection or, in a separate act. Where the return decision is issued as a separate act, it shall be issued at the same time and together with the decision rejecting the application for international protection.</p>	<p>Rejection of an application and issuance of a return decision</p> <p>Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, and the Member State has not decided to grant the person an autonomous residence permit or other authorisation offering a right to stay on hardship, humanitarian or other grounds, Member States shall issue a return decision that respects Directive XXX/XXX/EU [Return Directive]. The return decision shall be issued as part of the decision rejecting the application for international protection or, in a separate act. Where the return decision is issued as a separate act, it shall be issued at the same time and together with the decision rejecting the application for international protection.</p>

Reason

The wording of the Commission's proposal prevents Member States from granting protection on other humanitarian or family grounds outside international protection without initiating a return procedure. This is contrary to Article 3(2) of Proposal COM(2016) 466 final ('Qualification Regulation'), which precisely guarantees this right of Member States: 'This Regulation does not apply to other national humanitarian statuses granted by Member States under their national law to those who do not qualify for the refugee status or the subsidiary protection status'. Moreover, in certain circumstances, Member States are even obliged to provide protection; this is the case, for example, where there are threats to health, as the Court of Justice of the European Union (CJEU) has made clear in its case law since the M'Bodj case. In addition, this provision seems redundant because of the obligation under Article 6(1) of Directive 2008/115/EC ('Return Directive') to adopt a return decision in the event of illegal stay. The proposed amendment is in keeping with Article 6(4) of the Return Directive.

Amendment 18

COM(2020) 611 final, point (14), Article 40(1)(i)

Text proposed by the European Commission	CoR amendment
<p>Article 40 is amended as follows:</p> <p>(a) in paragraph 1 the following point is added:</p> <p>'(i) the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20 % or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20 % or lower cannot be considered as representative for their protection needs;</p> <p>[...]</p>	<p>Article 40 is amended as follows:</p> <p>(a) in paragraph 1 the following point is added:</p> <p>'(i) <i>the applicant's application may, on the basis of the findings of an initial interview, be decided upon on a case-by-case basis within a short period of time and, should the application be rejected, there is a reasonable prospect of rapid return to the home State or to a third country which has agreed to allow that person to reside.</i></p> <p>[...]</p>

Reason

The linking of sanctions to nationality as a result of linking the issue to protection rates is incompatible with the prohibition of discrimination under international and European law, if there is no justification in the individual case in hand. The CoR therefore proposes a procedure based on the possibility of return and the likelihood of rapid decisions on individual cases, as has been used in the Swiss asylum procedure since 2019. This would allow many more decisions to be taken within a short period of time than would be the case if there were a link to the rate of protection. This also and above all helps reduce the burden on local and regional authorities in border areas. This model in addition allows quick decisions to be taken to grant protection and can thus significantly accelerate the integration of clearly vulnerable people such as those entitled to international protection who are rescued from distress at sea.

Amendment 19

COM(2020) 611 final, point (14), Article 40(5)(c)

Text proposed by the European Commission	CoR amendment
<p>[...]</p> <p>(b) in paragraph 5 the following point is added:</p> <p><i>‘(c) the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20 % or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20 % or lower cannot be considered as representative for their protection needs.’</i></p>	<p>[...]</p> <p>(b) in paragraph 5 the following point is added:</p> <p><i>‘(c) the applicant’s application may, on the basis of the findings of an initial interview, be decided upon on a case-by-case basis within a short period of time and, should the application be rejected, there is a reasonable prospect of rapid return to the home State or to a third country which has agreed to allow that person to reside.’</i></p>

Reason

The linking of sanctions to nationality as a result of linking the issue to protection rates is incompatible with the prohibition of discrimination under international and European law, if there is no justification in the individual case in hand. The CoR therefore proposes a procedure based on the possibility of return and the likelihood of rapid decisions on individual cases, as has been used in the Swiss asylum procedure since 2019. This would allow many more decisions to be able to be taken within a short period of time than would be the case if there were a link to the rate of protection. This also and above all helps reduce the burden on local and regional authorities in border areas. This model in addition allows quick decisions to be taken to grant protection and can thus significantly accelerate the integration of clearly vulnerable people such as those entitled to international protection who are rescued from distress at sea.

Amendment 20

COM(2020) 611 final, point (15), Article 41(3)

Text proposed by the European Commission	CoR amendment
<p>Member State shall examine an application in a border procedure in the cases referred to in paragraph 1 where the circumstances referred to in Article 40(1), point (c), (f) or (i), apply.</p>	<p>Member State shall examine an application in a border procedure in the cases referred to in paragraph 1 where the circumstances referred to in Article 40(1), point (f) or (i), apply, and in point (c) only where circumstances indicate that a rapid decision and return can be expected in the individual case concerned.</p>

Reason

This would relieve the burden on local and regional authorities by whom applicants are accommodated during border procedures.

Amendment 21

COM(2020) 611 final, point (15), Article 41(5)

Text proposed by the European Commission	CoR amendment
The border procedure may only be applied to unaccompanied minors and to minors below the age of 12 and their family members in the cases referred to in Article 40(5) (b).	The border procedure may only be applied to minors and their accompanying family members in the cases referred to in Article 40(5) (b) or in cases where a rapid granting of international protection can be expected following an examination in accordance with Article 40(5)(c). Minors should not be kept in detention in border procedures.

Reason

The protection of minors under international law applies equally to everyone under the age of 18. Special procedures should therefore only be used where this is either in the interests of the minor or warranted on the basis of serious grounds within the meaning of Article 40(5)(b) of the proposal ('danger to the national security or public order') in individual cases. Detention should not be carried out for procedural reasons. This approach, based on the best interests of minors and the security interests of the Member States, is in line with previous positions adopted by the CoR.

Amendment 22

COM(2020) 611 final, point (15), Article 41(9)(b)

Text proposed by the European Commission	CoR amendment
<p>Member States shall not apply or shall cease to apply the border procedure at any stage of the procedure where:</p> <p>[...]</p> <p>(b) the necessary support cannot be provided to applicants with special procedural needs in the locations referred to in paragraph 14;</p>	<p>Member States shall not apply or shall cease to apply the border procedure at any stage of the procedure where:</p> <p>[...]</p> <p>(b) applicants have special procedural needs, unless steps are taken to ensure on a case-by-case basis that the necessary support can be provided in the locations referred to in paragraph 14;</p>

Reason

People with special procedural needs must have access to the relevant support measures on a case-by-case basis, otherwise they may not be transferred to a border procedure.

Amendment 23

COM(2020) 611 final, point (15), Article 41(11)

Text proposed by the European Commission	CoR amendment
<p>The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. It shall encompass the decision referred to in paragraph 2 and 3 and any decision on an appeal if applicable and shall be completed within 12 weeks from when the application is registered. Following that period, the applicant shall be authorised to enter the Member State's territory except when Article 41a(1) is applicable.</p> <p>By way of derogation from the time limits set in Articles 34, 40(2) and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within 12 weeks from when the application is registered.</p>	<p>The border procedure shall be as short as possible, in order to help alleviate pressure on border regions, while at the same time enabling a complete and fair examination of the claims. It shall encompass the decision referred to in paragraph 2 and 3 and any decision on an appeal if applicable and shall be completed within 8 weeks from when the application is registered. Following that period, the applicant shall be authorised to move further onto the Member State's territory except when Article 41a(1) is applicable. By way of derogation from the time limits set in Articles 34, 40(2) and 55, Member States shall lay down provisions on the duration of the examination procedure and of the appeal procedure which ensure that, in case of an appeal against a decision rejecting an application in the framework of the border procedure, the decision on such appeal is issued within 8 weeks from when the application is registered.</p>

Reason

The timeframe of 20 weeks is unreasonably long, obliging applicants to remain in transit zones, thus putting disproportionate burden on border regions. In its judgement on the Hungarian transit zone of 14 May 2020, the Court of Justice of the European Union (CJEU) stated that the 'specific procedures [at the border] must be carried out within a reasonable time' and states that already after four weeks, entry to the regular procedure must be granted. As the situation in the transit zone is a situation of deprivation of liberty, border procedures in transit zones have to be conducted quickly. A period of more than eight weeks, which already doubles the time limit allowed for at the moment according to Article 43 of the Asylum Procedures Directive (4 weeks), would most probably be seen as unreasonable both by the CJEU as well as the European Court of Human Rights (ECtHR). A period of eight weeks suffices to conduct an asylum procedure in most of the cases. If the procedure ends with a negative decision, an additional eight weeks are foreseen for the return procedure. If the total of the procedure runs for more than three months, it is not likely that the return may be carried out expeditiously, as foreseen for the border procedure.

Amendment 24

COM(2020) 611 final, point (15), Article 41(13)

Text proposed by the European Commission	CoR amendment
<p>During the examination of applications subject to a border procedure, the applicants shall be kept at or in proximity to the external border or transit zones. Each Member State shall notify to the Commission, [two months after the date of the application of this Regulation] at the latest, the locations where the border procedure will be carried out, at the external borders, in the proximity to the external border or transit zones, including when applying paragraph 3 and ensure that the capacity of those locations is sufficient to process the applications covered by that paragraph. Any changes in the identification of the locations at which the border procedure is applied, shall be notified to the Commission two months in advance of the changes taking effect.</p>	<p>During the examination of applications subject to a border procedure, the applicants shall be kept at or in proximity to the external border or transit zones. Each Member State shall notify to the Commission, [two months after the date of the application of this Regulation] at the latest, the locations where the border procedure will be carried out, at the external borders, in the proximity to the external border or transit zones, including when applying paragraph 3 and ensure that the capacity of those locations is sufficient to process the applications covered by that paragraph. <i>This notification shall be accompanied by a report on the consultation of the competent local and regional authority in whose area these procedures are to be carried out.</i> Any changes in the identification of the locations at which the border procedure is applied, shall be notified to the Commission two months in advance of the changes taking effect.</p>

Reason

When planning the locations for carrying out border procedures, it is important to take due account of the needs of the competent local and regional authorities.

Amendment 25

COM(2020) 611 final, point (15), Article 41(14)

Text proposed by the European Commission	CoR amendment
<p>In situations where the capacity of the locations notified by Member States pursuant to paragraph 14 is temporarily insufficient to process the applicants covered by paragraph 3, Member States may designate other locations within the territory of the Member State and upon notification to the Commission accommodate applicants there, on a temporary basis and for the shortest time necessary.</p>	<p>In situations where the capacity of the locations notified by Member States pursuant to paragraph 14 is temporarily insufficient to process the applicants covered by paragraph 3, Member States may, <i>after first consulting the competent local and regional authorities</i>, designate other locations within the territory of the Member State and upon notification to the Commission accommodate applicants there, on a temporary basis and for the shortest time necessary.</p>

Reason

When planning the locations for carrying out border procedures, it is important to take due account of the needs of the competent local and regional authorities.

Amendment 26

COM(2020) 611 final, point (16), Article 41a(2)

Text proposed by the European Commission	CoR amendment
<p>Persons referred to in paragraph 1 shall be kept for a period not exceeding 12 weeks in locations at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it can resort to the use of other locations within its territory. The 12-week period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain.</p>	<p>Persons referred to in paragraph 1 shall be accommodated for a period not exceeding 8 weeks in locations at or in proximity to the external border or transit zones; where a Member State cannot accommodate them in those locations, it can, after first consulting the competent local and regional authorities, resort to the use of other locations within its territory. The 8-week period shall start from when the applicant, third-country national or stateless person no longer has a right to remain and is not allowed to remain.</p>

Reason

When planning the locations for carrying out border procedures, it is important to take due account of the needs of the competent local and regional authorities. Likewise, not more than 8 weeks should be available for carrying out the return procedure in order to alleviate the pressure on border regions. In its judgement on the Hungarian transit zone of 14 May 2020, the Court of Justice of the European Union (CJEU) stated that the 'specific procedures [at the border] must be carried out within a reasonable time' and states that already after four weeks, entry to the regular procedure must be granted. As the situation in the transit zone is a situation of deprivation of liberty, border procedures in transit zones have to be conducted quickly. A period of more than eight weeks, which already doubles the time limit allowed for at the moment according to Article 43 of the Asylum Procedures Directive (4 weeks), would most probably be seen as unreasonable both by the CJEU as well as the European Court of Human Rights (ECtHR). A period of eight weeks suffices to conduct an asylum procedure in most of the cases. If the procedure ends with a negative decision, an additional eight weeks are foreseen for the return procedure. If the total of the procedure runs for more than three months, it is not likely that the return may be carried out expeditiously as foreseen for the border procedure. According to Article 34 of the 2016 proposal for an Asylum Procedure Regulation, it is foreseen that decisions on admissibility and on the use of third country agreements have to be taken within one month. A period of more than two months for a decision in the border procedure would therefore be unreasonable from a legal perspective. It is also necessary to foresee a short period as returns are more likely to occur after a swift procedure with minimal waiting times. Moreover, terminology needs to be consistent across the proposal, and ambiguous terms which could invoke de facto detention such as 'kept' should be avoided and replaced with legally precise wording such as 'accommodated', in line with the revised Reception Conditions Directive.

Amendment 27

COM(2020) 611 final, point (18), Article 53(9)

Text proposed by the European Commission	CoR amendment
<p>Member States shall provide for only one level of appeal in relation to a decision taken in the context of the border procedure.</p>	<p>In relation to a decision taken in the context of the border procedure, Member States shall provide for a remedy in accordance with Article 47 of the Charter of Fundamental Rights. For appeals, the time limits foreseen in national law apply in accordance with Article 55. Applicants have the right to remain on the territory during the period of appeal and pending its outcome in accordance with Article 54.</p>

Reason

The rigid limitation to only one level of appeal and the strict deadline for border procedures interferes with the competencies of Member States who are procedurally autonomous when it comes to providing a legal remedy in the context of border procedures. They are, however, bound to respect Article 47 of the Charter of Fundamental Rights, according to CJEU case law, which stipulates that rules on legal remedies must comply with the principle of non-discrimination and the principles of equivalence and effectiveness. This means that discrimination against other asylum seekers and unequal treatment in relation to other comparable administrative court proceedings is not permitted. The proposed amendment aims to ensure compliance with these requirements. Likewise, the delay within which a response to an appeal must be issued cannot be set uniformly at EU level and it is therefore best to link it to national administrative law provisions.

Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817

Amendment 28

COM(2020) 612 final, Recital 12

Text proposed by the European Commission	CoR amendment
<p>The screening should be conducted at or in proximity to the external border, <i>before the persons concerned are authorised to enter the territory</i>. The Member States should apply measures pursuant to national law to prevent the persons concerned from <i>entering</i> the territory during the screening. In individual cases, where required, this may include detention, subject to the national law regulating that matter.</p>	<p>The screening should be conducted at or in proximity to the external border. The Member States should apply measures pursuant to national law to prevent the persons concerned from <i>moving further onto</i> the territory during the screening. In individual cases, where required, <i>except for cases involving minors</i>, this may include detention, subject to the national law regulating that matter. <i>If as a result of the screening procedure, further onward movement is denied, Article 14 of the Schengen Borders Code shall apply.</i></p>

Reason

International law precludes children's deprivation of liberty on administrative grounds and according to the CJEU, minors cannot be treated systematically as adults in the migration context. Refusing onward movement after screening must be fully substantiated, in line with the Schengen Borders Code.

Amendment 29

COM(2020) 612 final, Recital 20

Text proposed by the European Commission	CoR amendment
<p>The Member States should determine appropriate locations for the screening <i>at or in proximity to the external border</i> taking into account geography and existing infrastructures, ensuring that apprehended third-country nationals as well as those who present themselves at a border crossing point can be swiftly submitted to the screening. The tasks related to the screening may be carried out in hotspot areas as referred to in point (23) of Article 2 of Regulation (EU) 2019/1896 of the European Parliament and of the Council²³.</p>	<p>The Member States should determine appropriate locations for the screening taking into account <i>the opinions of the competent local and regional authorities</i>, geography and existing infrastructures, ensuring that apprehended third-country nationals as well as those who present themselves at a border crossing point can be swiftly submitted to the screening. The tasks related to the screening may be carried out in hotspot areas as referred to in point (23) of Article 2 of Regulation (EU) 2019/1896 of the European Parliament and of the Council²³.</p>

Reason

Member States should be allowed to choose the appropriate locations according to their national circumstances and possibilities. In particular, they should be able to take account of the particular pressure placed on regions at or near external borders through decentralisation possibilities. It is important for the planning of screening sites to take due account of the needs of the competent local or regional authorities.

Amendment 30

COM(2020) 612 final, Recital 24

Text proposed by the European Commission	CoR amendment
<p>By the end of the screening, the authorities responsible for the screening should fill in a de-briefing form. The form should be transmitted to the authorities examining applications for international protection or to the authorities competent for return — depending on whom the individual is referred to. In the former case, the authorities responsible for the screening should also indicate any elements which may seem to be relevant for determining whether the competent authorities should submit the application of the third-country national concerned to an accelerated examination procedure or to the border procedure.</p>	<p>By the end of the screening, the authorities responsible for the screening should fill in a de-briefing form. The form should be transmitted to the authorities examining applications for international protection or to the authorities competent for return — depending on whom the individual is referred to – as well as, where appropriate, to the authorities responsible for health and safety under national law, and/or the authorities responsible for particularly vulnerable sections of the population, such as unaccompanied minors and women travelling alone. In the former case, the authorities responsible for the screening should also indicate any elements, in particular any special protection needs, which may seem to be relevant for determining whether the competent authorities should submit the application of the third-country national concerned to an accelerated examination procedure or to the border procedure.</p>

Reason

Any justified health or safety concerns should be forwarded to the corresponding competent authorities. Even where there is provision for the involvement of these authorities in the screening, steps should be taken to ensure that they receive all relevant information. This holds true for cases where special protection needs have been identified during screening, if a different authority is competent under national law, as is regularly the case for children, and possibly also for victims of trafficking and other groups. In particular, it is important to remember those groups that are the most vulnerable and that may be subject to abuse throughout the migration process, such as unaccompanied minors and women travelling alone.

Amendment 31

COM(2020) 612 final, Article 3(1)

Text proposed by the European Commission	CoR amendment
<p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Screening at the external border</p> <p>1. This Regulation shall apply to all third-country nationals who:</p>	<p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Screening at the external border</p> <p>1. This Regulation shall apply to all third-country nationals who:</p>

Text proposed by the European Commission	CoR amendment
<p>a) are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air, except third country nationals for whom the Member State is not required to take the biometric data pursuant to Article 14(1) and (3) of Regulation (EU) 603/2013 for reasons other than their age, or</p> <p>b) are disembarked in the territory of a Member State following a search and rescue operation.</p> <p>The screening shall apply to those persons regardless of whether they have applied for international protection.</p>	<p>a) are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air, except third country nationals for whom the Member State is not required to take the biometric data pursuant to Article 14(1) and (3) of Regulation (EU) 603/2013 for reasons other than their age, or</p> <p>b) are disembarked in the territory of a Member State following a search and rescue operation.</p> <p>Those persons shall be subject to screening by the authority responsible for refusing entry in accordance with Article 14(2) of Regulation (EU) 2016/399 (Schengen Borders Code) in accordance with national law, regardless of whether they have applied for international protection.</p>

Reason

The screening procedure introduces yet another step in the already burdensome migration management processes for many Member States with external EU borders. In order to avoid this requiring a separate procedure, which generates a significant additional burden, particularly for the external border countries, the Committee of the Regions proposes that this procedure be integrated into border controls and that the national authorities responsible for refusing entry in accordance with Article 14(2)(2) of Regulation (EU) 2016/399 (the Schengen Borders Code) be entrusted with it if the screening relates to an entry that does not fulfil entry conditions at the external border. Incorporating this into the border control process and the tasks of the border authorities will do more to ensure that the screening can fulfil its intended function, namely that people who are apprehended are subject to the appropriate procedures at the earliest opportunity and that these procedures can start without delay or interruption. As there are three possible approaches for third-country nationals covered by Article 3 (refusal of entry, referral to the authorities responsible for the return procedure, referral to the asylum authorities or to the Member State responsible for the asylum procedure based on a solidarity mechanism), one of which is refoulement at the border in accordance with Article 14 of Regulation (EU) 2016/399 (Schengen Borders Code), this allocation of the screening ensures a uniform approach and a link between screening and possible refusal of entry, which makes it much easier to carry out this procedure. In addition, the outcome of the screening can then be included in the decision to refuse entry without further intermediate steps.

Amendment 32

COM(2020) 612 final, Article 5

Text proposed by the European Commission	CoR amendment
<p>Screening within the territory</p> <p>Member States shall apply the screening to third-country nationals found within their territory where there is no indication that they have crossed an external border to enter the territory of the Member States in an authorised manner.</p>	<p>Screening within the territory</p> <p>Member States shall apply the screening to third-country nationals found within their territory where there is no indication that they have crossed an external border to enter the territory of the Member States in an authorised manner. To relieve the pressure on Member States' authorities, duplications of parts of the screening functions, such as in the case of an application for international protection, should be avoided.</p>

Reason

Screening must be conducted separately only if necessary. When applying for international protection, some screening functions (identification, special protection needs) are included in obligations under Eurodac and the Reception Conditions Directive and screening should be part of these procedures.

Amendment 33

COM(2020) 612 final, Article 6

Text proposed by the European Commission	CoR amendment
<p style="text-align: center;"><i>Article 6</i></p> <p style="text-align: center;">Requirements concerning the screening</p> <p>1. In the cases referred to in Article 3, the screening shall be conducted at locations <i>situated at or in proximity to the external borders.</i></p> <p>2. In the cases referred to in Article 5, the screening shall be conducted at any appropriate location within the territory of a Member State.</p> <p>3. In the cases referred to in Article 3, the screening shall be carried out without delay and shall in any case be completed within 5 days from the apprehension in the external border area, the disembarkation in the territory of the Member State concerned or the presentation at the border crossing point. In exceptional circumstances, where a disproportionate number of third-country nationals needs to be subject to the screening at the same time, making it impossible in practice to conclude the screening within that time-limit, the period of 5 days may be extended by a maximum of an additional 5 days.</p> <p>With regard to persons referred to in Article 3(1)(a) to whom Article 14 (1) and (3) of Regulation (EU) 603/2013 apply, where they remain physically at the external border for more than 72 hours, the period for the screening shall be reduced to two days.</p>	<p style="text-align: center;"><i>Article 6</i></p> <p style="text-align: center;">Requirements concerning the screening</p> <p>1. In the cases referred to in Article 3, the screening shall be conducted at <i>appropriate</i> locations <i>in the Member State concerned. These locations shall be determined after consultation with the competent local or regional authority.</i></p> <p>2. In the cases referred to in Article 5, the screening shall be conducted at any appropriate location within the territory of a Member State. <i>These locations shall be determined after consultation with the competent local or regional authority.</i></p> <p>3. In the cases referred to in Article 3, the screening shall be carried out without delay and shall in any case be completed within 5 days from the apprehension in the external border area, the disembarkation in the territory of the Member State concerned or the presentation at the border crossing point. In exceptional circumstances, where a disproportionate number of third-country nationals needs to be subject to the screening at the same time, making it impossible in practice to conclude the screening within that time-limit, the period of 5 days may be extended by a maximum of an additional 5 days.</p> <p>With regard to persons referred to in Article 3(1)(a) to whom Article 14 (1) and (3) of Regulation (EU) 603/2013 apply, where they remain physically at the external border for more than 72 hours, the period for the screening shall be reduced to two days.</p> <p><i>In any case, the procedures must ensure the adequate assessment of each case to prevent discriminatory conduct in the process.</i></p>

Text proposed by the European Commission	CoR amendment
<p>4. Member States shall notify the Commission without delay about the exceptional circumstances referred to in paragraph 3. They shall also inform the Commission as soon as the reasons for extending the screening period have ceased to exist.</p> <p>5. The screening referred to in Article 5 shall be carried out without delay and in any case shall be completed within 3 days from apprehension.</p> <p>6. The screening shall comprise the following mandatory elements:</p> <p>a) preliminary health and vulnerability check as referred to in Article 9;</p> <p>b) identification as referred to in Article 10;</p> <p>c) registration of biometric data in the appropriate databases as referred to in Article 14(6), to the extent it has not occurred yet;</p> <p>d) security check as referred to in Article 11;</p> <p>e) the filling out of a de-briefing form as referred to in Article 13;</p> <p>f) referral to the appropriate procedure as referred to in Article 14.</p> <p>7. Member States shall designate competent authorities to carry out the screening.</p> <p>Member States shall designate qualified medical staff to carry out the health check provided for in Article 9. National child protection authorities and national anti-trafficking rapporteurs shall also be involved, where appropriate.</p> <p>The competent authorities may be assisted or supported in the performance of the screening by experts or liaison officers and teams deployed by the European Border and Coast Guard Agency and the [European Union Agency for Asylum] within the limits of their mandates.</p>	<p>4. Member States shall notify the Commission without delay about the exceptional circumstances referred to in paragraph 3. They shall also inform the Commission as soon as the reasons for extending the screening period have ceased to exist.</p> <p>5. The screening referred to in Article 5 shall be carried out without delay and in any case shall be completed within 3 days from apprehension.</p> <p>6. The screening shall comprise the following mandatory elements:</p> <p>a) preliminary health and vulnerability check as referred to in Article 9;</p> <p>b) identification as referred to in Article 10;</p> <p>c) registration of biometric data in the appropriate databases as referred to in Article 14(6), to the extent it has not occurred yet;</p> <p>d) security check as referred to in Article 11;</p> <p>e) the filling out of a de-briefing form as referred to in Article 13;</p> <p>f) referral to the appropriate procedure as referred to in Article 14.</p> <p>7. Member States shall designate competent authorities to carry out the screening in accordance with Articles 3 and 5.</p> <p>Member States shall designate qualified medical staff to carry out the health check provided for in Article 9. National child protection authorities and national anti-trafficking rapporteurs shall also be involved, where appropriate.</p> <p>The competent authorities may be assisted or supported in the performance of the screening by experts or liaison officers and teams deployed by the European Border and Coast Guard Agency and the [European Union Agency for Asylum] within the limits of their mandates.</p>

Reason

Member States should be allowed to choose the appropriate locations according to their national circumstances and possibilities. In particular, they should be able to take account of the particular pressure placed on regions at or near external borders through decentralisation possibilities. When planning screening sites, due account has to be taken of the needs of the competent local and regional authorities.

The procedure must not be carried out in a discriminatory manner. In order to avoid overlaps of responsibilities, designation of the competent authorities must comply with the proposed provisions under Articles 3 and 5.

Amendment 34

COM (2020) 612 final, Article 9(3)

Text proposed by the European Commission	CoR amendment
<p>Where there are indications of vulnerabilities or special reception or procedural needs, the third-country national concerned shall receive timely and adequate support in view of their physical and mental health. In the case of minors, support shall be given by personnel trained and qualified to deal with minors, and in cooperation with child protection authorities.</p>	<p>Where there are indications of vulnerabilities or special reception or procedural needs, the third-country national concerned shall receive timely and adequate support in view of their physical and mental health by qualified specialist advisory services or the competent authorities, also ensuring the availability of adequate professionals for the specific needs of certain groups of third-country nationals, such as pregnant women, victims of gender-based or sexual violence, and people with disabilities, and LGBTIQ people. In the case of minors, support shall be given by personnel trained and qualified to deal with minors, and in cooperation with child protection authorities. To this end, the presence of minors shall be reported immediately to the national authorities responsible for child protection. Unaccompanied minors shall not be screened; they must be forwarded immediately to the competent child protection authorities. In addition, where there are indications of serious security concerns within the meaning of Article 40(5)(b), the competent authorities shall be informed.</p>

Reason

Where special protection needs have been identified, support should be provided by specialised advisory services or by the authorities responsible for the protection of people in such situations in order to ensure timely, expert assistance. It is also necessary to ensure that the presence of minors is reported immediately to the competent authorities for the protection of children. If the people concerned are unaccompanied and minors, they must be forwarded to the competent authorities in order to enable these to take the protection and support measures stipulated under international, European and national law and, in particular, to appoint a guardian or carer. At the same time, LGBTIQ people need protection because they represent the final group of the most vulnerable migrants. They are currently arriving in Europe in high numbers, but we lack real protection systems for them.

Amendment 35

COM (2020) 612 final, Article 14

Text proposed by the European Commission	CoR amendment
<p style="text-align: center;"><i>Article 14</i></p> <p style="text-align: center;">Outcome of the screening</p> <p>[...]</p>	<p style="text-align: center;"><i>Article 14</i></p> <p style="text-align: center;">Outcome of the screening</p> <p>[...]</p>

Text proposed by the European Commission	CoR amendment
<p>2. Third-country nationals who made an application for international protection shall be referred to the authorities referred to in Article XY of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation], together with the form referred to in Article 13 of this Regulation. On that occasion, the authorities conducting the screening shall point in the de-briefing form to any elements which <i>seem</i> at first sight to be relevant to refer the third-country nationals concerned into the accelerated examination procedure or the border procedure.</p> <p>[...]</p> <p>7. Where the third country nationals referred to in Article(s) 3(1) and Article 5 are referred to an appropriate procedure regarding asylum or return, the screening ends. Where not all the checks have been completed within the deadlines referred to in Article 6(3) and (5), the screening shall nevertheless end with regard to that person, who shall be referred to a relevant procedure.</p>	<p>2. Third-country nationals who made an application for international protection shall be referred to the authorities referred to in Article XY of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation], together with the form referred to in Article 13 of this Regulation. On that occasion, the authorities conducting the screening shall point in the de-briefing form to any elements which at first sight indicate in favour of or against referring the third-country nationals concerned into the accelerated examination procedure or the border procedure. In particular, reference is to be made to findings or suspicions regarding special protection needs, especially in the case of unaccompanied minors.</p> <p>[...]</p> <p>7. Where appropriate, the authorities responsible for health, safety and the protection of special groups shall be informed and, where provided for under national law, the cases of the persons concerned shall be forwarded to these authorities.</p> <p>8. Where the third country nationals referred to in Article(s) 3(1) and Article 5 are referred to an appropriate procedure regarding asylum or return, the screening ends. Where not all the checks have been completed within the deadlines referred to in Article 6(3) and (5), the screening shall nevertheless end with regard to that person, who shall be referred to a relevant procedure.</p>

Reason

In order to ensure that people with special protection needs are not transferred to the border procedure or an accelerated procedure, which in such cases could only be carried out with significant legal and practical difficulty, it should be clarified that such people are being referred to the asylum authority before that authority decides on the type of procedure to be followed. In particular, where there are health and safety concerns, referral should be possible not only to the asylum authority or to the authorities responsible for the return procedure. In addition, Member States should retain the possibility of covering specific responsibilities for certain groups with special protection needs. In particular, it is essential to take into account the special protection measures required for unaccompanied foreign minors.

Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum

Amendment 36

COM(2020) 613 final, Recital 11

Text proposed by the European Commission	CoR amendment
<p>The procedural rules set out in Regulation (EU) XXX/XXX [Asylum and Migration Management] for carrying out relocation and return sponsorship should be applied for the purpose of ensuring the proper implementation of the solidarity measures in a situation of crisis, although they should be adjusted in order to take into account the gravity and urgency of that situation.</p>	<p>The procedural rules set out in Regulation (EU) XXX/XXX [Asylum and Migration Management] for carrying out relocation and return sponsorship should be applied for the purpose of ensuring the proper implementation of the solidarity measures in a situation of crisis, although they should be adjusted in order to take into account the gravity and urgency of that situation. <i>In particular, unaccompanied minors should be relocated to the Member States that are responsible for them as soon as is possible or to other parts of the EU if they have family members in other Member States.</i></p>

Reason

Advocating improved access to rights for unaccompanied minors has long been a CoR position and stems from the (legal) need to give primary consideration to the best interests of the child. The EU needs to help unaccompanied minors relocate to other Member States if they have family members there to alleviate the pressure on border regions and in the spirit of solidarity and shared responsibility that the new pact should advocate.

Amendment 37

COM(2020) 613 final, Recital 14

Text proposed by the European Commission	CoR amendment
<p>In order to ensure that Member States have the necessary flexibility when confronted with a large influx of migrants expressing the intention to apply for asylum, the application of the border procedure, established by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedures Regulation] should be broadened, and an asylum crisis management procedure should allow Member States to <i>take a decision in the framework of a border procedure also on the merits of an application in cases where the applicant is of a nationality, or, in the case of stateless persons, a former habitual resident of a third country, for which the proportion of decisions granting international protection Union-wide is 75 % or lower. As a result, in the application of the crisis border procedure, Member States should continue applying the border procedure as provided by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedures Regulation] but could extend the application of the border procedure to nationals who come from third countries where the EU-wide average recognition rate is above 20 % but under 75 %.</i></p>	<p>In order to ensure that Member States have the necessary flexibility when confronted with a large influx of migrants expressing the intention to apply for asylum, the application of the border procedure, established by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedures Regulation] should be broadened, and an asylum crisis management procedure should allow Member States, <i>in consultation with the Commission, to apply the regular asylum procedure so as to alleviate the impact on the border regions under migrant pressure.</i></p>

Reason

In strained situations, border procedures put extra burden on border regions. Member States should have the option of dispensing with border procedures in consultation with the Commission to manage arrivals efficiently, processing asylum procedures in non-border locations on their territory.

Amendment 38

COM(2020) 613 final, Recital 16

Text proposed by the European Commission	CoR amendment
<p>In a situation of crisis, in view of the possible strain on the asylum system, Member States should have the possibility not to authorise the entry in their territory of applicants subject to a border procedure for a longer period of time than the ones set in Article 41 (11) and (13) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation]. However, the procedures should be completed as soon as possible and in any event the periods of time should only be prolonged by an additional period not exceeding eight weeks; if those procedures cannot be completed by the expiry of that prolonged period, applicants should be authorised to enter the territory of a Member State for the purpose of completing the procedure for international protection.</p>	<p>In a situation of crisis, in view of the possible strain on the asylum system, but taking into account the strain upon the regions impacted by such crisis, Member States should have the possibility not to authorise the further movement onto their territory of applicants subject to a border procedure for a longer period of time than the ones set in Article 41 (11) and (13) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation]. However, the procedures should be completed as soon as possible and in any event the periods of time should only be prolonged by an additional period not exceeding eight weeks. If the procedures cannot be completed by the expiry of that prolonged period, applicants are authorised to further move onto the territory of the Member State for the purpose of completing the procedure for international protection.</p>

Reason

The prolongation of a border procedure should not be implemented without first considering the impact on the regions.

Amendment 39

COM(2020) 613 final, Recital 23

Text proposed by the European Commission	CoR amendment
<p>In a crisis situation, Member States should have the possibility to suspend the examination of applications for international protection made by displaced persons from third countries who are unable to return to their country of origin, where they would face a high degree of risk of being subject to indiscriminate violence, in exceptional situations of armed conflict. In such a case, immediate protection status should be granted to those persons. Member States should resume the examination of their application one year at the latest from its suspension.</p>	<p>In a crisis situation, Member States should have the possibility to suspend the examination of applications for international protection made by displaced persons from third countries who are unable to return to their country of origin, where they would face a high degree of risk of being subject to indiscriminate violence, in exceptional situations of armed conflict. In such a case, immediate protection status should be granted to those persons. In a crisis situation, the Member State should also have the discretion to grant immediate protection status to children and particularly vulnerable persons as well as to other groups of persons in need of immediate protection, if provided under national law. Member States should resume the examination of their application one year at the latest from its suspension.</p>

Reason

In situations covered by the Crisis Regulation, children and people with special protection needs need a minimum level of security of stay. In line with subsidiarity, MS should have the option to let third-country nationals stay on their territory on other grounds, as stipulated by national laws.

Amendment 40

COM(2020) 613 final, Article 1(2)

Text proposed by the European Commission	CoR amendment
<p style="text-align: center;"><i>Article 1</i></p> <p style="text-align: center;">Subject matter</p> <p>[...]</p> <p>2. For the purposes of this Regulation, a situation of crisis is to be understood as:</p> <p>(a) an exceptional situation of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State or disembarked on its territory following search and rescue operations, being of such a scale, in proportion to the population and GDP of the Member State concerned, and nature, that it renders the Member State's asylum, reception or return system non-functional and can have serious consequences for the functioning the Common European Asylum System or the Common Framework as set out in Regulation (EU) XXX/XXX [<i>Asylum and Migration Management</i>], or</p> <p>(b) an imminent risk of such a situation.</p>	<p style="text-align: center;"><i>Article 1</i></p> <p style="text-align: center;">Subject matter</p> <p>[...]</p> <p>2. For the purposes of this Regulation, a situation of crisis is to be understood as:</p> <p>(a) an exceptional situation of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State or disembarked on its territory following search and rescue operations, being of such a scale, in proportion to the population and GDP of the Member State concerned, and nature, that it renders the Member State's asylum, reception or return system at local, regional and/or national level non-functional and can have serious consequences for the functioning the Common European Asylum System or the Common Framework as set out in Regulation (EU) XXX/XXX [<i>Asylum and Migration Management</i>], or</p> <p>(b) an imminent risk of such a situation.</p>

Reason

The burden of large numbers of entries and applications is often distributed differently across regions and depends in particular on the routes taken by migrants. A functional failure at local or regional level should also be defined as a crisis situation if it has the same consequences for the people concerned, in order to stress that, while relatively speaking a Member State's asylum system may still be fully operational at national level, there may be places or regions where this is not the case; and this non-functionality may cause major problems as regards providing or failing to provide services at local level.

Amendment 41

COM(2020) 613 final, Article 4

Text proposed by the European Commission	CoR amendment
<p>1. In a crisis situation as referred to in Article 1(2), and in accordance with the procedures laid down in Article 3, Member States may, as regards applications made within the period during which this Article is applied, derogate from Article 41 of Regulation (EU) XXX/XXX [Asylum Procedures Regulation] as follows:</p> <p>(a) By way of derogation from Article 41(2)(b) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], Member States may in a border procedure take decisions on the merits of an application in cases where the applicant is of a nationality, or, in the case of stateless persons, a former habitual resident of a third country, for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 75 % or lower, in addition to the cases referred to in Article 40(1) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation];</p> <p>(b) By way of derogation from Article 41(11) and (13) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], the maximum duration of the border procedure for the examination of applications set out in that Article may be prolonged by an additional period of maximum eight weeks. Following this period, the applicant shall be authorised to enter the Member State's territory for the completion of the procedure for international protection.</p>	<p>1. In a crisis situation as referred to in Article 1(2), and in accordance with the procedures laid down in Article 3, Member States may, as regards applications made within the period during which this Article is applied, derogate from Article 41 of Regulation (EU) XXX/XXX [Asylum Procedures Regulation] as follows:</p> <p>(a) By way of derogation from Article 41(2)(b) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], Member States may – in consultation with the Commission — decide not to apply a border procedure.</p> <p>(b) By way of derogation from Article 41(11) and (13) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], the maximum duration of the border procedure for the examination of applications set out in that Article may be prolonged by an additional period of maximum six weeks. Following this period, the applicant shall be authorised to enter the Member State's territory for the completion of the procedure for international protection.</p>

Reason

In crisis situations, application of the border procedure may cause additional overloads for border regions. Member States should therefore, in consultation with the European Commission, have the possibility of dispensing with the border procedure in order to manage arrivals more efficiently. Only a six-week extension of the border procedure should be possible in order to avoid creating (additional) congestion at the border.

Amendment 42

COM(2020) 613 final, Article 10(1)

Text proposed by the European Commission	CoR amendment
<p style="text-align: center;"><i>Article 10</i></p> <p style="text-align: center;">Granting of immediate protection status</p> <p>1. In a crisis situation as referred to in Article 1(2)(a), and on the basis of an implementing act adopted by the Commission in accordance with paragraph 4 of this Article, Member States may suspend the examination of applications for international protection in accordance with Regulation (EU) XXX/XXX [<i>Asylum Procedures Regulation</i>] and Regulation (EU) XXX/XXX [<i>Qualification Regulation</i>] in respect of displaced persons from third countries who are facing a high degree of risk of being subject to indiscriminate violence, in exceptional situations of armed conflict, and who are unable to return to their country of origin. In such a case, Member States shall grant immediate protection status to the persons concerned, unless they represent a danger to the national security or public order of the Member State. Such status shall be without prejudice to their ongoing application for international protection in the relevant Member State.</p>	<p style="text-align: center;"><i>Article 10</i></p> <p style="text-align: center;">Granting of immediate protection status</p> <p>1. In a crisis situation as referred to in Article 1(2)(a), and on the basis of an implementing act adopted by the Commission in accordance with paragraph 4 of this Article, Member States may suspend the examination of applications for international protection in accordance with Regulation (EU) XXX/XXX [<i>Asylum Procedures Regulation</i>] and Regulation (EU) XXX/XXX [<i>Qualification Regulation</i>] in respect of displaced persons from third countries who are facing a high degree of risk of being subject to indiscriminate violence, in exceptional situations of armed conflict, and who are unable to return to their country of origin. In such a case, Member States shall grant immediate protection status to the persons concerned, unless they represent a danger to the national security or public order of the Member State. <i>In a crisis situation, the Member State should also have the discretion to grant immediate protection status to children and particularly vulnerable persons, and other groups of persons in need of immediate protection, if provided for in national law.</i> Such status shall be without prejudice to their ongoing application for international protection in the relevant Member State.</p>

Reason

In situations covered by the Crisis Regulation, children and people with special protection needs need a minimum level of security of stay. In line with subsidiarity, MS should have the option to let third-country nationals stay on their territory on other grounds, as stipulated by national laws.

Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data for the effective application of Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management] and of Regulation (EU) XXX/XXX [Resettlement Regulation], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulations (EU) 2018/1240 and (EU) 2019/818

Amendment 43

COM(2020) 614 final, point (14), Article 10 (1)

Text proposed by the European Commission	CoR amendment
<p>Each Member State shall take the biometric data of every applicant for international protection of at least six years of age during the screening as referred to in Regulation (EU) XXX/XXX [Screening Regulation] or, where the biometric data could not be taken during the screening or where the applicant was not subject to screening, upon the registration of the application for international protection referred to in Article 27 of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation] and shall, as soon as possible and no later than 72 hours after the biometric data have been taken, transmit them together with the data referred to in Article 12 (c) to (p) of this Regulation to the Central System and to the CIR as appropriate in accordance with Article 4(2).</p> <p>Where Article 3(1) of Regulation (EU) XXX/XXX [Screening Regulation] applies and the person applies for international protection during screening, for every applicant for international protection of at least six years of age, each Member State shall use the biometric data taken during screening and transmit them together with the data referred to in Article 12 (c) to (p) of this Regulation to the Central System and to the CIR as appropriate in accordance with Article 4(2), no later than 72 hours from the registration of the application referred to in Article 27 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].</p> <p>Non-compliance with the 72-hour time-limit shall not relieve Member States of the obligation to take and transmit the biometric data to the CIR. Where the condition of the fingertips does not allow the taking of the fingerprints of a quality ensuring appropriate comparison under Article 26, the Member State of origin shall retake the fingerprints of the applicant and resend them as soon as possible and no later than 48 hours after they have been successfully retaken.</p>	<p>Each Member State shall take the biometric data of every applicant for international protection of at least twelve years of age during the screening as referred to in Regulation (EU) XXX/XXX [Screening Regulation] or, where the biometric data could not be taken during the screening or where the applicant was not subject to screening, upon the registration of the application for international protection referred to in Article 27 of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation] and shall, as soon as possible and no later than 72 hours after the biometric data have been taken, transmit them together with the data referred to in Article 12 (c) to (p) of this Regulation to the Central System and to the CIR as appropriate in accordance with Article 4(2).</p> <p>Where Article 3(1) of Regulation (EU) XXX/XXX [Screening Regulation] applies and the person applies for international protection during screening, for every applicant for international protection of at least twelve years of age, each Member State shall use the biometric data taken during screening and transmit them together with the data referred to in Article 12 (c) to (p) of this Regulation to the Central System and to the CIR as appropriate in accordance with Article 4(2), no later than 72 hours from the registration of the application referred to in Article 27 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].</p> <p>Non-compliance with the 72-hour time-limit shall not relieve Member States of the obligation to take and transmit the biometric data to the CIR. Where the condition of the fingertips does not allow the taking of the fingerprints of a quality ensuring appropriate comparison under Article 26, the Member State of origin shall retake the fingerprints of the applicant and resend them as soon as possible and no later than 48 hours after they have been successfully retaken.</p>

Reason

The Visa Code requests fingerprinting visa applicants from the age of 12; the same applies to children entering the EU for a short stay under the Entry/Exit System (EES). Aligning Eurodac age threshold to that of the Visa Code and EES ensures coherence and data reliability in medium/longer term.

Amendment 44

COM(2020) 614 final, point (17), Article 13(1)

Text proposed by the European Commission	CoR amendment
<p>Each Member State shall promptly take the biometric data of every third-country national or stateless person of at least six years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back or who remains physically on the territory of the Member States and who is not kept in custody, confinement or detention during the entirety of the period between apprehension and removal on the basis of the decision to turn him or her back.</p>	<p>Each Member State shall promptly take the biometric data of every third-country national or stateless person of at least twelve years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back or who remains physically on the territory of the Member States and who is not kept in custody, confinement or detention during the entirety of the period between apprehension and removal on the basis of the decision to turn him or her back.</p>

Reason

The Visa Code requests fingerprinting visa applicants from the age of 12; the same applies to children entering the EU for a short stay under the Entry/Exit System (EES). Aligning Eurodac age threshold to that of the Visa Code and EES ensures coherence and data reliability in medium/longer term.

Amendment 45

COM(2020) 614 final, point (18), Article 14 (1)

Text proposed by the European Commission	CoR amendment
<p>Each Member State shall promptly take the biometric data of every third-country national or stateless person of at least six years of age who is illegally staying within its territory.</p>	<p>Each Member State shall promptly take the biometric data of every third-country national or stateless person of at least twelve years of age who is illegally staying within its territory.</p>

Reason

The Visa Code requests fingerprinting visa applicants from the age of 12; the same applies to children entering the EU for a short stay under the Entry/Exit System (EES). Aligning Eurodac age threshold to that of the Visa Code and EES ensures coherence and data reliability in medium/longer term.

Amendment 46

COM(2020) 614 final, point (19), Article 14a (1)

Text proposed by the European Commission	CoR amendment
Each Member State shall promptly take the biometric data of every third-country national or stateless person of at least six years of age who is disembarked following a search and rescue operation as defined in Regulation (EU) XXX/XXX [<i>Regulation on Asylum and Migration Management</i>].	Each Member State shall promptly take the biometric data of every third-country national or stateless person of at least twelve years of age who is disembarked following a search and rescue operation as defined in Regulation (EU) XXX/XXX [<i>Regulation on Asylum and Migration Management</i>].

Reason

The Visa Code requests fingerprinting visa applicants from the age of 12; the same applies to children entering the EU for a short stay under the Entry/Exit System (EES). Aligning Eurodac age threshold to that of the Visa Code and EES ensures coherence and data reliability in medium/longer term.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

1. welcomes the Commission's proposal for a new migration and asylum pact to move beyond the five years of deadlock between Member States on a common asylum and migration system; supports the Commission's objective of developing a comprehensive system for managing migration in the long term, including refugee migration, based on European values, in particular the values of solidarity and dignity, as well as on EU and international law ⁽¹⁾;
2. is concerned that the local and regional dimension has not been sufficiently taken into account in the proposals as part of the new pact and that the countries on the EU's external borders are once again to have primary responsibility for arrival and registration. In this context, it is critical of the fact that the first entry criterion is being maintained. Thus, in the interests of genuine solidarity, calls for the speedy and fair distribution of asylum seekers to other Member States and greater involvement of the new European Agency for Asylum (EUAA), local regional authorities and civil society players, with a view to multilevel cooperation involving the relevant public and private sector stakeholders;
3. reiterates its call for a long-term solution to the challenges of dealing with irregular arrivals and the accommodation of people seeking protection in accordance with international and EU law, while ensuring that the principle of non-refoulement is respected and that all decisions and measures take into account the interests of vulnerable people. To that end, the CoR suggests that the Asylum and Migration Management Regulation and the New Pact on Migration and Asylum consider existing best practices of voluntary territorial distribution at regional level, which apply a key based on population, unemployment and income data ⁽²⁾
4. notes that a fixed quota for the distribution of asylum seekers across the Union has not been feasible; does, however, welcome in principle the Commission's proposal to introduce a solidarity mechanism in which all Member States must participate, but which allows them to choose freely between different types of contributions; points out that for this mechanism to work, there is a need to strike a balance between the places available for hosting refugees and other forms of contributions. It is thus crucial to ensure that the number of Member States hosting refugees is commensurate with the number of Member States opting for another type of contributions, and with the proportion of applicants with grounds for asylum to those to be returned;

⁽¹⁾ CoR Bureau Declaration on the situation of migrants in Moria (COR-2020-02499, point 9).

⁽²⁾ This is the case of the 'SHARE' proposal — an initiative led by the Basque Government and supported by various regional governments — which seeks to promote solidarity and co-responsibility in the reception of refugees and asylum seekers, applying a territorial distribution key on the basis of the three aforementioned key parameters.

5. however, given the complexity of the proposed procedure, is sceptical about whether the 'return sponsorship' system is feasible in practice. In this connection, suggests establishing a system of economic incentives and sanctions to ensure implementation of the solidarity mechanism;
6. underlines the importance of human rights and the rule of law (e.g. free access to independent advice and legal representation and to the United Nations High Commissioner for Refugees (UNHCR)), principles which also apply at the external borders of Europe. This holds true particularly for the proposed border procedures, which must be in keeping with European values and the rule of law and ensure that there is no discrimination on grounds of nationality; a different model from the one linked to the protection rate used for border procedures should be chosen. The new border procedures must also guarantee these standards in practice;
7. suggests that the co-legislators examine the provisions of Articles 53 and 54 of the proposal for an Asylum Procedure Regulation for their compatibility with CJEU case law on effective legal protection and the need to comply with other European law and rule of law principles when establishing legal protection in the light of Article 47 of the Charter of Fundamental Rights;
8. calls for the proposed screening procedure to be conducted in a way that allows for an effective identification of 'particular vulnerabilities' at an early stage. This includes the identification and appropriate treatment of categories of people mentioned in the Reception Conditions Directive and the proposed Asylum Procedure Regulation;
9. points out that the maximum period of five days provided for this screening will in many cases not be enough to effectively identify special protection needs. Further resources will need to be allocated in border regions to ensure procedures are carried out appropriately, special needs are properly identified and discriminatory practices such as racial profiling are prevented;
10. underlines the need to avoid duplications in the screening procedure and increase its effectiveness;
11. notes that successful crisis management begins at local and regional level in particular, and that coordination with local and regional authorities should therefore be a top priority;
12. suggests that immediate protection be granted, at the discretion of Member States, in crisis situations not only to refugees from armed conflict, but also to other vulnerable groups, in particular children and victims of torture and trauma as well victims of human trafficking, signs of which are not always visibly identifiable;
13. points out the need to comply with the General Data Protection Regulation and the general principles of data processing, and calls on the co-legislators to take due account of the reservations expressed by the European Data Protection Supervisor, in particular those relating to the proposals on the Screening Regulation and the Eurodac Regulation;
14. proposes setting the age threshold for biometric data collection within the framework of Eurodac at the age of 12 years in order to align it with the age requirements of the Visa Code and the Entry/Exit system. Storage of biometric data always entails risks in relation to data protection legislation. It is therefore recommended to ensure that the data of persons who may not yet understand the issue at stake may not be stored for law enforcement purposes;
15. welcomes the Commission's wish to create safe pathways to Europe. This constitutes an additional European contribution to international refugee protection but cannot replace individual asylum procedures;
16. calls on the Commission and the Member States to further expand resettlement programmes, set up more humanitarian reception programmes, such as community sponsorship programmes, and encourage the recruitment of skilled and talented workers from third countries;

17. stresses that many local and regional authorities across the EU are willing to be actively involved in the reception and integration of vulnerable migrants, and points to the potential of the CoR's 'Cities and Regions for Integration' initiative; suggests that the European Commission take note of regions' and cities' best practices in the area of integration so as to promote their implementation elsewhere, encourage the emergence of new initiatives and help instigate a more constructive public debate on asylum and migration law;

18. calls for effective policies for cooperation with third countries to be established and developed. To that end, the EU needs to develop a new strategy to support the sustainable development of these third countries, especially States in Africa, encouraging sustainable economic development and promoting democracy in those countries, with initiatives relating to healthcare, production, education, training, infrastructure building and sustainable and democratic economic progress that will mean that their inhabitants do not have to migrate;

19. expresses its expectation that more attention will be paid to the offers of help volunteered by local and regional authorities regarding the reception of vulnerable people as part of the new migration and asylum pact;

20. welcomes the 2021-2027 Action Plan on Integration and Inclusion as a necessary complement to the new Migration and Asylum Pact and its recognition of the role of local and regional authorities; is looking forward to implementation of the partnership for integration agreed between the European Commission and the European Committee of the Regions;

21. considers that pre-departure and pre-arrival measures are inextricably linked to effective development of legal migration channels, so that the Action Plan can succeed in its ambitions to successfully cover all the different stages in the integration process;

22. stresses the need for easier, clearer access for local and regional authorities, including at macro-regional level, to EU funding for integration and inclusion;

23. underlines the importance of combating disinformation on integration and migration by means of concrete facts and figures in order to counter discrimination, prejudice, racism and xenophobia. To this end, calls on the European Commission to include in its annual strategic foresight report the results of the CoR's EU Annual Regional and Local Barometer, which is an evidence-based tool to illustrate, inter alia, the impact of migration and integration on cities and regions; also urges the Commission to call for humanist communications and information campaigns aimed at the host societies which explain the need to properly address and manage migration movements;

24. strongly supports the Commission's objective of stepping up the fight against migrant smuggling and of dissuading migrants from making life-endangering journeys. Insists to this effect on the need to strengthen the role of the European agencies and to revise the EU Action Plan on migrant smuggling, which also provides clarity on the role of private rescue at sea. It is important to avoid criminalising the discharging of legal obligations (such as the obligation to carry out rescues at sea). From the CoR's point of view, cooperation in maritime rescue should be coordinated at European level and developed in partnership and mutual respect between state and non-state players;

25. calls for a particular focus on the potential victims of trafficking (women, young people, children), and stresses the importance of properly identifying them, this being a stage at which — should the assessment not be carried out properly — the trafficked person could be denied their human rights or in any case a series of protections that should be granted to them as a result of the violations of which they are victims; considers coordination with local and regional authorities to be essential here, together with multi-agency work — which is essential when it comes to the detection, early identification of and initial assistance to victims aimed at fully including and integrating them — in order to avert the risks of the severe exploitation of vulnerable people, who are potential victims of trafficking; maintains that, in order to ensure a satisfactory reception that meets the individual needs of victims of trafficking, the procedure for taking charge of them must be carried out on the basis of individual plans with a view to respecting their identity, expectations and individual abilities and prerogatives; stresses that multi-agency work, at the heart of which is the empowerment of the victims, is essential to achieving their social integration, paving the way to full autonomy;

26. believes that the objectives of the Migration and Asylum Pact, in particular securing solidarity between Member States and a comprehensive approach bringing together migration, asylum, integration and border management measures, can only be achieved by the Member States if they act together under the framework of the Common European Asylum System and when interests and capabilities of all of them are better recognised in the solidarity mechanism. Confirms that the proposals under the Pact comply with the principle of subsidiarity as set out in TEU Article 5 since the objective(s) of the proposed action — a Common European Asylum System reform — cannot be sufficiently achieved by the Member States, but can by reason of the scale and effects of this action be better achieved at EU level and the proposed action provides a clear benefit compared with action at national, regional or local levels. Further points out that the principle of proportionality needs to be respected.

Brussels, 19 March 2021.

*The President
of the European Committee of the Regions*

Apostolos TZITZIKOSTAS
