**Follow up to the European Parliament non-legislative resolution on the implementation of Article 43 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection**

1. **Rapporteur:** Erik MARQUARDT (Greens/EFA / DE)
2. **Reference numbers:** 2020/2047 (INI) / A9-0005/2021 / P9\_TA-PROV(2021)0042
3. **Date of adoption of the resolution:** 10 February 2021
4. **Competent Parliamentary Committee:** Committee on Civil Liberties and Home Affairs (LIBE)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The resolution concerns the implementation of Article 43 of the Asylum Procedures Directive (APD, 2013/32/EU) on border procedures, also in view of the current negotiations on the new amended Asylum Procedure Regulation Proposal (COM/2020/611 final). The resolution notes that while the Commission consulted the Parliament, the Member States and the stakeholders in preparation of the New Pact on Asylum and Migration, it neither presented an implementation report on the APD nor any impact assessment despite this being required. The resolution reiterates the importance of evidence-based policymaking, including monitoring and statistical data. It highlights that border procedures currently constitute exceptions while many applications for international protection are made at the border or in transit zones. It notes that the application of border procedures varies between the Member States, also in numbers, resulting in a lack of uniformity across the EU. The resolution notes that all persons seeking international protection have an interest in their requests being dealt with as quickly and efficiently as possible provided that all procedural safeguards and rights are granted in accordance with the APD which is essential. It notes that particularly in more complex cases the procedural guarantees, such as the right to legal assistance, are sometimes undermined. It highlights that where a decision cannot be taken within four weeks an application is to be processed in the normal procedure. It calls on the Member States to fully comply in law and in practice with the procedural safeguards, similarly stipulated in the APD for border procedures, including for detention, addressing special procedural needs and when large numbers arrive. It considers sufficient staff and resources essential and highlights the potential support of EU agencies. The Parliament calls on the Member States to exchange best practices and enhance operational cooperation. The resolution highlights that applicants in border procedures are likely to be placed in detention, including under national law, and regrets lacking alternatives to detention. The resolution recalls the limited possibilities to process unaccompanied minors’ applications in a border procedure and underlines adequate age assessment methods. The Parliament attaches importance to an independent, comprehensive and effective monitoring mechanism at the borders and highlights the potential role of NGOs. The resolution highlights alleged incidents of fundamental rights violations, increasingly reported at external borders, including many cases of persons being refused entry without their asylum claims being registered. It reiterates that the Member States are obliged to prevent unauthorised border crossings without prejudice to the rights of asylum seekers.

1. **Response to the requests and overview of the action taken, or intended to be taken, by the Commission:**

The report on the application of the Asylum Procedures Directive was not published due to the adoption of the Commission proposal for a new Asylum Procedure Regulation in July 2016 and ensuing legislative negotiations. The Commission continuously assesses the implementation of the Asylum Procedures Directive through studies, including those carried out in the context of the European Migration Network, and through the European Asylum Support Office (EASO) led Asylum Processes Network and a dedicated Contact Committee. The Commission continues collecting and publishing qualitative and quantitative data on the implementation of the directive, notably statistical data collected through the recently revised Regulation on statistics on migration and international protection ((EU 2020/851). The Commission remains committed to carrying out and publishing an implementation report of the Asylum Procedures Directive if the Asylum Procedures Regulation will not repeal it.

As regards the impact assessment in the context of the preparation of the New Pact on Migration and Asylum, the Commission has looked comprehensively at all available experience and evidence and gathered it in a Commission Staff Working document accompanying the Pact and the legislative proposals. This analytical paper is based on publicly available EU data and statistics from Eurostat on migration and asylum, data from Frontex (European Border and Coast Guard Agency) and EASO, as well as eu-LISA (European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice) for information on IT systems. The paper also builds on research by the Knowledge Centre for Migration and Demography of the Joint Research Centre. The legislative proposals take into account the experience gathered by the Commission and the EU agencies on the asylum and migration situation on the ground and the extensive reporting via, notably the regular progress reports on migration, which present the work achieved and the remaining gaps. The New Pact builds on the 2016 Commission’s proposals to reform the Common European Asylum System. These proposals are based on studies on transposition and implementation of key directives and regulations on Asylum and Migration. The legislative proposals also take into account a significant amount of information about the Member States’ asylum and return systems gathered in the course of the negotiations on the 2016 proposals. In that respect, the Commission obtained sufficient clarity from the Member States on the feasibility of certain options. The legislative proposals also take into account the knowledge gained through meetings and events organised by the Commission with the Member States (*tour des capitales*), civil society and other stakeholders in the fields of migration and asylum, as well as debates on migration and asylum organised by the Parliament, in particular by the relevant Parliamentary Committees. Finally, the legislative proposals also build on the outcome of a wide consultation of relevant stakeholders, which has been underway over the past years such as the Tampere 2.0 conference held on 24-25 October 2019 in Helsinki, organised as a side event of the Finnish Presidency (**paragraph 1 of the resolution**).

The Commission considers the respect of fundamental rights and the respect for the *non-refoulement* principle at external borders essential. While Member States are obliged to prevent unauthorised border crossings, the rights of persons requesting international protection must be respected. Where the Asylum Procedures Directive applies, it covers the right of access to the procedure (Article 6), meaning registration of an application for international protection made within specific time limits and an effective opportunity to lodge it as soon as possible. Under Article 8, the Member States have a duty to inform persons on the possibility to apply for asylum if there are indications they may wish to do so. If Member States examine applications in a border procedure, all basic principles and guarantees of the asylum procedure apply, including an individual assessment of the application. This is provided for in Article 43 of the Asylum Procedures Directive and in the draft Asylum Procedure Regulation. The current Reception Conditions Directive, in its Article 8 to which the Asylum Procedures Directive refers, as well as the provisional agreement on the revised Reception Conditions Directive as supported by the European Parliament, contains a detention ground for the use of the border procedure, to be applied on an individual basis. The same provisional agreement, and Article 11 of the current Reception Conditions Directive, provide strict rules on the detention of minors. The Commission regularly monitors the situation at the borders in Schengen evaluations, carried out also with the support of the European Union Agency for Fundamental Rights. Monitoring will be part of the new mandate for the future European Union Agency for Asylum, the successor of EASO, once the proposal is adopted.

The Commission addresses any serious fundamental rights concerns in regular exchanges with the Member States. The Commission, as the guardian of the Treaties, is conducting infringement procedures under Article 258 of the Treaty on the Functioning of the European Union on compliance with the Asylum Procedures Directive, including its Article 43 and the related provisions. Some of these already resulted in the Court of Justice of the European Union condemning serious deficiencies in Member States’ asylum procedures. The Commission is also closely following Member States’ spending at the borders under the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF) for it to be compliant with fundamental rights and already conditioned such funding on the respect of EU asylum law. It recently initiated a horizontal monitoring exercise with all Member States applying the Asylum Procedures Directive about the compliance of their national provisions with the directive.

Furthermore, the Commission is promoting the exchange of good practices on asylum procedures in a number of fora. Together with the Greek authorities and EU agencies, the Commission established a Task Force for Greece, to exemplarily facilitate asylum and reception procedures on the Greek islands. The Commission supports Member States in developing alternatives to detention, including through research and digital tools. The Commission supports the digitisation of the asylum procedure in order to make the procedures work in practice and within the timescales set. It is strengthening the EU agencies for them being able to fulfil their task of supporting Member States in the asylum procedure (**paragraphs 15 and 33 of the resolution**).

The Commission will continue to work closely with the Parliament and with the Council to promote an efficient and effective asylum procedure that respects fundamental rights and guarantees adequate procedural safeguards.