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From:	General Secretariat of the Council
To:	JHA Counsellors (Asylum)
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Subject:	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] - compilation of replies by Member States

Following the request for written contribution on the above-mentioned proposal (CM 2344/23), delegations will find in Annex a compilation of the replies as received by the General Secretariat.

ANNEX

Written replies submitted by the Member States

AUSTRIA

A. **Comments on the questions outlined in the presidency paper:**

General comment: For AT it is imperative to emphasize that the CEAS can only work in practice if all Member States apply the EU Asylum Acquis. Especially in the context of the AMR this principle should be a precondition for receiving solidarity contributions.

It should be reflected in the text, that solidarity can only be provided to those Member states that fully implement the Acquis; inter alia accepting transfers for persons in line with the responsibility rules of the Regulation.

Furthermore when we discuss **capacity limits** in the framework of border procedures we also have to discuss capacity limits in general for those Member States that have received a disproportionate number of asylum applications per capita for many years. **These MS should not be obliged to provide solidarity for Member States with a lower per capita pressure.**

In light of the parliament's recent proposals we deem it necessary to emphasize that it seems all the more important not to lose sight of the substantive progress made at council level on key elements for a functioning future system such as mandatory border procedures or addressing the issue secondary migration.

1) The time limit for a shift of responsibility in case of absconding

The 6 months transfer deadline is one of the main obstacles for an effective functioning of the current Dublin system. Therefore we support any extension of the deadline.

The **proposed 5 years transfer deadline can be supported**, if this will be applied for all cases.

However, we have a **strong reservation on a shortened deadline for border procedure cases**, as there is no logic behind such an approach for the functioning of the future system. A shorted deadline for border procedure cases:

- would incentivize secondary migration and therefore contradict efforts to avoid secondary migration, which is a main criteria for a functioning asylum system.

- would lead to a preferential treatment of cases with a low recognition rate and cases that pose a threat to national security or those who have mislead the authorities.
- would send the wrong signals to nationalities who are not in need of protection.

Furthermore a lot of questions also remain open regarding the practical implications of such an approach.

2) Dublin procedures

Regarding the take charge requests, AT is open for negotiations, but would need to see a concrete proposal with examples on how the implementation would work in practice in order for AT to decide on this matter.

Following the rules of the hierarchy of criteria is a legal obligation.

3) Further deliberations regarding responsibility

The extension of the definition of family members including all siblings is a "red line" for AT.

Furthermore, the responsibility based on the **irregular entry criterion should be at least 3 years.** The is no logical connection between the definition of family member and the entry criterion.

When it comes to the criteria of diplomas and other qualifications and the length of responsibility in case of expired residence documents AT has expressed its willingness to achieve compromises. The proposed deadlines could be accepted in this regard, although it would be preferable if the visa criterion would also be 3 years.

4) Beneficiaries of international protection

Concerning beneficiaries of international protection AT's position depends on the concrete proposal in the text, but AT is open for discussions in this regard.

Regarding the long term residence status the 5 years should be upheld and not shortened to 3 years.

Art. 33 1a and 1b

AT understands the new text as the implementation of the recent ECJ judgement. We would like to hear more from the Legal Service why the text not only refers to UAM but also to all cases of Art. 15 to 18 and Art. 24. In this regard we would like to ask if there is a written opinion on that?

5) On solidarity

AT thanks the presidency for the new text and the new proposals that partially bring more clarity in the concept. However, there are still some general issues that should be reflected in the text:

Comments on the Articles:

Art. 2 (w) - Migratory pressure and (wa) - significant migratory situation

Referring to our comments made regarding the necessity to have a clear framework to not only identify MS in need of solidarity but also to take into account the previous burden on a MS, we uphold our position to **introduce our proposed definition of "particular migratory pressure"** covering situations where a large number of third country nationals or stateless persons have entered currently or in the past.

As we currently discuss capacity limits for border procedures, capacity limits based on the number of asylum applications per capita should also be reflected in the text. **This means that a Member State that has reached its capacity limits because of disproportionate pressure should always be declared a Member State under migratory pressure.**

In our opinion, "risk of such arrivals" should not be a relevant criterion for determining "migratory pressure" as such a risk is unclear and unpredictable. As a result, we suggest deleting this wording. In general, the mode of arrival should not be relevant.

Article 7b – Information for assessing migratory pressure

When it comes to the declaration of a MS found to be under particular pressure it is of utmost importance to have a clear and objective criteria, which is why we are of the opinion that this article needs further consideration.

It is necessary that the European Commission makes decisions regarding access to the solidarity pool based on objective facts. In this regard arbitrariness must be avoided.

According to the current proposal the EC has to use 14 different statistics, including sub-statistics and information in order to determine which MS is declared as a MS under migratory pressure. There is no information in the text whatsoever how this will be applied in practice and how the EC will come to the conclusions that a MS is under pressure.

A pressure situation should be calculated based on the number of asylum applications as well as the asylum decisions that were taken in relation to the population.

Art. 44fa: full or partial reduction of solidarity contributions

AT welcomes this Article. In our opinion **MS that have received a disproportionate number of asylum applications per capita should always be excluded from the obligation to provide solidarity without a formal Council decision.**

Article 44h – Responsibility offsets

The contributing Member States should always be able to choose between relocation and responsibility offsets. We are also in favor of completely deleting the threshold of the current 75%.

BULGARIA

General comment

Bulgaria supports swift finalisation of the asylum reform based on the right balance between the responsibility and solidarity. Due to its geographical location, Bulgaria is bearing disproportionate burden to protect the external borders and to stop illegal entries. In this regard we expect recognition of our efforts and fair distribution of the responsibilities without imposing additional burden. Bulgaria is ready for compromise if enough flexibility is provided for the mandatory border procedures in terms of location and legal fiction and the current rules for shifting of the responsibility are kept.

Article 2 Definitions

On letter (f) we maintain our position against the inclusion of beneficiaries of international protection in the scope of the AMMR.

On letter (g)(v) we maintain scrutiny reservation. The final position depends on the overall balance between solidarity and responsibility.

On letter (w) we maintain scrutiny reservation. We consider that the migration situation may lead to pressures in one Member State, according to the particular circumstances and specificities of the countries, without prejudice to the situation at EU+ level. On this basis, we suggest deleting "the overall situation in the EU", and clarifying what this means in practical terms. We are concerned about the deletion of the reference to external borders, and it is primarily these that are affected by migratory pressure.

In addition, since there is no definition for "risk of migratory pressure" we need time for analysis the definition in (w) in connection with the phrase "risk of migratory pressure" and the consequences of establishing this situation.

We urge the retention of "risk of such arrivals" in the definition of migratory pressure. The pressure resulting from the attempts for illegal border crossing should be taken into account because this is an indicator for burden that needs equivalent solidarity. Our understanding is that timely EU response to threats is of utmost importance and we should not wait for the deterioration of the situation to react. Furthermore, Article 3 stipulates obligation for MS to effectively prevent irregular migration/unauthorised movements. On this basis, if Member States, even more those on the front line, are to prevent irregular migration at the borders of the Union, it would be fair to provide for the equivalent solidarity, to take into account the prevention of illegal entries into the EU territory, as migratory pressure or risk of migratory pressure.

Article 4 - Principle of integrated policy-making

On the proposed recital text, we still have doubts about the content of 'including the necessary human and financial resources and infrastructure'. The text creates an obligation without the parameters being clear. It is not clear what the scope of 'capacity' and the numerical dimension of financial resources are. In any case, the capacity and resources allocated to migration and asylum management should be compliant with the demographic and economic potential as well as the particularities of the national asylum system of the Member State concerned. The resources required are also directly dependent on migration flows, which cannot be fully predicted. We maintain scrutiny reservation linked to the concept for adequate capacity in the context of the border procedures.

Article* 5 *Principle of solidarity and fair sharing of responsibility

In Paragraph 1, letter (e) the meaning of "to correct unauthorized movements“ is unclear. We support the proposal made by Spain the wording in letter to (b) to be used, namely „prevent and reduce“.

Article 7a European Migration Management Report and Commission Decision

On paragraph 3(a), we propose an addition on 'assessment', specifying that the assessment will be based on factual data. The assessment should be based on actual factual data and not on subjective elements.

We maintain a scrutiny reservation in relation to the concept of 'level of preparedness' in paragraph 3(c) and the concept for the adequate capacity in the border procedures. It is important for us to have overall clarity on the concepts that are being introduced that create legal obligations for Member States.

On paragraph 3(d) on MS capacity levels we maintain scrutiny reseration, it relates to the concept of adequate capacity.

Regarding paragraph 4 and 5 on the notion of 'risk of migratory pressure', we consider that clarification is needed on this notion and on the consequences of establishing the existence of a risk of migratory pressure. The criteria for assessing the existence of a risk of migratory pressure are different from those for assessing migratory pressure that has already occurred.

On paragraph 1 letter (h) we believe that the elements for assessing the overall migration situation should include the prevention of illegal border crossings. The prevented cases are part of the overall migratory situation. It is an indicator for burden and for risk of migration pressure. As a quantitative indicator, the number of persons who have attempted to cross the borders of a Member State illegally over a certain reference period, could be introduced.

On letter (f), we maintain the reservation because of the reference to the notification regime for take back inquiries.

Article 7c Commission Recommendation regarding the establishment of the Solidarity Pool and other appropriate measures

On paragraph 3, clarity is needed on „quantitative and qualitative criteria“. It is not clear as well which elements the concept of Union-wide responsibility will include. In particular, what is the real dimension of this responsibility at Union level. What are the elements and obligations behind this concept that are shared by all Member States.

Article 19 Issue of residence documents or visas

Regarding Art.19 on residence documents and visas, we confirm our position on the time limits we favour: 2 years for residence documents and 6 months for visas respectively.

Article 21 Entry

We maintain the time limit in the current Regulation, which is 12 months. We uphold a scrutiny reservation on the 18-months time limit, and our final position will depend the overall balance achieved in the proposal.

Article 26 Obligations of the Member State responsible

On paragraph 1 we uphold our reservation. We cannot support the proposal in letters (c) and (d), i.e. extending the scope of responsibility to beneficiaries of international protection and resettled persons. The same goes to paragraph 2.

Article 27 Cessation of responsibilities

On paragraph 1a we disagree with the addition "has been granted international protection". It is not clear what cases this hypothesis covers. If the person has left the territory of the Member States, he should not have been granted protection in the country where he is registered. Moreover, we are talking about persons who have been granted international protection, and we have reservations about including them in the scope of the draft regulation.

29 Submitting a take charge request

We maintain our position on the deadline in paragraph 1. We support the deadline of three months for submitting a take charge request as regulated in the current legislation.

Art. 31 Submitting a take back notification

We consider the proposed system of take back notifications an unacceptable and inexpedient concept. In order to have applicable procedures and to safeguard the principles of sincere cooperation and transparency, each Member State has the right to consider the request and motivate its decision on the case. The predetermination of the case by another Member State through notification brings discrimination and is a prerequisite for conflicts in fulfilling the commitments under the regulation.

Article 32 Notification of a transfer decision

We maintain our position in favour of procedural autonomy of the Member States regarding the draft of the transfer decision within the overall timeframe for transfer implementation.

We maintain substantial reservation on paragraphs 1 and 2 regarding the reference to Art. 26 (1), points (c) and (d), which regulate the inclusion of the persons, who have received international protection, as well as of the resettled persons.

Article 33 Remedies

We support the text of par. 1a and 1b in order to protect the procedural guarantees of individuals.

Article 34 Suspension of transfers

Replying to a take charge request

We maintain our position on the deadline in paragraph 1. We support the deadline of two months for a decision on the take charge request as regulated in the current legislation.

Article 35 Detailed rules and time limits

Re
As a guideline for reflection, if the link with the border procedure is maintained, given the g
mandatory nature of the procedure and the burden it imposes on frontline Member States, it a
would be appropriate to reduce the time limit for all cases to 6 months with the possibility of r
an extension of up to one year.
d
i
Carrying out a transfer within 5 years is contrary to the principle of efficient procedures, will m
create administrative difficulties in the respective national administrations, and there may be f
a change in circumstances that would require a reconsideration of the case.
i
Article 44a Solidarity Pool
n
a
In paragraph (c) on alternative measures, we propose redrafting that alternative measures l
should b applied at the request of the Member State concerned.
i
d-fa
s
e
If we consider that the risk of migratory pressure has no implications for benefitting from d
solidarity measures but is just an alarm that the Member State should be prepared, it would be appropriate that the Member State concerned would be able to notify its needs and to y
request a reduction of its pledged solidarity contributions. A Member State that should be prepared for a migratory pressure could not be objectively expected to implement solidarity measures in its full extent.

Article 44 g Reconvening the High-Level EU Migration Forum

We believe it should be added that the benefiting MS may also initiate the convening of the forum.

CROATIA

Solidarity mechanism

Article 2 Definitions

Point (g) (v) - we cannot accept this amendment according to which a minor is considered to be married even if the marriage is not in accordance with the relevant national law of MS. The wording "for the purpose of applying the procedures set out in this Regulation" does not have added value since all of the provisions in this proposal for a Regulation are intended for the application of procedures prescribed by this Regulation. If such a minor were considered to be married, this would have certain consequences in terms of responsibility and would very likely lead to the abuse of the system. We believe it is necessary to clearly and unambiguously prescribe that a marriage of a minor can only be proven with solid evidence that is in accordance with the national law of the relevant MS. This way, minor or forced marriages would not be relativised.

Point (w) - we support MS that believe that the situation in MS cannot be compared with the overall situation in the Union and we are increasingly more in favour of linking the definition of migratory pressure with the geographical position of MS.

Point (wa) "significant migratory situation" - this is a hypothetical situation that will happen, while on the other hand it is stated that "cumulative effect of current and previous annual arrivals of third country nationals or stateless persons leads a..." which indicates to a realistic situation. If the purpose of this definition is to prevent a situation or migratory pressure that might lead MS to a crisis, we can support it but with clear parameters on the basis of which significant migratory situations would be assessed (how many of the past years would be taken into account?; would only the cumulative effect of the number of arrivals be taken into account or also their individual or cumulative effect on asylum, reception and migration system - e.g. MS might be in a situation of significant migratory crisis due to reception capacities and not asylum capacities since applications e.g. are quickly processed).

Article 5 Principle of solidarity and fair sharing of responsibility -

Paragraph 1, point (e) - we find the following sentence to be too general: *"take all measures necessary […] and proportionate […] to prevent and **correct** unauthorised movements between Member States"*. It is not clear what is meant under proportionate measures to prevent unauthorised movements. We therefore propose that a reference be added to some relevant legal grounds (regulation, RCD,...). We also think that the word "correct" should be clearer. In our previous comments, we proposed wording that would imply fingerprinting in Eurodac and non-provision of reception conditions in line with Article 17a of RCD.

Article 6 Strategic governance and monitoring of the migratory situation – we would like to thank you for taking into consideration our comments but we still propose a longer deadline of 18 months in paragraph 5 for MS to adopt national strategies. We propose 24 months.

We do not agree with amendments in paragraph 7 according to which the Commission would establish a uniform template "for the purpose of their national strategies" since we still believe that this means that the Commission interferes with the national issues. We propose that the Commission establish a uniform template according to which the Commission will collect data from MS' national strategies in line with Article 7b, paragraph 2(a).

Article 7a European Migration Management Report - since the Commission explained that "the level of preparedness" in paragraph 3, point (c) is not related to the adequate capacities for border procedures, it is not clear how the level of preparedness of MS capacities will be assessed if all capacities are not taken into account.

Article 7b Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure and significant migratory situation - we find paragraph 3 unnecessary and we believe that it is redundant since there is already a definition of a "significant migratory situation" in Article 2, point (wa).

We also propose that it should already be indicated which data the Commission might obtain from the agencies and which it will need from MS to avoid duplication (*MS regularly communicate statistics to EUAA on a monthly, quarterly, semi-annual and annual level).*

Article 44a Solidarity Pool - we propose that **paragraph 2, point (a)** (i) be supplemented so that it is clear that these are applicants who are in need of international protection which is currently not the case. We would also find it acceptable if this were explained more clearly in the recital. We would like to remind of CZ concept:

- *While **relocations should primarily apply to persons in need of international protection**, with priority for those most vulnerable, its application should be kept flexible. Given its voluntary nature, relocating Member States should be able to put forward their preferences in terms of persons to be considered for relocations.*

Article 44e Operationalisation of solidarity measures - we enter a general reserve to paragraph 3 due to the expression "in proportion to their overall pledge" as we do not see the purpose of an MS under migratory pressure using the solidarity pool in proportion to its pledge/contribution. The question in that case is how to meet the real needs of MS under pressure.

- ✓ Dublin rules

Article 2 Definitions (g) family members (v): When it comes to expanding the definition of family members, HR was always against this idea. We justified our position with the fact that international protection applicants do not have documents to prove family and kinship relations. This has resulted in different practices in MS and their interpretation of this criteria. The issue arises when one MS accepts the applicant's statement as valid proof while another MS does not. Some MS have shown to be more conservative when it comes to proving family relations and they are less likely to recognise them. The procedure for proving kinship is a challenge for all MS and it often takes a long time to determine family links (mainly due to a lack of material evidence and documents). Proving kinship for a wider scope of people would also likely lead to more lengthy procedures for determining responsibility. This is why HR wants this issue to be regulated through clearer criteria. The list of evidence for proving kinship has already been prescribed. However, we would like to point out that in practice very often only statements from applicants are taken into account.

Article 27 Cessation of responsibilities - we cannot support the inclusion of beneficiaries of international protection within the framework of Dublin responsibility.

Likewise, as we indicated before, this provision is a red line for us since it does not resolve situations in which MS border with third countries, as is the case with Croatia, and cross illegally from MS to a third country and then also illegally into another MS. Such a provision has so far proved to be inefficient in practice in the context of migration management and it encourages further movements and abuse of the Dublin system and rules. We think that this paragraph would make sense only in cases of legal border crossings whereas the practice so far has shown that most applicants choose illegal pathways. We propose that the procedure in case a person leaves the territory of MS illegally is prescribed more clearly (we do not find it acceptable that in case of a person who leaves an MS illegally and stays in a third country only to continue his or her journey towards another MS, this other MS becomes responsible).

Article 30, paragraph 8 Replying to a take charge request - Croatia can be flexible and support the obligation to provide substantiated reasons when submitting a take-charge request relating to the relevant hierarchy of the responsibility criteria but only in case of longer deadlines since we believe that this will represent an administrative burden for MS and we would like to ask that a template be made as soon as possible for the form which would be used for that purpose.

Article 33 Remedies - we think that the procedure in paragraph 1a has been made more complicated since it allows for the use of remedy against the refusal of a take-charge request, in particular when it comes to family reunification in paragraph 1b and we cannot support it.

Article 35, paragraph 2 Detailed rules and time limits - in principle, we are not in favour of long deadlines. However, our final position on deadlines and criteria depends on how the cessation of responsibility will be prescribed once a person leaves the EU territory referred to in Article 27(1a) of AMMR.

THE CZECH REPUBLIC

The position regarding four areas "responsibility" defined by SE PRES

1) The time limit for a shift of responsibility in case of absconding

CZ prefers longer time limits in case of absconding. We could accept specific time limit for "border procedures cases". We would like to know if the change in Eurodac Regulation in this point is necessary and feasible.

2) Dublin procedures

CZ is flexible in this point.

3) Further deliberations regarding responsibility

- extension of the definition of family members – it is not acceptable due to the proposed Article 33 par. 1a and 1b as it is closely interlinked.
- the length of responsibility in case of irregular entry – we prefer 3 years
- new criteria of diplomas and the question of residence documents and visas – CZ is flexible here.

4) *Beneficiaries of international protection*

CZ is flexible here. Nevertheless, we are of the opinion that further discussions are needed (please see further comments related to Article 44a). Moreover, the future discussions on "long term residents' directive" should be also taken into account.

Article 2 lett. g) - new text regarding marriage of minors

Reservation on the content of the new text. We cannot agree with the text that provides "fiction" of marriage only for the purposes of this Regulation. Conditions for marriage are given in national law of Member States and in our view this Regulation should not provide for the conditions for marriage even if in the specific situation regulated in this Regulation.

We can accept the previous text, which was deleted in the latest version or we can return to the original Commission proposal in this regard, where no provision on the marriage of minors were proposed.

Article 2 lett. p) and q)

It is not clear why letter q) (risk of absconding) was put into square brackets and not letter p) (absconding). Both terms are interlinked closely. It is not clear what other asylum instruments are meant in footnote 9.

Article 3 letter ha)

We propose to delete "management and" in order to align the text with letter d), where the word "management" was deleted. Both letters cover situation of unauthorised (illegal) movements.

The proposed text:

(ha) effective ~~management and~~ prevention of unauthorised movements;

Article 6 par. 7

We generally support the possibility to have the uniform templates for national strategies in order to have a certain level of convergence among Member States. However, we have concerns regarding the wording "uniform conditions". We do not understand the meaning in relation to national strategies. We propose following re-wording.

The proposed text:

(7) The Commission shall, by means of implementing acts, establish ~~uniform conditions in the form of~~ a template to be used by Member States for the purpose of their national strategies. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Article 7a par. 3 lett. d)

We would like to ask you for the clarification about the nature of the "capacity levels of the Member States"? Are these "capacities" the same as "capacities" in the context of discussions under border procedures in APR?

Article 7a par. 4 -Commission Decision

Thanks for the clarifications why the separate decision is necessary, this is acceptable for CZ.

Article 7a par. 5

We are of the opinion that newly added text has no added value and is duplicate with Article 7b. For example, Article 7b par. 2 letter f) and this para seems to us together illogical. Therefore, we propose the deletion.

Article 7a par. 6

We are not sure whether we understood correctly the clarification of CLS regarding classification of information (recommendation referred to in Article 7c). We would very much appreciate if it would be possible to clarify it once again at the earliest convenience.

Article 7c paragraph 3

The notion of "the Union wide responsibility" is completely unclear to us. We are of the opinion that we should not complicated the situation with new unclear notions. Therefore, we suggest to return to the previous version of paragraph 3.

Article 8 paragraph 4

We support the change in the wording ("security risk"), however we find confusing that the wording has not been changed throughout the whole document (i. e. last subpara. of Art. 8 para. 4, Article 38 etc.). Is there any reason to have the different wording in the text?

Article 9 title

We prefer the previous version of the title, because paragraphs 1 and 2 are about the obligations of third-country nationals not applicants.

Article 10

We support the delegations who proposed the deletion the reference to Screening Regulation.

On the other hand, we do not support the proposal to refer to a final decision to transfer the person concerned.

Article 11 paragraph 1 letter g)

We do not support the deletion of the first part of the text. Moreover, the reference to Article 33 par. 5 (provision of legal assistance) should be added.

Article 26 paragraph 2

It is unclear why "beneficiaries of international protection" were added and not for example resettled or irregularly staying person?

Article 29 paragraph 1 third subparagraph

Reservation to this new subparagraph due to the fact that we do not support new paragraphs in Article 33.

Article 33 paragraphs 1a and 1b

We have to raise reservation on the content of these new paragraphs. We are of the strong opinion that it is not necessary to regulate this issue in the Regulation.

Our reservation also covers all references to these new paragraphs.

Article 44a paragraph 2/a/ii – beneficiaries of international protection

We would like to draw PRES attention to the pending case C-753/22 regarding recognition of decision to grant international protection in one Member State by the other Member State where the application for international protection was lodged.

In the context of this pending case, we would like to raise several questions. The answers may clarify the situation regarding beneficiaries of international protection. We believe that this case may have certain impact to the issue of possible future relocations of beneficiaries of international protection.

We would like to ask whether contributing Member State which relocate beneficiary of international protection will be required to grant international protection as well? Or a residence permit according to national law of Member State concerned?

Article 44c

The word “report” in the title should be replaced by the “Decision”.

We believe that information regarding the intention to use the Solidarity Pool should be evaluated by the Commission in the context of concrete solidarity measures available in Solidarity Pool and in the context of the other Member States intentions to use Solidarity Pool in order to achieve balance among Member States identified under migratory pressure.

Article 44d paragraph 3

Scrutiny reservation on this paragraph. In our view, there is inconsistency with paragraph 1, where Member State, which is not identified as being under migratory pressure, may notify its intention to use Solidarity Pool. On the contrary here in para. 3 Commission may adopt the decision, that this MS is under migratory pressure.

We also find the wording “request to consider the Member State as being under migratory pressure” problematic, because according to para. 1, MS concerned notify the intention to use Solidarity Pool only.

Article 44d paragraph 5

The paragraph is for us generally problematic. We cannot support the proposal, where Member State under migratory pressure will not be allowed to get access to Solidarity Pool by the decision of the Council.

We should return to the previous version.

We also do not support the “objective reasons” used in paragraph 5.

Article 44d paragraph 6

As regards new first part of this paragraph, we would like to ask you for the clarification. The situation described by this part is different comparing to Article 44g?

In our view the scenario covered by this new text in paragraph is covered by Article 44g.

In other words, situations in paragraph 6 and in Article 44g are in our view the same. We will appreciate the clarification.

Article 44h paragraph 3 letter e)

The deletion of the letter e) is problematic for us. We are of the opinion that proper registration is very important generally.

DENMARK

Remarks on the discussion paper

1. **The time limit for a shift of responsibility in case of absconding**

DK remain flexible in relation to the time limits and can accept the proposal from the presidency, and as an alternative a time limit of 3 years for both groups.

2. **Dublin procedures**

DK remains flexible and can accept the proposal from the presidency in the spirit of compromise.

3. **Further deliberations regarding responsibility**

In order to explore both the option of broadening the concept of family and adding accountability for issued diplomas it is essential to establish that the requesting country has the burden of proof. Furthermore its essential to get more clarity in regards to how the Commission envisage this process.

For now there are too many unknown factors to make a decision that could potentially shift the balance in a way that would lead to transfers of large amounts of persons each year.

We invite the Commission to draft a paper explaining this process, what kind of evidence would be considered sufficient, how the family link would be established and to present concrete data on how many people a year are requesting transfers to family members and an estimate of how many extra request the extension of the link would result in.

We do see the reasoning behind wanting to connect family members, but we fear the provision will be largely abused and create a big burden shift.

Generel remarks on the articles

Article 6a para 2

Denmark suggest to add the two following points:

(k) Cooperation with safe third countries regarding transfers.

(l) Cooperation with third countries regarding disembarkation to the closest safe port following a search and rescue operation.

Article 7c para 2 (a)

Denmark don't support a threshold for relocation or financial contributions in the text as quantifying this data could create a pull factor.

Article 33

We support the right to an effective remedy before a court or tribunal in the requested Member State for the specific group of persons concerned in case C-19/21, but we cannot support this provision going further than the judgement itself.

We maintain a scrutiny reservation until there is more clarity on which group of persons is considered to be covered by this judgement and thereby must be covered by this provision.

Article 44 para 3 (b)

Denmark suggests adding the following (marked in **bold**):

b) "direct financial contributions provided by Member States primarily aiming at projects related to the area of migration, border management, and asylum **and return** or at projects in third countries that may have a direct impact on the flows at the external borders or may improve the asylum, reception, and migration **and border management as well as return** systems of the third country concerned, including assisted voluntary return and reintegration programmes and antitrafficking or antismuggling programmes, in accordance with Article 44i;.

FINLAND

Article 33

Paras. 1 and 3

We are still of the opinion that the scope of the remedy should not be limited as suggested in para. 1 a) and b). In addition, the court should not be given any deadlines, even indicative ones, to examine the appeal.

New paras. 1a and 1b

We are not in favor for adding the new paragraphs on the right to appeal in certain cases. We do not contest the Court's opinion that certain rights have their basis in the treaties, but do not agree with the presidency that the judgement would require adding these new rules. Instead, we should change the wording of article 33 and possibly other article and recitals so that it cannot be interpreted as giving the applicant a right to appeal against the reply given by the requested MS or against a decision not to send a request for taking charge.

If these provisions are added, we will need additional rules on what to do if the court accepts the appeal. We also have many questions, some of those below, about the impact of those paragraphs, which support the conclusion that they should be deleted:

1a) Under art. 30(8) a negative reply needs to be justified, but the requesting MS has no means to require a positive reply, it can only ask for reconsideration. So even if it considers that the other MS is responsible, it cannot made a transfer decision in case of a negative reply. However, we would now give the applicant an explicit possibility to contest this negative reply in a court and thus give more rights to the applicant than MS's have. This seems to turn the logic of the regulation upside down. What could then be the outcome of the appeal – could the Court "overrule" a negative reply given by another MS? If yes, what will/should happen– should we make a transfer decision or send out a new request? How can the Court actually examine the case, as the negative reply was given by another MS?

1b) Under Article 25(1) each Member State may decide to examine an application for international protection by a third-country national or a stateless person registered with it, even if such examination is not its responsibility under the criteria laid down in this Regulation. This new paragraph seems to mean that a MS is obliged to send a request in all cases (if it wants to avoid the possible appeal under 1b)). The applicant could then contest a negative reply by filing an appeal in accordance with 1a). But if the reply is positive, could the MS then use the discretion under art. 25 and decide to examine the application itself..? This illustrates well how the new paragraph would not be in line with the logic of article 25(1) and would render it practically meaningless. We are not convinced that this was the intended consequence of the judgement. On the other hand, if no request was sent because the requesting MS either considered itself responsible or took the responsibility under 25(1), how would the appeal under 1 b) affect the time limit to examine the application for international protection under APR? What should we do if the request under those articles was not sent because there were not enough proof (cf. art. 29(3)), but instead another MS (A) accepted the request made under a different article – does the applicant have a right to appeal under 1b) and how will that affect the possibility to make a transfer decision and to time limit for transfer to MS A?

Article 35

We have considered it important that the responsibility does not end or shift due to the applicant's own actions, but have been ready, in the spirit of compromise, to accept that this is the case in certain situations. However, in order to avoid secondary movements, it is important that the time limit for transfer is long enough. We prefer 5 years.

We do not support the new proposal (time limit is 18 months if the application is examined in border procedure), it would give applicants and Member States a wrong signal about the purpose of the responsibility determination as well as about the purpose of the border procedure. In addition, the rules regarding determination, cessation and shift of responsibility should be clear an unambiguous. In practice, it would be impossible to know in which procedure the application has been examined. This information cannot be found from Eurodac.

It is also crucial to find a solution to the awkward practical situation created by the Court's judgment in Case C-323/21 on the so called "chain rule". We need to achieve a clear system for our administrative services as well as to prevent the possibility that an asylum seeker may choose the state that examines the application.

As it is very common that an applicant has multiple applications in many MS, we should either write the rules regarding time limit for transfer so that the interpretation made by the Court in case 323/21 would no longer be possible or make sure that the time limit is sufficiently long so that this shift would not actualize in practice. For this reason also, we support the time limit of 5 years.

This court ruling will lead to even more complicated situation in case the appeal has suspensive effect. This can be illustrated by the following example: the MS A is determined as the responsible state by MS B, the applicant absconds and lodges a new application in MS C, where the appeal against transfer decision to A has suspensive effect. The clock would stop ticking for MS C, but not for B. This means that the responsibility may shift to the MS B because of the suspensive effect granted by State C. If this happens or the responsibility shifts for some other reason, do we need to make a new transfer decision to MS that has become responsible? Does the applicant then have a right to start the appeal procedure from the beginning?

FRANCE

L'ensemble du règlement étant soumis à discussion, les commentaires écrits de la France sont répartis comme suit :

1) Note de discussion « Vers une position commune »
2) Les définitions (article 2)
3) L'approche globale des migrations (articles 3 à 6 et article 7)
4) Le cycle annuel de gestion des migrations (articles 7a à 7d et 69)
5) La solidarité et la boîte à outils (articles 6a, 44a à 44k, 57 à 59)
6) La responsabilité (articles 8 à 44)
7) Dispositions générales (articles 1 et 61 à 75)

1. Note de discussion « Vers une position commune »

Sur le délai pour le transfert de responsabilité en cas de fuite, la France rappelle à titre liminaire son attachement à une procédure à la frontière obligatoire. Si elle peut comprendre l'intérêt de différencier les durées de responsabilité suivant que l'étranger est entré dans le cadre d'une procédure à la frontière ou de façon irrégulière, elle émet une réserve d'examen approfondi sur cette réduction de responsabilité. En première lecture, elle paraît très disproportionnée et demandera en tout état de cause en contrepartie de ce compromis que la notification de l'utilisation des mesures dérogatoires à la procédure à la frontière par un EM identifié en situation de pression migratoire fasse l'objet d'une évaluation systématique par la Commission (en cohérence avec nos commentaires récents à l'article 41bd, paragraphe 2 d'APR).

Sur les procédures Dublin, la France rappelle sa ferme opposition à la justification de l'ensemble des critères de responsabilité dans les requêtes et les réponses de prise en charge, en raison de sa lourdeur opérationnelle susceptible de nuire au respect des délais qui ont par ailleurs été fortement réduits dans AMMR. La France ne pourra envisager d'accepter une telle disposition qu'après avoir examiné un projet de formulaire proposé par la Présidence ou la Commission, ce qui est essentiel pour évaluer les conséquences opérationnelles de cette proposition. A ce titre, la France demande à la Présidence ou à la Commission de préciser si la justification des critères reviendra à remplir l'ensemble du formulaire type de requête aux fins de reprise en charge prévu par le règlement d'exécution Dublin (n°118/2014).

Sur les autres réflexions sur la responsabilité, la France soutient les deux propositions de la Présidence, à savoir l'extension de la définition des membres de la famille et l'inclusion des critères des diplômes en contrepartie d'une durée de responsabilité allongée pour le critère de l'entrée irrégulière et celui des titres de séjour et visas. La France rappelle d'une part que l'élargissement aux familles constituées pendant le parcours d'exil peut générer des risques de fraude sur la réalité de liens familiaux qu'il sera souvent difficile d'établir et d'autre part que l'inclusion des frères et sœurs aura de fortes conséquence sur les États de destination, dont la France, où existent de nombreuses communautés étrangères. Il s'agit donc de concessions importantes qui renforcent de façon significative la responsabilité des États de destination.

Sur les bénéficiaires de la protection internationale (BPI), la France rappelle que l'inclusion des BPI dans le système Dublin est l'une des grandes innovations proposées par le règlement AMMR, qui doit être maintenue. La France est peu favorable pour l'instant à la réduction du délai à 3 ans pour l'obtention du statut de résident de longue durée : les BPI ne devraient pas bénéficier d'un régime de faveur, et ce d'autant que la durée en tant que demandeur d'asile est prise en compte. La France rappelle qu'une durée de cinq ans constitue une incitation forte, pour le BPI, à participer activement aux mesures d'intégration mises en place.

Sur une nouvelle proposition d'équilibre, la France propose que les demandeurs de protection internationale déboutés à la frontière ne soient considérés comme des reprises en charge que pour sept ans, en contrepartie de la suppression de l'exemption automatique des MNA et des mineurs de moins de 12 ans et leurs familles. La France rappelle que les mineurs feront l'objet dans tous les cas d'un examen de la vulnérabilité au cas par cas, qui devrait conduire à les sortir de la procédure d'asile à la frontière. Elle rappellera que toute exemption automatique de la procédure d'asile à la frontière est une ligne rouge pour elle.

Enfin, de même qu'elle a rappelé son attachement au caractère obligatoire de la procédure d'asile à la frontière, la France rappelle, dans un souci d'équilibre global des discussions en cours, d'une part son attachement à des mécanismes de solidarité conduisant à la relocalisation de personnes en besoin manifeste de protection, à l'exclusion donc d'étrangers en situation irrégulière ou de demandeurs d'asile en provenance de pays d'origine sûrs, d'autre part l'importance qu'elle attache à la question des retours.

2. Sur les définitions

Article 2 : définitions

La France ne soutient pas la possibilité de prendre en compte le mariage d'un mineur à la seule fin de mise en œuvre d'AMMR si le mariage n'est pas légal selon la législation des États concernés. La France demande le retour à la rédaction précédente, avec la modification demandée dans ses commentaires écrits, à savoir le remplacement de « *would not be in accordance with the relevant national law* » par « *would be illegal in accordance with the relevant national law* ».

La France demande à nouveau la suppression de la notion de « risque d'arrivées » dans la définition de la pression migratoire (point w), dès lors que la notion de « risque de pression migratoire » (que la France soutient) est utilisée dans le mécanisme de solidarité.

La France maintient sa réserve d'examen sur la définition de la situation migratoire significative (point wa), la trouvant peu opérationnelle, et rappelle sa proposition de la lier aux stratégies nationales prévues à l'article 6, paragraphe 3. La France estime que la réponse de la Présidence (selon laquelle « les stratégies nationales vont bien au-delà de la pression migratoire significative et prennent en comptent toutes les situations. Ce n'est pas opportun de les lier ») à ses remarques n'est pas satisfaisante : la situation migratoire significative dans sa définition actuelle prend en compte « *a well prepared asylum, reception and migration system* », ce qui semble correspondre à l'objectif des stratégies nationales qui établissent une « *strategic approach to managing asylum and migration at national level and […] to ensure sufficient capacity for the implementation of an effective asylum and migration management system* ».

3. Sur l'approche globale des migrations (articles 3 à 6 et article 7)

Article 3 : approche globale de la gestion de l'asile et de la migration

La France soutient ces modifications rédactionnelles.

Article 4 : principe de l'élaboration de politiques intégrées

La France soutient la transformation de cet article en considérant et est en faveur de la rédaction proposée par la Présidence slovène lors de l'examen des considérants.

Article 5 : principe de solidarité et de partage équitable des responsabilités

La France soutiendra la transformation de ce paragraphe en considérant et se prononcera en faveur de la rédaction proposée par la Présidence slovène lors de l'examen des considérants.

Article 6 : gouvernance stratégique et suivi de la situation migratoire

La France soutient la suppression de la stratégie européenne et la proposition d'un modèle (« *template* ») commun établi par la Commission.

Article 7 : coopération avec les pays tiers pour faciliter le retour et la réadmission

La France regrette le manque d'intelligibilité de cet article et estime que la rédaction proposée par la Commission mélange la reprise partielle de dispositions législatives existantes avec des déclarations d'intention sans fondement juridique à ce stade.

La France souhaiterait avoir des éléments supplémentaires sur les mesures envisageables dans le cadre d'autres politiques de l'UE, les conditions juridiques d'une telle procédure et le lien possible avec d'autres leviers de réadmission. Ces éléments semblent nécessaires pour rendre cette disposition opérationnelle et pour pouvoir poursuivre les discussions sur son contenu.

Par ailleurs, la France souhaiterait débattre de l'ajout d'un paragraphe précisant les domaines dans lesquels les mesures pertinentes pourront être actionnées et soutient qu'une décision du Conseil, sur proposition de la Commission, devrait permettre l'adoption de telles mesures.

A défaut d'obtenir satisfaction quant aux clarifications demandées, la France demande la suppression de cette disposition.

4. Sur le cycle annuel de gestion des migrations (articles 7a à 7d et 69)

Article 7a : rapport européen de gestion de la migration et décision de la Commission

La France soutient les modifications proposées qui rendent cet article plus clair.

Article 7b : informations permettant d'évaluer la situation migratoire globale, la pression migratoire, le risque de pression migratoire et une situation migratoire significative

Paragraphe 2 :

La France propose d'ajouter une référence à l'évaluation prévue au paragraphe 2 de l'article 25bis du Code communautaire des visas pour que la Commission puisse étayer son évaluation de la coopération avec les pays tiers dans le champ des migrations.

Proposition rédactionnelle :

2. [...] (b) the level of cooperation on migration**, as well as in the area of return on the ground of the annual evaluation provided in the article 25a of the Visa Code, paragraph 2,** with third countries of origin and transit, first countries of asylum, and safe third countries as defined in Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*];

Article 7c : recommandation de la Commission concernant l'établissement d'une réserve de solidarité et d'autres mesures appropriées

La France indique lever sa réserve de fond sur le seuil chiffré compte tenu des dernières modifications apportées dans APR sur la capacité adéquate pour les procédures d'asile à la frontière.

Article 7d : Forum européen de haut-niveau sur la migration et Forum européen de niveau technique sur la migration

La France estime que la rédaction doit être plus précise pour mieux distinguer les différences entre les « *representatives* » des États pour le Forum de haut-niveau et les « *representatives of the competent authorities of the Member States at a level sufficiently senior to carry out the tasks conferred on the Forum* » pour le Forum technique.

La France demande que la rédaction du paragraphe 4 soit retravaillée dans le sens de la réponse de la Présidence : la Commission présidera toutes les réunions du Forum technique.

Proposition rédactionnelle :

4. **In order to ensure the smooth functioning of Part IV of this Regulation, a Technical-Level EU Migration Forum shall be convened with representatives of the competent authorities of the Member States at a level sufficiently senior to carry out the tasks conferred on the Forum. Following the meeting referred to in first subparagraph of paragraph 3 of this Article, the Commission shall convene and preside ~~a first~~ meetings of the Technical-Level EU Migration Forum. ~~Following that first meeting t~~The Technical Level EU Migration Forum shall meet on a regular basis.**

La France s'interroge également sur le mode de décision en vigueur au sein du Forum de Haut niveau, notamment concernant l'adoption des conclusions mentionnées à l'article 7d.

Article 69 : suivi et évaluation

Pas d'observation.

5. Sur la solidarité et la boîte à outils (articles 6a, 44a à 44k, 57 à 58a)

Article 6a : boite à outils permanente de l'Union européenne de soutien à la migration

La France soutient ces modifications.

Article 44a : réserve de solidarité

La France rappelle ses positions selon lesquelles :

- la relocalisation de ressortissants de pays tiers en situation irrégulière ne doit pas être envisagée. La France demande que la mention au §2 (a) (ii) de « *or for the purpose of return of illegally staying third-country nationals or stateless* » soit supprimée ;
- les compensations de responsabilité (« *Responsability offsets* ») doivent être mentionnées dans cet article.

Article 44b : établissement d'une réserve de solidarité

La France soutient ces modifications.

Article 44c : information sur l'intention de recourir à la réserve de solidarité ou à la boîte à outils par un EM identifié dans le rapport comme étant en pression migratoire

La France regrette la modification rédactionnelle concernant la boite à outils. Il apparait plus cohérent que les États sollicitent en premier lieu la boite à outils avant de solliciter des relocalisations et d'autres mesures alternatives de solidarité. La France propose la rédaction suivante, pour éviter de recourir au terme "insuffisant" :

Proposition rédactionnelle :

2. The Member State concerned shall include in the information the type and level of solidarity measures as referred to in Article 44a needed to address the situation and a substantiated reasoning in support thereof, including ~~where relevant any use made of~~ that the components of the Toolbox *are not adapted to the situation the Member State concerned is facing*.

En cas de maintien de la nouvelle rédaction du document st07618.en23, la France pose la question de la pertinence de la boite à outils, si elle n'est plus nécessaire dans l'utilisation des mécanismes de solidarité et n'apparaît qu'à titre informatif dans le règlement.

Article 44d : notification du besoin de recourir à la réserve de solidarité ou à la boîte à outils par un EM qui se considère lui-même en situation de pression migratoire

Paragraphe 2 :

La France émet une remarque similaire à celle concernant l'article précédant sur l'utilisation de la boite à outils et réclamera une clarification dans le sens suivant : un Etat, dans le cadre de la procédure de notification, devra faire état de l'insuffisance des composantes de la boite à outils avant de pouvoir faire appel aux soutiens prévus par la réserve de solidarité.

Proposition rédactionnelle :

2. b) The type and level of solidarity measures as referred to in Article 44a needed to address the situation and a substantiated reasoning in support thereof, including ~~where relevant any use made of~~ that the components of the Toolbox *are not adapted to the situation the Member State concerned is facing* ;

Paragraphe 5 :

La France demande qu'au paragraphe 5, le délai pour la convocation du Forum technique par la Commission (5 jours) et le délai pour que le Conseil décide par un acte d'exécution que l'État n'a pas accès à la réserve de solidarité (15 jours) soient alignés pour éviter que le forum technique soit réuni, puis que le Conseil refuse l'accès à la réserve à l'État concerné. La France remercie la Commission pour son soutien sur ce point.

Proposition rédactionnelle :

5. Where the Commission Decision establishes that the requesting Member State is under migratory pressure, the Commission shall convene the Technical-Level Migration Forum within [~~five~~ fifteen days] of the transmission of its decision to the Council. The Commission shall convene the Technical EU Level Migration Forum unless the Council, by way of an Implementing Act, has decided within [15] days of the transmission of the Commission's decision to the Council that there is insufficient capacity in the Solidarity Pool for the Member State concerned to get access to the Solidarity Pool or other objective reasons for not allowing that Member State to get access to the Pool.

Article 44e : opérationnalisation des mesures de solidarité

La France soutient la nouvelle rédaction de l'article et remercie la Présidence d'avoir pris en compte ses demandes dans la nouvelle rédaction des paragraphes 2 et 4.

La France exprime toutefois de nouveau sa forte opposition au terme « *reasonable* » dépourvu de signification juridique. Les EM doivent pouvoir exprimer leurs préférences concernant les profils des candidats à la relocalisation, qui sont fondées sur leurs capacités d'accueil et leurs procédures nationales. En outre, le terme « *available* » au paragraphe 1 doit être remplacé par « *eligible* » s'agissant des candidats à la relocalisation en raison de l'aspect contraignant du dispositif.

Article 44f : réduction partielle ou totale de la contribution de solidarité de l'EM sous pression migratoire, ou qui considère l'être, qui n'a pas notifié le besoin d'utiliser la réserve de solidarité

La France soutiendra la nouvelle procédure qui est plus claire.

Article 44fa : réduction partielle ou totale de la contribution de solidarité de l'EM se trouvant en situation migratoire significative ou se considérant comme tel

La France soutient la nouvelle procédure qui est plus claire.

Article 44g : nouvelle convocation du Forum de haut niveau de l'UE sur la migration

La France soutient cet ajout de cohérence, mais estime que si trop d'États ont demandé des réductions de leurs contributions, cela ne doit pas conduire les autres États à accroitre substantiellement leurs contributions, au risque de voir leurs propres capacités saturées.

Article 44h : compensation de responsabilité (« *Responsabilité offsets* »)

La France n'est pas satisfaite du système des compensations de responsabilité qui n'est possible que subsidiairement aux relocalisations et à la demande du seul État bénéficiaire. Si un seuil minimal de relocalisations est souhaitable, le recours aux compensations de responsabilité devrait être facilité compte tenu de leur plus-value opérationnelle.

La France rappelle sa demande tendant à ce que soit précisé au point d) du paragraphe 3 que le demandeur doit être présent sur le territoire de l'EM contributeur afin d'éviter qu'un demandeur présent sur le territoire de l'EM bénéficiaire ou d'un autre EM soit inclus dans les compensations de responsabilité de l'EM contributeur.

La France demande à nouveau que les demandeurs d'asile déboutés ne puissent pas être pris en compte dans des compensations de responsabilité et que le paragraphe 4 soit supprimé.

Article 44i : contributions financières directes

La France soutiendra les propositions.

Article 44j : mesures alternatives de solidarité

La France soutiendra les propositions.

Article 44k : clé de répartition

Pas d'observation.

Article 57 : procédure précédant la relocalisation

Paragraphe 3 :

La France rappelle avoir tenu une position ferme depuis le début des négociations sur la nécessité de déterminer l'EM responsable d'un demandeur d'asile avant d'inclure celui-ci dans le programme de relocalisation. Comprenant la charge administrative que peut représenter la procédure Dublin pour les EM bénéficiaires, la France accepterait de revenir sur sa position à condition que seuls les liens familiaux, s'il y en a, soient pris en compte par l'EM bénéficiaire pour choisir l'État de relocalisation, tel que prévu au paragraphe 3.

Toutefois, la France demande, en contrepartie, que l'État de relocalisation se déclare responsable de la demande dès qu'il a confirmé la relocalisation à l'EM bénéficiaire. En effet, cette mesure est cohérente avec les pratiques actuelles et permettra d'éviter le transfert successif (relocalisation, puis transfert Dublin) de demandeurs entre les EM. Ainsi, les dispositions du paragraphe 2, sous-paragraphe 3, et du paragraphe 3 de l'article 58 doivent être transférées au paragraphe 7 de l'article 57.

Paragraphe 7 :

La France rappelle sa volonté que les opérations de solidarité soient menées efficacement dans les délais les plus courts possible. Cependant, l'expérience acquise montre que les délais prescrits ici dans la procédure de relocalisation sont trop courts (une ou deux semaines selon les cas) et qu'ils devraient être de deux et quatre semaines, afin d'être moins contraignants pour l'EM contributeur, sans que cela n'empêche de tendre vers une réduction de ces délais, ce qui est dans l'intérêt de tous. Les délais prévus sont notamment inadaptés lorsqu'il y a des enjeux sécuritaires dans le dossier de la personne à relocaliser.

La France rappelle souhaiter que l'EM contributeur puisse se réserver la possibilité, s'il l'estime nécessaire, de se déployer dans l'EM bénéficiaire afin d'effectuer également des entretiens d'évaluation du besoin de protection.

Article 58 : procédure suivant la relocalisation

La France demande, par cohérence avec ses remarques à l'article 57, la suppression des sous-paragraphes 1 et 2 du paragraphe 2.

Articles 58a et 59

Pas d'observation.

6. Sur la Responsabilité (articles 8 à 44)

Article 8 : accès à la procédure d'examen d'une demande de protection internationale

La France demande des précisions sur ces modifications et indique que les notions de « *national security* » et de « *public order* » sont déjà utilisées dans d'autres dispositions du règlement AMMR et dans d'autres instruments du RAEC (APR et Accueil notamment).

La notion de « *security risk* » est-elle utilisée par cohérence avec le règlement Filtrage et le règlement ETIAS ? N'est-il pas problématique d'introduire une notion qui ne provient pas du domaine de l'asile alors que d'autres notions existent déjà ?

Si la Présidence estime qu'il faut conserver cette notion de « *security risk* », la France demande que sa définition soit ajoutée à l'article 2 AMMR afin d'éviter des acceptions différentes entre le règlement Filtrage et AMMR. De même, pour assurer la cohérence du règlement, la France demande que cette notion soit la seule utilisée pour les évaluations réalisées par l'État bénéficiaire et l'État de relocalisation, prévues à l'article 57.

Article 9 : obligations du demandeur

Paragraphe 2 :

La France demande des explications à la Présidence et à la Commission sur ces modifications.

Paragraphe 3 :

La France demande la suppression de la dernière phrase de ce paragraphe. Le demandeur devrait produire les pièces au plus tard lors de l'entretien prévu à l'article 12 d'AMMR afin que la procédure de détermination de l'État responsable soit menée le plus rapidement possible.

Paragraphe 4, point c) :

La France demande, par cohérence avec ses demandes à l'article 57, que soient remplacés, au point c) du paragraphe 4, les termes « *the Member State of relocation following a transfer pursuant article 57(9)* » par les termes « *the Member State of relocation pursuant to article 57, paragraphe 8* ». En effet, par cohérence avec sa demande à l'article 57, pour que l'État de relocalisation se déclare responsable de la demande de l'intéressé dont il a confirmé la relocalisation, mais avant la réalisation de son transfert, il devrait être exigé que le demandeur demeure dans l'État de relocalisation à compter de la notification de la décision de transfert. Le fait que celui-ci se rende ou non, dans les délais, dans l'État de relocalisation ne devrait pas avoir d'incidence sur son obligation de demeurer dans cet État, qui s'est déclaré responsable de sa demande. En outre, le demandeur qui ne respecte pas cette obligation et demeure dans l'État bénéficiaire de la relocalisation ne devrait pas se voir octroyer les conditions matérielles d'accueil par l'État bénéficiaire à compter de la notification de la décision de transfert, comme prévu à l'article 17bis de la directive Accueil.

Article 10 : conséquences en cas de non-respect

Le paragraphe 1 étant un simple renvoi à la directive Accueil, la France préconise d'adopter une rédaction plus simple.

Proposition rédactionnelle :

Article 17a of the Directive XXX/XXX/EU [Reception Conditions Directive] applies for the person presents in any Member State other than the one in which he or she is required to be present pursuant to Article 9(4) of this Regulation.

Article 11 : droit à l'information

La France remercie la Présidence pour la suppression de cette partie, qui limitait le droit à l'information sur l'assistance juridique gratuite.

Article 12 : entretien individuel

La France soutient la proposition.

La France rappelle sa demande de supprimer les deux dernières phrases du paragraphe 4 (« *The applicant may on his or her request to be interviewed and assisted by staff of the same sex. Member States shall endeavour to satisfy such requests, where reasonably practicable »)* afin de ne pas alourdir les procédures, ni de générer un risque contentieux non négligeable et de fragiliser la conduite des procédures Dublin.

Article 13 : garanties en faveur des mineurs

La France soutient la proposition.

Articles 14 : hiérarchie des critères

La France rappelle sa demande tendant à ce que soit explicitement prévu le cas où un MNA devient majeur à la suite d'un mouvement secondaire. La situation qui doit être prise en compte n'est plus celle existant lors de sa première demande (comme prévu par le paragraphe 2), mais celle existant lors de sa première demande en tant que majeur afin de pouvoir lui appliquer les critères 15 à 23. A défaut, il relèvera de façon permanente de l'article 15 relatif aux MNA.

Proposition rédactionnelle :

2. The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation obtaining when the application for international protection was first registered with a Member State ***where the applicant is an adult or an accompanied minor****.* ***When the applicant is an identified unaccompanied minor, the Member State responsible shall be determined on the basis of the situation obtaining when the last application for international protection was registered with a Member State.***

Article 15 : mineurs non accompagnés

Pas d'observation.

Article 15 : membres de la famille bénéficiaire d'une protection internationale

La France demande d'adapter le règlement AMMR à la suite de l'arrêt C-750/20 de la CJUE. La France considère que si un EM A est déjà responsable de la demande d'asile du ou des parents d'un enfant né à la suite d'un mouvement secondaire dans un autre EM B, l'EM A responsable de la demande des parents doit automatiquement être également responsable de la demande de ce mineur si ses parents présentent une demande au nom de cet enfant dans l'EM B. Dans le cas contraire, ce serait une incitation forte aux mouvements secondaires.

Contrairement aux indications de la Commission, la France considère que la nouvelle rédaction de l'article 26, paragraphe 2, d'AMMR ne permet pas de revenir sur la jurisprudence de la Cour, cette rédaction ne présentant pas de différence notable avec celle de l'article 20, paragraphe 3, du règlement Dublin III, qui avait fondé l'analyse de la Cour dans le renvoi C-750/20.

Proposition rédactionnelle (article 16, peut être reproduit pour les articles 17 et 25) :

Article 16 Family members who are beneficiaries of international protection

Where the applicant has a family member who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Where the applicant is a minor whose family member has not respected his or her obligation pursuant to article 9, paragraph 4, the desire in writing of his or her family member is not required provided that it is in the best interest of the child.

Article 17 : membres de la famille demandeurs d'une protection internationale

Pas d'observation.

Article 18 Procédure familiale

La France soutient la proposition.

Article 19 : délivrance de titres de séjour ou de visas

La France indique toutefois qu'il faudrait reprendre certains éléments de l'actuel article 12, paragraphe 4 du règlement Dublin III, et réintroduire la condition – pour les visas expirés – qu'ils aient « *effectivement permis d'entrer sur le territoire d'un État membre* » et « *aussi longtemps que le demandeur n'a pas quitté le territoire des États membres* ».

Articles 20 à 27

Pas d'observation.

Article 28 : début de la procédure

La France demande que, lorsque deux autres EM procèdent en même temps à la détermination de l'État responsable de la demande, le demandeur soit transféré directement dans l'EM responsable de sa demande et ne fasse pas l'objet de deux transferts successifs, et que la première procédure devienne caduque. En effet, lorsque deux EM procèdent en même temps à la détermination de l'État responsable, il semble plus pertinent que la procédure Dublin incombe à l'EM dans lequel se trouve le demandeur d'asile (c'est-à-dire le dernier EM à avoir engagé une procédure Dublin) afin que le demandeur d'asile soit transféré directement vers l'EM responsable de sa demande. Cette proposition évite de ré-initier la procédure Dublin dans le dernier EM et répond aux objectifs de « célérité » et de « méthode claire et opérationnelle » (considérant 34). Elle s'inscrit également dans un souci d'efficacité opérationnelle et financière. [Cette demande fait suite à l'arrêt récent de la CJUE dans les renvois joints C-323/21, C-324/21 & C-325/21]

Articles 29 à 31

Pas d'observation.

Article 32 : notification d'une décision de transfert

La France demande la suppression du délai de deux semaines pour prendre la décision de transfert à compter de l'acceptation ou de la confirmation. Ce délai doit être fixé par la législation des EM comme actuellement, le délai pour procéder au transfert étant déjà défini. Ce délai pour prendre une décision de transfert est en tout état de cause trop court.

La France pourrait renoncer à ses demandes d'allongement des durées pour les requêtes et notifications aux articles 29 à 31 (dans des commentaires écrits précédents), qu'elle juge également trop courts, si ce délai pour prendre la décision de transfert est supprimé.

Article 33 : voies de recours

La France s'oppose aux modifications proposées qui ne sont pas acceptables. Une réflexion sur l'arrêt C-19/21 doit être menée, mais elle ne doit pas conduire à introduire des recours supplémentaires dans les procédures Dublin comme proposé par la Présidence. Ces modifications conduiront à surcharger les tribunaux des EM, présentent un risque de dérives conséquent qui ne doit pas être négligé, encourageront les recours opportunistes, et rigidifieront la procédure Dublin entre EM.

La France demande à la Commission et au service juridique du Conseil de trouver une solution juridique pour éviter la création de ces voies de recours, qui ne font qu'alourdir les procédures et vont à l'encontre du système Dublin. Aussi longtemps qu'une solution convenable n'a pas été trouvée, la France considère cet article comme une ligne rouge et ne pourra pas soutenir ce point qui met en péril le fonctionnement du système Dublin, lequel présente déjà suffisamment de difficultés procédurales.

D'après Eurostat, les deux tiers des requêtes pour motifs familiaux (articles 8 à 11 et 24 du règlement Dublin III) ont fait l'objet de réponses négatives en 2021, soit autant de contentieux potentiels en raison de ces modifications.

En tout état de cause, la France rappellera que la décision de la Cour ne concerne que les MNA. Ajouter d'autres cas irait au-delà de la jurisprudence

Article 34 : placement en rétention

Pas d'observation.

Article 35 : modalités et délais

La France demande la réintroduction des termes « *refuses to comply* » permettant, outre la notion de fuite, de proroger le délai de transfert. La France est particulièrement attachée à ces termes qui lui permettent d'accepter la définition de la fuite proposée, car ils correspondent à ses pratiques nationales, confirmées par la jurisprudence du Conseil d'Etat. Si les termes « *refuses to comply* » ne sont pas réintroduits, la France s'opposera de nouveau fermement à la définition de la fuite. Leur réintroduction est une priorité aussi bien pour la France que pour d'autres États membres, ainsi que le montrent les interventions en réunion des conseillers JAI. Enfin, la France rappelle qu'en tout état de cause, sa position prioritaire est la suppression de la définition de la fuite dans AMMR pour s'en tenir aux définitions nationales, position portée également par d'autres États en réunion des conseillers JAI.

La proposition de modification de la définition ne permet pas de tenir compte de la situation dans laquelle un demandeur faisant l'objet d'un accord de prise ou de reprise en charge refuse de se conformer de manière systématique et intentionnelle à la mise en œuvre de la procédure de transfert par un État membre. Une telle situation va à l'encontre du principe de célérité de l'instruction de la demande d'asile, qui est un élément fondateur du règlement Dublin.

En outre, une définition restreinte de la fuite pourrait inciter les États membres à instaurer des mesures de contraintes plus fortes sur les individus dans le but d'éviter un transfert de responsabilité dû à l'impossibilité de réaliser le transfert en raison du comportement non-coopératif d'un demandeur et de l'impossibilité de proroger le délai de transfert pour motif de fuite.

Par ailleurs, une définition plus large de la fuite peut avoir un effet dissuasif sur les demandeurs, qui seraient contraints à la clandestinité pendant plusieurs années avant de pouvoir espérer échapper à une procédure Dublin et voir leur demande examinée. L'intérêt du mouvement secondaire serait fortement réduit, ce qui permettrait de mieux lutter contre ce phénomène dont l'ampleur est croissante.

Enfin, la plus-value opérationnelle de l'augmentation du délai de transfert en cas de fuite serait réduite si la possibilité de placer des demandeurs sous cette procédure est limitée par une définition en retrait par rapport aux pratiques actuelles.

Pour rappel, d'un point de vue opérationnel dans le cadre de la procédure Dublin, le demandeur est pleinement informé de ses droits et obligations. Cela inclut la lecture de la définition de la fuite. En conséquence, outre la définition de la fuite, mentionner de façon claire la prise en compte du comportement non coopératif du demandeur permet à ce dernier de saisir l'intérêt de prendre une part active au processus de responsabilité et les conséquences en cas de soustraction à l'application du règlement. Cela rejoint les travaux actuels menés dans le cadre de la Feuille de route Dublin visant à informer pleinement le demandeur de protection internationale et à l'associer de la manière la plus éclairée possible à la procédure.

Pour rappel, les positions précédentes de la France sur la fuite :

- La France rappelle que la définition de la fuite doit être modifiée (article 2, sous p)) : définir la fuite par le fait que le demandeur d'asile n'est pas resté « à la disposition des autorités administratives ou judiciaires» offre en effet peu de souplesse aux États membres. Par conséquent, la France propose une nouvelle définition de la fuite destinée à éviter des bascules rapides de responsabilité d'un État membre à un autre, en cohérence avec l'objectif du règlement visant à dissuader les mouvements secondaires.

Article 36 Coût du transfert

Pas d'observation.

Article 37 Échange d'informations pertinentes avant l'exécution d'un transfert

La France soutient cet ajout.

Articles 38 à 44 :

Pas d'observation.

7. Sur les dispositions générales

Article 1 Objectif

Pas d'observation.

Article 61 à 74 :

Pas d'observation.

Article 75 : entrée en force et applicabilité

La France posera une réserve d'examen sur ce report de la date d'entrée en vigueur et demande des explications.

GERMANY

Introduction

We thank the Presidency for the new revision of the text, as well as for the efforts to achieve a compromise. Germany still thinks that **progress with the CEAS legislative acts is urgently needed**. We therefore support rapidly moving forward in the negotiations.

Our comments focus mainly on the most relevant points for us. We reserve the right to make further comments. We also refer to our previous comments.

Article 2

- **Letter (g):**
  We have a scrutiny reservation regarding the definition of family members.

- **Letter (g) (v):**
  We are critical of the proposed amendment regarding the marriage of minors. There is a risk of promoting the marriage of minors, although the assessment of the relevant Member State is that this is contrary to the wellbeing of the child; this applies in particular to forced marriage and the marriage of younger children. In view of the assessment of the relevant Member State, we suggest supplementing the initial proposal with “unless the consideration as unmarried is not in the best interest of the minor”.

- **Letter (n):**
  Cf. our comments on Article 20.

- **Letter (o):**
  The provision is not clear. It is, for example, not clear to us what is meant by “transparent criteria” and who is to define them.

- **Letter (p):**

  We assume that, with the prior addition of "for reasons which are not beyond the person's control", the intention is to implement the Judgment of the Court of Justice C-163/17 of 19 March 2019. In this case, we propose the following clarifying addition of "; or without being reasonably justified" after "where so required by a Member State". Cf. also our comments on Article 35.

- **Letter (w):**

  The legal definition of migratory pressure is a key element because of the legal consequences associated with it. The definition should be consistent with the overall package.

  As previously outlined in the Asylum Working Party, the threshold of migratory pressure should be defined **as clearly and transparently as possible**. In our view, this would be possible if the actual situation were assessed using Eurodac entries, for example.

  We are not sure how to interpret the term "risk" in "risk of such arrivals". We are in favour of deletion.

- **Letter (wa):**

  The term "significant migratory situation" needs to be defined more precisely using specific parameters, to distinguish it from the definition of a crisis.

  The term "well prepared asylum, reception and migration system" is too vague. We therefore ask the Presidency to concretise.

Article 3

- **(a):**

  We ask once again that the words "with full respect for human rights aspects" be added after "migration management": "building their capacities in search and rescue, border, asylum and migration **management *with full respect for human rights aspects***, preventing ...".

We also **remind the Commission of our written questions** about the meaning of the phrase “legal pathways for third-country nationals in need of international protection and for those otherwise admitted to reside legally in the Member States”. **For reasons of clarity, we propose using the wording “including on regular migration” instead** (“*mutually beneficial partnerships and close cooperation with relevant third countries, including on* ***regular migration****, addressing the root causes of irregular migration*”).

- **(ha):**
  We remind the Commission of our proposal to replace “unauthorised movements” (unclear meaning) with “***irregular*** movements”.

Article 5

- **Paragraph -1:**
  We agree to the deletion of this paragraph and the addition of a corresponding recital. **However, the recital should not reproduce this text exactly, but should be worded more precisely, because the sentence could also be understood to mean that all migration management (including legal, illegal, returns) is governed by the rules of the Common European Asylum System. Further, the Member States have sole responsibility in certain areas of migration (Article 79 (5) TFEU), so that the statement “the EU as a whole shares the responsibility to manage migration” is subject to misunderstanding.**

- **Paragraph 1:**
  We refer to our written comments of 14 February 2023 (sent on 20 February 2023).

- **In addition, regarding (a):**
  (a)
  Please revise the wording to conform to the language of the Global Compact for Migration (GCM) and replace the phrase “efficient management of migration flows and the return of those who are illegally staying” with “ensure safe, orderly and regular migration flows and the return of those who are staying irregularly”.

Further, we ask the Commission to explain why the text sometimes uses the term "illegal" (usually in connection with "stay") and sometimes the term "irregular" (usually in connection with "entry" or "migration", but also once in connection with "stay", p. 53). We ask to use the term "irregular" instead of illegal" where possible. And what does the term "unauthorised" (used in connection with movements) mean in contrast to this?

Article 6

- **Paragraphs 1 and 2:**
  We agree to the deletion of paragraphs 1 and 2.

- **Paragraph 3:**
  We agree to the deletion of the phrase in square brackets [*"taking into account the guidelines developed pursuant to paragraph 7"*].

- **Otherwise our position remains critical as before:**

  The national strategies should set out the strategic approach for managing asylum and migration at national level. But they should not lead to more bureaucracy, for example by requiring constant modification.
  And they should not extend to regular migration that is not directly related to the Common European Asylum System.
  This should be expressed even more clearly in paragraph 3, for example by re-wording the passage "*Such national strategies shall include information on how the Member State is implementing the principles set out in this Part*" as follows:

  *Such national strategies shall include **relevant** information **in regard to** ~~on how the Member State is implementing~~ the principles set out in this Part*

- It is also unclear how the Member States' obligations, formulated here in detail, to create national strategies with contingency plans relate to the contingency plans according to the Frontex Regulation (Articles 8 (6) and 9 (3), Regulation (EU) 2019/1896), which only refer to integrated European border management and return but not to asylum management. How are these contingency plans to be distinguished from each other? In other words: what added value does this provision offer? **Would it not be better to delete this provision concerning details?**

- **Paragraph 7:**
  We are opposed to this provision. Such requirements would create a great deal of bureaucracy for the Member States. We also doubt whether the Commission is permitted to intervene in the Member States' competences to this extent. With a template, the Commission would in any case indirectly determine the form of the national strategies setting out the Member States' strategic approach for managing asylum and migration at national level. Such requirements appear excessive in terms of subsidiarity as well.

  We ask for the opinion of the Council's Legal Service on these points.

Article 7

- We refer to our written comments of 14 February 2023 (sent on 20 February 2023).

Article 7a

- We enter a scrutiny reservation on the amendments to the solidarity mechanism regarding SAR arrivals. We also request a more detailed explanation of the background to the amendment made regarding SAR arrivals.

Article 7b

- **Paragraph 1**:
  We believe the criterion in paragraph 1 (c) ("the number of return decisions that respect Directive 2008/115/EC") should be expanded to include information on whether the person was in fact returned so far as this is practicable.

Article 11

- **Paragraph 1 letter (ga):**
  As a result of the proposed amendment of Article 35 (cf. our comments on Article 35) the sentence should read as follows: “of the fact that absconding **and the refusal to comply** will lead to an extension of the time limit in accordance with Article 35;”

Article 13

- **Paragraph 3:**
  We ask for explanation, why “shall represent and assist” was deleted. The different wording to the definition in Art. 2 (k) und para. 2 could lead to difficulties in interpretation and application of Art 13 para. 3.

Article 15

- **Paragraph 5:**
  In the light of the ECJ Judgment of 6 June 2013, MA and Others, C-648/11, EU:C:2013:367, we have a scrutiny reservation regarding the responsibility of the Member State where the unaccompanied minor`s application was first registered.

Article 19

- **Paragraph 4**:
  The uniform time limit for cessation of responsibility after having issued a visa and residence document should, as proposed by the Commission, be maintained **at three years** in the interest of a stable and clear rule on responsibility. This is an important way to prevent irregular secondary movement.

Article 20

- We see the objective of this provision and the positive effects it would have for integration if an applicant had successfully completed training during an earlier stay, and we are in favour of this.

- Provisions must be formulated to **prevent the potential for abuse**, for example due to the wide variety of educational pathways in Europe. It can be assumed that reviewing the information presented would significantly increase the administrative burden. Unfortunately, there is no database of diplomas and qualifications for all of Europe which could be used to check the information supplied by applicants. In addition to being open to abuse, we believe that this provision is likely to be a source of discussions between member states.

  However, in general, new responsibility criteria must be subject to the condition that effective measures to reduce irregular secondary movement be taken.

Article 21

- **Paragraph 1**:
  The time limit for cessation of responsibility in the event of illegal entry should remain **at three years**, as proposed by the Commission. This is an important way to prevent irregular secondary movement.

Article 25

- Regarding the addition to paragraph 2 we still have a scrutiny reservation. We fear that the term “social” is too vague and that member states will interpret it differently in the individual case, thereby delaying the determination of the member state responsible.

Article 26

- **Paragraphs 2 and 3**:
  We welcome the addition. In general, the **inclusion of beneficiaries of international protection** in the framework of the AMMR is important to prevent irregular secondary movement.

Article 27

- **Paragraph 1a:**

  We reject the supplementary proposal and the addition of the whole of paragraph 1a, because cessation of responsibility after the applicant has been absent from the EU for a period of at least three months would mean starting the procedure over if the applicant re-enters the EU. In Germany's view, the procedure for determining responsibility should only be carried out once.

Article 29

- **Paragraph 1:**

  Following an initial examination, the proposed wording to implement the judgment of the Court of Justice (Judgment of 1 August 2022, C-19/21) in the regulation text is a step in the right direction. It has not yet been possible to complete the examination. However, we still have questions regarding concrete implementation (particularly regarding Article 33 (1a)).

Article 30

- **Paragraph 8:**

  We continue to welcome the fact that the objection to a take charge request must be substantiated. However, we reject an obligation to provide substantiated reasons for rejection relating to the relevant criteria of the hierarchy, as this will lead to an increased administrative burden and will not speed up the procedure.

Article 33

- **Paragraph 1a:**

  See the comments regarding Article 29 (1) above.

- **Paragraph 1b:**

  See the comments regarding Article 29 (1) above.

Article 34

- **Paragraph 3 subparagraphs 3 and 4**:
  At least the current status (6 weeks) should be maintained.

Article 35

- **Paragraph 1:**
  We have a scrutiny reservation regarding the time limit set out in paragraph 1.

- **Paragraph 2:**
  - We are in agreement with the systematic inclusion of the extension of the time limit in cases of imprisonment in paragraph 2.
  - We expressly welcome the inclusion of a maximum time limit of **five years** for transfers in cases where the person **absconds** and is accountable for doing so.
  - However, the inclusion of an extension of the time limit in cases **of refusal to comply** is material for us and we therefore reject the deletion. The maximum time limit for transfers should also be **five years** in these cases.
  - However, the term "refusal to comply" should be based on the Member States' own criteria.
  - Differentiation of the "**border procedure**": In our view, there is inconsistency in the proposal of a shortened time limit for transfers (18 months) in the case of a prior rejection of an application by another Member State in the border procedure. Persons whose application is rejected in the border procedure and who additionally later abscond would benefit from this. Germany therefore rejects the proposal.
  - In our view, it is also important that the transfer does not have to be carried out within the remaining time (at least three months) and that instead, the time limit for transfers **starts over** when the obstacle to transfer (absconding, refusal to comply) no longer exists. Because the obstacles to transfer are not beyond the applicant's control, the time limit for the Member State to carry out the transfer should be long enough.

- In this context, we consider the definition of “absconding” in Article 2 letter (p) to be important. We assume that, with the prior addition of “for reasons which are not beyond the person’s control”, the intention is to implement the Judgment of the Court of Justice C-163/17 of 19 March 2019. In this case, we propose the following clarifying addition with regards to “absconding” in Article 2 (p) and to “refusal to comply! In Article 35 para. 2: “for reasons which are or not reasonably justified”.

Article 44b

- **Paragraph 1:**
  The inclusion of an implementing act to create a Solidarity Pool first needs further scrutiny.
- **Paragraph 4 (previous version):**
  We are in agreement with the deletion of the previous proposal that a Member State benefitting from solidarity measures need not pledge in the following year.

Article 44c

- **Paragraph 1:**
  We enter a scrutiny reservation regarding the reference to Article 44b (1) (“implementing act”).

Article 44e

- **Paragraph 4 sentence 2 (new version):**
  Given the definition in Article 2 letter (j) of the AMM Regulation, the addition of the supplementary term “identified” is not necessary. Moreover, we reject the replacement from “shall” by “may” and are in favour of maintaining the previous wording.

Article 44h

- We are sceptical of “responsibility offsets” and need to examine this instrument further. We refer to our previous comments.

Article 44i

- **Paragraph 5:**
  We request clarification of whether it is to be understood from the regulation that financial contributions are to be continued after the relevant time frame for the solidarity instrument has expired. What should happen if the situation in the "benefitting Member State" has improved by the end of the solidarity instrument?

Article 44j

- **Paragraph 3**:
  The remarks on Article 44i (5) apply accordingly.

Article 57

- Please explain whether, during the personal interviews provided for under Article 57 (6) sentence 2, the "member state of relocation" may, by means of electronic systems and in accordance with its powers under national law, itself collect the information that is to be transmitted by the "benefitting member state" in accordance with Article 57 (5). In our view, this would be important for speeding up the procedures and making them less error-prone. Should this be made clear in the recitals or in the operative part of the text? This request is connected to the revised SOPs for the Voluntary Solidarity Mechanism (VSM), which have been endorsed and should be taken into account.

- We ask the Presidency to reconsider the wording of "danger to the national security or public order of the Member States" as we are not sure whether the current wording reflects what was meant to be achieved with changing the Commission's proposal. We want to avoid that the wording can lead to misunderstandings.

- **Paragraph 7:**

  While we do understand why this article provides for a time limit of one or (in exceptional cases) two weeks to make the procedure as efficient as possible, we would like to point out that given the current experience with the VSM, these **time limits are too short**, especially if the member state of relocation chooses to conduct a personal interview with the person concerned as provided for in paragraph 6. For this reason, **the time limits should be extended as follows**: in general at least two weeks and in case of a personal interview to a minimum of three weeks, with the possibility to prolong this to four weeks.

- **In any case we reject the principle that failure to act within the time limits referred to above should entail the obligation to relocate the person concerned** (last sentence of paragraph 7).

Text proposal (changes in strikethrough/bold):

Article 57

5. In the cases referred to in paragraphs 2 and 3, the benefitting Member State shall transmit to the Member State of relocation as quickly as possible all relevant information and documents on the person referred to by using a standard form, enabling the authorities of the Member State of relocation to check whether there are grounds to consider the person concerned a danger to the national security or public order of the Member States.

6. The Member State of relocation shall examine the information transmitted by the benefitting Member State pursuant to paragraph 5, and verify that there are no reasonable grounds to consider the person concerned a danger to its national security or public order of the Member States. The Member State of relocation may choose to verify this information during a personal interview with the person concerned. ***In case of a*** ~~*The*~~ *personal interview* ~~*shall take place within*~~ *the time limits provided for in paragraph 7* ***shall be three weeks****.*

*7. Where there are no reasonable grounds to consider the person concerned a danger to the national security or public order of the Member States, the Member State of relocation shall confirm within ~~one~~ **two** week**s** of receipt of the relevant information from the benefitting Member State that it will relocate the person concerned. Where the checks confirm that there are reasonable grounds to consider the person concerned a danger to its […] national security or public order of the Member States, the Member State of relocation shall inform the benefitting Member State, within ~~one~~ **two** week**s** of receipt of the relevant information from that Member State […] of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place.*

*In exceptional cases, where it can be demonstrated that the examination of the information is particularly complex or that a large number of cases need checking at that time, the Member State of relocation may give its reply after the ~~one~~**two**-week time limit mentioned in the first and second subparagraphs, but in any event within ~~two~~ **three** weeks, in case of personal interviews within four weeks. In such situations, the Member State of relocation shall communicate its decision to postpone a reply to the benefitting Member State within the original ~~one~~ **two**-week time limit.*

*Failure to act within the ~~one~~ **two**-week period mentioned in the first and second subparagraphs and the ~~two~~ **three**-week period mentioned in the third subparagraph of this paragraph shall be tantamount to confirming the receipt of the information, ~~and entail the obligation to relocate the person, including the obligation to provide for proper arrangements for arrival~~.*

Article 58

- We still have a scrutiny reservation concerning the procedure for determining the member state responsible and regarding the question whether this procedure can also be applied prior to a transfer with a view to avoiding multiple transfers. Given the fact that a relocation transfer involves considerable effort (as evidenced by our experience with the VSM) this option should be examined.

Article 58a

- We are generally sceptical of the offsets and need to examine this instrument further.

Article 72

- We are very cautious about the proposed increase in the AMIF regulation's flat rates for resettlement and relocation and ask the Presidency to explain the meaning and purpose of the change.

Article 75

- Why was the date for the applicability changed?

GREECE

The delegation of Greece would like to submit the following written comments to the revised text of the draft AMMR Regulation (Ref no 7618/23) on the topics discussed during the JHA Counselors Meeting on 27 & 28/3/2023, on the proposed trade offs aiming at the overall balance between responsibility and solidarity in the context of AMMR and Dublin rules .

EL reiterates its general scrutiny reservation, taking into account the interdependence of this Regulation with the other legislative proposals of the Pact under negotiation, particularly the APR proposal and the Crisis and Force Majeure Regulation.

Furthermore, EL upholds its reservations as expressed in the Counselors and AWG meetings on this file and reiterates comments already submitted on AMMR, in particular on the articles linked to the Solidarity Mechanism and Part III, especially the articles on the criteria for determining the Member State responsible.

On Q1 : Time limit for a shift of responsibility in the case of absconding

EL maintains its substantive reservation on the mandatory application of the border procedure. The proposed option could be considered as a way forward, only if the set time limit for shift of responsibility is significantly lower than the 18 months proposed and is set at 6 months.

At the same time, the proposed period of 5 years before any shift of responsibility for all other cases of absconding is unjustifiably long. We propose to maintain the currently provided time limit of 18 months.

EL new suggestion

The burden placed on MS at the external borders exposed to migratory flows, by the first entry criterion in AMMR, the long period of stable responsibility for the vast majority of cases tied to the data retention period in Eurodac, together with the obligations foreseen by a set of rules in Screening, Eurodac, Reception Conditions Directive and the application of Border Procedures in APR, as well as a possible definition for migratory pressure, which will not be primarily focused on the geographical position of the MS and the particularities of the sea and land external borders could only be counterbalanced by a significantly shorter period of stable responsibility. We would therefore propose a period of 12 months for stable responsibility for all illegal entries and asylum seekers for whom border procedures (mandatory or optional) have been applied.

On Q2 : Dublin Procedures

Replacing the procedure of Take Back Request with a Simple Notification without any shift of responsibility related to a time frame for submission is not acceptable, since in the same respect Take Charge requests, mainly family reunification requests, are linked to deadlines that lead to shift of responsibility, despite the overarching obligation of all MS to respect the fundamental right of family unity.

The proposal to add an obligation in art 30.8 for assessing the hierarchy of criteria does not entail any new advantage compared to the automated procedure of Take Back Notification, with no shift of responsibility, it exists already as obligation in Dublin III and the Implementing Regulation.

On Q3 : Further deliberations regarding responsibility

Siblings vs length of responsibility of the irregular entry criterion

EL holds the position that expanding the definition of family members by including siblings, is an element for an effective and fairer system for responsibility determination. Siblings by definition have meaningful links, thus by including them in the criteria will limit secondary movements.

Raising the period of responsibility related to the irregular entry criterion from 12 months to 18 months or three years is not acceptable, since it adds burden for reasons only depending on the geographical position of a MS.

Diplomas and qualifications vs the length of responsibility for expired visas and residence documents

This proposal constitutes an unbalanced trade off in terms of potential caseload of persons with academic skills linked to a MS . We continue to support the current time frames for visa/expired residence permits

Q4 Beneficiaries:

EL is of the position that beneficiaries should fall out of the scope of the AMMR

AMMR

EL remains committed to the comments already submitted in previous AWG and meetings, but we would like to reiterate the following suggestions:

On the Definitions

(w) 'migratory pressure' means a situation **which is generated by** […] arrivals of third country nationals or stateless persons **that are of such a scale that they** ~~**and that**~~ […] places a **disproportionate** burden **on Member States taking into account the overall situation in the Union,** even on well-prepared asylum and reception systems and requires immediate action. **It covers situations where there is a large number of** *irregular* **arrivals of third-country nationals or stateless persons or a risk of such arrivals, including where this stems from** *recurring* **disembarkations following search and rescue operations,** *notably as a result of the geographic location of a Member State and the specific developments in third countries* ~~**or from unauthorised movements of third country nationals or stateless persons between the Member States;**~~

Comment: *The geographic location of a MS is decisive factor of the exposure of the MS to migratory flows of all types, therefore specific reference is needed*

Article 7b par 2

2....

(b) the level of cooperation on migration as well as in the area of return with third countries of origin and transit, first countries of asylum, and safe third countries as defined in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and on the basis of existing EU readmission agreements and arrangements.

Comment: *no reference to pre-existing EU readmission agreements and arrangements with third countries has been introduced in para.(b), however it is decisive factor for managing efficiently the migratory flows.*

Article 7c par 2

2.The Recommendation shall identify the annual numbers for relocations and for direct financial contributions at Union level, *which shall be counted on an equal share and value and calculated in accordance with the formula set out in Annex, based on the anticipated number of irregular arrivals, including the number of projected disembarkations, following migratory flows generated by search and rescue operations, the average recognition rates and the average return rates.*

(a) ~~[Xxx] for relocations~~

(b) ~~[Xxx] for direct financial contributions~~

Comment: *EL maintains the position is that the level of annual solidarity contributions should be based on objective criteria in particular number of arrivals/requests, recognition rates, returns). For par. 2, the above-mentioned wording is proposed.*

Article 44a par 2

2. The Solidarity Pool shall consist of the following types of solidarity measures, which shall be considered of equal value *and address the needs of benefitting Member States:*

Comment: EL *maintains the position of the needs based approach of the solidarity mechanism*

Article 44 h par 2

In par 2 the responsibility offsets should apply in relation to the annual target set out in the Recommendation foreseen in Article 7.c, instead of being set out in data of Article 7.c.2. The offsets, as a mechanism to close existing fair-sharing of responsibility gaps, should be established in accordance with the migratory pressures and the needs identified for the given year and not to an arbitrary number. They should be a mirror of the relocation needs and fill the gap which was not satisfied with the pledging exercise.

HUNGARY

Hungary still considers that the reform of the Common European Asylum System has to be carried out in a prudent manner by taking into account that the decisions on the individual legislative files will have long-term consequences for the proper and effective functioning of the Common European Asylum System as well as on the national practices. This is why we prefer to ensure adequate time to discuss and consider all the complex and challenging issues instead of seeking for swift compromises. The current compromises proposed by the Presidency touch upon several Hungarian red lines and do not take into consideration the specific geographical position of the Member States situated at the Western Balkan migratory route such as Hungary.

Hungary maintains its previous written comments and all the comments made at the Working Party and counsellor meetings with regard to each Article, and underlines the following key elements:

- With regard to the time limit for a shift of responsibility in a case of absconding, we think that the proposed 18-month time limit for the persons whose application was rejected by another Member State in the border procedure, does not take into account Hungary's (aforementioned) special situation. In this regard we suggest to have a single time limit which is much shorter than the proposed 5 years. Furthermore, increasing the time limit for transfer obligation in the case of absconding would not ensure the cooperation of the applicants with the authorities and by this the swift conclusion of the asylum procedure.

- The extension of the definition of family members to include siblings, the introduction of the take back notifications, the application of a new responsibility criterion of diplomas and other qualifications, as well as the inclusion of beneficiaries under the scope of the take back procedure remain to be a red-line for Hungary.

- With regard to the length of responsibility in case of irregular entry, Hungary is ready to consider the 3-year-long deadline. At the same time, in the case of the responsibility criterion for expired residence documents or visas, Hungary would like to keep the currently applicable deadlines.

- As a general comment on all articles concerned, we would like to reaffirm our strong objections to treating persons rescued at sea separately from persons who crossed the external border illegally.

- We would like to keep the currently applicable definition for the family member as set out in the Dublin III regulation.

- Regarding Article 6, the proposed text has to state clearly that the national strategies should not concern issues related to regular migration as it is not directly related to the Common European Asylum System. Without this clarification Hungary is not in a position to accept the Article.

- Regarding Article 7c, we do not agree with setting out the minimum numbers for relocations and direct financial contributions, as they would only serve as a pull factor.

- The current wording in Paragraph (1a) of Article 27 is not acceptable for Hungary as it would encourage secondary movements and generate unfair conditions for Member States situated at the Western Balkan route such as Hungary.

- Regarding Article 44a, responsibility offsets, as a form of indirect relocation, have to be listed under Point (a) of Paragraph (2). Furthermore, Hungary can only accept the concept of responsibility offsets, if the application of this solidarity type is mandatory only for Member States that are ready to take part in relocations.

- We reaffirm our previous position on the importance of counting the alternative solidarity contribution (mentioned in Article 44j) based on their added value instead on their financial value (as suggested by the compromise text), otherwise the implementation of this concept may be discriminatory both for the benefitting and for the contributing Member States.

- We continue to encourage the Presidency and the Commission to share with us (possibly by a simulation) more information on the application of the distribution key set out in article 44k. Furthermore, Hungary's strong position is that a distribution key set out in the context of solidarity can only be fair if it takes into account the national financial resources spent on the protection of the external borders.

IRELAND

1. Time limit for a shift of responsibility in case of absconding.

We have some concerns about having a reduced timeframe in the case of absconding for persons who were rejected in the border procedure. Bearing in mind that those in the border procedure are persons who are unlikely to be granted protection, pose a risk to national security etc. there should not be an incentive for absconding. Furthermore, it is not clear how it would be identified that a person had been refused in the border procedure.

We had previously indicated that we continued to support the text of the Commission Proposal which provided an indefinite period for those who abscond however we could support a five year time limit for a shift of responsibility in the case of absconding.

If a reduced timeframe is to be provided for those who were rejected in the border procedure (in the interest of finding a balance between solidarity and responsibility) then it should only apply to those who were processed in the mandatory border procedure.

2. Dublin Procedure

We can agree to an obligation for the determining Member State to justify that it has assessed the hierarchy of the responsibility criteria.

3. Further deliberations regarding responsibility

(i) We do not support the inclusion of siblings in the definition of family members. The relationship is too difficult to establish. We are not sure what is meant by a "differentiated approach to the length of responsibility in the case of irregular entry". Is proposed to have a different time frame for different categories? We would not support this approach in the case of irregular entry.

(ii) We are not in favour of the new criteria of diplomas and other qualifications as it will be difficult to establish in practice however, in the interest of compromise we can agree to it with timeframes proposed 18 months for visa and 3 years for residence permits.

4. Beneficiaries of International Protection

We strongly support the inclusion of beneficiaries of international protection in the scope of the take back procedure and are flexible on the length of time in the Long Term Residence Directive.

Dublin Procedure Article 8 – 40

Article 10:

Para 1: We can agree to the new text here. However, the reference to the Screening Regulation in the last part of the sentence creates a problem for us. Ireland is not part of the Screening Regulation therefore, no applicant in Ireland will have been informed of the consequences pursuant to the Screening Regulation. We also understand that this could also impact other Member States as not all applicants will be subject to the Screening Regulation. We suggest including a reference to Article 11 here also. Article 11 also obliges Member States to provide applicants with information on the consequences of non-compliance.

> *The applicant shall not be entitled to the reception conditions set out in Articles 15-17 of Directive XXX/XXX/EU (Reception Conditions Directive) in accordance with Article 17a of that Directive in any Member State other than the one in which he or she is required to be present pursuant to Article 9(4) of this Regulation from the moment he or she has been notified of a decision to transfer him or her to the Member State responsible, provided that the applicant has been informed of that consequence pursuant to Article 8(2), point (b) of Regulation (EU) XXX/XXX [Screening Regulation]* ***or Article 11 of this Regulation.***

Para 2: We would prefer the previous wording here. 'shall not' as opposed to 'do not have to'.

Article 13

Para 3: The new wording here "the Member States shall involve the representative of an unaccompanied minor" is vague and we prefer the previous wording which is in line with Article 22 of the APR.

> **The competent authorities shall ensure that unaccompanied minors are represented and assisted in such a way so as to enable them to benefit from the rights and comply with the obligations under this Regulation, [Regulation (EU) No XXXX/XXXX [Dublin AMMR Regulation]] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].**

Article 27

Para 1a: We do not support the inclusion of this paragraph, Ireland does not have access to the Entry/Exit system making this difficult to establish in practice. Notwithstanding this we can agree to the text changes proposed.

Article 33

We understand that Para 1a and 1b were introduced as a result of CJEU Case C 19/21 however, we have some concerns about how this would operate in practice and will need to consider it further

Article 35

See comments above in relation to the lime limit for a shift of responsibility in case of absconding.

Article 37

Para 2(e): As Ireland is not part of the Screening Regulation the requirement to submit the screening form pursuant to Article 13 of the screening Regulation is a problem for us. We also understand that the Screening Regulation may not apply to all applicants for international protection, therefore, we would suggest adding "**where available"** to this point.

Governance Articles 3 – 7

Article 4

We support the deletion of this Article and the inclusion of the text in the footnote in a recital instead.

Article 5

We support the deletion of para -1

Article 6

We can support the deletion of para 1 and the changes in para 3, 5 and 7.

Article 6a

We can support the changes made to this Article.

Annual Migration Management Cycle Articles 7a – 7d

Article 7a

We thank the Presidency for the explanation of why a new and separate Commission Decision was introduced here and that it is intended to clarify in the recitals that the Member States will only be required to provide the information in Article 7b where this is not otherwise available to the Commission.

In para 5 the new text "the Commission shall base itself on the information gathered pursuant to…." does not read right. We prefer the previous wording or alternatively the wording in Article 7b could be used "The Commission shall use the information gathered pursuant to…"

Article 7b:

Para 2(f) – We suggest adding "where available" at the end of this end of this point. Where the assessment is being carried out for the purpose of preparing the Report and the Commission Decision, these will not be available.

Solidarity 44a to 44k

Article 44c

The end of para 3 doesn't read right and looks like there is text missing at the end of the sentence. We suggest adding "…within ten days of receipt of the information referred to in para 2" or "…within 10 days of being informed in accordance with para 1"

Article 44h

We refer to previous written comments on this article. While we support the concept of Responsibility Offsets we do not think the text it is clear enough as to how it will operate in practice – how it links to the fair share principle, and any impact on the Council Decision establishing the solidarity pool and the solidarity measures pledged by Member States in accordance with Article 44a .

ITALY

Italy acknowledges the excellent work and the efforts made by the Swedish Presidency to accommodate the MS' concerns.

The Italian delegation has the pleasure to submit the following amendment proposal concerning the Asylum and Migration Management Regulation (AMMR) examined during the meeting of JHA Counsellors on March 27-28 (doc. No. 7618/23).

On a general note, Italy reiterates its general scrutiny reservation due to the linkages of this Regulation with the other legislative proposals of the Pact under negotiations, particularly the APR proposal and the Crisis and Force Majeure Regulation.

Nonetheless, Italy remains committed to a constructive approach, key to reach the goal of a fair, functional and sustainable asylum system based on an overall balance and a genuine burden sharing.

Needless to highlight that Italy has so far showed much flexibility and good will when supporting the Council position on Eurodac and Screening regulations, ascribed to the responsibility field. Therefore, it expects a similar level of flexibility and good will when it comes to provisions concerning solidarity.

The following Italian amendment proposals regard the whole compromise text, as discussed in the latest JHA Counsellor's meeting, and specifically the provisions which need to be improved for a better balance. Concerning the articles excluded from this contribution, the Italian delegation can show flexibility.

Article 2 - Definitions

f) albeit Italy considers that beneficiary of international protection should not be in the scope of AMMR regulation, this definition, possibly aligned with other asylum instruments, is necessary as is connected with point g) on 'family members',

g) (v) sibling or siblings of the applicant should be included. The argument against this inclusion - i.e. the uneasy proof of family relationship - is misleading. In the first place, difficulty doesn't mean impossibility, secondly there are scientific methods which may help where administrative evidence is lacking. Furthermore, the asylum system should be lying on the respect for human rights. Ruling out siblings from the notion of family members would infringe the right to family unity which is inherent in the respect for family life (Article 7 of the Charter). Ultimately, the denial of family reunification of siblings might be a driver for unauthorised movements.

(w) the geographical position of a MS is a relevant factor. Therefore, this provision should be amended as follows:

'migratory pressure' means a situation which is generated by […] arrivals of third country nationals or stateless persons that are of such a scale that they ~~and that~~ […] place~~s~~ a disproportionate burden on Member States taking into account the overall situation in the Union, even on well-prepared asylum and reception systems and requires immediate action. It covers situations 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 recurring disembarkations following search and rescue operations, as a result of the geographical location of a Member State, or from unauthorised movements of third country nationals or stateless persons between the Member States;

Article 5 – Principle of solidarity and fair sharing of responsibility

The para. -1, even more so as Article 4 would be moved to a recital, should stay in the operative part and be reworded as follows:

-1. The principle of solidarity and fair sharing of responsibility shall be the basis ~~based on the premise~~ of a system where ~~that~~ the EU as a whole shares the responsibility to manage migration, governed by the set of common rules included in the Common European Asylum System.

*1(e) take all **measures necessary** […] and proportionate […] to prevent and ~~correct~~ manage (or reduce, as suggested by Spain) unauthorised movements between Member States.*

Article 6 - Strategic governance and monitoring of the migratory situation

Italy can support the removal of paragraphs 1 and 2 even though Member States might take advantage from a European and comprehensive strategy.

As for para. 7, in the spirit of compromise, Italy can accept the new text with the following change:

"~~uniform conditions in the form of~~ a common template to be used by Member States for the purpose of their national strategies.".

Article 7 - Cooperation with third countries to facilitate return and readmission

Italy can support this provision but two changes should be introduced in para. 1 and 3. When reference is made to "Union's overall relations", the text should read "*The Union and Member States' overall relations*".

Article 7b - Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure ~~and~~ or significant migratory situation

In the heading of this Article, a disjunction should be introduced, consistently with para. 1.

(f) In coherence with its position regarding the take back procedures, Italy suggests to replace the reference to "notifications" by a reference to "requests" as follows:

(f) the number of incoming and outgoing take charge and take back requests in accordance with Articles 29 and 31;

(j) In order to reflect the specific migratory pressure of persons disembarked, both spontaneously and following a search and rescue operation, and in order to avoid double counting of applications for international protection, Italy suggests to reword paragraph (j) as follows:

(j) the number and nationality of third-country nationals disembarked, including those following search and rescue operations […];

(m) The number of final asylum decisions is extremely difficult to be calculated since asylum authorities obtain no systematic feedback from judiciary. Therefore, Italy proposes to remove this reference from this point.

Article 7c - Commission Recommendation regarding the establishment of the Solidarity Pool and other appropriate measures

1. The Recommendation shall identify the annual numbers for relocations and for direct financial contributions, which shall at least be:

(a) [Xxx] for relocations

(b) [Xxx] for direct financial contributions

The best option would be identifying the annual numbers for relocation on the basis of objective criteria, which are actually mentioned in the second paragraph of this Article: the overall number of arrivals, the average recognition rates as well as the average return rates.

In the spirit of compromise, a set threshold can be accepted, where it is put in relation and balanced with other relevant elements of the whole system, i.e. the adequate capacity concept in the border procedure and the responsibility offsets.

Either way, a concrete figure is part and parcel of the negotiations and should be urgently identified and submitted to Member States.

Article 7d - The High-Level EU Migration Forum and Technical-Level EU Migration Forum

The Forum should be convened without delay. 15 days would be ideal, considering the urgent need for a solidarity response, where needed. Therefore:

3. The Council shall convene the High-Level Migration Forum [within ~~XX~~ *15 days*] following the adoption of the Report referred to in Article 7a and the Recommendation referred to in Article 7c.

Article 11 - Right to information

Para. 1(ga): a scrutiny reservation is raised on this point, with reference to the time limits of transfers (Article 35).

Article 12 - Personal interview

In para. 4, a reference to "cultural mediators" in alternative to "interpreters" is needed, in order to extend the chances of ensuring appropriate communication. According to the Italian experience the professional profile of cultural mediator has been an important asset to overcome cultural barriers. Furthermore, cultural mediators are specifically foreseen in the special domestic legislation on minors.

Therefore, the third sentence before the last in para. 4 should read as follows:

"Where necessary, Member States shall have recourse to an interpreter or a cultural mediator".

Chapter II - Criteria for determining the Member State responsible (Articles 14-23)

- **Article 14.** ***Hierarchy of criteria***.

The hierarchy of criteria should be better complied with than in the current practice. Therefore, substantiated reasons should be provided in case of negative reply, in order to ensure a more proper examination of any individual case.

This should be reflected in this Article, by the following suggested wording:

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter. *Failure to apply the said order shall be justified on the basis of all circumstances of the case relating to all criteria set out in this Chapter.*"

This new wording is connected to Articles 29.3 and 30.8, which should be accordingly amended by deleting the word "relevant".

- ***Article 15 - Unaccompanied minors***. Italy supports the reference to the best interests of the unaccompanied minor. Consistently with BIC, in para. 5, Italy insists in placing the responsibility on the Member State where a UAM is present, since his/her transfer to another Member State may result in postponing the taking charge by the competent authorities and the access to the asylum procedure.

- ***Article 19 - Issue of residence document and visas*.** Italy supports the current time limits. Where uniform time spans are preferred, one year is a reasonable alternative as a component of the overall balance.

- ***Article 20 - Diplomas or other qualifications*.** Italy supports this criterion connected to cultural link as meaningful.

- ***Article 21 - Entry criteria.*** Italy does not support the extension of time limit, advocating for the current one (12 months). The cessation of responsibility in para. 1 is to be considered in conjunction with the obligations set forth in Screening regulation proposal. On the basis of the new screening procedure, absconding to evade registration becomes quite unlikely. Therefore, there is no reason to extend the time span from 1 to 3 years. In addition, given that search and rescue operations are linked to the fulfilment of international obligations, a lower time limit should be foreseen for persons disembarked in relation to SAR operations,

- ***Article 22 - Visa waived entry***. Italy can accept the deletion of the second part of para. 1 and the new paragraph 2.

Dependent persons and discretionary clauses (Articles 24-25)

- ***Article 24 - Dependent persons***

Italy reiterates the proposal to introduce an additional subparagraph at the end of para. 1. Its rationale is connected to the experience over time of unjustified refusals by requested MS to, by contrast, well documented requests.

The new subparagraph should read as follows:

> *In order to apply this paragraph, a Member State in which an application was registered shall provide the requested Member State with documentary evidence referred to in paragraph 3. The reply of the requested MS refusing the request shall state the reasons thereof.*

- ***Article 25 - Discretionary clauses.*** Italy supports the widening of the scope through a reference to *social and cultural* considerations.

Furthermore, for the sake of flexibility and efficiency under the overall fair share principle, a presumption should be also added in the last subparagraph of para. 2, which should read as follows:

> *The requested Member State shall carry out any necessary checks to examine the humanitarian grounds cited, and shall reply to the requesting Member State within two months of receipt of the request using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. Where no reply is provided within the set time limit, acceptance is presumed. A reply refusing the request shall state the reasons on which the refusal is based.*

Article 26 - Obligations of the Member State responsible

As already mentioned, Italy deems that beneficiaries should be outside the scope of this Regulation, since its aim is to determine the MS responsible for the examination of an application. Therefore, point c) of para. 1 should be deleted, as well as the addition in para. 2.

Art. 27 - Cessation of responsibilities

In para. 1 the reference to “take back notification”, consistently with the Italian position, should be replaced by “take back request”.

Art. 29 - Submitting a take charge request

The last subparagraph of para. 1, with reference to a UAM, should be a “shall clause”. Actually, in the interest of minors, a uniform application of this provision throughout EU should be foreseen.

Article 31 - Submitting a take back notification

As already mentioned Italy advocates the take back request procedure. Consequently the heading and the relevant provisions should be changed similarly to the current acquis.

Nonetheless, the notification procedure, if suitably counterbalanced with other favourable provisions (for instance, expanded notion of family members and shifting of responsibility where the notification is not made within the foreseen time limit), might be taken into consideration.

In this case, Article 31 should read as follows:

1. *In a situation referred to in Article 26(1), point (b), (c) or (d) the Member State where the person is present shall make a take back notification within ~~two weeks~~ one month after receiving the Eurodac hit. Failure to make the take back notification within the time limit shall be tantamount to accepting the responsibility.*

3. The notified Member State shall confirm receipt of the notification to the Member State which made the notification within ~~two weeks~~ one month, …etc.

4. Failure to act within the ~~two week~~ one month period…etc.

Article 33 - Remedies

Italy can support the added paragraphs 1a and 1b (in conjunction with the new subparagraph in Article 29.1.

In coherence with the concept of strengthened hierarchy, point b) in para. 1 should read as follows:

b) whether ~~Articles 15 to 18 and Article 24~~ Articles 14 to 24 have been infringed, in the case of the persons taken charge of pursuant to Article 26(1), point (a).

Article 35 - Detailed rules and time limits

A link between the responsibility rules in AMMR and border procedure in APR is acceptable for Italy. Nonetheless, since absconding will be less likely due to the pre-entry procedures (screening and BP), the envisaged 5 year period seems not only disproportionate but also counterproductive in terms of possible increase of litigation on integration ground.

Regarding rejected applications within the BP, the 18 month period envisaged, since it is already in the *acquis*, may be more reasonable where reduced to e.g. 6 months.

Solidarity mechanisms

Art. 44a - Solidarity Pool

A need-based approach is key to ensure relevance to the solidarity mechanisms. Therefore, the chapeau of para. 2 should read as follows:

2. The Solidarity Pools shall consist of the following types of solidarity measures, depending on the needs of beneficiary Member States, which shall be considered of equale value:

In the same vein, point c) of para. 2 should read as follows:

c) where requested by the beneficiary Member State, alternative solidarity measures…etc.

In point (a)(ii) of para. 2, the reference to beneficiaries of international protection can be accepted only where the two Member States concerned agree on including them in the relocation pool.

Point b) should be improved by deleting the wording “may have a direct impact” which may entail an ex-ante assessment of the impact of projects, which is evidently impossibile. Therefore, the following text is suggested:

(b) direct financial contributions provided by Member States primarily aiming at projects related to the area of migration, border management and asylum in the benefitting Member States or at projects in third countries related to the same areas, including assisted voluntary return and reintegration programmes and anti-trafficking or anti-smuggling programmes, in accordance with Article 44i;

Article 44c - Information regarding the intention to use the Solidarity Pool by a Member State identified in the Report as under migratory pressure

The reference to the Toolbox should be deleted since the resort to it is not mandatory:

2. The ~~notification of the~~ Member State concerned shall include in the information the type and level of solidarity measures as referred to in Article 44a needed to address the situation and a substantiated reasoning in support thereof, ~~including where relevant any use made of the components that the use of the Toolbox is insufficient.~~

Article 44d - Notification of the need to use the Solidarity Pool by a Member State that consider itself under migratory pressure

Like in the previous Article, the reference to the Toolbox should be deleted in point 2(b)

(b) the type and level of solidarity measures as referred to in Article 44a needed to address the situation and a substantiated reasoning in support ***thereof, ~~including where relevant any use made of the components of the Toolbox~~;***

The procedure provided for in paragraphs 3, 4, 5 and 6 should be simplified.

Article 44e - Operationalisation of solidarity measures

According to the needs-based approach, para. 3 should be reworded as follows:

3. In operationalising the solidarity measures identified, Member States shall implement their pledged solidarity contributions referred to in Article 44a in proportion to their overall pledge to the Solidarity Pool for the given year and in compliance with the needs identified by the Recommendation of the Commission referred to in Article 7c. …etc.

Article 44f - Full or partial reduction of the solidarity contribution by a Member State under migratory pressure or that considers itself under migratory pressure and that has not notified the need to use the Solidarity Pool

Since the reduction of solidarity measures after pledges may dramatically affect benefitting Member States and alter the response to their solidarity needs, the Council implementing decisions provided for in para. 5 should indicate the modalities to close loopholes in terms of solidarity. Therefore, the para. 5 should read as follows:

5. Following the receipt of the Commission's assessment, ~~Where the Commission concludes that the pledged contributions of the requesting Member State should be partially or fully reduced, the Commission shall inform~~ the Council~~, which~~ shall adopt an implementing act to determine whether or not to authorise the Member State to derogate from the Council implementing Decision establishing the Solidarity Pool. Where the derogation is authorised, the Decision may establish, upon request of the benefitting Member States, that the pledged contributions, partially or fully reduced, are replaced by applying Article 44h.

Article 44fa - Full or partial reduction of the solidarity contribution by a Member State that is facing a significant migratory situation or that considers itself facing a significant migratory situation

To the same purpose as in Article 44f.5, a similar amendment should be introduced in para. 5:

5. Following the receipt of ~~Where~~ the Commission's assessment ~~concludes that the pledged contributions of the requesting Member State should be partially or fully reduced, the Commission shall inform~~ the Council~~, which~~ shall adopt an implementing act to determine whether or not to authorise the Member State to derogate from the Council Decision establishing the Solidarity Pool. Where the derogation is authorised, the Decision may establish, upon request of the benefitting Member States, that the pledged contributions, partially or fully reduced, are replaced by applying Article 44h.

Article 44g - Reconvening the High-Level EU Migration Forum

Each benefitting Member State should also have the opportunity to ask for the reconvening of the Forum:

1. *Where the Council, on its own or of one or more benefitting Member States' initiative or upon invitation from the Commission, considers that the solidarity contributions to the Solidarity Pool are insufficient, including where significant reductions have been granted according to Articles 44f and 44fa or the overall situation requires additional solidarity support, it shall by simple majority convene the High-Level EU Migration Forum to request Member States for additional solidarity contributions*

Article 44h - Responsibility offsets

Italy considers responsibility offsets as a second-level mechanism meant to close loopholes in solidarity objectives set out in the Recommendation referred to in Article 7c.

In order to not discriminate among contributing Member States, the offsetting should apply regardless of the chosen type of contribution, including the financial ones. Since solidarity is mandatory on the basis of the fair share pursuant to Article 44k, offsetting should be triggered off where contributing Member States have not complied with their respective fair share.

Furthermore, the percentage in para.1 doesn't provide indications on how cases under 75% should be addressed, even though, failing to reach that percentage would entail more serious consequences.

Consequently, in para. 2, the mandatory triggering of responsibility offsets should be linked to an additional condition, namely a gap of contributions falling below a specified percentage of the Recommendation.

Therefore, Italy suggests the following rewording of para. 2:

1. *Where, ~~following~~ notwithstanding the meeting of the High Level Migration Forum convened in accordance with Article 44g, the ~~relocation~~ pledges to the Solidarity Pool contained in the Council Implementing Decision referred to in Article 44b are below 75% of the Recommendation or below the number referred to in Article 7c(2)~~(a)~~, the contributing Member States shall take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the number referred to in Article 7c(2)~~(a)~~….etc.*

Procedural requirements (Articles 57-60)

Article 57 - Procedure before relocation.

A scrutiny reservation is raised on article 57.1 with regard to the categories of people who may be relocated pursuant to Article 44a.2a, as already mentioned above. The same reservation applies to Article 57.3.

Furthermore, Italy suggests to align para. 3 with the wording in Article 25.2, i.e. “family, social or cultural considerations”.

Article 58a - Procedure for Responsibility Offsets under Article 44h(1)

The procedure for voluntary offsets, pursuant to Article 44h.1, should however include some elements of certainty, otherwise the measure turns out to be irrelevant. Therefore, a reference to a minimum level (e.g. 75%) of acceptance of requests made by beneficiary Member States is suggested in paragraph 3.

The time limits in this Article should not be longer than 15 days. Failure to reply within this timeframe should be tantamount to accepting the request.

Finally, the request should be made in terms of applicants’ number, rather than applications, since these might be multiple.

Therefore, this Article should be reworded as follows:

1. *Where a benefitting Member State may request another Member State to take responsibility for examining a number of applications for international protection pursuant to Article 44h(1), it shall transmit its request to the contributing Member State and include the number of ~~applications~~ applicants for international protection to be taken responsibility for instead of relocations up to the number identified in the Recommendation pursuant to Article 7c.*

2. *The contributing Member State shall give a decision on the request within ~~30~~ 15 days of receipt of the request.*

   The contributing Member State may decide to accept to take responsibility for examining a lower number of ~~applications~~ applicants for international protection than requested by the benefitting Member State but no less than 75% of the request of the latter. Failure to reply within the set timeframe shall be tantamount to accepting the request.

2. *The Member State which has accepted a request pursuant to paragraph 2 shall identify the individual ~~applications~~ applicants for international protection for which it takes responsibility for and shall indicate its responsibility pursuant to Article 11(3) of Regulation (EU) XXX/XXX [Eurodac Regulation].*

LATVIA

Latvian national experts continue evaluating all proposals and additions made by the Presidency in the text of the AMMR, therefore **we maintain a general scrutiny reservation on the new text**.

Consequently, **please find below our preliminary view** on the aspects discussed previously:

Further deliberations regarding responsibility

Latvia maintains its position and cannot support (1) the extension of the definition of family members to include siblings, as well as (2) the new criteria of diplomas and other qualifications for establishing responsibility.

We also believe, that the proposals of the Presidency to balance them by introducing differentiated deadlines would only add more complexity (and possibility of misunderstandings) to the overall procedure.

Article 2

Latvia has concerns regarding the current wording of the definition (g) 'family members', as marriage is not the only criterion for reaching majority before the age of 18 in accordance to national civil code. Therefore, we propose to clarify, that Points (g)(ii) to (g)(iv) are applicable to a minor, unless in accordance with the existing legislation applicable to him / her, the majority has not been reached earlier.

Latvia also maintains its objections against the definitions (w) 'migratory pressure' and (wa) 'significant migratory situation'. Both definitions, which will serve as a basis for sometimes very specific and quantifiable support, are framed in very broad terms. In practice this could lead to difficulties when measuring the situation on the ground.

Articles 6a and 44c

We believe further clarifications on the Toolbox and its components are still needed, as well as on the interconnection between the support to be provided by the Toolbox and that to be received from the Solidarity Pool (order, modalities etc.).

Latvia has concerns regarding the new wording of Article 44c Paragraph 2, where the previously already unclear hierarchy / interconnection / link between the Toolbox and the Solidarity Pool has been weakened even more (by deleting the reference to the fact, that the use of the Toolbox is insufficient).

Articles 7c and 44j

Latvia maintains essential objections against the current wording, which sets out a mandatory (lowest) amount of relocations and direct financial contributions, while identifying other forms of solidarity as an option only in exceptional circumstances.

In addition, Latvia is disappointed, that Member States' contributions through Union agencies will not be considered as a part of their alternative solidarity contributions. This new approach disregards the situation that was in place when Frontex and EUAA founding regulations were negotiated and some Member States voluntarily agreed to contribute an amount that might be considered above their fair share.

We would also like to receive clearer indications regarding the possible amount of annual relocations and financial contributions.

LITHUANIA

LT comments on AMMR (balanced solidarity and responsibility)

Reiterating that Lithuania has always been in favour of mandatory but flexible solidarity where a MS could choose forms of solidarity measures, we still are among those Member States that reject any permanent solidarity mechanisms and solidarity contributions that would be calculated according to the mandatory formula / distribution key (without evaluation of individual capacities of the member states). We maintain concerns about the permanent nature of pledging to the Solidarity Pool as well as the mandatory fair share calculated according to a distribution key (which is not a guiding principle anymore).

We maintain general scrutiny reservation.

As for the possible trade offs in the Presidency's discussion note (7618/23), we already expressed a lot of flexibility, just to specify that for 1) The time limit for a shift of responsibility in case of absconding - time limit of 18 months would be more acceptable for us; and for 2) Dublin procedures – we sympathize with take back notifications.

As for the concrete proposals to some articles:

Article 7c

We raise a substantial reservation. We cannot accept any minimal thresholds which together with the distribution key (Article 44k) applied in a mandatory manner (Article 44b) leave Member States no discretion.

Text proposal:

Article 7c

Commission Recommendation regarding the ~~establishment of the~~ Solidarity Pool and other appropriate measures

1. **<…>**

2. **The Recommendation shall identify indicative ~~the~~ annual numbers for relocations and for direct financial contributions at Union level ~~which shall at least be~~:**

(a) [Xxx] for relocations

(b) [Xxx] for direct financial contributions

Article 44b

We raise a substantial reservation. In line with our position on solidarity, we cannot agree to the mandatory fare share calculated according to the distribution key. The fair share principle should be established *as a guiding principle* which was offered as an option in the CZ conception paper.

Text proposal:

Article 44b

Establishment of the Solidarity Pool

1. **<…>**

2. **During the High Level Migration Forum meeting referred to in Article 7d, Member States shall pledge their contributions to the Solidarity Pool, taking ~~fully~~ into account the level of solidarity needs identified in the Recommendation referred to in Article 7c and ~~in accordance with the mandatory~~ fair share calculated according to the distribution key set out in Article 44k.**

Article 44g

Substantial reservation. Paragraph 2 refers to the procedure in Article 44b involving calculation of the mandatory fare share according to the distribution key.

Article 44k

Substantial reservation. Application of the distribution key is acceptable as long as it has no binding effect

LUXEMBOURG

1) **The time limit for a shift of responsibility in case of absconding**: Luxembourg can be flexible concerning a differentiated approach to time limits in case of absconding. If a decision is taken in that direction, we would however suggest a period of 30 months (2.5 years) for situations where the person absconding is someone whose application was rejected by another Member State in the border procedure.

2) **Dublin procedures**: Luxembourg wishes to reiterate the high importance it attaches to the notifications system for take back procedures. In a spirit of compromise, we could accept the inclusion of a possible obligation on the determining Member State to justify that it has assessed the hierarchy of the responsibility criteria.

3) **Further deliberations regarding responsibility**:

- As for the definition of family members and the inclusion of siblings in its scope, Luxembourg maintains a scrutiny reservation on this issue as this will need to be decided at a later stage when the picture regarding the overall balance is clearer. As for the length of responsibility in case of irregular entry, Luxembourg has a preference for 3 years.

- Concerning the new criteria of diplomas and other qualifications, Luxembourg can lift its scrutiny reservation and accept this new criterion. Concerning the length of responsibility in case of expired visas, we can flexible regarding the 18 months period, in a spirit of compromise.

4) **Beneficiaries of international protection**: Luxembourg cannot accept a reduced period of 3 years for beneficiaries. The period should remained aligned with the period of 5 years required for EU citizens.

Article-by-article

Art. 2 (g)(v): LU took note of the Commission's explanations on the new language concerning the marriage of a minor, but maintains a substantive reservation.

Art. 6a (c): LU maintains its reservation regarding the reference to the Instrumentalisation Regulation in light of our position on this proposal.

Art. 7a (6): LU maintains its reservation regarding the classification of the Commission's Recommendation.

Art. 12 (4): With regards to the reference to "*interviews of unaccompanied, and where applicable, accompanied minors, shall be conducted in a child-friendly manner, by staff who are appropriately trained (…)*" and following the Presidency's explanations regarding cases where interviews would need to be conducted with accompanied minors, LU requests clarifications in the text. "Where applicable" is not sufficiently clear and precise.

Art. 13 (3): Luxembourg can show some flexibility on this provision.

Art. 19: see comment above

Art. 20: see comment above

Art. 21: see comment above

Art. 22: Luxembourg maintains its concerns with regard to this criterion in its current version, but could show some flexibility if a system of simple take back notifications is maintained.

Art. 33: substantive reservation

Art. 35: see comment above

Art. 44h: LU continues to believe that responsibility offsets should exclusively be measures of last resort, as they would otherwise undermine the good functioning of the solidarity mechanism. Therefore, we believe that the offsets should not be referred to in previous articles.

Art. 44k: Full support from LU. The simplicity of the distribution key is an important issue for us.

Art. 58 (4): LU wishes to underline that the automatic granting of international protection status under this article is problematic for us. We consider that an evaluation of the international protection needs to be done before a recognition.

MALTA

Article 2

- Points (n) and (o):

MT maintains its substantive reservation on these two points due to the serious concerns we have vis-à-vis the new criterion for establishing the Member State responsible based on the holding of diplomas or other qualifications.

- Point (w)

MT is still concerned with the reference to the 'overall situation in the Union'. Member States face different realities and therefore a situation that might lead to migratory pressure in one Member State might not lead to migratory pressure in another Member State. In view of this MT is of the opinion that the reference to the overall situation in the Union should be deleted:

> *'migratory pressure' means a situation […] which is generated by arrivals of third country nationals or stateless persons and that are of such a scale that they place a disproportionate burden on Member States* ***~~taking into account the overall situation in the Union~~,*** *even on well-prepared asylum and reception systems and requires immediate action.* It covers situations 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 recurring disembarkations following search and rescue operations, or from unauthorised movements of third country nationals or stateless persons between the Member States;

Without prejudice to this, MT still requires a clarification in relation to how disproportionate burden will be calculated in practice when taking into account the overall situation in the Union.

Article 5(-1)

MT reiterates its position that this paragraph should be retained instead of being shifted to the recitals.

Article 7b

- Paragraph 1

MT maintains its reservation on point (f) due to our opposition to the notion of take back notifications. In this regard, it should be recalled that in our view the current system of take back request should be maintained.

Regarding point (k), MT is of the opinion that the text should clearly indicate if here we are referring to persons claiming to be unaccompanied minors, or persons verified as being unaccompanied minors following the necessary checks by the competent authorities, or to both. In this regard, MT is of the opinion that data should be captured in relation to both claimed and verified unaccompanied minors.

Article 7c

- Paragraph 2

MT is not in favour of having a minimum number for relocations and financial contributions to be set out in the Regulation. Instead, MT is of the opinion that the annual numbers should be calculated on a formula established on the basis of objective criteria: the real overall number of arrivals, recognition rates and implemented returns.

- Paragraph 3

MT is of the opinion that if the annual numbers for relocations is calculated on a formula established on the basis of objective criteria, as per our comment on paragraph 2, the first sub-para of paragraph 3 becomes redundant and could therefore be deleted:

> ~~***When identifying the level of the Union-wide responsibility that should be shared by all Member States responsibility and the consequent level of solidarity, the Commission shall take into account relevant qualitative and quantitative criteria, including, for the relevant year, the overall number of arrivals, the average recognition rates as well as the average return rates.***~~

The Commission may identify a higher number for relocations or direct financial contributions than those provided for in paragraph 2 and may identify other forms of solidarity as set out in Article 44a(3)(c) depending on the needs arising from the specific challenges in the area of migration in the Member State concerned.

Article 19

- Paragraph 4

MT does not support the extension of responsibility in cases of expired residence documents and visas, which according to the current Proposal is extended to 3 years and 18 months respectively from the date of expiry. MT is of the opinion that this should be maintained as in the current acquis (i.e. 2 years for an expired residence permit and 6 months for an expired visa).

Article 20

- General comment

MT maintains its reservation on the whole Article since we do not support the inclusion of diplomas/qualifications as a mandatory criterion to establish responsibility.

- Paragraph 1

MT would still like an answer to the following question that has been asked in a number of meetings and which to date remains unanswered: What happens in case an applicant was previously issued with a diploma or qualification from an education establishment which at the time was located in Member State X, but at the time of application is no longer located in that Member State, but has either closed completely or is now located in another Member State?

Without prejudice to our general comment, while we welcome the introduction of a timeframe within when this criterion would apply, MT is of the opinion that a 5-year period is too long and should therefore be considerably shortened.

Article 21

- Paragraph 1

MT maintains its substantive reservation on this paragraph in view of the extension of the timeframe for responsibility, which in our view should remain 1 year as per current acquis.

Article 27

- Paragraph 1

MT does not support the idea of a take back notification and is of the opinion that we should maintain the current system of a take back request.

Article 30

- Paragraph 8

While MT has no objections to the new addition made by the Presidency, we would like to recall our substantive reservation on the new time-limits for replying to a take charge request, which in our view are too short.

Article 31

- General comment

MT maintains its reservation on the whole Article since we are of the opinion that we should maintain the current system of a take back request.

Furthermore, MT is of the opinion that in case a take back request is not sent within the stipulated time limit, or the Member State concerned does not reply within the stipulated deadline, there should be a shift of responsibility akin to the current acquis.

- Paragraph 1

Without prejudice to our general comment, MT maintains its reservation on the time limit that is being proposed to send a take back notification, which we deem as being too short, and should be extended to two months. Furthermore, MT is opposed to the added proviso in this paragraph since in our view failure to send a take back notification within the stipulated time limit should lead to a change in responsibility.

MT also maintains its reservation on this paragraph due to our reservation on the inclusion of beneficiaries of international protection in the scope of the AMMR.

Article 35

- Paragraph 2

MT is of the opinion that the extension of the time limit for transferring the person concerned in case of absconding to 5 years is too long and should be considerably shorter (e.g. maximum of two years; 6+18). Furthermore, in case the person who absconds was previously under a border procedure, the time limit should only be extended by a further 6 months (i.e. total of 1 year; (6+6).

Without prejudice to the above, MT is of the opinion that we should clarify that when referring to the person becoming available to the authorities again in the second sub-paragraph, we are referring to the competent authorities of the transferring Member State.

We also would like to receive an answer to a repeated request for clarification; does the proviso in the second sub-paragraph also apply in case there are multiple instances of abscondment, or is this is a one-off provision?

Article 44b

- Paragraph 3

While not opposed to the notion that Member States should have flexibility in terms of the type of solidarity measures to be provided, MT would like to reiterate its position that in order for this system to work in practice and to effectively alleviate the burden on frontline Member States, it is essential that the provision includes safeguards that the needs identified will be fully met.

MT is of the opinion that this point should be clearly reflected in the text as follows:

> *In implementing paragraph 2, contributing Member States shall have full discretion in choosing between the types of solidarity measures listed in Article 44a(2), points (a), and (b) and, where applicable, point (c), or a combination of them.* ***The Commission shall ensure that the needs identified in Article 7c are met through the contributions of Member States.***

Article 44d

- Paragraph 6

MT is of the opinion that if the Council decides that there is insufficient capacity in the Solidarity Pool, it shall convene, and not consider convening, a meeting of the High-Level Migration Forum in accordance with Article 44g.

MT is of the opinion that the same possibility to submit a new notification to the Commission should also apply in case the Council does not agree to the Commission's decision and therefore concludes that the Member State concerned is not under migratory pressure.

Article 44e

- Paragraph 3

MT maintains its scrutiny reservation on this paragraph due to our concerns on its practical implications. While MT is in favour of the notion that benefitting Member States or Member States who have been granted a full reduction should not be obliged to implement their pledged solidarity contributions, we are concerned that this might lead to a significant shortfall in the original solidarity envisaged to alleviate the burden on Member States under migratory pressure. In our view and linked to our position that the identified needs of the Member States are to be met, any derogation from the pledged solidarity contributions needs to be offset by an increase in pledges from the remaining Member States.

- Paragraph 5

While MT can accept the notion that Member States may express reasonable preferences in terms of the profiles for relocation candidates, MT would continue to reiterate its position that in order for this system to work in practice and effectively alleviate the burden on frontline Member States, it is essential that the needs identified are fully met.

Article 44f

MT maintains its scrutiny reservation on this article due to our concerns on its practical implications. While MT is in favour of the notion that Member States under migratory pressure, or that consider themselves to be under migratory pressure, can be granted a full or partial reduction of their pledged solidarity contributions, we are concerned that this might lead to a significant shortfall in the original solidarity envisaged to alleviate the burden on member states under migratory pressure. In our view and linked to our position that the identified needs of the Member States are to be met, any derogation from the pledged solidarity contributions needs to be offset by an increase in pledges from the remaining Member States.

Article 44fa

MT maintains its scrutiny reservation on this article due to our concerns on its practical implications. While MT is not opposed to the notion that Member States facing a significant migratory situation, or that consider themselves to be facing a significant migratory situation, can be granted a full or partial reduction of their pledged solidarity contributions, we are concerned that this might lead to a significant shortfall in the original solidarity envisaged to alleviate the burden on member states under migratory pressure. In our view and linked to our position that the identified needs of the Member States are to be met, any derogation from the pledged solidarity contributions needs to be offset by an increase in pledges from the remaining Member States.

Article 44g

MT is of the opinion that a benefitting Member State should also have the possibility to request additional support contributions or measures if the ones requested under Articles 44c or 44d prove insufficient to effectively alleviate the migratory pressure faced by that Member State, including following the application of derogations envisaged in Articles 44e, 44f and 44fa.

Article 57

- Paragraph 3

MT has a scrutiny reservation on this paragraph due to our reservation with regards to Article 20.

Furthermore, MT is of the opinion that the text should clearly indicate that the consent of applicants for international protection is not required to proceed with relocation.

Article 58

- Paragraph 3

MT has a scrutiny reservation on this paragraph due to our reservation vis-à-vis Article 20 of the AMMR and subsequent applications in the APR.

- Paragraph 4

MT is of the opinion that once a beneficiary of international protection has been relocated, his/her status in the benefitting Member State should be withdrawn on the basis that it has lapsed.

Article 69

In view of our comment on Article 7c(2), MT is of the opinion that the added text in Article 69 (third sub-paragraph) is redundant and should therefore be deleted.

THE NETHERLANDS

General comments:

The Netherlands refers to what it raised orally in relation to the suggested trade-offs and the articles discussed during the JHA Counsellors Asylum meeting on 27-28.03.23.

Further, the Netherlands would like to stress the importance of clear legal texts. A verbal explanation in, e.g. a JHA Counsellors meeting, that a certain circumstance, in the view of e.g. the Commission, falls under a certain definition, is not always sufficient. In case of ambiguity, we should write it down more explicitly. An example of this is the deletion in Article 35 of “refuses to comply with the transfer”, because it would fall under the scope of “absconding”. However, this is debatable, and will lead to discussions in practice/courts and will not follow thus interpretation because it is not explicitly stated.

Furhermore, we would like to stress again the objections we have to an extension of the definition of family members with siblings, which to our understanding also includes half siblings and step siblings. Extending the definition to siblings will create complex procedures, with many discussions between Member States.

Important in this context is the extension now also proposed in Article 33 (remedies). This article now stipulates that when a request to take charge is rejected, the asylum seeker can lodge an appeal against and in the Member State that rejected the request. We see the big risk that these adjustments are going to lead to many proceedings with long lead times. All that time the asylum seeker is in reception facilities, which already are under pressure. For example, it can lead to the situation in which the asylum seeker has to be transferred to that other Member State to attend those court proceedings. How can he get in touch with a lawyer who will conduct those proceedings for him? Which Member State determines the costs for this legal assistance? Needless to say, this will lead to increased pressure on courts.

Furthermore this begs the question how these procedures interact with other procedures. For example, in the Netherlands an asylum seeker from a safe country of origin files his application for international protection. He simply says that his brothers are in Poland and Germany. Should the Netherlands first start take charge procedures towards those countries, including acces to free legal procedures if we do not do so? And if we indeed have to start a take charge procedure, and Poland rejects this reguest (e.g. because they cannot trace the brother in their asylum procedure), must Poland then pay the costs of legal aid if the asylum seeker lodges an appeal against this Polish rejection of the take charge request? And if the Polish court approves the rejection of the take take charge request, should we subsequently start a take charge procedure to Germany, with the same follow-up procedures? Likely, this would take several months with a lot of administrative procedures, while at the end this is might very well be an asylum application with no chance of being granted.

Second question: if a person from a country with low recognition rates is apprehended at the border by Italy and claims he has a step brother. Should a take charge request then be made by the Italian authorities, and should that prioritize over fast-tracking the asylum application of this person in an asylum border procedure?

Articles:

PART I

Article 2 (definitions)

G(v): This concerns an entirely new definition of married minors. NL objects to this new definition. It seems not logical, if a MS does not recognise such a marriage, which is based on moral principles, to have to (re)unify the persons under the Dublin arrangements. NL wants to return to the earlier proposals to the effect that the marriage must have been recognised in both the transferring and requested MS.

L: An addition/clarification is needed in the defintion of “residence document”. It must make clear that, simular to the period required to determine the MS responsible, the period for assessing applications for regular (non-asylum) residence permits does **not** fall under the scope of a “residence document”. In particular, NL points here to the Court ruling in case C-66/21. In that case the Court noted that MS must grant the reflection period also to a Dublin claimant and that during this time the transfer is prohibited.

It should be prevented that, by offering such a reflection period, the MS also immediately becomes responsible for the asylum application.

PART II

Article 3 (comprehensive approach to asylum and migration management

D: We do not in any way wish to question the right to apply for international protection. But there is an inner contradiction in this provision: on the one hand "effective prevention of irregular migration" on the other "while ensuring the right to apply for international protection".

Article 7a (European Migration Management Report and Commission Decision)

3(e) During the Counsellors meeting the Commission explained that the results of this monitoring are taken into accountin the Commission’s report. The Commission also explained that, if monitoring shows that a MS has not sufficiently implemented the asylum acquis or has fallen short of being properly prepared, this will be taken on board in the assessment of the Commission on whether this MS is under migratory pressure. We thank the Commission for this explanation, we however think we should make this more explicit in the text.

Article 7b (Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure and significant migratory situation)

With reference to our previous written comments: NL suggests adding another element to the enumeration of Article 7b, which deals with measuring migration pressure in the EU and per MS: "*The number of applications for family reunification with a person granted international protection"*. Assessing these applications requires capacity of the competent authorities and involves the provision of facilities in case of a positive decision.

Article 7c (**Commission Recommendation regarding of the Solidarity Pool and other appropriate measures)**

4: NL could possibly agree to this article (in particular sub 2), provided it is always possible for the Commission to propose a lower number (so not only in exceptional circumstances as currently included). Solidarity should relate to what is actually needed.

PART III: CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Article 8 (Access to the procedure for examining an application for international protection)

4: It is important that MSs will have the same interpretation *of 'poses a security risk to Member States'*. We therefore request that a definition of this term be included in Article 2 of the AMMR.

Article 10 (Consequences of non-compliance)

1: The sentence *"provided that the applicant has been informed of that consequence pursuant to Article 8(2) Screening Regulation"* should be deleted. Given the principle of interstate trust, it can be assumed that such information has been provided. However, an even more important argument is that there will also be migrants who will deliberately avoid the Screening Procedure. Not being informed is in that case due to their own actions. It would be highly undesirable if precisely this group were to be rewarded, in the sense that they will be entiteled to reception conditions even after the notification of the transfer decision.

Article 12 (personal interview)

3: NL would like to refer to its earlier written comments. Our asylum authorities are under a high pressure, in particular as a consequense of a higher influx, also in NL. Flexiblity in this article is needed:

3. The personal interview shall take place in a timely manner and, in any event, before a transfer decision is taken ~~any take charge request is made pursuant to Article 29.~~

Article 13 (guarantees for minors)

Since this provision mainly deals with unaccompanied minors, we suggest to amend the title of the article to “guarantees for *unaccompanied* minors”.

5: We suggest to delete the sentences "*Any decision to transfer an unaccompanied minor shall be preceded .... minor are taken into consideration"*. Article 15 already includes such a condition and we prefer the wording of this article. Article 13 (5) says that the transfer must be in the best interests of the minor. This does make a transfer very difficult to motivate and thus the basic premise of this provision (namely that the unaccompanied minor can also be transferred to the MS where he has previously lodged an application for international protection) would become almost useless. The starting point should be “yes, unless” and not “no, provided”.

Article 21 (entry)

NL prefers the deadline of 3 years. This is because it prevents migrants from disappearing and staying “under the radar” after their irregular entry into the Union, thus avoiding the processing of their asylum application in the MS of entry and thus being able to choose in which country they submit their asylum application.

Article 25 (discretionary clauses)

2. NL would like to delete the words *'social or cultural considerations'*. These are unframed terms, so each MS will give its own interpretation. This will give rise to unnecessary discussions between MS and unnecessarily long procedures, accompanied by additional administrative burdens. There is also a risk that asylum seekers will be able to derive their own rights from this.

Article 29 (submitting a take charge request)

1. Following our objections to the amendments in Article 33, we consider the new text in this article not necessary (yet).

Article 30 (replying to a take charge request)

8. NL refers to its earlier written comments. We fear this text will lead to discussions in courts or between MS as to whether a claim refusal was sufficiently substantiated and/or whether there was or was not a fictitious agreement. Clearer distinction is necessary to our opinion.

~~**Where the requested Member State does not object to the request within the one-month period set out in paragraph 1 […], or where applicable within the two-week period set out in paragraphs 2 and 7, by a reply which gives substantiated reasons based on all the circumstances of the case and relating to the relevant why the criteria set out in Chapter II do not apply, this shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.**~~ **A reply refusing the request shall state the substantiated reasons on which the refusal is based, relating to the relevant criteria set out in Chapter II.**

Where the requested Member State does not reply to the request within the one-month period set out in paragraph 1 […], or where applicable within the two-week period set out in paragraphs 2 and 7, or if the refusal doesn't state the substantiated reasons, this shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

The Commission shall, by means of implementing acts, draw up a standard form for the reasoning of the replies required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

Article 33 (remedies)

1a and 1a: The introduction of paragraph 1a stipulates that when a request to take charge is rejected, the asylum seeker can lodge an appeal against and in the MS that rejected the request. This will lead to many court procedures, with practical obstacles. We have similar concerns with regard to the introduction of paragraph 1b (please also see above in the general comments).

We are familiar with the Court's judgment in case C-19/21 and we are not convinced that the adjustments made to Article 33 are compelled following from that judgment. Because in its judgment the the Court also attributes significance to:

- The current Dublin Regulation (Article 27) unclear whether such a remedy is available;
- The responsibility criteria of the current Dublin Regulation also grant rights to the asylum seeker;
- The case involves a minor who, given his position, is vulnerable and in need of extra protection.

These are elements that, in our view, the Union legislator can, if desired, adjust in the new legislation, in particular the first two. We also draw attention to the opinion of the Advocate General in this case, which also does not extend as far as is now done in these amendments.

We refer to our earlier made text proposal with regard to Article 33.

Article 34 (detention)

As already stated before; a main reason for the limited number of effected transfers is that the asylum seeker absconds shortly before the scheduled transfer. The most effective way to counter this is through detention. Therefore, MS should be allowed to lower thresholds for detention. NL refers to the previously submitted written comments and text proposal:

Article 34

Detention

1. ~~Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.~~ A person must not be detained solely because he or she has made a request for protection.

(d) in case the person concerned submits an application after a transfer decision was notified, the date when the decision on that application is taken, where no appeal or review has been lodged against such decision, or from the moment when the appeal or review no longer has a suspensive effect in accordance with Article 33(3).

Artikel 35 (detailed rules and time limits)

NL had made a number of proposals for Article 35 in its earlier written comments and would like to refer to these. Besides finding a solution to the awkward practical situation created by the Court's judgment in Case C-323/21) concerning the so called "chain rule", these suggestions also aimed to achieve a clearer system for our administrative services *as well as* to prevent an asylum seeker from frustrating the transfer deadline by repeatedly lodging new applications in the same MS *as well as* to enable MS that have a system of a second appeal to retain it. Unfortunately, those proposals were not adopted yet. We urgently request the Presidency to look at our proposals again and take these text suggestions on board:

1. The transfer of an applicant or of another person as referred to in Article 26(1), point (b), (c) and (d) from the transferring […] Member State to the Member State responsible shall be carried out in accordance with the national law of the transferring […] Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of

(a) the acceptance of the take charge request or of the confirmation of the take back notification by **the ~~another~~** Member State **responsible**,

(b) the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3),

(c) the final decision on an appeal or review of a transfer decision in second instance, in case the national law provides for such an appeal or review, where there is a suspensive effect in accordance with national law, regardless of whether the appeal is submitted by the applicant or of another person as referred to in Article 26(1), point (b), (c) and (d) or the competent authorities of the transferring Member State,

(d) the final decision on an application, appeal or review for another type of residence document which, in accordance with national law, prevents that a transfer can be carried out, or

(e) the decision on a subsequent application for international protection in the same Member State which is registered after a transfer decision has been notified.

2. As mentioned also during the Counsellors meeting, we believe this paragraph should, besides absconding, also include the situation in which the person concerned "refuses to comply with the transfer". We have heared the explanation by the Commission and would like to either request to add this again to this paragraph, or to find other wordings to make sure this situation (where a person has not absconded and is still available to the authorities, but somehow frustrates or prevents the transfer) is covered.

PART IV

The mechanism is complex and, as a result, it is almost impossible to estimate what the impact will be on the MS that have to provide solidarity. With that, it is difficult to oversee what MS will now commit to if this regulation is adopted. It is therefore important that the political decision yet to be taken on the minimum numbers (Article 7c(2)) be thoroughly prepared. So, not only the minimum numbers should be presented, but also what they are based on and how they relate to the spontaneous inflows in the MS that have to contribute solidarity. The same goes to what the expected range is with the numbers then proposed by the Commission in its recommendation (Article 7c(3)) and also the expected additional numbers if after the Commission recommendation more MS are identified as MS under migration pressure/facing a situation of significant migration situation, and what the implications will be if other MS are exempted from contributing.

Article 44h (Responsibility offsets)

We are willing to support responsibility offsets, but we really need an addition:

In any case, should be added to the articles that the contributing MS has the possibility to fill in their pledges on relocations with cases for which the benefitting MS has been determined resposible, but a transfer cannot take place due to a situation as refferd to in article 8(3): “Where it is impossible for a Member State to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.”

2. The last sub paragraph mentions that MS shall not be obliged to take responsibility in the form of offsets above their fair share calculated according to the distribution key set out in Article 44k. In our view it could be made clearer that as soon a MS has offered it’s fair share [on relocation] it cannot be obliged to accept any (mandatory) offsets.

Article 58 (Procedure after relocation)

2. NL favours that the determination of responsibility takes place before relocation. This is to prevent tertiary movements as well as to prevent the MS of relocation from having to carry out only a responsibility determination procedure.

PART V

Article 57 (entry into force and applicability)

We have to look more in depth to this provision. E.g.: how do we deal with cases where responsibility has been determined under the current Dublin Regulation but a subsequent application is submitted under the AMMR?

POLAND

I. General approach to migration management and solidarity

Horizontal position:

1. We oppose mandatory solidarity based on alternative: relocations or financial contributions. Relocations should be entirely voluntary for MSs. We continue to emphasise that we do not question the mechanism itself, but the forced participation in it.

2. However, we are pleased with the clear indication that the relocation scheme is intended only for applicants for international protection and, in the case of a bilateral agreement between MS, for beneficiaries of international protection (who received it not earlier than 3 years before the decision of the EU Council to establish the Solidarity Pool), and third countries nationals and stateless persons illegally staying in the MS (only to 'return' them to their countries of origin).

3. Theoretical treatment of alternative solidarity measures equally with relocations and financial contributions remain fictitious. If a MS-beneficiary asks for them, the MS contributing solidarity will have to participate in relocations or make a financial contribution. The possibility of reaching for this measure is rather unlikely, as alternative measures are provided by the EU Agencies. Additionally it is still unclear how the value of the alternative measures will be calculated.

4. We note the compromise on the exemption from MS participation in compulsory solidarity contributions if it is under migratory pressure (ad. 44e (3)). At the same time, we believe that the mechanism of full or partial reduction of the solidarity contribution by a MS under migratory pressure should not be determined whether or not MS uses the Solidarity Pool itself. We opt for maximum simplification, so as not to generate additional burdens for MS under pressure.

5. The distribution key is based on the insufficient indexes. The costs that come from national budgets of MS for border protection should be considered. Moreover, we believe that additional factors referring to social and economic ability to receive foreigners for relocation shall be taken into account in fair-share calculation. As the math formula for distribution key shall be easy, we suggest to implement them into the "report", where not only migratory situation will be assessed, but also the capacity of the MS to admit relocated foreigners (such as: unemployment rate, access to accommodation, access to kindergartens/schools, the presence of diaspora of certain nationalities etc.).

6. It remains important that relocations take place after the procedure for determining the appropriate MS for the examination of an application for international protection (Dublin before relocation) in order to avoid multiple transfers and related costs.

Detailed position:

2 (v) — we accept the abolition [...] and thus add siblings to the definition of family members. However, we request for clarification and reformulating the subpara. 2, which in the current version remains unclear.

2 (w) — we accept changes, but we maintain comments made previously: for deletion of the second sentence, where reference is made to the hypothetical situation (risk of multiple entries) + reference to SAR

2 (wa) — as before we opt for deleting: "different from migratory pressure".

3(a) and (d) — we support the changes

3 (h) — we maintain the comment previously reported: "based on the principle of solidarity and fair-sharing of responsibility" should be deleted. This is the overarching principle on which the New Pact on Migration and Asylum is based. We don't see the point of mentioning it in this place.

3 (ha) — if the term "unauthorised movements" refers only to secondary migration movements — as in 7a(5) or 7b(2)(l) --> "unauthorised movements of third country nationals and stateless persons between the Member States", we request for specifying it.

4 — we welcome the deletion of this Article

7a (4) — In the current construction we are dealing with: 1) the Commission's report, 2) the Commission's decision and 3) with the Commission's Recommendations on Solidarity Pool and identification of measures from the EU Toolbox to be applied in the following year by MS under migratory pressure (ad. 7c (1) - which we find complex. We noted the justification presented during the meeting that EC decision is needed as it is the legislative act. However, we would like to know if the MS's assessment is going to be also included in the EC Report.

7a (3)(b) — we maintain the comment previously made: we support HU's proposal to change "projected disembarkations" to "irregular border crossings".

7a (6) — We maintain the comments previously made: we share the doubts of those MS who had reservations about publication after a certain period of time. We agree with the type of clause, but the publication of this information after the adoption of the decision by the Council of the EU, in our view, will be a pull factor for illegal migration. We support the reference to the CLS assessment.

7b (1)(h) – instead of „the number of persons apprehended in connection with an irregular crossings of the external land, sea or air border" – we opt for „the number of prevented border crossings" – support of HU.

7b (2)(j) — Why is "benefitting" deleted?

7c (1) — we do not see the added value of the term "in a balanced and effective manner" — we are in favor of deleting

7c (2) and (3) — substantive reservation on the form of mandatory solidarity in the form of relocation
and mandatory financial contributions. Reservation on the inclusion of numbers for relocations and direct financial contributions in the Regulation.

7d (4) — the Commission convenes and chairs the first Technical-Level EU Migration Forum, but is unclear who convenes and chairs the next Technical-Level EU Migration Forum.

44a (1) and 44b (1) — technically: Council Implementing Decision vs. Council implementing act —

for the unification of the nomenclature

44a (1) — technically: High-Level EU Migration Forum

44a (2)(a)(ii) — we support the provision — the introduced amendment clarifies the provision.

44d (1) in conjunction with (3) — since the application/notification of the need to use the Solidarity Pool is examined by the EC, the MS should submit the application to the Commission, sending for the information to the Council.

44d (3) in conjunction with (4) — if a MS is considered to be under migratory pressure, and it reports the need to use the Solidarity Pool, it should not be denied it. We believe that in this situation resources available within the Solidarity Pool should be adapted to the needs of all MS that report the need to use it or apply the procedure described in para. (5).

44e (3) in conjunction with 44f (1) — we request for confirmation that we properly understand when the MS would not participate in solidarity contributions:

1. If it is identified in the EC Decision as being under migratory pressure and benefiting from support from the SP → it does not participate in SP contributions a priori

2. If it is identified in the EC Decision as being under migratory pressure but does not benefit from support from the SP (ad. 44c) → it may ask for exemption from contributions to SP

3. If it is not identified in the EC Decision, but considers itself to be under pressure and asks for support from the SP (ad. 44d) → it may request exemption from contributions to SP

Title 44f is inconsistent with the content of 44f (1) — the subjective scope is not the same.

In situation 2 (if the MS is indicated in the EC Decision as being under pressure but does not benefit from solidarity support (44c)) we believe that the basic principle should be that they do not provide solidarity contributions (not as proposed in the AMMR: MS submits of an application to be exempted from contributions).

In addition, the possibility of not providing solidarity contributions should be taken into account
in a situation where the MS does not appear in the EC decision, but it considers itself to be in a situation of migratory pressure and it submits an application to the EC to qualify it as such, but does not apply for support from the Solidarity Pool, but submits an application to be exempted from solidarity contributions.

44fa — we support article.

44h (1) — we support the provision.

44j (1) — the content of the provision is more favorable than before. However, we wonder what if there are divergent financial estimates of the benefitting MS and the contributing MS.

44k — we maintain an important substantive reservation regarding the opposition to such a construction of the distribution key. In our view, we should also reflect the contribution to border surveillance, e.g. by taking into account the financial contributions of MS to their protection.

69 — substantial reservation due to the setting of numbers for relocation and financial contributions.

II. The Dublin Procedures

Horizontal position:

1. We uphold our position on maintaining the full take back procedure instead of taking back notifications due to the possibility of an appeal procedure (notifications do not have such a possibility), while by way of compromise we are able to finally accept notifications, but with longer deadlines for sending them.

Detailed position:

Article 2 (n) — if this provision refers to the stationary learning, we can support it;

Article 10 — para. 2 — support for ‘do not have to’ in place of ‘shall not’;

Art. 18 (2) — we find this proposal worth considering;

Art. 19 (4) — we may consider agreeing to deadlines of 3 years and 18 months, but additionally with the following conditions: use of the visa for entry and using it until leaving the territory of the MS (as in the current Article 12(4);

Art. 20 — if it is agreed, we opt for a shorter period of time — max. 3 years; the 5-year period is too long;

Art. 21 — we can support 3 years. In general we opt for the shortest possible period of time — but by compromise we can accept the longer time proposed;

Art. 22 — support for the addition of para. 2;

Art. 29 — 2 months for sending the take chargé request — support;

Art. 30 — para. 8 — support;

Art. 31 — para. 1 — why is there a time limit of 2 weeks if we don’t have to keep it? Do we assume that we try to send a notification within 2 weeks, but if we fail to do so, we can still do it? If so, we can agree conditionally, although practically 2 weeks would often be very difficult to keep.

Art. 32 — issuance of a transfer decision — 2 weeks from acceptance, confirmation of receipt of notification — we insist on 'as soon as possible'; the time limit of 2 weeks may be difficult to maintain due to the national law.

Art. 33 — proposed deadlines for appeal 1-3 weeks – support.

Art. 34 — as regards the deadline for carrying out the transfer — we opt for maintaining to the current deadline of 6 weeks. Shortening the deadline to 5 weeks will result in an increase in secondary movements; with regard to the proposals: deadlines for sending requests/notifications take chargé/take back (2 weeks from the registration of the application for international protection/getting a hit) are too short, we opt for 1 month (3 weeks); deadline for replying — 2 weeks (take back) and 1 month (take chargé), urgent — 2 weeks.

The one-week deadline is too short. We understand the idea of shortening deadlines (1-2 weeks), but they must be feasible. In PL, two bodies (and also the Refugee Board in the appeal procedure) are involved in the procedures. Therefore, it takes time to proceed. In addition, foreigners not cooperating with the authorities could act in such a way in order to extend the deadlines (misuse of procedures).

Art. 35 (1) — deletion — consent; para. 2 — extension of the transfer period in case of absconding to 5 years — too long period - reservation. We recognize that there should be no differentiation of the time limit for the transfer of responsibility in the case of absconding — 18 months should apply to everyone, without exceptions. In the spirit of compromise we can agree to a maximum of 3 years.

Art. 37 — *the screening form pursuant to [...] Article 13 of Regulation (EU) XXX/XXX [Screening Regulation], including any evidence referred to on the form* — the verification will be carried out before the application for international protection is accepted, if it is found that the person poses a threat to national security or public order, the MS carrying out the security check will become the State responsible and thus the transfer will not be organised;

III. Detailed Questions

1) Time limit for the transfer of responsibility for examining an application for international protection in the event of absconding

Given the overriding importance of preventing abuse of the system, while maintaining a balance between responsibility and solidarity, PREZ SE would like MS to consider whether it would be appropriate to differentiate the time limit for the transfer of responsibility in the event of absconding on the basis that the application was rejected by another MS in the border procedure, e.g. a time limit of [18 months] could be foreseen for situations where a person fleeing is a person whose application has been rejected by another MS under the border procedure, while a time limit of [5 years] can be foreseen for other fleeing persons.

We opt for one term for extension of responsibility — 18 months, as before. We recognize that there should be no differentiation of the time limit for the transfer of responsibility in the event of absconding — 18 months should apply to everyone, without exception. By compromise we can accept max. 3 years.

The period of 5 years is far too long for the economics of the conduct of a proceeding as such and due to the fact that, in such a long period, the foreigner's personal or family situation may undergo radical changes, which in turn may affect the transfer of responsibility to other MS. However, we also understand the position that secondary migration flows between MS should be reduced. However, setting it at the level of 5 years will be rather a pull factor, seen as a possibility to move for 5 years within the EU.

2) The Dublin Procedures

Bearing in mind the need to ensure a more efficient and less bureaucratic system, which strikes the right balance between the interests of the MS requested to take chargé and those of the MS that send take back notifications, PREZ SE invites delegations to consider the possible obligation of the MS to establish responsibility for examining an application for international protection that it has assessed the hierarchy of the criteria of liability. Such an obligation could be included in Article 30(1). 8. This could be seen as a simplified take back procedure if a person made multiple requests in several MS.

The proposal to refer in a negative asylum decision to all criteria in the form of a checklist and to include a short statement of reasons is worth considering.

We can finally agree to notifications instead of requests take back, but with a longer period of time to send it — 1 month in place of 2 weeks.

3) Further reflections on liability

With a view to striving firmly towards a balanced and fair common position of the Council, PREZ SE invites MS to consider possible compromises on other accountability issues, in particular:

— extending the definition of family members to siblings, in exchange for changes in the length of liability in case of illegal entry (18 months/3 years)

— new criteria for diplomas and other qualifications in exchange for establishing responsibility for expired residence documents [3 years] and expired visas [18 months]

We agree to broaden the definition of family members. We can accept one responsibility period — 2 years.

We may consider new criteria on which we express doubts (diplomas and qualifications) — in exchange for the proposed periods of 3 years and 18 months from the completion of the validity of the document/visa, but in addition, we request for the current conditions for the application of Article 12 (4): the need to use visas for entry and to apply this criterion until the leave the territory of the MS by a foreigner.

4) Beneficiaries of international protection

Two proposals affecting the balance of interests concern persons who have been granted international protection. Given the importance of this issue for several MSs, PREZ SE would like MS to consider how to include beneficiaries in the scope of the take back procedure and reduce residence requirements for beneficiaries of international protection [3 years] in order to obtain long-term resident status, they[1] could be included in the overall compromise.

We support the inclusion of beneficiaries of international protection within the scope of this Regulation and use a take back.

[1] Negotiations at the Working Party on Integration, Migration and Exclusion (Admission)

As regards the acquisition by beneficiaries of international protection of long-term resident status, we are inclined to accept a proposal to shorten the period required for the acquisition of resident status by beneficiaries of international protection only if:

- The required period of stay in the MS during which the application would be submitted will not be less than 3 years,

Derogations in the calculation of uninterrupted residence for beneficiaries of international protection will be completely abolished or limited (i.e. the waiting period for obtaining protection will not be taken into account or will be taken into account, but to a lesser extent than before).

PORTUGAL

Portugal would like to thank the Presidency to identify the most sensitive situations and for the proposals presented a view to advancing negotiations. Regarding the AMMR and based on document 7618/23, please find bellow our comments:

1) **Article 35**

We think that the proposal to limit responsibility to 18 months can be acceptable and we are flexible to it, as a bargain chip regarding the mandatory border procedure. The definition of a period of 5 years (but we could accept 3 years) in other situations of absconding and an “additional” 3 months for carrying out the transfer, as a way of combating abuses, seems equally positive. We can also make a wording suggestion for the second paragraph of n.2, since the reference should be the *first subparagraph* of n.2.

2) **Article 29 (3)**

The scope of this provision is unclear. The application of criteria is always done hierarchically (cf. Article 14). We would appreciate to see the template since we fear extra burden on administrations that should be avoided if we are aiming an efficient and quick procedure.

3) Regarding the criteria of siblings and diplomas, although we have already accepted the introduction of these two criteria before, without any compensation before, we can express a position of support for the three years, in the case of illegal entry, and 18 months or three years in the case of visas/documents,

4) Regarding the inclusion of beneficiaries of international protection in the procedures for taking back responsibility, we have, in principle, a favorable position, anticipating added value in relation to the forms of communication and standardized procedures, by the "Dublin" rules. However, this position is still under examination at national level, as well as the definition of the deadline for beneficiaries of international protection to access the long-term resident status.

Article 6a

Regarding article 6a we welcome the new wording of point c) concerning the restriction of the derogations as referred to in the Regulation of crises and force majeure, instrumentation regulation and APR.

Article2, g) – v)

We have expressed concerns regarding definition provided on g), v) regarding minor marriages. We took note of the Commissions' explanations, but we would rather add at the end "unless such marriage is manifestly contrary to the public policy (ordre public) of the Member State or Member States concerned".

Article 33

Scrutiny reservation.

THE SLOVAK REPUBLIC

As per the request presented at the last Counsellors meeting (27-28 March 2023) and in line with the SK positions so far, the following red lines remain for the Slovak Republic at this stage of the procedures:

The extension of family definitions to siblings is our long-standing position based on anticipated challenges to prove this family relationship, in addition to the significant burden such a Dublin criterion would place on the MS.

Inclusion of beneficiaries under the scope of AMMR (Dublin procedure): We believe that the primary objective of the Dublin procedure has always been to determine which MS will be responsible for the asylum claim process. This is not a case of beneficiaries who are already provided with international protection.

It is still difficult for the Slovak Republic to understand how **diplomas** add value to the Dublin procedure; considering that many migrants arrive without documentation. Even though we understand that the EP places a great deal of emphasis on it, we still call for its removal from the proposal.

In terms of timeframes for **responsibility shifts**, five years is an unreasonable length of time; we also believe that a similar timeframe will be beneficial to the entire Dublin procedure.

As for **responsibility offsets**, while we acknowledge the concept, we doubt that it is in full alignment with the CZ PRES strategic document *Way forward* as it is currently proposed. The use of Dublin offsets **should always be at the discretion of the MS providing solidarity** and, ideally, at the same level as the other three forms of solidarity: relocation, financial contribution, other alternatives. If accepted, we might reconsider our position regarding the minimum threshold for relocation and financial contributions. Yet in order to make a final decision there is an urgent need to have clear picture on how the distribution on fair share will be implemented.

We would also like to suggest the following wording in article 44h last part of the sentence

> *(…) the contributing Member States shall take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the number referred to in Article 7c(2)(a) and in line with a fair share.*

Regarding LTR directive (to be discussed at IMEX) the Slovak Republic supports five-year periods of legal residence for the purpose of obtaining long-term residence permit.

ROMANIA

General observations, on the topics proposed in „Towards a common position - discussion note":

1) The time limit for a shift of responsibility in case of absconding

In the spirit of flexibility, we can agree with this proposal, further stressing the need to ensure a swift and efficient asylum procedure. We would like to mention that we support the reduction of the period of responsibility and propose to include situations where the asylum application was rejected in the accelerated procedure, in addition to those rejected in the border procedure (according to the working document).

2) Dublin procedures

We understand that the PRES is intended to create, for the requesting Member State, the same obligation as that laid down (in Article 30.8 of the Proposal) for the requested Member State to assess all the conditions of responsibility in a hierarchical order when carrying out the determination procedure. We point out that these assessments are carried out at the level of both Member States involved in the Dublin procedure, but the Member State of correspondence shall be sent the Dublin request, respectively the final response to the Dublin request, with an indication of the responsibility criterion applicable to the case. As we have previously argued, we believe that both the proposal in point 2 and the provision in Article 30.8 would create an additional administrative burden.

3) Further deliberations regarding responsibility

We agree to extend the definition of family members, for example by including siblings, but we indicate preference for the 18-month period of responsibility in case of illegal entry. As regards the possibility of accepting diplomas and other qualifications as criteria of responsibility, we can agree with this proposal, but, as we mentioned earlier, we believe that this criterion for determining responsibility should apply as long as the foreigner does not leave the territory of the Member States and the criteria does not undertake a responsibility of more than 3 years from the date of issue (residence permits) or 18 months (visas) respectively.

4) Beneficiaries of international protection

We can show flexibility by agreeing to the inclusion of beneficiaries of international protection, once again stressing the need to clearly delimit the grounds for cessation of responsibilities. We do not support reducing the time required to obtain long-term resident status for beneficiaries of international protection (amendment of Article 4 of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents).

On Articles:

Article 2 (g) (v) *– We cannot agree with the proposal, as the application of this definition would create derogations from the national rules on family law (Civil Code).*

Article 10 *– We believe that the cessation of the right of a foreigner to benefit from reception conditions in Member States other than those involved in the process of determining the Member State responsible should take place from the moment the transfer decision remains unappealable.*

Article 27 (1a) *– We consider that evidence provided by the Eurodac data system could also be used. At the same time, the criteria for cessation of responsibility should also include the situation in which another Member State has already been identified as responsible. We also ask for clarification on the cases of unaccompanied minors who are asylum seekers, whether they will be able to be the subject of receiving notifications or whether the requesting Member State will assume responsibility for them.*

Article 29 (1) *– We consider that the application of Article 29 (1), sub-paragraph 3, as well as the provisions of Article 33 (1a) and (1b), would generate syncopes both in the implementation of the Regulation, but especially in the application of legal remedies, since there will be situations in which the remedies will be excessively, abusively used, both in the requesting MS, as much as in the requested MS. This could lead to situations where the courts of the two Member States involved in the determination procedure would issue different decisions which in turn will lead to the responsibility of two Member States (the court of the requesting Member State rules the foreigner to continue the asylum procedure in that Member State and the court of the requested MS rules that the responsibility is his, and the foreigner will be transferred from the requesting MS to the requested MS). Moreover, the ways of using appeals, the representation of the parties before the court, as well as the enforceability of judgments are elements that require clarification and cannot be regulated in this legislative act without the involvement of the ministries of justice and judicial authorities.*

Article 31 (1) *– We continue to support the view that the consequence of non-compliance with the deadline for sending the take back notification within 2 weeks after receiving the Eurodac hit should be the assumption of responsibility of the requesting MS. The responsibility for carrying out the determination procedure lies with both States involved.*

Article 31 (3) *– We ask for clarification on the practical way of confirming receipt of the notification. Will automatic confirmations be used or will the receipt of the notification need to be confirmed by the authorities of the requested Member State? We make it clear that an automatic confirmation would make it impossible to demonstrate the cessation of the responsibility of the requested MS.*

Art. 33 (2) *– We support the deletion of the reference to Article 33, paragraphs (1a) and (1b).*

Art. 35 (2) *– We would like to mention that we support the reduction of the period of responsibility and propose to include situations where the asylum application was rejected in the accelerated procedure, in addition to those rejected in the border procedure (according to the working document). In this regard, we propose to amend article 35.2(3) as follows:* ***Where the application of the person concerned who absconded has previously been rejected by the Member State responsible following an examination of the application in a border procedure referred to in Article 41[32] or in accelerated procedure according to Article 40 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], the time limit may only be extended up to a maximum of [18 months].***

SPAIN

General remarks

In relation to the debate on specific issues of the above-mentioned proposal held on 27 and 28 March, the Spanish delegation stresses its overall constructive approach and flexibility with regard to the negotiation of this file. Spain remains committed to facilitate progress on the discussions of this legal instrument as an essential piece of the Pact on Migration and Asylum in order to conclude the negotiations of all the files thereof before the end of the legislative term as agreed with the European Parliament in the joint Roadmap. Progress on all the files should be based on the principle of solidarity and fair-sharing of responsibility.

In this spirit of compromise, the Spanish delegation has already made important concessions concerning the solidarity mechanism, as well as on the Screening and Eurodac Regulations. An extremely flexible though mandatory solidarity should be mirrored by an adaptable responsibility reflected in the border procedure and Dublin rules. We would like to stress that the “mandatory border procedure”, stated as a *fait accomplis* in the related document, has not been agreed yet until everything is agreed on the overall negotiation of the Pact, encompassing all the pillars at stake.

The Spanish delegation would like to reiterate our gratitude to the Swedish Presidency for their efforts in achieving concrete progress with the new compromise text, notwithstanding the need to always bearing in mind the interdependency of this Regulation with the other legislative proposals of the Pact under negotiation, particularly the APR and the Crisis and Force Majeure Regulation.

As requested by the Swedish Presidency, the following specific remarks refer to all the Articles concerning the AMMR proposal as reflected in document ST 7618/23. In those Articles where there are no comments or remarks, the Spanish delegation shows its flexibility in relation to the proposals presented by the Swedish Presidency or the original text adopted by the Commission, where no changes are made.

Specific remarks

Definitions

- **Article 2**

  - **(g)** Definition of *family members*. Spain supports the inclusion of the concept *family en route* to be taken into account when defining family members.

  - **(g)(v)** Definition of *family members*. Spain strongly supports keeping the mention to *sibling or siblings of the applicant* in the text. This would contribute to provide more effective responsibility rules and a meaningful link between the person concerned and the Member State responsible, taking into account also the wider implications for the families concerned. Furthermore it helps a better functioning of the Dublin system by establishing responsibility according to meaningful criteria and to avoid secondary movements.

    However, the Spanish delegation does not support a possible trade-off proposal between the inclusion of siblings and the differentiated approach to the length of responsibility in case of irregular entry as proposed in the document's cover note.

    Furthermore, Spain shares the views of the Presidency and the Commission when dealing with the treatment given to married minors in letter (v) *in fine* of this Article.

  - **(n) and (o).** Definitions of *diploma or qualification* and of *education establishment*. Our delegation supports the inclusion of these criteria and the definitions thereto. A temporal reference could complete the definition of education establishment *in fine*, as follows:

"in accordance with national law or administrative practice on the basis of transparent criteria at the time of issue of the diploma or qualification".

In relation to the Swedish Presidency proposal to balance the criteria of diplomas and other qualifications for establishing responsibility with the length of responsibility in case of expired residence documents (three years) and expired visas (18 months), the Spanish delegation may explore a flexible approach.

- **(w) and (wa).** Definitions of *migratory pressure* and *significant migratory situation*. Spain still raises concerns on the relation established in (w) between the burden on a Member State and *the overall situation in the Union*. Spain would rather include a mention or a clarification to the situation in the Member States concerned. This delegation would prefer to mention the geographical particularities in connection with the migratory pressure.

  Furthermore, Spain kindly insists in asking for a swift start of the negotiation on the Crisis Regulation, intimately linked with these definitions.

The comprehensive approach

- **Article 4.** Regarding the deletion of Article 4 and its transfer to the recitals, Spain would prefer keeping this Article in the operative part, since the integrated policy-making can be better guaranteed with a stronger obligation stated in the set of Articles rather than in the recitals. Nevertheless, our delegation could be flexible accepting its inclusion it in the recitals. In any case, the support by Union Agencies should only take place under the request of Member States.

- **Article 5(-1).** Spain would rather prefer to maintain this Article in the operative part of the text, as this is the first time that the principle enshrined in Article 80 TFEU would be developed by secondary law and thus assist in the legal framework upon which migration should be managed based on the principle of solidarity and fair sharing of responsibility. This provision is in line with the conclusions of the special European Council of 9th February 2023, which state that *the migration situation […] is a European challenge that requires a European response*. Notwithstanding the above, Spain may be flexible supporting the inclusion of the principle in the recitals.

  However, in order to align it with Article 80 TFEU, we would suggest the following alternative wording included in the recitals:

  The principle of solidarity and fair sharing of responsibility shall govern the Union policies in the area of asylum and migration, including its financial implications.

This principle is based on the premise that the EU as a whole and its Member States share the responsibility to manage migration and asylum, governed by the set of common rules included in the Common European Asylum System and other relevant Union legal instruments on migration and asylum.

- **Article 5.1 (b) y (e)** Spain believes there is an inconsistency concerning the *measures* to be taken between these two paragraphs where in letter (b) correctly states *"prevent and reduce"* in letter (e) erroneously states *"prevent and ~~correct~~"*. Spain considers that "prevent and reduce" should prevail in both letters.

- **Article 6**. Spain supports the removal of paragraphs 1 and 2 from the text avoiding duplication with the European Migration Management Report in Article 7.a., following the criteria of the Council Legal Service and the deletion in paragraph 3 of the reference to guidelines developed by the Commission foreseen in paragraph 7. In the spirit of compromise, we could accept, in line with the proposed text by the Presidency, the reference to a "*~~uniform conditions in the form of a~~ common template to be used by Member States for the purpose of their national strategies.*

- **Article 6a**. Spain supports the new compromise text.

- **Article 7**. ***Cooperation with third countries to facilitate return and readmission***. Spain believes that provisions of Article 7.1 are redundant and coincident with those established in Article 25a of the Community Code on visas, so we consider this paragraph unnecessary and should be deleted. In case the wording in paragraph 1 is kept, we propose adding reference to Member States at the end of paragraph 1. The overall relations of both the Union and the individual Member States should be taken into consideration when identifying the relevant measures. Wording should be then as follows:

  1.Where the Commission, on the basis of the analysis carried out in accordance with Article 25a(2) or (4) of Regulation (EU) No 810/2009 of the European Parliament and of the Council and of any other information available from Member States, as well as from Union institutions, bodies, offices and agencies, considers that a third country is not cooperating sufficiently on the readmission of illegally staying third-country nationals, and without prejudice to Article 25(a)(5) of that Regulation, it shall submit a report to the Council including, where appropriate, the identification of any measures which could be taken to improve the cooperation of that third country as regards readmission, taking into account the Union and the Member States' overall relations with the third country

The Annual Migration Management Cycle

Spain supports the main elements established in Articles 7a-7d. Nevertheless, the following specific remarks should be taken into consideration:

- **Article 7a.1**. ***European Migration management Report and Commission Decision***. Spain supports to maintain the issuance of the European Migration Management Report on a yearly basis. Shorter periods would imply additional workload for national Administrations, the Commission and other institutions. In addition, the several steps foreseen until the finalization of the report allow for adjustments thereto. At the same time, according to Article 7d, the High-Level and the Technical-Level migration fora may be convened on an extraordinary basis where the situation so requires. Spain also agrees to the new wording of this paragraph.

- **Article 7a.2.** Spain welcomes the inclusion of our proposal on the Member States' decision-making on the solidarity pledges. The Commission Report and the Recommendation thus remain only as an information tool which complements the national tools and sources of information.

- **Article 7a.5.** Spain supports the deletion of *where appropriate*. Consultations to Member States shall take place in any case in order to follow a needs-based approach.

- **Article 7b (Title)**. In order to assess individually each of the possible migratory situations a Member State may face, the word *"and"* should be replaced by *"or"*, as it is already done in Article 7b.1.

  Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure or a significant migratory situation.

- **Article 7b.** Our delegation shares the following remarks to the relevant paragraphs:

  - **(ba)** Spain supports the addition of this new paragraph as it reflects the pressure of beneficiaries of temporary protection in the migratory situation of the UE.

  - **(f)** In accordance with our position regarding the take back procedures, Spain suggests that the reference to *notifications* should be replaced by a reference to *"requests"* as follows:

(f) the number of incoming and outgoing take charge and take back requests in accordance with Articles 29 and 31;

- **(j)** In order to reflect the specific migratory pressure of persons disembarked, both spontaneously and following a search and rescue operation, and in order to avoid double counting of applications for international protection, our delegation suggests to eliminate the last sentence of paragraph (j) as follows:

  (j) the number and nationality of third-country nationals disembarked, including those following sear and rescue operations […];

- Spain also deems relevant to take into account within this Article 7b.1 the number of statelessness applications, as it could be a significant number for some Member States as it is the case of Spain. Thus, a new letter (na) could be added as follows:

  (na) the number of applications for statelessness recognition.

- **(m)** The reference to *final asylum decisions* concerns a category of data with difficulties to be measured and collected, in need of internal coordination between different administrative units and the judiciary and with a high risk of data duplication. Spain proposes to remove this component from the list.

- **Article 7c.1.** Spain thanks the inclusion in the new text of the word *effective* to address the migratory situation. Furthermore, this delegation welcomes the needs-based approach with the addition of the words *that reflects the needs of the member States under migratory pressure*.

- **Article *7c.2***. The identification of the annual numbers for relocations and for direct financial contributions should reflect the migratory situation, pressures and needs of a given year. Therefore, taking into consideration the information which the Commission will have at its disposal, the annual number could be defined by using a formula, even if deemed as indicative, which would take into account the number of arrivals, average recognition rates and the return rates. Applying that formula would render, for the sake of flexibility, the minimum threshold unnecessary. In addition, paragraph 3 foresees that a lower number than the minimum threshold could, in exceptional situations, be established, voiding the threshold of its minimum character. In addition, the Union shared responsibility constitutes a principle enshrined in the Treaties which should be respected and guaranteed. Therefore, focus should be put on identifying the measures and the level of solidarity required to ensure the application of the fair-share principle.

  In this sense, consequential amendments should be made on Article 69.

  In any case, Spain could be flexible on this Article, accepting the establishment of a minimum threshold as far as equivalent rules apply under APR to the border procedure and the adequate capacity identified by an annual number of cases to be processed, as well as to the responsibility offsets procedure.

<u>Criteria and mechanisms for determining the Member State responsible</u>

General Principles and safeguards **(Articles 8 to 13)**

Spain could be reasonably flexible concerning these Articles. Nevertheless, a reservation is upheld on **Article 11.1 (ga)** ***Right to information,*** due to the cross-reference to Article 35 on the transfer procedure and the extension of the time limit therein.

Criteria for determining the Member State responsible (Articles 14-23)

- **Article 14.** ***Hierarchy of criteria***. Spain considers that the assessment of the criteria should be made, at least, upon lodging of the application and not upon registration. By the time of registration, the information available to determine if family criteria, diplomas, expired residence and the rest of criteria apply would be insufficient.

- **Article 15.** ***Unaccompanied minors*****.** Spain supports the inclusions stating the best interests of the unaccompanied minor. In **paragraph 5**, this delegation insists in placing the moment to determine the Member State responsibility when the application for international protection is lodged and not upon registration.

- **Article 19.** ***Issue of residence document and visas*****.** Spain would favour maintaining a similar deadline of three years for residence documents and visas, but, as stated previously, our delegation would be in a position to be flexible.

- **Article 20.** ***Diplomas or other qualifications*****.** This delegation supports these criteria based on diplomas and other education qualifications.

- **Article 21. Entry criteria.** Spain does not support the extension of deadlines, advocating for maintaining the current Dublin rules (12 months). In addition, persons disembarked following search and rescue operations should have a lower deadline, given their specificities linked to the fulfilment of obligations under international law.

- **Article 22. Visa waived entry**. We can accept the suggested wording, including the new paragraph 2.

Dependent persons and discretionary clauses (Articles 24-25)

- **Article 25. Discretionary clauses.** Spain supports the widening of the scope of the discretionary clause with the inclusion of *social and cultural* considerations in terms of flexibility and efficiency under the overall fair share principle.

Obligations of the Member State responsible

- **Article 26.** ***Obligations of the Member State responsible.*** Spain stresses that beneficiaries of international protection should not be part of the responsibility determination rules, since their applications have already been processed by a given Member State and the procedures have been completed. Thus, the attached obligations have been complied with. Beneficiaries of international protection are to be considered a shared EU responsibility. Therefore, letter c) of Article 26.1 and the addition in 26.2 should be deleted and the consequential amendments should take place throughout the text.

- ***Article 27. Cessation of responsibilities.*** In line with the contribution on Article 26, the **second subparagraph of paragraph 1** should be deleted, since "persons who have already been granted international protection" should fall outside of the responsibility determination rules. Spain supports the proposed **paragraph 1a**.

Procedures

- **Article 29. *Submitting a take charge request.*** Regarding **paragraph 3** of this provision, we support provisions aimed at adequately justifying the used criterion and that all the other hierarchically superior criteria are not met. In this vein, the applicant should be asked about the concurrence of those criteria, including through uniformed forms. Therefore, we suggest the following wording:

  "3. In the cases referred to in paragraphs 1 and 2, the take charge request by another Member State shall ***include full and detailed reasons, based on all the circumstances of the case, relating to all the ~~relevant~~ criteria set out in Chapter II. It shall*** *be made using a standard form and including proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the applicant's statement, who shall be asked about the concurrence of the criteria set out in Chapter II. enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.*

- ***Article 31. Submitting a take back notification.*** As a general rule, the take back procedure must remain as a request procedure, not a mere notification procedure. Otherwise, the exception foreseen in article 31(3) in fine could become in the general rule if used as an answer to take back "notifications". Hence, our delegation proposes changing the word "notification" by "request" in the title itself and throughout the relevant provisions in the legal instrument. Additionally, the failure to request within the time limit should tantamount to accepting the responsibility. Hence, the following wording is proposed:

Article 31

Submitting a take back request

1. In a situation referred to in Article 26(1), point (b), (c) or (d) the Member State where the person is present shall make a take back request within two weeks after receiving the Eurodac hit. Failure to make the take back request within the time limit shall tantamount to accepting the responsibility.

However, in the spirit of compromise, if new rules are foreseen expanding the family members, adapting the timeframes for determination and cessation, we could explore the notification procedure.

But that needs to be complemented with robust rules before the notification takes place. We could make the final phase lighter, but instead we ensure that the system is more robust in the assessment of each and every relevant criteria.

Furthermore, if the notification is not made in time, this should imply the shifting of responsibility. Clearer rules, swifter procedures mean consequence to every rule which has not been complied with (e.g. time limit for sending the request/notification)

Article 33. Remedies. Spain considers that the scope of the remedies should include the potential incorrect use of the hierarchical responsibility determination criteria and thus cover articles 14 to 24. Therefore, we suggest the following wording on **Article 33.1.b)**:

b) whether Articles 14 to 24 have been infringed, in the case of the persons taken charge of pursuant to Article 26(1), point (a).

The Spanish delegation welcomes the inclusion of **Paragraph 1a and 1b**, but we insist that remedies should include all the elements of the decision, including all the responsibility criteria from Articles 14 to 24.

Detention for the purpose of transfer

- ***Article 35. Detailed rules and time limits.*** The Spanish delegation welcomes the link proposed by the Swedish Presidency between border procedure and specific responsibility rules as suggested by Spain in previous meetings.

  Nevertheless, absconding is only one of the elements, and maybe not the most reasonable one, which could be considered. Spain believes that this proposal may be treating better the persons absconding after a negative decision than the ones whose case is still open. Spain concerns whether this provision might be somehow incentivizing absconding.

  This delegation would favour that after the border procedure, any future application is treated as a new application within the responsibility determination rules.

  In any case, 5 years seems an unreasonable period. The concerned persons will have most probably developed meaningful links with the country they have stayed in after such a long period of time. Furthermore, 18 months is the period foreseen in the current *acquis*.

  In case of absconding, one general (lower) timeframe for absconding could be suggested. If an differentiated approach for cases under the border procedure is proposed, a much lower time frame (6 months) should be envisaged. In case a differentiated approach is foreseen, the SAR category should have specific rules given its specificities.

Solidarity Mechanisms

Solidarity Pool and EU Migration Support (44a – 44k, 58a)

- **Article 44a.3a.** Spain supports the new version of Article 44a 3, as it clarifies solidarity measures of the Solidarity Pool. However, beneficiaries of international protection should not be included in the scope of relocations provided that there are eligible candidates from the other categories. Notwithstanding the foregoing, Spain could be flexible on this point if the possibility of relocate beneficiaries of international protection is subject to agreements between Member States.

Regarding paragraph (ii), we cannot support the possible limitation of the category *illegally staying third-country nationals or stateless persons* to those under a purpose of return, so we propose to delete the wording *for the purpose of return*:

Therefore, Spain suggests the following amendments:

2. The Solidarity Pool shall consist of the following types of solidarity measures, which shall be considered of equal value and address the needs of benefitting Member States:

(a) relocation in accordance with Articles 57 and 58:

(i) […]

*(ii) where **bilaterally** agreed by the contributing and benefitting Member States **concerned**, of beneficiaries of international protection who have been granted international protection less than three years prior to the adoption of the Council decision establishing the Solidarity Pool, or ~~for the purpose of return~~ of illegally staying third-country nationals or stateless persons.*

- **Article 44b.2**. Spain supports the compulsory nature of the fair-share principle.

- **Article 44c.2**. Spain supports the de-linking of the use of the Permanent Toolbox and the access to the Solidarity Pool.

- **Article 44.d.2.b.** As stated in relation with the previous article, Spain supports the de-linking of the use of the Permanent Toolbox and the access to the Solidarity Pool.

- **Article 44.d.4**. Spain supports the new wording of this Article.

- **Art 44.e.** As already mentioned in Article 7.c.1, effectiveness and needs-based approach, rather than balance, should be the driving principles regarding the operationalization of the solidarity measures. That is why the Spanish delegation proposes to use the expression of *effective manner* instead of *balanced manner*, resulting in the following text for paragraph 1:

1. In the Technical-Level EU Migration Forum, all Member States shall cooperate among themselves and with the Commission to ensure an effective operationalisation of the Solidarity Pool in an effective manner in the light of the needs identified and assessed and the solidarity contributions available.

Spain also expresses its gratitude for keeping the reference to contributing and benefitting Member States in paragraph 4. Although it should be underlined that the proposal includes the word *available* in reference to relocation candidates (*available relocation candidates*), the Spanish delegation would like to express our doubts regarding this adjective. In our understanding, it could lead to a reduction of relocations. The reference to relocation candidates is already clear enough and therefore the term available adds no value. Thus, the Spanish delegation would like to eliminate this word from the text resulting in the following wording: *[…] Member States contributing with or ~~and~~ benefitting from relocations may express reasonable preferences in light of the needs identified for the profiles of relocation candidates and a potential planning for the implementation of their solidarity contributions. […]*

- **Art 44 fa.** Spain considers appropriate the distinction between the two procedures stated in Articles 44f and 44fa in order to having a clearer picture in practical terms. Our main concern in case of full or partial reduction of responsibility refers to the risk that the use of these procedures could pose to the core of the principle of solidarity and the quantitative contributions from the Member States. Specific guarantees should be implemented to face this risk.

- **Art. 44 h.** Spain welcomes the new title for Article 44h. We think that the expression *responsibility offsets* is more appropriate than *Dublin offsets*, in line with previous comments. The Spanish delegation considers *responsibility offsets* as a second-level mechanism to be used in the cases foreseen in this Article, including its compulsory procedure.

  Responsibility offsets should be triggered in cases where the solidarity contributions have not reached the objective set in the Recommendation. This offsetting should take place regardless of the type of contribution and therefore should also apply to cases where the financial contributions have not fulfilled the annual objective. Solidarity is flexible, but mandatory. Hence, offsetting should be activated when the individual Member States have not contributed according to their fair-share.

Therefore, paragraph 2 could read as follows:

Where, following the meeting of the High Level Migration Forum convened in accordance with Article 44g, the solidarity contributions ~~relocation pledges~~ to the Solidarity Pool contained in the Council Implementing Decision referred to in Article 44b are below the number referred to in Article 7c~~2)(a)~~, the contributing Member States shall take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the number referred to in Article 7c~~2)(a)~~.

Additionally, the Spanish delegation insists on the fact that the *responsibility offsets* should apply in relation to the annual target set out in the Recommendation foreseen in Article 7.c, instead of being set out against the minimum threshold (Article 7.c.2). Two reasons justify this amendment: firstly, to ensure the coherence with our contributions to that Article which suggest deleting the minimum thresholds; secondly, even if those thresholds remained in the text, the offsets, as a mechanism to close existing fair-sharing of responsibility gaps, should be established in accordance with the migratory pressures and the needs identified for the given year and not to a minimum reference number. They should be a mirror of the relocation needs and fill the gap which was not satisfied with the pledging exercise.

In addition, the Spanish delegation raises the concern on those situation in which the solidarity contributions are below 75% of the Recommendation, but higher than the minimum threshold. It appears that, in those cases, the responsibility offsets would never be applied, neither on voluntary nor on a mandatory basis.

Finally, we welcome the deletion of **Article 44.h.3.e),** it seems unnecessary as the obligations under the Eurodac Regulation are anyhow compulsory and all Member States are obliged to fulfill them. Potential non-compliance with these obligations should be dealt with the already existing EU procedures. Therefore, we propose to delete this reference.

- **Articles 44i and 44j**. Spain agrees to the new wording on both Articles, reminding the need to foresee the triggering of responsibility offsets where the financial contributions and other alternatives measures do not meet the objective set by the Commission recommendation.

- ***Procedural requirements (Articles 57-60)***

- **Article 57. *Procedure before relocation.*** Spain upholds the scrutiny reservation on article 57.1 with regard to the scope of persons which may be relocated established in article 44a.3.a. In our view, beneficiaries of international protection should fall beyond the scope since they should not be part of the responsibility determination rules. The same reservation applies to Article 57.3 when mentioning "beneficiaries of international protection".

  Furthermore, we suggest extending the scope of paragraph 3 to "social considerations", in line with the wording in Article 25.2.

  Where relocation is to be applied, the benefitting Member State, or, upon request of the benefitting Member State, the Asylum Agency, shall identify the persons who could be relocated. Where the person concerned is an applicant for or a beneficiary of international protection, that Member State shall take into account, where applicable, the existence of meaningful links such as those based on family, social or cultural considerations, between the person concerned and the Member State of relocation.

  While we can accept the time limits set up in this article, further clarification is required as to the reference in paragraph 9a to "timeframe for the implementation".

- **Article 58. Procedure after relocation.**

  Paragraph 6 may be simplified taking into account that responsibility after relocation should always remain in the Member State of relocation.

Art 58a.2. In line with the comments on Article 44h, Spain suggests indicating that the number of *responsibility offsets* should be related to the unfulfilled number of relocations as established in the Recommendation. In addition, Spain proposes to delete or reduce the possibility to lower the amount requested by the benefiting Member States, since the whole responsibility offsetting could otherwise be rendered void of purpose. The time limits in this Article should not be longer than 15 days. Failure to reply within this timeframe should tantamount to accepting the request.

Having regard to the above, amendments are proposed as follows:

Article 58a

Procedure for responsibility Offsets under Article 44h(1)

1.Where a benefitting Member State may request another Member State to take responsibility for examining a number of applications for international protection pursuant to Article 44h(1), it shall transmit its request to the contributing Member State and include the number of applications for international protection to be taken responsibility for instead of relocations up to the number referred to in the Recommendation mentioned in Article 7c.

2. The contributing Member State shall give a decision on the request within 15 days of receipt of the request. Failure to reply within the established timeframe shall tantamount to accepting the request.

OR

2.The contributing Member State shall give a decision on the request within 15 days of receipt of the request accepting to take responsibility for examining, at least, 75% of applications for international protection requested by the benefitting Member State. Failure to reply within the established timeframe shall tantamount to accepting the request.

The Member State which has accepted a request pursuant to paragraph 2 shall identify the individual applications for international protection for which it takes responsibility for and shall indicate its responsibility pursuant to Article XX of Regulation (EU) XXX/XXX [Eurodac Regulation].