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| From:          | Presidency  |
| To:            | Delegations   |
| No. Cion doc.: | 11213/20  |
| Subject:       | Draft 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] |

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1. During 13 informal meetings of the Asylum Working Party between 7 January and 15 April 2021, the working party examined and concluded the first examination of the proposal for the Asylum and Migration Management Regulation (AMMR). Most of these meetings were devoted to the solidarity aspects of the proposal.
2. On the basis of this examination, the Presidency would like to take stock of the contributions made by Member States and summarise the most relevant technical issues in this document, leaving the political options to be discussed at a later stage. As a result, some suggestions for technical modifications of the Solidarity Part of the AMMR are included in Annex to this document.

3. It is understood that there are many issues of concern to Member States which are not touched upon in the Annex 1. However, the Presidency considers that these issues should be part of larger and more in-depth considerations, which would not be possible during the limited time available until the end of the Portuguese Presidency. In addition, the Presidency does not wish to propose solutions that could prejudice future political choices on the balance between solidarity and responsibility, and has thus limited the suggested modifications to the more technical aspects.
4. We do not intend to enter into an Article-by-Article discussions on these provisions, as they only provide a partial picture of the progress made, but we nonetheless consider that this document might help further discussions on the topic. Also, due to the large amount of written contributions from Member States, it has not been possible to address all parts of the AMMR and only provisions of Part IV – Solidarity and some related Articles are included.
5. It is understood that all delegations have general scrutiny reservations on the whole AMMR proposal and that in addition, some delegations have scrutiny or substantive reservations on certain specific provisions.
6. Modifications as compared to the Commission proposal are indicated as follows:
  - new Presidency text is in **bold underline**;
  - deleted Presidency text is in **~~bold strikethrough~~**.

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<sup>1</sup> see also Presidency progress report on the Pact on Migration and Asylum (9178/21)

2020/0279 (COD)

Draft

**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]**

*Article 2*

*Definitions*

For the purposes of this Regulation:

(...)

- (r) ‘benefitting Member State’ means the Member State benefitting from the solidarity measures in situations of migratory pressure or for disembarkations following search and rescue operations as set out in Chapters I-III of Part IV of this Regulation;
- (s) ‘contributing Member State’ means a Member State that contributes or is obliged to contribute to the solidarity measures to a benefitting Member State set out in Chapters I-III of Part IV of this Regulation;
- (t) ‘sponsoring Member State’ means a Member State that commits to return illegally staying third-country nationals to the benefit of another Member State, providing the return sponsorship referred to in Article 55 of this Regulation;
- (u) ‘relocation’ means the transfer of a third-country national or a stateless person from the territory of a benefitting Member State to the territory of a contributing Member State;

- (v) ‘search and rescue operations’ means operations of search and rescue as referred to in the 1979 International Convention on Maritime Search and Rescue adopted in Hamburg, Germany on 27 April 1979;
- (w) ‘migratory pressure’ means a situation ~~where there is a large number of arrivals of third country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries~~ which generates migratory movements that place a disproportionate burden on Member States, 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 arrivals following search and rescue operations, notably as a result of the geographic location of a Member State and the specific developments in third countries;
- (...)
- (ab) ‘vulnerable persons’ means the persons referred to in the second paragraph of Article 20 of Directive XXX/XXX/EU [Reception Conditions Directive].

## Article 6

### *Governance and monitoring of the migratory situation*

(...)

4. The Commission shall adopt a Migration Management Report each year setting out the anticipated evolution of the migratory situation and the preparedness of the Union and the Member States. In the case of **recurring disembarkations following migratory flows generated by** search and rescue operations, the Commission shall consult the concerned Member States, **which shall have a possibility to comment on the draft Report within one week**, and the Report shall set out the total number of projected disembarkations **for the following year in the short term** and the solidarity response that would be required to contribute to the needs of the Member States of disembarkation through relocation and through measures in the field of capacity building, operational support and measures in the field of the external dimension. The Report shall also indicate whether particular Member States are faced with capacity challenges due to the presence of third-country nationals who are vulnerable **according to the definition in Article 2 (ab)**, and include the results of the reporting on monitoring listed in paragraph 3 including the information gathered within the framework of the Migration Preparedness and Crisis Blueprint and propose improvements where appropriate.

(...)

## PART IV

### *SOLIDARITY*

#### CHAPTER I

#### *SOLIDARITY MECHANISMS*

##### *Article 45*

##### *Solidarity contributions*

1. Solidarity contributions for the benefit of a Member State under migratory pressure or subject to disembarkations following search and rescue operations shall consist of the following types:
  - (a) relocation of applicants who are not subject to the border procedure **and who are therefore more likely to have a right to stay in the Union** for the examination of an application for international protection established by Article 41 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] ;
  - (b) return sponsorship of illegally staying third-country nationals;
  - (c) relocation of beneficiaries of international protection who have been granted international protection less than three years prior to adoption of an implementing act pursuant to Article 53(1);

- (d) **other solidarity contributions consisting of<sup>2</sup>:**
- (i) capacity-building measures in the field of asylum, reception and return,
  - (ii) operational support, and
  - (iii) measures aimed at responding to migratory trends affecting the benefitting Member State through cooperation with third countries.

2. Such contributions may, pursuant to Article 56, also consist of:

- (a) relocation of applicants for international protection subject to the border procedure in accordance with Article 41 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*];
- (b) *relocation of illegally staying third-country nationals. Article 46*

#### *Solidarity Forum*

A Solidarity Forum shall comprise all Member States. The Commission shall convene and preside the Solidarity Forum in order to ensure the smooth functioning of this Part.

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Based on suggestions by several delegations, examples of other solidarity contributions could be inserted in recitals or in the text of the Regulation (as a new paragraph (1a)), as follows:

**Measures under point (d) of paragraph 1 may include capacity-building measures and operational support in addition to those covered by EU agencies' operations or EU funding in the field of asylum and migration management in the benefitting Member States, such as measures relating to the joint processing of cases, asylum management and reception capacities, border protection, countering human smuggling and trafficking, return and readmission, communication and information, or financial and technical support to search and rescue operations.**

**In relations with third countries, the measures may include operational cooperation and operational support not yet fully covered by EU agencies' operations or EU funding, such as measures relating to border management, including search and rescue operations, combatting human smuggling and trafficking, strengthening asylum management and reception capacities, return and readmission, strategic resettlement, communication and information, or fostering perspectives in regions of origin aimed at responding to and preventing illegal migration flows towards the European Union.**

*Article 47*

*Solidarity for disembarkations following search and rescue operations*

1. This Article and Articles 48 and 49 shall apply to **recurring disembarkations** ~~search and rescue operations that generate recurring arrivals~~ of third-country nationals or stateless persons onto the territory of a Member State **following search and rescue operations** and to vulnerable persons as set out in **Article 2 (ab) and** Article 49(4).
2. Where the Migration Management Report referred to in Article 6(4) indicates that one or more Member States **are** faced with the situations referred to in paragraph 1, it shall also set out the total number of applicants for international protection referred to in Article 45(1), point (a) that would need to be relocated in order to assist **that or** those Member States. The report shall also identify any capacity-building measures referred to in Article 45(1), point (d) which are necessary to assist the Member State **or Member States** concerned.
3. Within two weeks of the adoption of the Migration Management Report, the Commission shall invite all other Member States that are not expected to be faced with arrivals on their territory as referred to in paragraph 1 to provide the solidarity contributions referred to in paragraph 2. In its request, the Commission shall indicate the total number of applicants to be relocated by each Member State in the form of solidarity contributions referred to in Article 45(1), point (a) by each Member State, calculated according to the distribution key set out in Article 54. The distribution key shall include the share of the benefitting Member States.



4. Within one month of the adoption of the Migration Management Report, Member States shall notify the Commission of the contributions they intend to make, by completing the SAR Solidarity Response Plan set out in Annex I. Member States shall indicate whether they intend to provide contributions in the form of:
- (a) relocation in accordance with Article 45(1), point (a); or
  - (b) measures in accordance with Article 45(1), point (d) identified in the Migration Management Report; or
  - (c) relocation in accordance with Article 45(1), point (a) of vulnerable persons pursuant to Article 49(4).
5. Where the Commission considers that the solidarity contributions indicated by all the Member States pursuant to paragraph 4 **are not sufficiently close to fall significantly short of** the total solidarity contributions set out in the Migration Management Report, the Commission shall convene the Solidarity Forum. The Commission shall invite Member States to adjust the number and, where relevant, the type of contributions. Member States that adjust their contributions shall submit revised SAR Solidarity Response Plans in the course of the Solidarity Forum.

#### *Article 48*

##### *Commission implementing acts for search and rescue operations*

1. Within two weeks from the submission of the SAR Solidarity Response Plans referred to in Article 47(4) or two weeks from the end of the Solidarity Forum referred to in Article 47(5), and where the total solidarity contributions indicated by all the Member States in their Plans corresponds to, or is considered by the Commission to be sufficiently close to the total solidarity contributions set out in the Migration Management Report, the Commission shall adopt an implementing act setting out the solidarity measures indicated by Member States pursuant to Article 47(4) or Article 47(5). Such measures shall constitute a solidarity pool for each Member State expected to be faced with disembarkations in the short term.

2. Where the Asylum Agency notifies the Commission and the Member States that 80% of the solidarity pool in the first ~~sub~~paragraph has been used for one or more of the benefitting Member States, the Commission shall convene the Solidarity Forum to inform the Member States of the situation and request Member States to increase their contributions. Following the end of the Solidary Forum, where Member States have indicated their readiness to make increased contributions the Commission shall amend the implementing act establishing a solidarity pool referred to in the first subparagraph in relation to the benefitting Member State concerned to increase the contributions indicated by Member States.

3. **Paragraph 2 does not apply if the situation as described therein arises in the last month of the application of the Migration Management Report.**

4. 2. Where the total number or types of solidarity contributions indicated by Member States pursuant to Article 47(5) **are not sufficiently close to** ~~still falls significantly short of~~ the total solidarity contributions set out in the Migration Management Report leading to a situation where the solidarity pool is not able to provide a foreseeable basis of ongoing support to the Member States referred to in Article 47(2), the Commission shall, within two weeks after the end of the Solidarity Forum, adopt an implementing act establishing a solidarity pool for each Member State expected to be faced with disembarkations in the short term. That implementing act shall set out:

- (a) the total number of third-country nationals to be covered by relocation to contribute to the needs of the Member States referred to in Article 47(2) as identified in the Migration Management Report;
- (b) the number and share referred to in point (a) for each Member State, including the benefitting Member States, calculated according to the distribution key set out in Article 54;
- (c) the measures indicated by Member States as set out in Article 45(1), point (d).

5. Where Member States have indicated measures set out in Article 45(1), point (d), those measures shall be in proportion to the contributions that the Member States would have made by means of the relocations referred to in Article 45(1), point (a) as a result of the application of the distribution key set out in Article 54. They shall be set out in the implementing act except where the indications by Member States would lead to a shortfall of greater than 30% of the total number of relocations identified in the Migration Management Report. In those cases, the contributions set out in the implementing act shall be adjusted so that those Member States indicating such measures are required to cover 50% of their share calculated in accordance with the distribution key set out in Article 54 through relocation or return sponsorship as referred to in Article 45(1) point (b) or a combination of both. The Member States concerned shall immediately indicate to the Commission how they intend to cover their share in this regard. The Commission shall adjust the contributions set out in the implementing act regarding relocation, return sponsorship and the measures referred to in Article 45(1), point (d) for those Member States accordingly.
6. Where one or more Member States have not submitted an SAR Solidarity Response Plan within the time limits set out in Article 47(4) and Article 47(5), the Commission shall determine the amount and type of contributions to be made by those Member States.
7. Where the Asylum Agency notifies the Commission and the Member States that 80% of the solidarity pool in ~~the first sub~~paragraph 4 has been used for one or more of the benefitting Member States, the Commission shall convene the Solidarity Forum to inform the Member States of the situation and the additional needs of the **benefitting** Member States. Following the Solidary Forum the Commission shall adopt an amendment to the implementing act establishing a solidarity pool referred to in ~~the first sub~~paragraph 4 in relation to the benefitting Member State concerned to increase the total number of third-country nationals covered by the solidarity measures referred to in point (a) of ~~the first sub~~paragraph 4 by ~~a maximum of~~ 50%. The share of each Member State referred to in point (b) of ~~the first sub~~paragraph 4 shall be amended accordingly. Where the provisions of ~~the second sub~~paragraph 5 are applied and Member States have indicated that they shall contribute through return sponsorship, the share of these measures shall be increased by 50%. The measures referred to in Article 45(1), point (d) shall also be increased by a share that is in proportion to a 50% increase of that Member States share calculated according to the distribution key set out in Article 54.

**8. Paragraph 7 does not apply if the situation as described therein arises in the last month of the application of the Migration Management Report.**

**9. 3-** The implementing acts referred to in **this Article and any amendments thereto paragraphs 1 and 2** shall be adopted in accordance with the examination procedure referred to in Article 67(2).

*Article 49*

*Solidarity pool for search and rescue operations*

1. **After** ~~Within two weeks of~~ the adoption of the implementing act referred to in Article 48(1) or Article 48(2), the Member State referred to in Article 47(2) shall notify the Commission of its request for solidarity support. Following that request, the Commission shall draw on the solidarity pool and coordinate the implementation of the solidarity measures for each disembarkation or group of disembarkations taking place in a period of two weeks.
2. Under the coordination of the Commission **and in consultation with the benefiting Member State concerned**, the Asylum Agency and the European Border and Coast Guard Agency shall draw up the list of eligible persons to be relocated and to be subject to return sponsorship. The list shall indicate the distribution of those persons among the contributing Member States taking into account the total number of persons to be relocated or to be subject to return sponsorship by each contributing Member State, the nationality of those persons and the existence of meaningful links between them and the Member State of relocation or of return sponsorship. Priority shall be given to the relocation of vulnerable persons, **according to Article 2 (ab)**. The Asylum Agency and the European Border and Coast Guard Agency shall assist the Commission in monitoring the use of the solidarity pool.

3. Where the Commission has adopted a report concluding that a Member State referred to in Article 47(2) is under migratory pressure as set out in Article 51(3), the remaining solidarity contributions from the solidarity pool established under Article 48(1) or Article 48(2) may be used for the purpose of immediately alleviating the migratory pressure on that Member State. In such cases, the provisions of paragraph 2 shall apply.

This paragraph shall not apply where an implementing act provided for in Article 53 is adopted. As from the adoption of that implementing act drawing on the list of eligible persons to be relocated and to be subject to return sponsorship as provided for in paragraph 2 shall cease.

Where the solidarity pool referred to in the first subparagraph is insufficient for the purpose of immediately alleviating the challenges faced by the Member State referred to in Article 47(2), solidarity contributions from the solidarity pool of the other Member States established under Article 48(1) or Article 48(2) may be used insofar as this does not jeopardize the functioning of the pool for those Member States.

4. Where the Migration Management Report identifies that a Member State referred to in Article 47(2) is faced with capacity challenges due to the presence of applicants who are vulnerable regardless of how they crossed the external borders, the solidarity pool established under Article 48(1) or Article 48(2) may also be used for the purpose of relocation of vulnerable persons. In such cases, the provisions of paragraph 2 shall apply.
5. The Commission shall support and facilitate the procedures leading to the relocation of applicants and the implementation of return sponsorship, paying particular attention to unaccompanied minors, **among the vulnerable persons defined in Article 2 (ab)**. It shall coordinate the operational aspects of relocation and return sponsorship, including with the assistance of experts or teams of experts to be deployed by the Asylum Agency or the European Border and Coast Guard Agency.

*Article 50*

*Assessment of migratory pressure*

1. The Commission shall, **in close cooperation with the Member State concerned**, assess the migratory situation in a Member State where:
  - (a) that Member State has informed the Commission **and the Council** that it considers itself to be under migratory pressure. **The Member State may include in its information an estimate of the measures needed to address and respond to the situation;**
  - (b) on the basis of available information, it considers that a Member State may be under migratory pressure.
  
2. The Asylum Agency and the European Border and Coast Guard Agency shall assist the Commission in drawing up the assessment of migratory pressure. The Commission shall inform the European Parliament, the Council and the Member States, without delay, that it is undertaking an assessment **and keep them updated of the main developments regarding the evaluation.**

3. The assessment of migratory pressure shall cover the situation in the Member State concerned during the preceding six months, compared to the overall situation in the Union, and shall be based in particular on the following information:
- (a) the number of applications for international protection by third-country nationals and the nationality of the applicants;
  - (b) the number of third-country nationals who have been detected by Member State authorities while not fulfilling, or no longer fulfilling, the conditions for entry, stay or residence in the Member State including overstayers within the meaning of Article 3(1)(19) of Regulation (EU) 2017/2226 of the European Parliament and of the Council<sup>3</sup>;
  - (c) the number of return decisions that respect Directive 2008/115/EC;
  - (d) the number of third-country nationals who left the territory of the Member States following a return decision that respects Directive 2008/115/EC;
  - (e) the number of third-country nationals admitted by the Member States through Union and national resettlement [or humanitarian admission] schemes;
  - (f) the number of incoming and outgoing take charge requests and take back notifications in accordance with Articles ~~29~~ **34** and ~~31~~ **36**;
  - (g) the number of transfers carried out in accordance with Article ~~35~~ **31**;
  - (h) the number of persons apprehended in connection with an irregular crossing of the external land, sea or air border;

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<sup>3</sup> Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, p. 20.

- (i) the number of persons refused entry in accordance with Article 14 of Regulation EU (No) 2016/399;
- (j) the number and nationality of third-country nationals disembarked following search and rescue operations, including the number of applications for international protection;
- (k) the number of unaccompanied minors;
- (l) the number of third-country nationals who have been granted international protection;**
- (o) the number of first instance and final asylum decisions.**

4. The assessment of migratory pressure shall also take into account the following:

- (a) the information presented by the Member State, ~~where the assessment is carried out pursuant to paragraph 1, point (a)~~;
- (b) the level of cooperation on migration 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*];
- (c) the geopolitical situation in relevant third countries that may affect migratory movements;
- (d) the relevant Recommendations provided for in Article 15 of Council Regulation (EU) No 1053/2013<sup>4</sup>, Article 13, 14 and 22 of Regulation (EU) XXX/XXX [*European Union Asylum Agency*] and Article 32(7) of Regulation (EU) 2019/1896;

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<sup>4</sup> Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.



- (e) information gathered pursuant to Commission Recommendation of XXX on an EU mechanism for Preparedness and Management of Crisis related to Migration (Migration Preparedness and Crisis Blueprint)
- (f) the Migration Management Report referred to in Article 6(4);
- (g) the Integrated Situational Awareness and Analysis (ISAA) reports under Council Implementing Decision (EU) 2018/1993 on the EU Integrated Political Crisis Response Arrangements, provided that the Integrated Political Crisis Response is activated or the Migration Situational Awareness and Analysis (MISAA) report issued under the first stage of the Migration Preparedness and Crisis Blueprint, when the Integrated Political Crisis Response is not activated;
- (h) information from the visa liberalisation reporting process and dialogues with third countries;
- (i) quarterly bulletins on migration, and other reports, of the European Union Agency for Fundamental Rights.
- (j) the support provided by Union Agencies to the benefitting Member State;
- (aa) relevant parts of the vulnerability assessment report of the European Border and Coast Guard Agency.**

*Article 51*

*Report on migratory pressure*

1. The Commission shall consult the Member State concerned during its assessment undertaken pursuant to Article 50(1) **and will give this Member State an opportunity to comment on the draft Report within three days. The information presented by the Member State may be updated until the adoption of the report, in order to better capture a developing situation.**

The Commission shall submit the report on migratory pressure to the European Parliament and to the Council within one month after the Commission informed them that it was carrying out an assessment pursuant to Article 50(2).

2. In the report, the Commission shall state whether **it considers that** the Member State concerned is under migratory pressure.
3. Where the Commission concludes that the Member State concerned is under migratory pressure, the report shall identify:
  - (a) the capacity of the Member State under migratory pressure in the field of migration management, in particular asylum and return as well as its overall needs in managing its asylum and return caseload;
  - (b) measures that are appropriate to address the situation and the expected timeframe for their implementation consisting, as appropriate, of:
    - (i) measures that the Member State under migratory pressure should take in the field of migration management, and in particular in the field of asylum and return;
    - (ii) measures referred to in Article 45(1), points (a), (b) and (c) to be taken by other Member States;
    - (iii) measures referred to in Article 45(1), point (d) to be taken by other Member States.
4. Where the Commission considers that a rapid response is required due to a developing situation in a Member State, it shall submit its report within two weeks at the latest from the date on which it informed the European Parliament, the Council and the Member States pursuant to Article 50(2) that it was carrying out an assessment.

## Article 52

### *Solidarity Response Plans in situations of migratory pressure*

1. Where the report referred to in Article 51 indicates that a Member State is under migratory pressure, the other Member States which are not themselves benefitting Member States shall contribute by means of the solidarity contributions referred to in Article 45(1), points (a), (b) and (c). Member States shall prioritise the relocation of unaccompanied minors.
2. Where the report referred to in Article 51 identifies measures referred to in **Article 45(1), point (d) paragraph 3, point (b)(iii) of that Article**, other Member States may contribute by means of those measures instead of measures referred to in Article **45(1), points (a), (b) and (c) 51(3)(b)(ii)**. Such measures shall not lead to a short fall of more than 30% of the total contributions identified in the report on migratory pressure under Article 51(3)(b)(ii).
3. Within two weeks from the adoption of the report referred to in Article 51, **contributing** Member States shall submit to the Commission a Solidarity Response Plan by completing the form in Annex II. The Solidarity Response Plan shall indicate the type of contributions from among those set out in Article **45(1), points (a), (b) and (c) 51(3)(b)(ii)** or, where relevant, the measures set out in Article **45(1), point (d) 51(3)(b)(iii)** that Member States propose to take. Where Member States propose more than one type of contribution set out in Article **45(1), points (a), (b) and (c) 51(3)(b)(ii)**, they shall indicate the share of each.

Where the Solidarity Response Plan includes return sponsorship, Member States shall indicate the nationalities of the illegally staying third-country nationals present on the territory of the Member State concerned that they intend to sponsor.

Where Member States indicate measures set out in Article **45(1), point (d) 51(3)(b)(iii)** in the Solidarity Response Plan they shall also indicate the detailed arrangements and the time-frame for their implementation.

4. Where the Commission considers that the solidarity contributions indicated in the Solidarity Response Plans do not correspond to the needs identified in the report on migratory pressure provided for in Article 51, it shall convene the Solidarity Forum. In such cases, the Commission shall invite Member States to adjust the type of contributions in their Solidarity Response Plans in the course of the Solidarity Forum by submitting revised Solidarity Response Plans.
5. A Member State proposing solidarity contributions set out in Article **45(1), points (a), (b) and (c) 51(3)(b)(ii)**, may request a deduction of 10% of its share calculated according to the distribution key set out in Article 54 where it indicates in the Solidarity Response Plans that over the preceding five years it has examined twice the Union **average** per capita **number** of applications for international protection.

### *Article 53*

#### *Commission implementing acts on solidarity in situations of migratory pressure*

1. Within two weeks from the submission of the Solidarity Response Plans referred to in Article 52(3) or, where the Solidarity Forum is convened pursuant to Article 52(4), within two weeks from the end of the Solidarity Forum, the Commission shall adopt an implementing act laying down the solidarity contributions for the benefit of the Member State under migratory pressure to be taken by the other Member States and the timeframe for their implementation.
2. The types of contributions set out in the implementing act shall be those indicated by Member States in their Solidarity Response Plans. Where one or more Member States have not submitted a Solidarity Response Plan, the Commission shall determine the types of contributions to be made by the Member State taking into account the needs identified in the report on migratory pressure.

Where the type of contribution indicated by Member States in their solidarity response plans is that referred to in Article 45(1), point (d), the Commission shall assess whether the measures proposed are in proportion to the contributions that the Member States would have made by means of the measures referred to in Article 45(1), points (a), (b) or (c) as a result of the application of the distribution key set out in Article 54.

Where the measures proposed are not in proportion to the contributions that the contributing Member State would have made by means of the measures referred to in Article 45(1), points (a), (b) or (c), the Commission shall set out in the implementing act the measures proposed while adjusting their level.

Where the measures proposed would lead to a shortfall greater than 30% of the total number of solidarity measures identified in the report on migratory pressure under Article 51(3)(b)(ii), the contributions set out in the implementing act shall be adjusted so that those Member States indicating such measures would be required to cover 50% of their share calculated according to the distribution key set out in Article 54 through measures set out in Article **45(1), points (a), (b) and (c)** ~~51(3)(b)(ii)~~. The Commission shall adjust measures referred to in Article **45(1), point (d)** ~~51(3)(b)(iii)~~ indicated by those Member States accordingly.

3. The implementing act shall set out:
  - (a) the total number of persons to be relocated from the **benefitting requesting** Member State pursuant to Article 45(1), points (a) or (c), taking into account the capacity and needs of the **benefitting requesting** Member States in the area of asylum identified in the report referred to in Article 51(3)(b)(ii);
  - (b) the total number of persons to be subject to return sponsorship from the **benefitting requesting** Member State pursuant to Article 45(1), point (b), taking into account the capacity and needs of the **benefitting requesting** Member States on return identified in the report referred to in Article 51(3)(b)(ii);
  - (c) the distribution of persons to be relocated and/or those to be subject to return sponsorship among the Member States including the benefitting Member State, on the basis of the distribution key set out in Article 54;

- (d) the measures **referred to in Article 45 (1) point (d) to be provided by contributing Member States following the application of paragraph 2 indicated by Member States pursuant to second, third and fourth subparagraph of paragraph 2.**

The distribution referred to in paragraph 3 point (c) shall be adjusted where a Member State making a request pursuant to Article 52(5) demonstrates in the Solidarity Response Plan that over the preceding 5 years it has **examined been responsible for** twice the Union **average** per capita **number** of applications for international protection. In such cases the Member State shall receive a deduction of 10/% of its share calculated according to the distribution key set out in Article 54. This deduction shall be distributed proportionately among the Member States making contributions referred to in Article 45(1) points (a), (b) and (c).<sup>5</sup>

4. Where contributions have been made in response to a request by a Member State for solidarity support from other Member States to assist it in addressing the migratory situation on its territory to prevent migratory pressure pursuant to Article 56(1) within the preceding year, and where they correspond to the type of measures set out in the implementing act, the Commission shall deduct these contributions from the corresponding contributions set out in the implementing act.
5. On duly justified imperative grounds of urgency due to the migratory pressure present in a benefitting Member State, the Commission shall adopt immediately applicable implementing acts in accordance with the urgency procedure referred to in Article 67(3).

Those acts shall remain in force for a period not exceeding 1 year.

6. The Commission shall report on the implementation of the implementing act one month after it ceases to apply. The report shall contain an analysis of the effectiveness of the measures undertaken.

## Article 54

### *Distribution key*

The share of solidarity contributions referred to in Article 45(1), points (a), (b) and (c) to be provided by each Member State in accordance with Articles 48 and 53 shall be calculated in accordance with the formula set out in Annex III and shall be based on the following criteria for each Member State, according to the latest available Eurostat data:

- (a) the size of the population (50% weighting);
- (b) the total GDP (50% weighting).

## Article 55

### *Return sponsorship*

1. A Member State may commit to support a Member State to return illegally staying third-country nationals by means of return sponsorship whereby, acting in close **cooperation and** coordination with the benefitting Member State, it shall take measures to **prepare for and** carry out the return of those third-country nationals from the territory of the benefitting Member State. **The Commission and the European Border and Coast Guard Agency may provide support.**

**The benefitting Member State shall apply the provisions of the [recast Return Directive]. In the event that the return decision is annulled, then the sponsoring Member State shall be informed.**

2. Where a Member State commits to provide return sponsorship and the illegally staying third-country nationals who are subject to a return decision issued by the benefitting Member State do not return or are not removed within 8 months, the **sponsoring** Member State ~~providing return sponsorship~~ shall transfer the persons concerned onto its own territory in line with the procedure set out in Articles 57 and 58 **and shall apply the provisions of the [recast Return Directive]**. This period shall start from the adoption of the implementing act referred to in Article 53(1) or, where applicable, **from the communication of the list referred** in Article 49(2) **to the sponsoring Member State**. **Member States may bilaterally agree on a shorter period.**

**2a. The benefitting Member State shall take measures to ensure that those third country nationals remain at the disposal of the competent authorities for the duration of the period referred to in paragraph 2. The benefitting Member State shall inform the sponsoring Member State of the unavailability of the third country national for the return process as soon as possible.**

**When an illegally staying third country national either absconds or makes an application for international protection, during the 8 month period or any bilaterally agreed shorter period as referred to in paragraph 2, the counting of this period shall be suspended until the illegally staying third-country national is again available for the return process.**

**The benefitting Member State shall inform the sponsoring Member State of the availability of the third country national for the return process as soon as possible.**



3. Where a Member State commits to provide return sponsorship in relation to third-country nationals who are not yet subject to a return decision in the benefitting Member State, the period referred to in paragraph 2 shall start to run from either of the following dates:
- (a) the date when a return decision is issued by the benefitting Member State; or
  - (b) where a return decision is issued as a part of a decision rejecting an application for international protection or where a return decision is issued in a separate act, ~~at the same time and~~ together with the decision rejecting an application for international protection **without undue delay** in accordance with Article 35a of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], the date when the applicant or third-country national no longer has a right to remain and is not allowed to remain.
4. The measures referred to in paragraph 1 ~~may shall~~ include **in particular one or more of** the following activities carried out by the sponsoring Member State, **in agreement with the benefitting Member State and, where applicable, in cooperation with the European Border and Coast Guard Agency:**
- (a) providing counselling on return and reintegration to illegally staying third-country nationals;
  - (b) using the national programme and resources for providing logistical, financial and other material or in-kind assistance, including reintegration, to illegally staying third-country nationals willing to depart voluntarily;
  - (c) leading or supporting the policy dialogue and exchanges with the authorities of third countries for the purpose of facilitating readmission;
  - (d) contacting the competent authorities of third countries for the purpose of verifying the identity of third-country nationals and obtaining a valid travel document;
  - (e) organising on behalf of the benefitting Member State the practical arrangements for the enforcement of return, such as charter or scheduled flights or other means of transport to the third country of return.

These measures shall not affect the obligations and responsibilities of the benefitting Member State laid down in [*recast Return Directive*] 2008/115/EC.

**Before starting the return sponsorship, the benefitting Member State and the sponsoring Member State shall agree on the measures to be taken by each party and on the necessary administrative arrangements so that the return of the third-country nationals concerned may be implemented.**

**The benefitting Member State shall provide a list of the third-country nationals concerned.**

#### *Article 56*

##### *Other solidarity contributions*

1. Where a Member State requests solidarity support from other Member States to assist it in addressing the migratory situation on its territory to prevent migratory pressure, it shall notify the Commission of that request.
2. Any Member State may, at any time, in response to a request for solidarity support by a Member State, or on its own initiative, including in agreement with another Member State, make contributions by means of the measures referred to in Article 45 for the benefit of the Member State concerned and with its agreement. Contributions referred to in article 45(1), point (d) shall be in accordance with the objectives of Regulation (EU) XXX/XXX [Asylum Migration Fund].
3. Member States which have contributed or plan to contribute with solidarity contributions in response to a request for solidarity support by a Member State, or on **their its** own initiative, shall notify the Commission, thereof by completing the Solidarity Support Plan form set out in Annex IV. The Solidarity **Support Response** Plan shall include, where relevant, verifiable information, including on the scope and nature of the measures and their implementation.

## CHAPTER II

### PROCEDURAL REQUIREMENTS

#### Article 57

##### *Procedure before relocation*

1. The procedure set out in this Article shall apply to:
  - (a) persons referred to in Article 45(1), points (a) and (c) and in Article 45(2), point (a);
  - (b) persons referred to in Article 45(1), point (b) where the period referred to in Article 55(2) has expired, and Article 45(2), point (b).
  
2. Before applying the procedure set out in this Article, the benefitting Member State shall ensure that there are no reasonable grounds to consider the person concerned a danger to national security or public order of ~~the that~~ Member States. If there are reasonable grounds to consider the person a danger to national security or public order **before or during the procedure set out in this Article, including where a security risk has been determined in accordance with Article 11 of Regulation (EU) XXX/XXX [Screening Regulation]**, the benefitting Member State shall not apply **or immediately terminate** the procedure set out in this Article. **The benefitting Member State shall exclude the person concerned from any future relocation or transfer to any Member State**, and shall, where applicable, exclude the person from the list referred to in Article 49(2). **Where the person concerned is an applicant for international protection, the benefitting Member State shall be the Member State responsible in accordance with Article 8(4).**

3. 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 or cultural considerations,** between the person concerned and the Member State of relocation. Where the identified person to be relocated is a beneficiary for international protection, the person concerned shall be relocated only after that person consented to relocation in writing. **This consent shall include permission to exchange the information mentioned in paragraph 5. The person concerned shall not have the right to request to be relocated to a specific Member State pursuant to this Article.**

Where relocation is to be applied pursuant to Article 49, the benefitting Member State shall use the list drawn up by the Asylum Agency and the European Border and Coast Guard Agency referred to in Article 49(2).

The first subparagraph shall not apply to applicants for whom the benefitting Member State can be determined as the Member State responsible pursuant to the criteria set out in Articles 15 to 20 and 24, with the exception of Article 15(5). Those applicants shall not be eligible for relocation.

**Member States shall ensure that family members are relocated to the territory of the same Member State.**

4. When the period referred to in Article 55(2) expires, the benefitting Member State shall immediately inform the sponsoring Member State that the procedure set out in paragraphs 5 to 10 shall be applied in respect of the illegally staying third-country nationals concerned.

5. **In the cases referred to in paragraphs 2 to 4, 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. The benefitting Member State shall transmit to the Member State of relocation as quickly as possible the relevant information and documents on the person referred to in paragraphs 2 and 3.**
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 **the its** national security or public order **of the Member States**.
7. Where there are no reasonable grounds to consider the person concerned a danger to **the its** national security or public order **of the Member States**, the Member State of relocation shall confirm within one week **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 **the its** national security or public order **of the Member States**, the Member State of relocation shall inform **the benefitting Member State**, within one week **of receipt of the relevant information from that Member State** ~~the benefitting 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-week time limit mentioned in the first and second subparagraphs, but in any event within two 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-week time limit.

Failure to act within the one-week period mentioned in the first and second subparagraphs and the two-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.

8. The benefitting Member State shall take a transfer decision at the latest within one week of the confirmation by the Member State of relocation. It shall notify the person concerned in writing without delay of the decision to transfer him or her to that Member State **and, where applicable, of the fact that it will not examine his or her application for international protection.**
9. The transfer of the person concerned from the benefitting Member State to the Member State of relocation shall be carried out in accordance with the national law of the benefitting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within 4 weeks of the confirmation by the Member State of relocation or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3).
10. Articles 32(3), (4) and (5), Articles 33 and 34, Article 35(1) and (3), Article 36(2) and (3), and Articles 37 and 39 shall apply *mutatis mutandis* to the **procedure transfer for the purpose** of relocation.

**The benefitting Member State carrying out the transfer of a beneficiary of international protection shall transmit to the Member State of relocation all the information referred to in Article 40(2), information on which grounds the beneficiary based his or her application, and the grounds for any decisions taken concerning the beneficiary.**

11. The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of information and documents for the purpose of relocation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

## Article 58

### *Procedure after relocation*

1. The Member State of relocation shall inform the benefitting Member State of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.
2. Where the Member State of relocation has relocated an applicant for whom the Member State responsible has not yet been determined, that Member State shall apply the procedures set out in Part III, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5), and Article 21(1) and (2).

Where no Member State responsible can be designated under the first subparagraph, the Member State of relocation shall be responsible for examining the application for international protection.

The Member State of relocation shall indicate its responsibility in Eurodac pursuant to Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].

3. Where the Member State of relocation has relocated an applicant for whom the benefitting Member State had previously been determined as responsible on other grounds than the criteria referred to in Article 57(3) third subparagraph, the responsibility for examining the application for international protection shall be transferred to the Member State of relocation.

The Member State of relocation shall indicate its responsibility in Eurodac pursuant to Article 11(3) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].

4. Where the Member State of relocation has relocated a beneficiary for international protection, the Member State of relocation shall automatically grant international protection status respecting the respective status granted by the benefitting Member State.

5. Where the Member State of relocation has relocated a third-country national who is illegally staying on its territory, of Directive 2008/115/EC shall apply.
- 6. Where a third-country national makes an application for international protection for the first time following a transfer as set out in Article 55(2) to the sponsoring Member State, the Member State in which the application was registered shall apply the procedures set out in Part III, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5), and Article 21(1) and (2).**

**Where no Member State responsible can be designated under the first subparagraph, the sponsoring Member State shall be responsible for examining the application for international protection.**

**The Member State which has conducted the process of determining the Member State responsible shall indicate the Member State responsible in Eurodac pursuant to Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].**

- 7. Where a third-country national for whom the Member State had previously been determined as responsible has been transferred to the sponsoring Member State, responsibility for examining any further representations or a subsequent application of the person concerned in accordance with Articles 42 and 43 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] shall be transferred to the sponsoring Member State.**

**The sponsoring Member State shall indicate its responsibility in Eurodac pursuant to Article 11(3) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].**



*Article 59*

*Other obligations*

The benefitting and contributing Member States shall keep the Commission informed on the implementation of solidarity measures ~~taken on a bilateral level~~ including measures of cooperation with a third country.

*Article 60*

*Operational coordination*

Upon request, the Commission shall coordinate the operational aspects of the measures offered by the contributing Member States, **and including** any assistance by experts or teams deployed by the Asylum Agency or the European Border and Coast Guard Agency.