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From:	General Secretariat of the Council
To:	Delegations
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] - Articles 1-2, 8-27 - Comments from the delegations

Following the Informal meetings of the Asylum Working Party on 13 and 28 July 2021, delegations will find attached a compilation of replies received from Member States on the abovementioned subject.

ANNEX

Written comments submitted by the Member States

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]

and following informal videoconferences of the members of Asylum Working Party on 13 and 28 July 2021

Articles 1-2, 8-27

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AUSTRIA

AT maintains a scrutiny reservation to the whole AMR proposal and the compromise proposals presented by the Slovenian Presidency.

Article 1 – Aim and subject matter

AT does not support the changes made in Art 1 and calls to retain the previous wording. Since AT is opposed to a separate solidarity mechanism for Search and Rescue situations, "a mechanism for solidarity" is the preferred form.

Article 2 – Definitions (g, p and q)

Art 2(g)(v): AT objects the inclusion of siblings into the term "family members". We call to maintain the definition of the current Dublin-Regulation. Therefore, Art 2(g)(v) should be deleted. AT enters a scrutiny reservation to the new paragraph.

Art 2(p): AT does not see an added value in the inclusion of examples in a legal definition. Moreover, the current example could lead to misuse and would allow for situations where for example an applicant "notifies" the authorities by means of a phone call of the absence and his or her action would no longer be covered by the definition of absconding.

The words "or omission" should be added after "the action" to ensure that those situations are also covered by this definition.

Art 2(q): AT proposes to delete the term "specific". Is has not been clarified what concrete consequences the new words "specific" and "and circumstances" would have for assessments of the risk of absconding in practice. We would be grateful if you could clarify this by practical examples.

In principle, AT is in favour of a broad definition of absconding and risk of absconding and we do not support a stricter standard.

Article 8 – Access to the procedures for examining an application for international protection

Art 8(4): AT welcomes that the examination whether there are reasonable grounds to consider the applicant a danger to national security or public order has been extended to all MS (para 4). Art 11 Screening-Regulation should be aligned.

Article 9 – Obligations regarding applications

AT welcomes the clarifications in paragraphs 3 and 5.

Art 9(3): The last sentence: „the applicant is not in a position at the time of the interview to submit evidence to substantiate the elements and information provided“ is very vague. AT proposes a clear wording, such as „where it is absolutely impossible for the applicant to substantiate […]”.

Concerning the new sentence in paragraph 3, AT asks for clarifications concerning legal consequences of the term “is in possession”. It should be prevented that applicants can circumvent this obligation by legally transferring the possession to someone else.

Article 10 – Consequences of non-compliance

AT thanks the presidency for deleting the words “from the moment he or she has been notified of a decision to transfer him or her to the Member State responsible”. However, the relation to the RCD should be further clarified. AT enters a scrutiny reservation.

Article 11 – Right to information

Art 11(1)(ga): “or refusal to comply with the transfer decision” should be added in (ga) to align it with the proposed Art 35.

Art 11(2) last subparagraph should not impose additional burden on authorities.

Article 12 – Personal interview

In Art 12(4) AT does not support the deletion of “unaccompanied”. AT is interested in the proposal by the Council Legal Service mentioned by the Presidency during the AWP meeting on 28 July (“In the event that minors are interviewed, the interview shall be carried out in a child friendly manner.”). However, we prefer to keep “unaccompanied”.

We support the new wording “be expected”. The deletion of the wording “and qualified” and “and where appropriate a cultural mediator, who is able to ensure appropriate communication between the applicant and the person conducting the personal interview” is positive. We also welcome the insertion of the last sentence (interview by staff of same sex) as a compromise.

Article 13 – Guarantees for minors

Art 13(5): AT welcomes the insertion of the word “relevant” and the wording “appropriately trained staff” instead of “with the qualifications and expertise”. We support Member States, which proposed to delete the sentence from “Before transferring” to “without delay” since such a confirmation could lead to additional bureaucratic burden without added value due to the fact that these obligations already arise from EU-law.

Article 15 to 17: AT refers to its comments on Art 2(g)(v) and the definition of family member not including siblings.

Article 15 – Unaccompanied minors

AT is interested in the NL proposal regarding this Article and will further reflect on this once the comments are received.

Article 17 and 18 – Family members who are applicants for international protection, Family procedure

Art 17: The deletion of "in a Member State" is not supported.

Art 18: As stated above, AT opposes the inclusion of siblings in the definition of family members. Therefore paragraph 2 should be deleted.

Notwithstanding the general reservation, the criterion of "strongest ties" as stated by the applicant should be deleted since it includes a subjective element which could lead to situations where the applicant could de-facto choose a Member State responsible. While COM explained during the AWP on 28 July that this subjective criterion was chosen due to the lack of objective alternatives, in paragraph 1 the decisive criterion is "largest number" or "oldest", which are possible objective criteria.

Article 20, Art 2(n)(o) – Diplomas or other qualifications

As already brought forward during the first reading, AT in general opposes the proposal for the new criterion related to the possession of a diploma or qualification. AT does not see an added value in introducing such a criterion in comparison to Art 19. Moreover, in practice this would lead to problems regarding the proof of diplomas or qualifications and to undesired and far-fetched cases.

Notwithstanding the general reservation, we welcome some of the changes made:

- in Art 2(n) the addition of "on the territory of that Member State" and the time period of one year;
- in Art 2(o) the deletion of "any type of" and "or considered as such"; and
- in Art 20 the requirement that the application is registered less than a certain time period after the diploma or qualification was issued.

However, we call to reintroduce the wording "and the application for international protection was registered after the applicant left the territory of the Member State following the completion of his or her studies". Otherwise misuse could be incentivized.

We support the proposal by the BE and CZ delegation to reduce the time period to 3 years.

Article 21 - Entry

Art 21 para 1: AT welcomes the extension of the time frame for cessation of responsibility to 3 years. Building on this, AT proposes to extend the period to 5 years in order to bring it in line with Art. 17 para. 2 of EURODAC Regulation (category 2).

As a general remark, AT would like to stress that the time limit of at least 3 years in Art 21 and 22 is crucial to prevent secondary movements and should not be reduced.

Article 24 – Dependent persons

Art 24 para 1 first sentence: AT thanks for the specification but prefers to delete the criterion "severe psychological trauma" since this could lead to misuse and would send the wrong signals.

Once cases of "severe psychological trauma" reach the level of "serious illness" they would already be covered. Please therefore explain the added value of this casuistic criterion.

In addition to the strategic concerns, it would be very complicated to assess the existence of a severe trauma as ground for dependency in practice.

Article 26 –Obligations of the Member State responsible

Art 26 para 1: AT upholds the scrutiny reservation on Art 26 para 1 lit c and d.

Article 27 – Cessation of responsibilities

AT is of the position that the AMR should foresee a stable responsibility of Member States. This would be necessary in order to create a fair balance between solidarity and responsibility as well as to ensure a proper functioning of the asylum system and to prevent secondary movements. The first sentence of Art 27 is closely interlinked with the proposed shift of responsibility set out in Art 35. Therefore, we will comment on this matter in more detail when we reach discussions on Art 35.

BELGIUM

BE maintains its scrutiny reservation on the AMMR proposal and in particular on the below mentioned articles, including in their new version.

Article 2, b)

- We would rather favor the use of the word "to a Member Sate" rather than "from a Member State".

Article 2, g) (new subparagraph)

- We support NL proposal to delete the words « On the basis of an individual assessment ».
- The scope of the words « relevant national law » should be clarified (substantial law or rule on the conflict of law).
- We think that the wording « had it been contracted in the Member State concerned » is not clear: it does not make it possible to understand whether the Member State must apply its national rules on the recognition of foreign documents or if it must act as if the person concerned wanted to get married on its territory.
- As ES and IT, we think that this new subparagraph should better include the questions of international private law on the recognition of marriages.
- The whole subparagraph should be reworded so that it better reflects the goal the Presidency wishes to pursue.

Article 2, p)

- We have a scrutiny reservation on article 2 (p) but think that the new version of the definition goes in the right direction.
- Through the words "assigned area or residence" there seems to be a link with APR where "shall be kept" was replaced by "shall be required to reside". Can you tell us whether this was the intention or not?
- Could you confirm whether the new wording covers 1°open and close centers, 2° alternatives to detention, and also 3° the practice of having applicants living at a private address – which is not "assigned by the authorities"? If this is correct, it has to be clear from the text that each situation is covered, especially the private addresses.
- We are cautious with the use of the words "such as". In this regard, we will have to reflect on the proposal of the Council Legal Service about the two options to draft the definition (make a list of examples in a recital or make an extended list of situations in the article).
- We wonder whether the refusal to comply with a transfer decision should be embedded with the concept of absconding.

Article 2, q)

- We ask that the definition of 'risk of absconding' be identical for the purposes of AMMR, APR and the Return directive so that if a person switches from one procedure to the other, the continuation of detention can be guaranteed.

Article 9

- The initial wording of the title was better suited ('Obligations of the applicant') since the focus was set on the applicant.
- §2: We prefer the former wording ('residence permit or visa which has expired') (same remark for article 19, §4).
- §3: 'and cooperate with the competent authorities in collecting the biometric data in accordance with Eurodac Regulation'. This part of the sentence seems redundant with the obligation that already exists in the Eurodac Regulation. Therefore, we suggest to delete it. This comment is also valid with regard to Article 11, §1, (ea).

Article 10

- We remain skeptical about the efficiency of Article 10 with regard to the various obligations of Article 9.

Article 11

- New subparagraph in §2: We wonder whether it is intended to cover written or oral provision of information. If it is written, it seems to be difficult to put in practice. If it is orally, then it should be clearly mentioned.

Article 12

- We welcome the changes made to §4 and ask to keep the last sentence that was added ('Member States shall endeavour to satisfy such requests, where reasonably practicable.').

Article 18

- §2: We have a scrutiny reservation on the new paragraph due to our scrutiny on the definition of 'family member'.
- §2, (b): « the sibling to which the applicant states that he/she has the strongest ties": this wording makes room for a subjective approach where a choice is left to the applicant, which is contradictory to the Dublin system.

Article 20

- §1: We would prefer a period of 3 years (alignment with article 19, §4).

BULGARIA

General comments

The Republic of Bulgaria upholds its substantive reservation on the entire proposal for a Regulation, as well as the reservation on Part III Criteria and mechanisms for determining the Member State responsible.

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

Para 2

We confirm the substantive reservation on the provision and the position already stated. In the context of the Pact, the principle third country nationals to apply for international protection in the country of first registration, interlinked with the border procedures, will bring overload to several Member States at EU's external borders. Related to the above, balance should be achieved balance through the possibilities for cessation of responsibility, which in the present proposal have been formally limited, and in practice deleted.

The addition "*Without prejudice to the rules set out in part IV of this Regulation*" is in a positive direction.

Para 4

We suggest the following draft in sub paragraph 3, which would secure the principles of fairness, equality and sincere cooperation, will be respected:

„Where the security check carried out in accordance with Article 11 of Regulation (EU) XXX/XXX {Screening Regulation} or in accordance with the first and second subparagraphs of this paragraph shows that there are reasonable grounds to consider the applicant a danger to national security or public order of any Member State, the Member State responsible shall be the one determined pursuant to Chapter II or the clauses set out in Chapter III of Part III and Article 29 shall not apply. Where the Member State carrying out the security check is in possession of information that indicates that there are reasonable grounds to consider the applicant a danger to national security or public order of any Member State, that Member State shall communicate such information to the Member State responsible.

The wording suggested provides compliance of the provision with Art. 38 of the proposal.

Article 9 Obligations <u>regarding applications</u>

We do not support the suggested title amendment. The obligations should apply to the candidate. We consider that the title should remain "*Obligations of the candidate*". The rights and obligations apply to the subject.

Art. 11 Right to information

Para 1

We raise a reservation on para 1, item (ga) due to the reference to the clauses of Art. 35(2) on which we uphold a substantive reservation.

Article 13 Guarantees for minors

Para 3

The addition that clarifies the functions of the representative, i.e. that the representative has the authority to only represent and support the unaccompanied minor while in the process of determining the Member State responsible, is in a positive direction but it should be further elaborated. To make clear that the representative supports the unaccompanied minor which does not mean involvement in the process of determining the Member State responsible.

Para 5

Concerning the obligation of the transferring Member State to make sure, that the Member State responsible or the Member State of relocation will take the measures referred to in Articles 14 and 23 of Reception Conditions Directive and Article 22 of Asylum Procedure Regulation without delay, the mechanism by which this obligation will be implemented is not clear. The application of the relevant provisions is the obligation of the Member State responsible for the minor, based on certain criteria or relocation stemming from its EU membership. In this context, we suggest the deletion of the first line of para 5.

Regarding the requirement for the conclusions of the assessment of the best interests of the child to be clearly stated in the transfer decision, we do not consider that measure to have an added value. If

the transfer is not in the best interests of the child, this would have been clarified during the procedure, and in accordance with the principle of mutual trust and fair cooperation between Member States, no transfer decision would be reached at all. **Article 15 Unaccompanied minors**

Para 5

We suggest the following draft of para 5:

„5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible, shall be that where the unaccompanied minor is present."

Article 18 Family procedure

Para 2

Positive scrutiny reservation on the added paragraph 2.

Article 19 Issue of residence documents or visas

Para 4

We uphold the reservation on the provision. We cannot support the extension of responsibility of Member State that issued visa or residence documents up to 3 years, as well as the harmonization of the time limits for both types of documents. We support the current timelines.

To maintain the text from the current Dublin Regulation, Art. 12 that the visa must have enabled the entry on the territory of a Member State.

Article 20 Diplomas or other qualifications

We confirm the position already stated. We do not consider that the possession of a diploma or qualification should be one of the criteria for determining the Member State responsible. The need for international protection should not be linked to the possession of a diploma. This could lead to abuses of the asylum system and make the process of determining the responsible Member State more complex and difficult to implement.

Article 21 Entry

We raise a substantive reservation and we cannot support the extension of responsibility for the state of first entry in case of illegal border crossing to be raised at 3 years. This does not contribute to the balance. We are positive to preserving the current timeline of 12 months.

The hypothesis in the proposal suggests that the applicant has resided for three years in another Member State and that has applied for international protection in another Member State/s. The extended period will not discourage third country nationals from absconding but will instead become an incentive for people to stay and abscond in the EU for longer and to apply in several Member States.

Article 22 Visa waived entry

We support para 2 of the current provision, namely in the case of an application in another Member State, where the applicant may be exempted from the visa requirement, the other Member State in question shall be competent to examine the application.

Regarding the three years' timeline, we would support its reduction to one year.

Article 24 Dependent persons

In para 1we suggest the addition of siblings and spouse to the scope of persons of whom the candidate could depend. Due to age or other life circumstances the candidate could have not parents living or children but to have other relatives that could take care of him/her.

Article 26 Obligations of the Member State responsible

Para 1

We uphold our reservation on the provision. 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.

We have always expressed our position against the inclusion of beneficiaries of international protection in the scope of a Regulation determining the Member State responsible. Such proposal was discussed and rejected during the debates on the packages from 2016. We're opposing the new proposal to extend responsibility of the Member State to the beneficiaries of international protection which also disrupts the principle of free movement of people.

Article 27 Cessation of responsibilities

We uphold a reservation on the provision due to the presence of an only option for cessation of responsibility. As we have already stated, it is essential for a Member States of first registration to achieve balance, through opportunities for cessation of responsibility, which, however, are lacking in the draft regulation.

We support the text in para 2 of article 19 of the current regulation, regarding the cessation of responsibility when it's identified that the person has left the territory of the Member States for at least 3 months, to remain in the text of the provision.

Relocation as well as relocation in case a return has not been implemented as part of return sponsorship should be also defined as a criterion for cessation in compliance with Part IV of the draft Regulation.

THE CZECH REPUBLIC

General Comments

The Czech Republic ("CZ") welcomes the possibility to send the written comments regarding the AMMR proposal, in particular to comment the provisions discussed during the meetings chaired by SI PRES.

CZ reiterates scrutiny reservation towards the whole proposal. Moreover CZ has the substantial reservations regarding all parts of the proposal which enable direct or indirect mandatory redistribution of the third-country nationals among Member states.

Article 2

Letter c)

Special scrutiny reservation due to inclusion of immediate protection holders pursuant to Regulation addressing situations of crisis and force majeure in the field of asylum and migration.

Letter l)

In the definition of residence document we appreciate the clarification of the notion "temporary protection arrangements". We would like to remind that the repeal of the Temporary Protection Directive is proposed.

Letter n)

The changes in the definition of diplomas and qualification are in principal welcomed. Nevertheless we have scrutiny reservation on the time limit of 1 year. Moreover our concerns regarding the practical application of this new criterion remain.

Letter p)

The new wording is acceptable.

Letter q)

The changes made in the definition of risk of absconding are acceptable. Moreover we would like to repeat our suggestion to cover at least some of the objective criteria for definition of risk of absconding. We should take an inspiration in the text of the proposal on recast return directive.

Article 9

CZ does not support the change made in the title of the Article 9. Despite the clarification of Council Legal Service, we think that the obligations are linked to the persons not to applications.

The change in paragraph 2 is supported.

We agree with the other delegations that the new text in paragraph 3 is not necessary because the similar obligation is given by Eurodac Regulation.

Article 12

CZ has the similar concerns as some other delegations that the deletion of the word "unaccompanied" would create an obligation to interview also an accompanied minor. Therefore we support the possible change in the wording.

Article 13

We welcome the changes made in this Article.

Regarding best interest of the child assessment in para 4 we would like to point out that APR proposal does not contain similar provision. We are wondering whether similar provision is necessary to have in AMMR.

We propose to delete the whole para 4 because of administrative burden and possible space for misusing.

In our opinion the obligation to take into account the best interest of the child is sufficient as a necessary safeguard.

The other reason for deletion of para 4 is the wording in Article 15 para. 4, which provides for best interest assessment regarding relevant question – which Member State is responsible.

Moreover we also support the intervention of the Dutch delegation regarding the possible change of paragraph 4 in order to clarify that the provision is applicable in the case of unaccompanied minors only.

Article 18

CZ has to raise scrutiny reservation for paragraph 2 despite the clarification provided.

First, we understand this paragraph as breaching the hierarchy of the criteria relevant for the determination of the responsible Member State.

If the person for example has several family members in other MS firstly Article 16 is applicable and then Article 17. In other words at least letter a) is superfluous. Regarding the letter b) our concerns aim to vague notion “strongest ties”.

In case that siblings remain in the definition of family members the first part of the Article should be applicable also for the siblings.

To conclude the proposed paragraph 2 is not needed or should be amended, in our opinion.

Article 18

Scrutiny reservation. It is not clear why the period of 5 years is proposed.

Article 26

There may occur a situation where the third-country national will not want to continue with the asylum procedure in the responsible Member State. How to deal with these situations? Is it possible to take a decision that the application lodged in first Member State is rejected as implicitly withdrawn?

This provision should also cover a situation where, for some reason, the status of beneficiary of international protection is withdrawn or ceased and a person concerned moved to other Member State and asked for asylum there. Thus, whether in these cases Member State that recognized the relevant status is responsible according to the rules laid down in this Regulation (for example because of the issued residence permit), or whether their responsibility has ceased.

DENMARK

Article 2 letter p:

We would like a bit more clarity as to the definition of ”absconding”. Has a person absconded only when the person is missing and his or hers whereabouts are unknown to the authorities or does the definition also cover scenarios where the person isn’t missing, but intentionally is not available to the authorities? Furthermore, how are situations not directly related to the provisions of AMMR covered in this situation, as an example: This could be a person who refuses take a COVID-test in order to board a plane in connection with a scheduled return or refuses to collaborate with the authorities at all.

Finally, we would also like a clear definition of what it means to be “available to the authorities”.

Article 8:

The wording of the provision should be considered amended to include the dependency provision (Article 24), but not to refer to the discretionary clause (Article 25). The latter article is precisely not a binding criterion and is applied in the case where the Member State is not responsible. The current wording suggests the opposite, ie. that it is a binding criterion of liability.

Article 12.4:

DK does not conduct interviews with companied minors by default and does not want to be obligated to do so. We therefor suggest the following sentence instead ”potential interviews of minors” to replace the deletion of “unaccompanied”.

The provision stipulates that the applicant can always request a caseworker and interpreter of the same sex, and the Member State must try to meet the request, if practicable. It should be clarified what is practically possible. This may mean that the applicant on the day of the interview will request this, and the interview must be postponed, unless a postponement in itself will be reason

enough not to meet the request. In addition, the provision will lead to an unequal procedure in Denmark for applicants in the initial procedure and normal procedure, as the provision only covers the first interview where the responsibility is determined.

Today, it will be after a concrete assessment whether such a wish can be met, and not something we must, if it is practically possible.

Article 13.5:

In relation to that the receiving Member State must confirm that reception of an unaccompanied minor takes place in accordance with the Reception Conditions Directive and the Asylum Procedures Regulation, then DK is not bound by these directives. In addition, it is difficult to see the need for a Member State to confirm this in general, as it must be assumed that a Member State complies with the directives to which it is currently bound, unless this is doubted and there are grounds for adopting this view.

Denmark therefor encourages a further clarification of the content of the confirmation from the Member State responsible or the Member State of relocation. Thus, it ought to be clarified, if the confirmation entails more than just a confirmation, e.g. a description of the measures that the Member State will take when receiving the unaccompanied minor, which authority should assess whether the confirmation fulfills the conditions in article 13 (5).

If the confirmation from the Member State responsible or the Member State of relocation does not require such details of the measures, it does not seem necessary to request such a confirmation -as said before - due to the mutual trust of compliance with the Regulation between the Member States. It would perhaps be more prudent/appropriate only to request a confirmation if specific background information regarding e.g. the reception and/or accommodation conditions in the Member State responsible or the Member State of relocation indicates a necessity to do so."

Article 18:

DK cannot support the inclusion of siblings. We support the definition of family as it is defined in article 8 in the European Convention on Human Rights.

In regards to paragraph 2, what applies if the applicant has both a spouse and siblings, and the applicant only wants to agree to unite with a sibling, eg because the sibling is in a country that the applicant prefers to be in?

Article 26:

We still need some clarification as to whether a person who has obtained protection in one member state must undergo the same procedure as a person who are an asylum seeker or a rejected asylum seeker, including the appeal procedure and calculation of the time limit for transfer. If a person who already has obtained protection in a member state can't be transferred within the time limit, does the responsibility then shift to the receiving member state.

ESTONIA

General comments

- As the government has not yet passed a decision on the positions yet, all our comments are of preliminary nature.
- All previously expressed substantial reservations and scrutiny reservations concerning the whole text and the Part III remain the same.

Article 1 Aim and subject matter

Point (b)

Proposal to keep the previous wording. We do not support technical amendment made as the word "mechanism" should not be in plural form.

Reasoning – we prefer a one mechanism with flexible measures. Disembarkations following SAR can be one of the triggering elements creating a situation of migratory pressure, but the way of entry cannot be a factor of triggering separate migration management mechanism. We cannot support SAR as a separate category.

Article 2 definitions

Point (g) sub point (v)

Proposal to delete "sibling or siblings of the applicant". Substantial reservation on the widening of the definition of the family member remains.

We support amendment concerning the marriages of the minors for protecting children's best interests.

Reasoning: We cannot support widening of the scope of the family members with siblings (and subsequently to half-siblings). In our view, widening of the scope of the family members in the Dublin procedure framework enables fragmentation of the family definition in EU law regulating migration. It could also pose some problems in implementation. It would not be feasible to presume that all asylum applicants consider their siblings as close family members with whom they want to be reunited with and live with as a family. There is no legal requirement to guarantee family unity with the siblings. In addition, it might create an unfair treatment compared to the third country nationals, who come to the EU for work, study or for other purposes.

Points (n) and (o)

Amendments made are moving to a right direction. The text has been improved significantly. However substantial reservation and proposal to delete in their entirety remains.

Reasoning: We cannot support adding the new and significantly wider criteria of diplomas or other qualifications proposed in the Article 20 and therefore the points n and o in the Article 2 should be deleted. The scope is too wide and the level of enabling the abuse of the system is too high. We are unfortunately witnessing quite a high level of abuse of the migration system by foreign students. Having been studying in a Member State does not necessarily create stronger link with the country compared with the one based on a visa or a residence permit. Considering the wider time limits from the graduation and broadening of the residence permit or visa criteria, low threshold of falsifications and no added value compared to the visas or residence permits, we think that a new criterion would be highly problematic to implement and should not therefore be introduced.

Point (p) and (q)

We can support technical amendments made.

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

Paragraph 4 last sentence

Proposal to amend the article "a" with a slightly stronger determiner "any" as follows:

“Where the security check carried out in accordance with Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] or in accordance with the first and second subparagraphs of this paragraph shows that there are reasonable grounds to consider the applicant a danger to national security or public order of ~~a~~ **any** Member State, the Member State carrying out the security check shall be the Member State responsible, and Article 29 shall not apply.“

Reasoning - We can support technical amendments made to the Article 8. We consider the amendments made in paragraph 4 as an important improvement, which we support. We were wondering whether it would make the text even more clear, if to state that grounds to consider a person as a danger to national security or public order concerns of “any Member State” would perhaps underline better that it does not matter which Member State.

Article 18 Family procedure

Paragraph 2 subparagraph b

Proposal to delete. Scrutiny reservation.

Reasoning - As elaborated before, we cannot support widening of the scope of the family members by including siblings. Additionally, we feel that such wording like “the sibling to which the applicant states that he/she has the strongest ties” is highly subjective and rises an opportunity for the applicant to choose the country which is responsible for the asylum proceedings. The latter would pose a contradiction to the purpose of the Dublin regulation.

Article 20 Diplomas or other qualifications

Amendments made are moving to a right direction. The text has been improved. However substantial reservation and proposal to delete the Article 20 in its entirety remains.

Reasoning – Please also see the explanation provided for the Article 2 points n and o. Additionally, we read that by deleting the obligation to leave the country, the situation has been created, which enables for the former student not to leave the country after the end of the studies. We tend to disagree that by adding the 5- year deadline for applying for the protection, will automatically cover the previous obligation to leave the country after the end of the studies.

Article 8 – 17, 19 and 21 - 44

We can support technical amendments made.

FINLAND

Kindly note that all our comments are preliminary at this stage, and we may later submit further comments and/or specification on these articles.

We would see it highly valuable if the presidency could continue its practice to share the written comments submitted by MSs.

Article 2 g) and n): we can support the changes suggested by the Presidency in 10450/1/21.

Article 2 p) absconding

We support those MS who suggest revising the definition. It is important that absconding does not presuppose leaving the country. We suggest the definition to be in line with the definition of absconding as it is in the RCD. Thus, we suggest the following:

'absconding' means the action by which a **person concerned** does not remain available to the competent administrative or judicial authorities, **responsible for carrying out the procedures set out in this Regulation** ~~**such as failure to notify absence from a particular accommodation centre, or assigned area or residence, where so required by a Member State by leaving the territory of the Member State without authorization from the competent authorities**~~ for reasons which are not beyond the applicant's control;

Article 9 Obligations regarding applications ~~**of the applicant**~~

We support the MS's who see that the previous version of the title of the article is preferable.

Article 11 Right to information

We find that the wording need clarification, as it now stands ("in particular" in para 1) it can be interpreted that one or several from the list in para 1 could be left out from the information pamphlet/written information. This, in practice, is not or should not be possible. Thus, we suggest the para 1 to be divided into two:

para -1 would determine information that **shall be given to all applicants**, whilst para 1a would determine information. that is **only** given **in case of first application**.

Article 17 Family members who are applicants for international protection

For clarification on the article, we suggest the following:

"Where the applicant has **a** family **member in a Member State** whose application for international protection in a that Member State has not yet been the subject of a first decision regarding the substance, ~~**a that**~~ **the** Member State **responsible for examining that application** shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing."

Article 18 Family procedure

Regarding para 1: Albeit we understand the explanations given in the asylum working party, we are hesitant to the usage of the "make". According to AMMR, determining responsibility begins from registration. Thus we see it logical, that in stead of "submit" or make", we would use to word "register".

Regarding para 2: Albeit we understand the explanations given in the asylum working party, as some colleagues states we also see risks in giving the applicant the choice when determining the MS responsible. We see, that the determination should in the end be a matter of the MS to decide. Thus, we suggest the following deletion, to clarify this, taking into notice though, that we see that evaluating which tie is the strongest is a difficult, if not impossible task:

- **"…failing this, responsibility shall lie with the Member State which is responsible for the sibling to which the applicant ~~states that he/she~~ has the strongest ties."**

Article 26 Obligations of the Member State responsible

Regarding para 3: We find it important that all regulation regarding the determination of the MS responsible is within AMMR. We do not see the added value of the changes suggested and would hope for more clarification.

FRANCE

Following AWP of 13 July 21

Sur l'article 1 : Objectif et objet

Afin de respecter l'ordre des parties, la France considère que les points b) (mécanisme de solidarité) et c) (critères et mécanismes de détermination de l'État membre responsable de l'examen d'une demande de protection internationale) devraient être inversés.

Proposition rédactionnelle :

In accordance with the principle of solidarity and fair sharing of responsibility, and with the objective of reinforcing mutual trust, this Regulation: *(a) sets out a common framework for the management of asylum and migration in the Union;* *(~~b~~**c**) establishes ~~**a**~~ mechanism**s** for solidarity;* *(~~c~~**b**) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.*

Sur l'article 2 : Définitions

Sous g) (membres de la famille) :

La France rappelle que **l'expression « *would not be in accordance with the relevant national law* » ne semble pas suffisamment marquer la nécessité du respect des lois encadrant le mariage des mineurs et propose de la remplacer par l'expression « *would be illegal* ».**

Proposition rédactionnelle :

Article 2 g) *On the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage ~~would not be~~ **would be illegal** in accordance with the relevant national law had it been contracted in the Member State concerned, in particular having regard to the legal age of marriage.*

La France maintient en outre sa réserve sur le principe de l'élargissement aux familles constituées pendant le parcours d'exil, qui peut générer des risques de fraude sur la réalité de liens familiaux qu'il sera souvent difficile d'établir. Pour autant, ces critères élargis pourraient constituer la contrepartie de l'allongement de la durée de responsabilité notamment des pays de première entrée.

De même, la proposition d'ajout des frères et sœurs mérite réflexion. Il convient avant tout d'évaluer les conséquences sur les pays où des fortes communautés sont déjà établies et l'intérêt réel de regrouper des adultes (les frères et sœurs sont déjà pris en compte quand il s'agit de mineur au regard de l'intérêt supérieur de l'enfant). Nous pouvons néanmoins soutenir ces deux propositions dans un esprit de compromis avec d'autres éléments que nous souhaitons obtenir (conditions matérielles d'accueil dans le seul État membre responsable de la demande, champ d'application revisité quant à la suppression de la bascule de responsabilité pour les cas de reprise en charge, et amendement de la définition de la fuite).

S**ous n) (diplômes et qualifications) :**

La France remercie la Présidence slovène pour les modifications apportées qui correspondent aux demandes d'encadrement de ce nouveau critère par la France. Ce nouveau critère est désormais plus opérationnel.

La France rappelle que ce nouveau critère pèsera sur certains États membres en particulier, notamment la France. Il constitue donc un élément d'équilibre du Pacte.

Sous p) (fuite), et sous q) (risque de fuite) :

La France ne soutient pas la définition de la fuite proposée dans la seconde version du compromis slovène qui est trop restrictive et donc peu opérationnelle. Les termes « *remain available* » offrent peu de souplesse aux États membres, ce qui conduira à des bascules rapides de responsabilité alors même que l'objectif du règlement est de dissuader les mouvements secondaires. La France réaffirme de ce fait sa ligne rouge sur la définition proposée de fuite qui n'est pas acceptable.

La France propose une définition adaptée et opérationnelle de la fuite :

Article 2 p)
'absconding' means ~~the action by which an applicant does not remain available to the competent administrative or judicial authorities, such as by leaving the territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the applicant's control~~; <u>the behaviour by which an applicant, a third-country national or a stateless person, voluntarily subtracts himself/herself or attempts to subtract from the procedure for determining the Member State responsible or the measure for transfer to the Member State responsible, in particular by failing to comply with the requirements of the authorities of the State in which he or she is present.</u>

Toutefois, la France soutient la nouvelle rédaction uniquement en ce qu'elle permet l'extension du champ d'application de la fuite et du risque de fuite aux étrangers en situation irrégulière et aux apatrides.

<u>Sur l'article 9 : Obligations relatives aux demandes d'asile</u>

Sur le deuxième paragraphe :

La France estime qu'il est nécessaire d'expertiser cet amendement qui remplace les termes « *which has expired* » par « *whose validity has ceased* » s'agissant de l'obligation du demandeur d'asile de présenter sa demande dans l'État membre dans lequel il se trouve lorsqu'il ne dispose plus d'un titre de séjour ou d'un visa valide. Plus d'explications sur la portée de cette modification sont également attendues de la part de la Présidence, la notion d'« *expired* » étant couramment utilisée dans le Code visas, au contraire de la notion de « *ceased* ».

Sur le troisième paragraphe :

La France maintient une réserve d'examen sur la possibilité pour le demandeur de produire des pièces après l'entretien relatif à la détermination de l'État membre responsable, considérant que le demandeur d'asile devrait avoir l'obligation de produire ses pièces au plus tard lors de l'entretien prévu par l'article 12 du règlement - qui lui-même doit avoir lieu au plus tôt - afin que la procédure de détermination de l'État membre responsable soit menée à terme le plus rapidement possible.

Sur le quatrième paragraphe :

La France rappelle que le point c) devrait être supprimé. En effet, la détermination de l'État membre responsable de la demande d'asile doit impérativement être effectuée en amont de la procédure de relocalisation (articles 57 et 58). Ainsi, à l'issue de la relocalisation, comme le prévoit l'article 58, paragraphe 3, l'État membre de relocalisation est forcément l'État membre responsable de la demande.

Sur l'article 10 : Conséquences en cas de non-respect

Sur le premier paragraphe :

La France prend note que l'article 10, paragraphe 1 est un simple article de renvoi. Dès lors, la France suggère que cet article soit rédigé de manière 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.

Par ailleurs, la France tient à rappeler sa position exprimée précédemment sur ce paragraphe.

La France considère en effet que le traitement des personnes ne respectant pas les obligations résultant de l'article 9 doit être différencié selon qu'elles relèvent de la procédure de prise en charge (articles 29 et 30) ou de la reprise en charge (article 31). Relèvent de la procédure de reprise en charge les personnes dont la demande d'asile est en cours de traitement dans un autre État membre responsable, dont la demande a été rejetée, les bénéficiaires de la protection internationale, ainsi que les réinstallés. Ces personnes ne se sont donc pas conformées à leurs obligations en application du présent règlement en déposant une demande d'asile dans un autre État membre.

Par conséquent, la France demande que le bénéfice des conditions matérielles d'accueil (CMA) puisse être refusé dès l'enregistrement de la demande dans le cadre des reprises en charge, dès lors que le demandeur bénéficie, ou a bénéficié, des CMA dans l'État membre responsable de l'examen de sa demande d'asile, qu'il a été informé de son obligation de demeurer dans cet État membre, mais qu'il a cependant choisi de déposer une nouvelle demande d'asile dans un autre État membre.

Ainsi, lorsque le demandeur n'a pas respecté les obligations résultant de l'article 9, le bénéfice des CMA ne devrait être ouvert, jusqu'à la notification de la décision de transfert, que dans les situations de prise en charge.

Cette orientation ne méconnaît pas l'impératif d'assurer aux demandeurs d'asile un niveau de vie digne, conformément au droit de l'Union, y compris la Charte des droits fondamentaux, et aux obligations internationales (qui figurent dans le projet de refonte de la directive Accueil). Elle apparaît nécessaire pour limiter les mouvements secondaires et lutter contre les détournements de procédures.

Sur l'article 11 : Droit à l'information

La France pose une réserve d'examen sur l'amendement proposé par la présidence slovène sur le point g) qui paraît porter atteinte au principe du droit au recours effectif dans la mesure où l'information relative à l'aide juridique ne serait dorénavant fournie qu'au stade du recours, et non en amont de celui-ci.

Sur l'article 12 : Entretien individuel

Sur le quatrième paragraphe :

La version de compromis slovène est positive quant à l'ajout de la phrase « *Member States shall endeavour to satisfy such requests, where reasonably practicable* », qui tempère le droit créé par le règlement Gestion de l'asile et de la migration (par rapport au règlement Dublin III) de demander à s'entretenir avec un agent de même sexe au cours d'un entretien de détermination de l'État membre responsable. La France considère toutefois qu'une suppression de ce droit serait plus soutenable : cette proposition risque d'alourdir les procédures, de générer un risque contentieux non négligeable et de fragiliser ainsi la conduite à terme des procédures Dublin (en cas d'annulation pour vice de procédure au moment de l'entretien).

COURTESY TRANSLATION INTO EN

Article 1: Aim and subject matter

Based on the order of the respective parts, France takes the view that points (b) (solidarity mechanism) and (c) (criteria and mechanisms for determining the Member State responsible for examining an application for international protection) should be reversed.

Proposed wording:

In accordance with the principle of solidarity and fair sharing of responsibility, and with the objective of reinforcing mutual trust, this Regulation: *(a) sets out a common framework for the management of asylum and migration in the Union;* *(~~b~~**c**) establishes ~~**a** mechanism~~**s** for solidarity;* *(~~c~~**b**) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.*

Article 2: Definitions

Point (g) (family members):

We would point out that **the expression '*would not be in accordance with the relevant national law*' does not seem to sufficiently emphasise the need to comply with the laws on the marriage of minors; we propose that it be replaced by the expression '*would be illegal*'.**

Proposed wording:

Article 2(g) *On the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage ~~would not be~~* ***would be illegal*** *in accordance with the relevant national law had it been contracted in the Member State concerned, in particular having regard to the legal age of marriage.*

In addition, we maintain our reservation on the principle of the extension to cover families formed during transit, which may lead to a risk of fraud regarding the actual nature of the family relationship, which will often be difficult to establish. However, these extended criteria could compensate for the lengthening of the period of responsibility, in particular with regard to the Member States of first entry.

The proposed addition of siblings also deserves examination. The main objective should be to assess the consequences for countries where significant communities have already been established, as well as the genuine interest in grouping together adults (in the case of a minor, the siblings are already taken into account in the light of the best interests of the child). Nevertheless, we can support both these proposals in a spirit of compromise in return for certain other aspects which we would like to see included (material reception conditions in the single Member State responsible for examining an application, revised scope as regards eliminating shifts of responsibility in cases of take back, and amendment to the definition of absconding).

Point (n) (diplomas and qualifications):

We wish to thank the Slovenian Presidency for the changes made, which meet our requests to provide a framework for this new criterion. It is now more operational in nature.

We would point out that this new criterion will impose a burden on certain Member States in particular, and specifically on France. It therefore acts as a balancing element in the Pact.

Point (p) (absconding) and point (q) (risk of absconding):

We do not support the definition of 'absconding' proposed in the second version of the Slovenian compromise, which is too restrictive and therefore not very practical. The words '*remain available*' do not provide Member States with sufficient flexibility, and this will lead to rapid shifts of responsibility which run counter to the Regulation's aim of discouraging secondary movements. We therefore reaffirm our red line on the proposed definition of 'absconding', which is unacceptable.

We propose the following adapted and practical definition of 'absconding':

Article 2 (p) **'absconding' means ~~the action by which an applicant does not remain available to the competent administrative or judicial authorities, such as by leaving the territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the applicant's control~~; <u>the behaviour by which an applicant, a third-country national or a stateless person, voluntarily subtracts himself/herself or attempts to subtract from the procedure for determining the Member State responsible or the measure for transfer to the Member State responsible, in particular by failing to comply with the requirements of the authorities of the State in which he or she is present.</u>**

Nevertheless, we support the new wording solely insofar as it enables the scope of absconding and the risk thereof to be extended to third-country nationals in an irregular situation and stateless persons.

<u>Article 9: Obligations regarding applications</u>

Paragraph 2:

We consider it necessary to examine this amendment, which replaces the words '*which has expired*' with the words '*whose validity has ceased*' with regard to the obligation of the asylum applicant to make his or her application in the Member State where he or she is present in cases where he or she is no longer in possession of a valid residence permit or a valid visa. We are also expecting the Presidency to provide further explanations regarding the scope of this amendment, since the term '*expired*' is commonly used in the Visa Code, unlike the term '*ceased*'.

Paragraph 3

We maintain a scrutiny reservation on the possibility for the applicant to submit evidence after the interview determining the Member State responsible; we take the view that the asylum applicant should be obliged to submit his or her evidence at the latest during the interview referred to in

Article 12 of the Regulation – which itself must take place at the earliest possible opportunity – so that the procedure to determine the Member State responsible can be completed as quickly as possible.

Paragraph 4:

We note that point (c) should be deleted. The Member State responsible for examining an application must be determined prior to the relocation procedure (Articles 57 and 58). Consequently, once relocation has taken place, as provided for in Article 58(3), the Member State of relocation is necessarily the Member State responsible for examining the application.

Article 10: Consequences of non-compliance

Paragraph 1:

We note that Article 10(1) merely refers to another provision. We therefore suggest that this article be drafted in simpler terms.

Proposed wording:

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.

We would also draw attention to our position on this paragraph as expressed previously.

In our view, the treatment of persons who fail to comply with the obligations arising from Article 9 must be differentiated depending on whether they are covered by the take charge procedure (Articles 29 and 30) or the take back procedure (Article 31). Persons covered by the take back procedure are those whose asylum application is being examined in another Member State responsible or whose application has been rejected, as well as beneficiaries of international

protection and resettled persons. Such persons are therefore failing to comply with their obligations under this Regulation if they make an asylum application in another Member State.

We therefore request that it should be possible to refuse entitlement to the material reception conditions as soon as an application has been registered within the framework of a take back in cases where the applicant benefits – or has previously benefited – from the material reception conditions in the Member State responsible for examining his or her asylum application, has been informed of his or her obligation to remain in that Member State, but has nevertheless chosen to make a new asylum application in another Member State.

Consequently, until notification of the transfer decision, where the applicant has failed to comply with the obligations arising from Article 9, he or she should be entitled to the material reception conditions only in take charge situations.

Such a position does not disregard the need to guarantee a dignified standard of living for asylum applicants in accordance with Union law, including the Charter of Fundamental Rights, and international obligations (as set out in the draft recast of the Reception Conditions Directive). It seems necessary in order to limit secondary movements and combat the misuse of procedures.

Article 11: Right to information

We hereby enter a scrutiny reservation on the amendment to point (g) as proposed by the Slovenian Presidency, which seems to infringe the principle of the right to an effective remedy insofar as the information on legal assistance would henceforth be provided only at – and not prior to – the appeal stage.

Article 12: Personal interview

Paragraph 4:

The wording of the Slovenian compromise is positive as regards the addition of the words '*Member States shall endeavour to satisfy such requests, where reasonably practicable'*, which moderates the right established by the Asylum and Migration Management Regulation (in respect of the Dublin III Regulation) to request to be interviewed by staff of the same sex during an interview to determine the Member State responsible. However, we consider that a more sustainable solution would be to

abolish this right: this proposal risks making the procedures more cumbersome, creating a significant risk of litigation and thereby ultimately undermining the functioning of the Dublin procedures (in the case of cancellation on grounds of procedural violation at the time of the interview).

Following AWP of 28 July 21

Remarques générales

- La France remercie la Présidence slovène de cette version de compromis, et accueille favorablement la plupart des modifications proposées par le compromis qui va dans la bonne direction.

- Si nous soutenons l'économie générale du dispositif, il est essentiel de susciter des discussions politiques régulières sur ce règlement (ainsi que sur le règlement Procédure commune), sur lequel les positions des États membres divergent très largement.

- L'un des problèmes majeurs qui se pose à l'Europe en matière d'asile est l'importance des mouvements secondaires et des demandes d'asile multiples. La France ne pourra accepter la partie IV du règlement (sur la solidarité) sans garantie que la partie III (responsabilité) soit pleinement satisfaisante. A ce titre, nous maintenons notre réserve générale d'examen sur l'ensemble du règlement.

- **Sur l'article 13 (garanties en faveur des mineurs)**

Sur les troisième et quatrième paragraphes :

La France soutient le remplacement des termes *« be involved » par « represent and assist the minor* » pour désigner l'action du représentant du mineur et suggère que soit établie une trame commune à l'ensemble des États membre pour l'évaluation de l'intérêt supérieur de l'enfant (trame fondée sur les critères inscrits à l'article 13, paragraphe 4).

Sur le cinquième paragraphe :

La France soutient cette modification qui supprime l'obligation, pour l'Etat transférant, de s'assurer que l'État membre requis prenne les mesures nécessaires pour l'accueil du MNA transféré. Cette disposition faisait peser une charge disproportionnée sur l'État transférant et présentait des difficultés opérationnelles.

- **Sur l'article 14 (hiérarchie des critères)**

Sur le premier paragraphe :

La France rappelle sa proposition d'amender le premier paragraphe pour prévoir explicitement les articles qui s'appliquent lors des relocalisations (conformément à l'article 58, paragraphe 2), afin de clarifier le fait que la relocalisation déroge aux règles de responsabilité classiques.

Proposition rédactionelle :

1. *The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.* ***Whenever a person is concerned by a relocation procedure, only Article 15 to 20 and 24, with the exception of Article 15(5) shall apply****.*

Sur le second paragraphe :

La France soutient le maintien de l'article 14, paragraphe 2, mais propose que la situation du demandeur d'asile – qui est MNA au moment d'une première demande d'asile enregistrée dans un État membre, mais devenu majeur au moment d'une demande d'asile suivante – soit réévaluée, afin de pouvoir le transférer [si on étudie sa situation sous le prisme de sa minorité, l'intérêt supérieur du mineur devra être pris en compte alors même qu'il est devenu majeur]. Par dérogation à l'article 14, paragraphe 2, la détermination de l'État membre responsable doit ainsi se faire sur la base de la situation qui existe au moment où la demande de protection internationale suivante est enregistrée, sans considération de ce qu'une demande a été enregistrée antérieurement dans un autre État membre durant sa minorité.

Concrètement, un ressortissant de pays tiers, qui est mineur au moment de sa première demande d'asile en Autriche, et qui devient majeur en France lors de sa nouvelle demande, ne peut actuellement pas être transféré dans un autre État membre du fait que la détermination de l'État membre responsable se fait sur la base de la situation au moment de la première demande d'asile (article 7, paragraphe 2 du règlement Dublin III, et article 14, paragraphe 2 du projet de règlement Gestion de l'asile et de la migration). La France souhaite donc que ce transfert soit possible, dans la mesure où l'intérêt supérieur du mineur n'a plus à être pris en considération.

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.* ***When the applicant is an unaccompanied minor as established by the article 15 of this regulation, 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.***

- **Sur l'article 15 (mineurs non accompagnés)**

Sur le cinquième paragraphe :

Voir commentaires de la France pour l'article 14, paragraphe 2, concernant les mineurs non accompagnés devenus majeurs.

- **Sur l'article 18 (procédure familiale)**

Paragraphe 2 :

La France maintient sa réserve d'examen sur cet article qui risque de créer des renvois de responsabilité entre les États membres, et de nuire à l'objectif de célérité des transferts.

Les termes « *strongest ties* » pour définir les liens avec le membre de la fratrie le plus proche devraient être mieux définis. Dans le cas contraire, cela risquerait d'entrainer des divergences d'appréciation entre les États membres, qui se renverraient la responsabilité sans qu'aucun critère objectif ne permette de fixer la responsabilité d'un seul État membre. Par conséquent, afin

d'harmoniser les pratiques nationales, la France propose de donner à la Commission un pouvoir d'exécution sur ce point.

Proposition rédactionnelle :

2. Where the applicant has family members as referred to in Articles 16 and 17 in more than one Member State, the Member State responsible shall be determined as follows: *a) responsability shall lie with the Member State responsible for the family member referred to in Article 2(g), points (i) to (iv)* *b) failing this, responsability shall lie with the Member State which is responsible for the sibling to which the applicant states that he/she has the strongest ties.* ***With a view to facilitating the appropriate action to identify those ties, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).***

- **Sur l'article 19 (délivrance de titres de séjour ou de visas)**

Paragraphe 4 :

Il convient de reprendre certains éléments de l'actuel article 12, paragraphe 4 du règlement Dublin III, et de réintroduire la condition – pour les visas expirés depuis moins de trois ans – 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* ».

Proposition rédactionnelle :

Where the applicant is in possession of one or more residence documents or one or more visas whose validity has ceased ~~which expired~~ less than three years before the application was registered, and which enabled him or her actually to enter the territory of a Member State, paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the territory of the Member State.

- **Sur l’article 20 (délivrance de diplômes ou d’autres qualifications)**

La France remercie la Présidence pour ces amendements positifs et renvoie à nos commentaires à propos de l’article 2, sous n).

- **Sur l’article 22 (entrée sous exemption de visa)**

En l’état du texte, l’État membre d’entrée doit être considéré responsable de l’examen la demande d’asile dans les cas d’exemption de visa, afin de prévenir les mouvements secondaires. Cette règle est surprenante dans la mesure où le mouvement secondaire constaté n’est dans ce cas pas irrégulier, puisque l’exemption de visa est valable dans tous les États membres. Par conséquent, cela pourrait pénaliser les États membres ayant des connexions aériennes nombreuses et bon marché avec les pays exemptés de visa ou les pays frontaliers des pays exemptés de visa. Il semble donc inopportun de rendre responsable un État membre qui n’a aucun moyen de prévenir ce mouvement secondaire régulier. La délégation demandera la reprise des écritures de l’article 14 du règlement Dublin III en vigueur.

Proposition rédactionnelle :

~~***If a third-country national or a stateless person enters into the territory of the Member States through a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection. That responsibility shall cease if the application is registered more than three years after the date on which the person entered the territory.***~~

If a third-country national or a stateless person enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection.

The principle set out in paragraph 1 shall not apply if the third-country national or the stateless person lodges his or her application for international protection in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In that case, that other Member State shall be responsible for examining the application for international protection.

- **<u>Sur l'article 26 (obligations de l'État membre responsable)</u>**

<u>Paragraphe 1 :</u>

Cette modification de cohérence proposée par la Présidence permet de prévoir explicitement les différents cas de figure de la reprise en charge, ce qui convient à la France. Toutefois, l'alinéa b) devrait inclure explicitement les demandeurs ayant retiré leur demande d'asile dans l'État membre responsable ou dont la demande a été préalablement rejetée, qui entrent actuellement dans le champ d'application de l'article 18, paragraphe 1, sous c) et d), du règlement Dublin III.

Proposition rédactionnelle :

The Member State responsible under this Regulation shall be obliged to: *a) take charge, under the conditions laid down in Articles 29, 30 and 35, of an applicant whose application was registered in a different Member State.* *b) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, an applicant or a third country national or a stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation]**<u>, including a person whose application has been rejected or explicitly or implicitly withdrawn and made an application in another Member State or who is on the territory of another Member State without a residence document</u>** ;* *c) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a beneficiary of international protection in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation].*

d) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a resettled or admitted person who has made an application for international protection or who is irregularly staying in a Member State other than the Member State which accepted to admit him or her in accordance with Regulation (EU) XXX/XXX [Union Resettlement Framework Regulation] or which granted international protection or humanitarian status under a national resettlement scheme.

Paragraphe 2 :

Le terme "*applicant*" doit être remplacé par "*person*" afin d'inclure les mineurs accompagnant des membres de leur famille dont la demande d'asile a déjà été rejetée (article 26, paragraphe 1, sous b)), ou qui bénéficient déjà d'une protection internationale (article 26, paragraphe 1, sous c)) ou ont été réinstallés (article 26, paragraphe 1, sous d)). Il s'agit d'une modification de cohérence du fait de l'inclusion de ces catégories de personnes dans la partie responsabilité du règlement GAM qui permettra de lutter contre les détournements de procédure et les mouvements secondaires.

Cette modification rédactionnelle permettra de transférer dans l'État membre qui a accordé la protection internationale aux parents les mineurs nés dans un autre État membre. Cela répond de plus à des renvois préjudiciels en cours devant la CJUE (affaires C-720/20 et C-153/21) sur la question du possible transfert des bénéficiaires de la protection internationale et mineurs accompagnants vers l'État responsable de la demande d'asile des parents.

Proposition rédactionnelle :

2. *For the purposes of this Regulation, the situation of a minor who is accompanying the* ~~***applicant***~~ ***person*** *and meets the definition of family member shall be indissociable from that of his or her family member and the minor shall be taken charge of or taken back by the Member State responsible* ~~***for examining the application for international protection***~~ *of that family member*~~***, even if the minor is not individually an applicant,***~~ *unless it is demonstrated that this is not in the best interests of the child. The same principle shall be applied to children born after the* ~~***applicant***~~ ***person*** *arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.*

- **<u>Sur l'article 27</u> (cessation de la responsabilité)**

<u>Paragraphe 1 :</u>

La France rappelle à nouveau que le délai de transfert de six mois, tel qu'établi à l'article 35 du règlement, est trop bref au regard des contraintes nombreuses conditionnant le transfert (logistique du *routing*, disponibilité des escortes policières, assignation ou rétention du demandeur pour éviter sa fuite…) ; le risque de devoir reprendre en charge l'essentiel des demandeurs « Dublin » faute de pouvoir réaliser le transfert en temps utile reste donc majeur.

Par conséquent, la France demande la suppression de la bascule de responsabilité pour les personnes soumises à une procédure de reprise en charge (article 26, paragraphe 1, sous b), c) et d)), car ces personnes ont volontairement quitté l'État membre responsable de leur demande ou de leur protection internationale, en violation de leurs obligations prévues à l'article 9 du présent règlement.

En effet, pour réduire les mouvements secondaires, il semblerait dysfonctionnel de prévoir une bascule de responsabilité, même au terme d'un délai prolongé, pour les demandeurs ayant déjà été transférés une première fois dans l'État membre responsable. La France estime ainsi que la suppression de la bascule de responsabilité est de nature à dissuader les demandes multiples présentées dans plusieurs États membres, et confirme le principe de responsabilité, en particulier dans le cas où l'État membre responsable n'a pas éloigné le débouté.

<u>Paragraphe 2 :</u>

La France considère que des risques de détournement conséquents sont à craindre avec la possibilité qu'une demande de protection internationale, enregistrée après un retour volontaire, soit considérée comme une première demande : des personnes pourraient utiliser les délais d'instruction de leur demande pour se maintenir sur le territoire d'un Etat membre, puis profiter d'un programme de retour volontaire avant de revenir présenter une demande de protection internationale qui ne pourra pas être traitée comme un réexamen.

COURTESY TRANSLATION INTO EN

- France thanks the Slovenian Presidency for this compromise version and welcomes most of the amendments proposed by the compromise, which is along the lines desired.

- While we support the overall scheme, it is essential to hold regular political discussions on this Regulation (as well as on the Asylum Procedure Regulation), on which Member States' positions differ greatly.

- One of the major problems that Europe faces in terms of asylum is the extent of secondary movements and multiple asylum applications. France cannot accept Part IV of the Regulation (on solidarity) without assurance that Part III (on responsibility) is fully satisfactory. We are therefore maintaining our general scrutiny reservation on the Regulation in its entirety.

- **Article 13 (guarantees for minors)**

Paragraphs 3 and 4

France supports the replacement of the term '*be involved*' with '*represent and assist the minor*' to describe the role of the minor's representative, and suggests establishing a common framework for all Member States for evaluating the best interests of the child (a framework based on the criteria set out in Article 13(4)).

Paragraph 5

France supports this amendment, which removes the obligation for the transferring state to make sure that the requested Member State takes the necessary measures to accommodate the transferred unaccompanied minor. This provision imposed a disproportionate burden on the transferring state and gave rise to operational difficulties.

- **Article 14 (hierarchy of criteria)**

Paragraph 1

France reiterates its proposal to amend Article 14(1) to explicitly mention the articles which apply in the case of relocation (in accordance with Article 58(2)), in order to clarify that relocation derogates from the usual rules on responsibility.

Proposed wording:

3. *The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.* ***Whenever a person is concerned by a relocation procedure, only Article 15 to 20 and 24, with the exception of Article 15(5) shall apply****.*

Paragraph 2

France supports retaining Article 14(2), but proposes that the situation of an asylum seeker who was an unaccompanied minor when the first asylum application was registered in a Member State, but has become an adult by the time a subsequent asylum application is made, be re-evaluated so that they can be transferred [if their situation is examined as though they are a minor, the best interests of the minor should be taken into account even though they have become an adult]. By way of derogation from Article 14(2), the Member State responsible should therefore be determined on the basis of the prevailing situation at the time the subsequent request for international protection is registered, regardless of whether an application was previously registered in another Member State when the person was a minor.

In practice, a third-country national who was a minor when they made their first asylum application in Austria, and who has become an adult in France by the time they make a new application, cannot currently be transferred to another Member State because the Member State responsible is determined on the basis of the situation at the time of the first asylum application (Article 7(2) of the Dublin III Regulation, and Article 14(2) of the draft Asylum and Migration Management Regulation). France would therefore like this transfer to be possible, insofar as the best interests of the minor no longer have to be taken into account.

Proposed wording:

4. 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. ***When the applicant is an unaccompanied minor as established by the article 15 of this regulation, 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 (unaccompanied minors)**

Paragraph 5

See France's comments on Article 14(2) concerning unaccompanied minors who have become adults.

- **Article 18 (Family procedure)**

Paragraph 2:

France maintains its scrutiny reservation on this Article, which could lead to responsibility being referred from one Member State to another, and could compromise the objective of rapid transfers.

The expression 'strongest ties' to qualify ties with the closest family member should be defined more precisely. Otherwise, differences could arise in the way this is assessed by Member States, which would be able to assign responsibility to each other without any objective criterion for assigning responsibility to a single Member State. In order to harmonise national practices, we propose that the Commission be granted implementing powers for this point.

Proposed wording:

2. Where the applicant has family members as referred to in Articles 16 and 17 in more than one Member State, the Member State responsible shall be determined as follows:

a) responsibility shall lie with the Member State responsible for the family member referred to in Article 2(g), points (i) to (iv)

b) failing this, responsibility shall lie with the Member State which is responsible for the sibling to which the applicant states that he/she has the strongest ties. ***With a view to facilitating the appropriate action to identify those ties, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).***

- **Article 19 (Issue of residence documents or visas)**

Paragraph 4:

This paragraph should include some elements of the current Article 12(4) of the Dublin III Regulation, and reintroduce the condition that visas whose validity has ceased less than three years previously must have '"enabled him or her actually to enter the territory of a Member State' and that the applicant 'has not left the territories of the Member States'".

Proposed wording:

Where the applicant is in possession of one or more residence documents or one or more visas whose validity has ceased ~~which expired~~ less than three years before the application was registered, and which enabled him or her actually to enter the territory of a Member State, paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the territory of the Member State.

- **Article 20 (Diplomas or other qualifications)**

We would like to thank the Presidency for these positive amendments, and to refer to our comments on point (n) of Article (2).

- **Article 22 (Visa waived entry)**

As the text stands at the moment, the Member State of entry must be regarded as responsible for examining the application for asylum if there is a visa waiver, the aim being to put a stop to secondary movements. This rule is surprising given that, in such cases, the onward movement is not

irregular since the visa waiver is valid in all Member States. That being so, it could penalise Member States which have numerous and cheap flight connections with countries which benefit from visa waivers, as well as countries that share borders with countries that benefit from visa waivers. It therefore seems inappropriate to assign responsibility to a Member State which has no way of stopping such regular onward movement. We would like the wording of Article 14 of the current Dublin III Regulation to be reproduced here.

Proposed wording:

~~*If a third-country national or a stateless person enters into the territory of the Member States through a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection. That responsibility shall cease if the application is registered more than three years after the date on which the person entered the territory.*~~ ***If a third-country national or a stateless person enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection.*** ***The principle set out in paragraph 1 shall not apply if the third-country national or the stateless person lodges his or her application for international protection in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In that case, that other Member State shall be responsible for examining the application for international protection.***

- **On Article 26 (obligations of the Member State responsible)**

Paragraph 1:

This modification, proposed by the Presidency for coherence, allows explicit provision to be made for the various cases of taking back, which France supports. However, subparagraph (b) should explicitly include applicants who have withdrawn their asylum application in the Member State responsible or whose application has been previously rejected, who currently fall within the scope of Article 18(1)(c) and (d) of the Dublin III Regulation.

Proposed wording:

The Member State responsible under this Regulation shall be obliged to:

a) take charge, under the conditions laid down in Articles 29, 30 and 35, of an applicant whose application was registered in a different Member State.

*b) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, an applicant or a third country national or a stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation]****, including a person whose application has been rejected or explicitly or implicitly withdrawn and made an application in another Member State or who is on the territory of another Member State without a residence document*** *;*

c) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a beneficiary of international protection in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation].

d) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a resettled or admitted person who has made an application for international protection or who is irregularly staying in a Member State other than the Member State which accepted to admit him or her in accordance with Regulation (EU) XXX/XXX [Union Resettlement Framework Regulation] or which granted international protection or humanitarian status under a national resettlement scheme.

Paragraph 2:

The term ‘applicant’ should be replaced by ‘person’ in order to include minors accompanying family members whose application for asylum has already been rejected (Article 26(1)(b)) or who already enjoy international protection (Article 26(1)(c)) or have been resettled (Article 26(1)(d)). This change is for reasons of coherence due to the inclusion of these categories of persons in the responsibility part of the AMMR, and will help to combat misuse of procedure and secondary movements.

This change in the wording will make it possible to transfer minors born in another Member State to the Member State which has granted international protection to the parents. This also addresses pending preliminary rulings before the CJEU (cases C-720/20 and C-153/21) on the issue of the possible transfer of beneficiaries of international protection and accompanying minors to the State responsible for the parents’ asylum application.

Proposed wording:

*3. For the purposes of this Regulation, the situation of a minor who is accompanying the **~~applicant~~ person** and meets the definition of family member shall be indissociable from that of his or her family member and the minor shall be taken charge of or taken back by the Member State responsible **~~for examining the application for international protection~~** of that family member**~~, even if the minor is not individually an applicant,~~** unless it is demonstrated that this is not in the best interests of the child. The same principle shall be applied to children born after the **~~applicant~~ person** arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.*

- **On Article 27 (cessation of responsibilities)**

Paragraph 1:

We would once again reiterate that the six-month time limit for transfers, as laid down in Article 35 of the Regulation, is too short in view of the many constraints affecting the transfer process (routing logistics, availability of police escorts, detaining or placing the applicant under a compulsory residence order to prevent them from absconding, etc.); the risk of having to take back the bulk of Dublin applicants due to an inability to carry out the transfer in a timely manner remains high.

We therefore request the elimination of the shift of responsibility for persons subject to a take back procedure (Article 26(1), points (b), (c) and (d)), as these individuals have voluntarily left the Member State responsible for their application or for their international protection, in breach of their obligations under Article 9 of this Regulation.

Indeed, if the aim is to reduce secondary movements, it would seem counter-productive to provide for a shift of responsibility, even after an extended period, for applicants who have already been transferred to the Member State responsible once. We therefore consider that eliminating the shift of responsibility is likely to discourage the lodging of multiple applications in several Member States, and confirms the principle of responsibility, particularly in cases where the Member State responsible has not removed the rejected applicant.

Paragraph 2:

We are of the opinion that regarding an application for international protection registered after a voluntary return as a new application could lead to significant risks of misuse. Individuals could use the time during which their application

is being examined to remain in the territory of a Member State, and then participate in a voluntary return programme before returning to submit an application for international protection that cannot be treated as a review.

GREECE

As a general remark, EL maintains a substantial scrutiny reservation on the whole new text of the proposal, including Part III, criteria and mechanisms for determining the Member State responsible. As it stands, the proposal does not strike a fair balance between responsibility and solidarity.

EL reiterates its points of views and comments expressed in the Asylum WP meetings on the 13th and 28th of July and previous written comments.

All drafting and proposed text by EL is in red, in addition to the comments to specific articles.

Article 1

In accordance with the principle of solidarity and fair sharing of responsibility, and with the objective of reinforcing mutual trust, this Regulation:

(a) sets out a common framework for the management of asylum and migration in the Union;

(b) establishes ~~a~~ mechanism**s** for solidarity;

(c) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.

Comment:

EL welcomes the modification in point (b) for clarity purposes;, however EL would like to underline that all solidarity mechanisms, SAR and migratory pressure, should have parity in triggering and use the same methodology when it comes to solidarity mesaures concerning persons.

Article 2

(b) 'application for international protection' or 'application' means a request **made by a third-country national or a stateless person** for protection **from** ~~**made to**~~ a Member State ~~**by a third-country national or a stateless person**~~, who can be understood **to** ~~**as**~~ seek~~**ing**~~ refugee status or subsidiary protection status;

(c) (g)‘family members’ means, insofar as the family already existed before the applicant or the family member arrived on the territory of the Member States, the following members of the applicant’s family who are present on the territory of the Member States:

(i) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,

(ii) the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

(iii) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,

(iv) where the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present

(v) sibling or siblings of the applicant;

On the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage would not be in accordance with the relevant national law had it been contracted in the Member State concerned, in particular having regard to the legal age of marriage.

Comment:

Concerning the addition in the end of point g, and the clarifications offered by COM in the WG of [….], EL is of the opinion that additional clarifications are necessary (a) in cases where requesting and requested MSs are of differing view on the existence of a vaild marriage, and (b) in cases of a married minor that has a child.

(p) 'absconding' means the action by which **a person concerned** ~~**an applicant**~~ does not remain available to the competent administrative or judicial authorities, such as **failure to notify absence from a particular accommodation centre, or assigned area or residence, where so required by a Member State** ~~**by leaving the territory of the Member State without authorization from the competent authorities for reasons which are not beyond the applicant's control**~~;

Justification:

EL has scrutiny reservations on new definition of "absconding". As the wording stands it includes cases of domestic absconding. In the context of AMMR and responsibility determination, EL is of the opinion that relevant definition should cover the cases of unauthorized movement to another m-s. Unauthorised movements within the territory of the m-s is regulated in national law.

EL has the position that the definition should include applicants and irregular third country nationals and not beneficiaries of international protection.

(q) 'risk of absconding' means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria defined by national law to believe that **a person concerned** ~~**an applicant**~~ who is subject to **procedures set out in this Regulation** ~~**a transfer procedure**~~ may abscond;

Comment:

EL has scrutiny reservations in respect to the effect of this definition in the case of return sponsorship.

Article 8

1. Member States shall examine any application for international protection by a third- country national or a stateless person who applies on the territory of any one of them, including at the

border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter II **or the clauses set out in Chapter III of Part III** indicate is responsible.

2. **Without prejudice to the rules set out in part IV of this Regulation,** where

no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was registered shall be responsible for examining it.

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, the determining Member State shall continue to examine the criteria set out in Chapter II **or the clauses set out in Chapter III** of Part III in order to establish whether another Member State can be designated as responsible.

Where a Member State cannot carry out the transfer pursuant to the first subparagraph to any Member State designated on the basis of the criteria set out in Chapter II **or the clauses set out in Chapter III** of Part III or to the first Member State with which the application was registered, that Member State shall become the Member State responsible.

4. If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] has not been carried out **pursuant to that Regulation**, the first Member State in which the application for international protection was registered shall examine whether there are reasonable grounds to consider the applicant a danger to national security or public order of **the** ~~**that**~~ Member State**s** as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III.

If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] has been carried out, but the first Member State in which the application for international protection was registered has justified reasons to examine whether there are reasonable grounds to consider the applicant a danger to national security or public order of **the** ~~**that**~~ Member State**s**, that Member State shall carry out the examination as soon as possible after the registration

of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III.

5. Where the security check carried out in accordance with Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] or in accordance with the first and second subparagraphs of this paragraph shows that there are reasonable grounds to consider the applicant a danger to national security or public order of **a** ~~**the**~~ Member State**, the Member State** carrying out the security check~~,~~ ~~**that Member State**~~ shall be the Member State responsible**, and Article 29 shall not apply**.

Comment:

EL welcomes the changes in paragraphs 1,2,3.

EL retains a scrutiny reservation on paragraph 4, given the interlinkage to the Proposal for the Screening Regulation. Especially in the case of persons posing security concerns, the m-s where the person is present should be responsible for examining the application of international protection although that m-s may not be the m-s of first entry.

Article 9

3. The applicant shall fully cooperate with the competent authorities of the Member States in matters covered by this Regulation, in particular by submitting as soon as possible and at the latest during the interview referred to in Article 12, all the elements and information available to him or her relevant for determining the Member State responsible. ~~**The applicant shall submit his or her identity documents if the applicant is in possession of such documents and cooperate with the competent authorities in collecting the biometric data in accordance with Regulation EU XXX/XXX [Eurodac Regulation].**~~ Where the applicant is not in a position at the time of the interview to submit evidence to substantiate the elements and information provided, the competent authority may set a time limit within the period referred to in Article 29(1) for submitting such evidence.

Comment:

The new addition in par.3 is also mentioned in art. 11 par (ea), EL does not see the reason for this duplication. EL has concerns about the practical implementation of this article.

Article 10

2. Elements and information relevant for determining the Member State responsible submitted after expiry of the time limit referred to in Article 9(3) shall not be taken into account by the competent authorities, except for the application of criteria set out in Articles 15-18.

Article 14

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.

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.

3. The criteria of Article 15 paragraphs 2-4 shall apply at any time before the first decision in substance, even if the period provided for in Article 29 paragraph 1 has expired, unless it is demonstrated that it is not in the best interest of the child.

The criteria of Article 16-18 and 24 shall apply at any time before the first decision in substance even if the period provided for in Article 29 paragraph 1 has expired.

Article 15

2. The Member State responsible shall be that where a family member of the unaccompanied minor is legally present, unless it is demonstrated that it is not in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the

practice of that Member State, or sibling is legally present**, unless it is demonstrated that it is not in the best interests of the minor.**

5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be that where the unaccompanied minor's application for international protection is present ~~was first registered~~, unless it is demonstrated that this is not in the best interests of the minor.

Comment:

EL has a scrutiny reservation on paragraph 2 as amended. EL needs clarifications about the responsibility in cases that transfer of UAM is not in its best interest.

EL reiterates its previous position on paragraph 5, in respect with responsibility over a UAM in case of multiple applications.

According to the CJEU, the best interest of the minor must be the basis of all decisions the Member States take when interpreting the Regulation. The CJEU has ruled that unaccompanied minors form a category of particularly vulnerable persons, and it is important to ensure that they have prompt access to the procedures for determining international protection status and therefore not to prolong more than is strictly necessary the procedure for determining the Member State responsible. This means that, as a rule, unaccompanied minors should not be transferred to another Member State, but on the contrary the Member State, in which that minor is present after having lodged an asylum application, is to be designated the 'Member State responsible.' (C-648/11, paras. 55-61).

Article 16

Where the applicant has a family member who has been allowed to reside as a beneficiary of international protection or as a beneficiary of another humanitarian status granted within the framework **of** asylum procedures 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.

The Commission is empowered to adopt delegated acts in accordance with art 68 concerning the timely notification of the Member States which humanitarian statuses besides international protection are granted in each Member state within the framework of the asylum procedure.

Comment:

Art. 16 provides for the reunification of applicants with their family members who are allowed to reside in a Member State as beneficiaries of international protection. However, almost all Member States do provide for some kind of humanitarian status on the basis of national legislation, which often covers cases in which a return would stipulate an undue humanitarian hardship or would even be prohibited by the European Charter of Human Rights. In this context, family members enjoying humanitarian status clearly have the same interest in being reunited with each other as do family members of beneficiaries of international protection.

Article 17

Where the applicant has a family member ~~**in a Member State**~~ whose application for international protection in **a** ~~**that**~~ Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Comment

EL needs clarification in cases of an applicant with more than one family members in a single MS. For example, if an applicant has a spouse and a sibling in m-s X, will the applicant be able to choose with which relative (s)he will be reunited with? Are the requesting and requested m-s obliged to examine all the family ties between the family members involved?

Article 18

1. Where several family members **make** ~~**submit**~~ applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined as follows:

(a) responsibility for examining the applications for international protection of all the family members shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;

(b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

2. Where the applicant has family members as referred to in Articles 16 and 17 in more than one Member State, the Member State responsible shall be determined as follows:

(a) responsibility shall lie with the Member State responsible for the family member referred to in Article 2(g), points (i) to (iv);

(b) failing this, responsibility shall lie with the Member State which is responsible for the sibling to which the applicant states that he/she has the strongest ties.

Comment:

EL welcomes the provision but some clarifications are needed for its practical implementation:

1) What happens if the "take charge' request in relation to the sibling with the closest ties is rejected? Can a "take charge" request be made in relation to another sibling with less strong ties or another relative present in another m-s? In these cases, what will apply concerning the deadlines? Will the deadline for the later 'take charge' request commence on the date of the first rejection?

2) In addition, does the phrase "family members in more than one MS" include the MS of the applicant's presence?

Article 19

4. ~~Where the applicant is in possession of one or more residence documents or one or more visas **whose validity has ceased** **which expired** less than three years before the application was registered, paragraphs 1, 2 and 3 shall apply.~~

Where the applicant is in possession only of one or more residence documents which have expired less than two years previously or one or more visas **whose validity has ceased** less than six months previously and which enabled him or her actually to enter the territory of a Member State,

paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the territories of the Member States.

Comment:

Scrutiny reservations. EL retains previous position. EL cannot accept the extension of responsibility of Member State that issued visa or residence documents up to 3 years, as well as the harmonization of the time limits for both types of documents. EL supports the deadlines of the currently applicable regulation 604/2013.

Article 21

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [*Eurodac Regulation*], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the first Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than ~~3 years~~ 12 months after the date on which that border crossing took place.

Comment:

EL cannot support extension of responsibility for the state of first entry in case of illegal border crossing to be 3 years. This does not contribute to the necessary balance between responsibility and solidarity. EL supports the current timeline as provided for in Regulation 604/2013.

Article 24

1. Where, on account of pregnancy, having a new-born child, serious illness, severe disability, severe **psychological** trauma or old age, an applicant is dependent on the assistance of his or her child, ~~or~~ parent, sibling or spouse legally resident in one of the Member States, or his or her child or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, ~~or~~ parent, sibling or spouse provided that family ties

existed before the applicant arrived on the territory of the Member States, that the child, ~~or~~ parent, sibling or spouse or the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing.

Where there are indications that a child, ~~or~~ parent, sibling or spouse is legally resident on the territory of the Member State where the dependent person is present, that Member State shall verify whether the child ~~or~~ parent, sibling or spouse can take care of the dependent person, before making a take charge request pursuant to Article 29. A reply refusing the request shall state the reasons on which the refusal shall state the reasons on which the refusal is based.

2. Where the child, ~~or~~ parent sibling or spouse referred to in paragraph 1 is legally resident in a Member State other than the one where the applicant is present, the Member State responsible shall be the one where the child, ~~or~~ parent, sibling or spouse is legally resident unless the applicant's health prevents him or her from travelling to that Member State for a significant period of time. In such a case, the Member State responsible shall be the one where the applicant is present. Such Member State shall not be subject to the obligation to bring the child ~~or~~ parent, sibling or spouse of the applicant to its territory.

Comment:

Siblings and spouses should also be included in the provision. Applicants of old age, whose parents have passed away and have no children at all or no children in any Member State, are excluded, even if they have a strong, supportive family environment (siblings) in another Member State. Furthermore, applicants dependent on their spouses, who are not beneficiaries of international protection, but are legally resident in another Member State, are also excluded. The fact that some Member States may have national legal provisions, allowing the family reunion under specific circumstances, is not a valid reason for excluding the spouses from the scope of Article 24 of this regulation.

Article 26

1. The Member State responsible under this Regulation shall be obliged to:

(a) take charge, under the conditions laid down in Articles 29, 30 and 35, of an applicant whose application was registered in a different Member State;

(b) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, an applicant, or a third-country national or a stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*];

(c) ~~take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a beneficiary of international protection in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*];~~

(d) ~~take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a resettled or admitted person who has made an application for international protection or who is irregularly staying in a Member State other than the Member State which accepted to admit him or her in accordance with Regulation (EU) XXX/XXX [*Union Resettlement Framework Regulation*] or which granted international protection or humanitarian status under a national resettlement scheme.~~

2. In the situations referred to in paragraph 1, points (a) and (b), ~~**the Member State responsible shall examine or complete the examination of the application for international protection pursuant to**~~ Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] **shall apply**.

Comment:

EL retains its position that beneficiaries (including resettled and admitted persons) should be excluded from the scope of Part III, because the aim of this part is to set up the criteria and mechanisms for determining the Member State responsible, while beneficiaries of international protection have different status than applicants for international protection or unsuccessful

applicants for international protection. The Member State responsible has been already determined in these cases.

Article 27

2. The obligation laid down in Article 26(1), point (b), of this Regulation to take back a third-country national or a stateless person shall cease where it can be established, on the basis of the update of the data set referred to in Article 11(2)(c) of Regulation (EU) XXX/XXX [*Eurodac Regulation*], that the person concerned has left the territory of the Member States on either a compulsory or a voluntary basis, in compliance with a return decision or removal order issued following the withdrawal or rejection of the application or where it is established the person concerned has left the territory of the Member States for at least three months

An application registered after an effective removal or voluntary departure ~~**or voluntary return**~~ has taken place shall be regarded as a new application for the purpose of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.

Comment:

EL retains substantive reservation on this Article since it sets out permanent responsibility to the Member State of first entry without exception, even for cases currently regulated by art 19.2 (the person has left the territory of the Member States for at least three months). In conjunction with art.21, art. 27 serves to reinforce the "first entry criterion" and renders responsibility almost permanent on Member States situated at the external borders. EL believes that in that way, incentives for irregularity and less compliance are created, as asylum seekers are going to resort to irregularity in order to avoid registration in first entry countries.

Additionally, the list of causes for cessation of responsibility is not exhaustive, as it does not include relocation, return sponsorship (which may entail a shift and therefore a cessation of responsibility), or Art. 29 (1), third subparagraph, with regard to the request to take charge out of the relevant periods. EL proposes the inclusion of cessation of responsibility in abovementioned cases.

HUNGARY

We maintain our scrutiny reservation on the whole amended proposal.

Article 1

We believe that the changes made to *point (b)* broaden the definition concerning solidarity measures. This is a matter of political importance, therefore in our view, we should wait until the end of the negotiations before agreeing on the changes made here.

Article 2

The Presidency explained that the changes made in *point (b)* were done so that the definition would be aligned with the one in APR. We agree with these amendments.

We also maintain our position on the definition of family member in *point g)*. The draft regulation includes family relationships established before entering the territory of a Member State. The new definition of family member could lead to fraud, given that a family is treated differently from a single applicant. The use of such a broadly interpreted definition of family members allows for new forms of fraud, and may lead to the increase of forced marriages and marriages of convenience, which are problematic to detect in practice. We also disagree with the extension of the concept of family member to siblings, as such an interpretation will lead to frauds as well.

The new paragraph added to *point (g)* is acceptable to us.

As regards *point n)* and *(o)*, we propose the deletion of the definition. During the first reading of the proposal, we have indicated our disagreement with the content of Article 20, despite the inclusion of the 5-year timeframe. It is completely unrealistic to expect the Member State that issued the diploma or qualification to be responsible, even after years, on the grounds of having issued the diploma or the qualification, when the person concerned has practically severed all meaningful contact with the Member State concerned.

Concerning *point p)*, we welcome the new definition of absconding, given the broadened scope of definition in terms of persons and interpretation.

We have substantive reservation regarding *point q)*. The procedures (solidarity) set out in this proposal are matters of political importance, therefore in our view, we should wait until the end of the negotiations before agreeing on the changes made here.

Article 8

Regarding the changes made to *paragraph 1*, we would like to ask for some clarification on adding the clauses set out in Chapter III of Part III. The criteria set out in Chapter III of Part III provide for the possibility of assumption of responsibility by discretion, even in cases where responsibility of the Member State concerned could not be established on the basis of the criteria for determining the Member State responsible. In view of this, it may be appropriate to distinguish in the wording of Article 8 between criteria for determining the Member State responsible and responsibility under discretionary clause. The amended text as it stands does not distinguish between the two.

We believe that the change made to *paragraph 2* is a matter of political importance, therefore in our view, we should wait until the end of the negotiations before agreeing on the changes made here.

We maintain our previous position, we cannot agree with the content of *paragraph 3*, as we believe that all Member States must comply with the conditions set out in EU law, and that the conditions for determining the Member State responsible should be extended to all Member States.

We welcome the changes made to *paragraph 4*, as we believe that security checks should not only cover the national and public security of the Member State concerned, but also the internal security of the Union as a whole.

As regards the last *subparagraph of paragraph 4*, it is not quite clear why only Article 29 shall not be applicable, and why does not it apply from Article 13.

Article 9

We reiterate our previous position and support *paragraph 1*, as secondary movements and asylum-shopping can be prevented as a result of its contents.

With regard to *paragraph 2*, we welcome the fact that the proposal has attempted to contain the internal movement. In the *second subparagraph*, regarding changes made from "*which has expired"* to "*whose validity has ceased"*, the Presidency explained that documents can cease in more ways, than expire. Hence, we are positive about the changes.

We also welcome the new sentence added to *paragraph 3* on the cooperation of the applicant in the collection of biometric data.

In *paragraph 4*, we still have reservations about *point (c)* and *paragraph 5* with regard to the reference to relocation, as we cannot accept the proposed solidarity mechanism in its current form.

In addition, we are positive about the changes made to *paragraph 5*, by including "*cooperate with the authorities"*.

Article 10

Regarding the changes made to *paragraph 1*, we would suggest to keep the deleted phrase, as this is not included in the text of the RCD being on trialogue.

In addition, we propose to amend the article with cases of non-cooperation, as this article still does not provide for cases where the third-country national has deliberately misled the determining authority, thus unduly delaying the procedure.

Article 11

Points (a) and (b) of paragraph 1, we have reservations with regard to the reference to relocation.

We suggest to indicate in *point b)* of this article that the person should be informed about the consequences he or she can expect in dealing with his or her application if he or she does not cooperate with the authorities.

Regarding *point e)*, we have reservations, as we do not support the diplomas or the qualifications as criteria for determining the Member State responsible.

We also welcome the addition of *point (ea)* on information on the collection of biometric data.

The content of *point (g)* is acceptable to us.

We believe that the information on absconding in *point (ga)* should also include the whole of Article 35.

The *new subparagraph in paragraph 2* on the information provided to minors is also acceptable to us, as, in our view, the principle of child-friendly information needs to be implemented in a coherent way within the draft regulation, irrespective of the fact that our national law already takes this requirement into account.

Article 12

We agree that the determining Member State must conduct a personal interview in order to help determine the Member State responsible.

In addition, with regard to the text and content of *paragraph 4*, we propose to keep the text of the current Dublin III Regulation, as the current addition would impose additional administrative burdens on the Member States and the reference to a suitably qualified person is already included in paragraph 5. In the case of *paragraph 5*, we also consider the current text to be justified, as Article 13 sets out in detail the special procedural rules for minors.

Article 13

As regards *paragraph 3*, the representative of the minor cannot participate in the procedure to determine the Member State responsible, that is the exclusive responsibility of the Member States, but can only support the minor. The new wording *represent and assist* is misleading. The word *represent* still suggests that the representative plays an active role in establishing the Member States responsible.

With regard to our position, we considered the added value of the procedure presented in *paragraph 5* to be doubtful, as it would have only unnecessarily prolong the process of transfer to the Member State responsible, which would have not necessarily been in the best interests of the child. In addition, we believed that the principle of mutual trust must have been prevailed. In this regard, we are positive about the changes made here.

We agree with the changes made to the *last subparagraph in paragraph 6*.

Article 14

During the first reading of the draft regulation, the Commission explained that the term *"situation obtaining"* allows the authorities to make a much broader analysis, as the decision can be based not only on the information provided by the applicant, but also on other existing objective criteria. We generally agree with the content of this article, however, as a technical remark, we reiterate our previous position and note that the term *"situation obtaining"* is not sufficient, so we suggest using the wording *"elements and information provided"* instead, in order to make the text clearer. If we decide to keep the original phrase, than we suggest to at least list some examples.

Article 15-17

The content of these articles is basically acceptable to us, we agree with the conditions for determining the Member State, but we have a scrutiny reservation on these articles regarding the definition of family member as stated in Article 2 point (g).

Article 18

Basically, we agree with the content of the new paragraph added, *paragraph 2*, but for the reasons explained earlier, we have scrutiny reservation on the whole article regarding the definition of family member in Article 2 point (g).

Article 19

Maintaining our previous position, we cannot agree with the 3-year timeframe stated in *paragraph 4*. We consider the current rules (two years for residence permits, six months for visas) to be applicable, since in the case of stays abroad beyond the current time limits, the person concerned has practically severed all meaningful contact with the Member State issuing the residence permit or visa.

Regarding changes made in *paragraph 4*, changing "*which has expired"* to "*whose validity has ceased"*, are welcomed as documents can cease in more ways, than expire.

Article 20

During the first reading of the proposal, we have indicated our disagreement with the content of this Article, despite the inclusion of the 5-year timeframe. It is completely unrealistic to expect the Member State that issued the diploma or qualification to be responsible, even after years, on the grounds of having issued the diploma or the qualification, when the person concerned has practically severed all meaningful contact with the Member State concerned.

Article 21

We are concerned about the content of *paragraph 1*. We consider the 3-year timeframe to be unreasonably long. We propose to keep the current 12-month period. Long-term responsibility is to be ensured by other provisions of Chapter IV.

We are also concerned about *paragraph 2* with regard to the reference to those who are disembarked following a search and rescue operation.

Regarding *paragraph 3,* the reference to relocation is still under assessment, as we cannot accept it in its current form. We also stress that the procedure for determining responsibility must be completed before relocation.

Article 22

With regard to the responsibility rules, we still consider it unacceptable that in the case of an application by visa-free nationals, it is not the Member State of application but the Member State of entry that will be responsible, and for 3 years.

Article 23

The content of this article is acceptable to us.

Article 24

We have reservation on this article in view of our concerns expressed earlier about the definition of family member in Article 2 point (g).

According to the changes made in *paragraph 1 (severe psychological trauma)*, we believe that it still does not provide a clear definition, it still provides for the possibility of fraud.

Article 25

The content of this article is acceptable to us.

Article 26

We still have a reservation on *paragraph 1 points (c) and (d)*, as in our view the scope of the regulation should not extend to recognized persons.

With regard to *point (c)*, we would also like to emphasize that the Dublin rules concern the determination of the Member State responsible for examining applications, so the issue of

beneficiaries of international protection goes beyond the scope of this draft and therefore falls within the scope of bilateral readmission agreements. The same remark applies to the last part of *point (d)*, so we suggest the deletion of the words *"or which granted international protection.…"*.

As regards the changes made to *paragraph 3*, we welcome the simplification of the procedure.

Article 27

We propose amendments to *paragraphs 1 and 2* of this Article.

In *paragraph 1*, in addition to beneficiaries of international protection, it is proposed to treat those under review of status as an exception. Furthermore, we do not support the notification procedure for such readmission notifications, as we do not see how a system that does not allow the requested Member State to reply and explain its reasons could serve the Dublin system.

The article removes the possibility of cessation of responsibility provided for in Article 19 (2) of the current Dublin III Regulation, namely, leaving the territory of the Member States for a longer period (at least 3 months). Although this is difficult to apply in practice due to the burden of proof on the requested Member State, we do not consider it necessary to remove this case completely.

In *paragraph 2*, we propose the following amendment:

"An application registered after an effective removal **or voluntary ~~return~~ departure** has taken place shall be regarded as a new application for the purpose of this Regulation, thereby giving rise

to a new procedure for determining the Member State responsible**. Voluntary Compliance with the return decision shall be established on administrative proof."**

We recommend to align the definitions with point 8 of Article 3 of the Return directive and with the return handbook (where voluntary departure means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision. According to the Return Handbook voluntary return means a voluntary return of legally staying third country nationals.)

We also would like to note that voluntary departure – steaming from its nature, except assisted voluntary returns/departures – is performed in most cases without involving the authority therefore without the supervision/monitor of the authority. Proving that a person has complied with the return decision voluntarily during period for voluntary departure is currently possible in certain situations only. We recommend to amend this section that the section shall be applicable only where there is administrative proof available on the voluntary compliance with the return decision. Administrative proof might include data from national entry-exit systems, notification from an other MS to the ordering MS about the exit to a third country or if the third-country national shows exit stamps in his/her travel document at a foreign representation of an MS located in a third country (this situation will be changed with the interoperability developments).

ITALY

PART I

SCOPE AND DEFINITIONS

Article 1

Aim and subject matter

In accordance with the principle of solidarity and fair sharing of responsibility, and with the objective of reinforcing mutual trust, this Regulation:

(a) sets out a common framework for the management of asylum and migration in the Union;

(b) establishes ~~a~~ mechanism**s** for solidarity;

(c) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.

Comment: *plural form reflects the double mechanism in Part IV AMMR. Italy supports this amendment.*

Article 2

Definitions

For the purposes of this Regulation:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty and who is not a person enjoying the right to free movement under Union law as defined in Article 2, point (5) of Regulation (EU) 2016/399 of the European Parliament and of the Council;

(b) 'application for international protection' or 'application' means a request **for protection made to a Member State by a third-country national or a stateless person ~~from made~~**

~~to~~ a Member State ~~by a third-country national or a stateless person~~, who can be understood **to** ~~as~~ seek~~ing~~ refugee status or subsidiary protection status;

(c) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a decision has not been taken, or has been taken and is either subject to or can still be subject to a remedy in the Member State concerned, irrespective of whether **that person** ~~the applicant~~ has a right to remain or is allowed to remain in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], including a person who has been granted immediate protection pursuant to Regulation (EU) XXX/XXX [*Regulation addressing situations of crisis and force majeure in the field of asylum and migration*];

(d) 'examination of an application for international protection' means examination of the admissibility or the merits of an application for international protection in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] and Regulation (EU) XXX/XXX [*Qualification Regulation*], excluding procedures for determining the Member State responsible in accordance with this Regulation;

(e) 'withdrawal of an application for international protection' means either explicit or implicit withdrawal of an application for international protection in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*];

(f) 'beneficiary of international protection' means a third-country national or a stateless person who has been granted international protection as defined in Article 2(2) of Regulation (EU) XXX/XXX [*Qualification Regulation*];

(g) 'family members' means, insofar as the family already existed before the applicant or the family member arrived on the territory of the Member States, the following members of the applicant's family who are present on the territory of the Member States:

(i) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,

(ii) the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

(iii) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,

(iv) where the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present,

(v) sibling or siblings of the applicant;

On the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage would not be in accordance with the relevant national law had it been contracted in the Member State concerned, in particular having regard to the legal age of marriage.

(h) 'relative' means the applicant's adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;

(i) 'minor' means a third-country national or a stateless person below the age of 18 years;

(j) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;

(k) 'representative' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary;

(l) 'residence document' means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including

the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;

(m) 'visa' means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States, including:

(i) an authorisation or decision issued in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than 90 days,

(ii) an authorisation or decision issued in accordance with its national law or Union law required for entry for a transit through or an intended stay in that Member State not exceeding 90 days in any 180-day period,

(iii) an authorisation or decision valid for transit through the international transit areas of one or more airports of the Member States;

(n) 'diploma or qualification' means a diploma or qualification which is obtained **in a Member State** after at least a ~~**three months'**~~ period of **one year of** study **on the territory of that Member State** in a recognised, state or regional programme of education or vocational training at least equivalent to level 2 of the International Standard Classification of Education, operated by an education establishment in accordance with national law or administrative practice of the Member States;

(o) 'education establishment' means ~~**any type of**~~ public or private education or vocational training establishment established in a Member State and recognised by that Member State ~~**or considered as such**~~ in accordance with national law or whose courses of study or training are recognised in accordance with national law or administrative practice;

(p) 'absconding' means the action by which **a person concerned** ~~**an applicant**~~ does not remain available to the competent administrative or judicial authorities, such as **failure to notify absence from a particular accommodation centre, or assigned area or residence, where so required by a Member State** ~~**by leaving the territory of the**~~

~~**Member State without authorization from the competent authorities for reasons which are not beyond the applicant's control**~~;

(q) 'risk of absconding' means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria defined by national law to believe that **a person concerned** ~~**an applicant**~~ who is subject to **procedures set out in this Regulation** ~~**a transfer procedure**~~ may abscond;

(…)

(x) 'resettled or admitted person' means a **refugee or** person **in need of international protection** who has been accepted by a Member State for admission pursuant to Regulation (EU) XXX/XXX [*Union Resettlement Framework Regulation*] or under a national resettlement scheme outside the framework of that Regulation;

(y) 'Asylum Agency' means the European Union Agency for Asylum as established by Regulation (EU) XXX/XXX [*European Union Asylum Agency*];

(z) 'return decision' means an administrative or judicial decision or act stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return ~~that respects~~ **in accordance with the** Directive 2008/115/EC of the European Parliament and of the Council;

(aa) 'illegally staying third-country national' means a third-country national who does not fulfil or no longer fulfils the conditions of entry as set out in Article 6 of Regulation (EU) 2016/399 or other conditions for entry, stay or residence in a Member State.

(…)

Comment: *in **point b)** the amendment is only linguistic.*

*In **points f)** and **g.iv)**, a scrutiny reservation is entered with reference to the inclusion of beneficiaries into the scope of AMMR.*

*A scrutiny reservation is also entered on the additional text (here highlighted in grey) concerning **married minors**. The provision, as it is written, seems to be a codification of the public order clause on the basis of which in private international law the judiciary*

of a Member State can refuse to recognise, execute or even validate the transcription of an act that conflicts with the fundamental principles of their domestic legal system.

The aim to introduce an advantage for minors is understandable and acceptable but it should be clarified what the authority competent is for the individual assessment. Marital status and connected issues generally fall within the judiciary competences. In this amendment it is not clear whether there is a shift of competence to the administrative authority, which would bring about enormous disparities in treatment between EU states, uncertainty about the extent of subjective situations and ultimately a possibly unintended consequence even for the MS requesting its introduction.

In any case, it seems an invasion of national jurisdiction: the EU has no competence to decide when a marriage is valid, while this rule seems to establish such a criterion excluding a possible recognition of its effects.

*In **point x)** the added words are compatible with the nature of resettlement and humanitarian admission programmes. The eligible persons are, respectively, refugees and persons in need of international protection.*

*In **point z)** the proposed amendment is technical.*

PART III

CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE

CHAPTER I

GENERAL PRINCIPLES AND SAFEGUARDS

Article 8

Access to the procedure for examining an application for international protection

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter II **or the clauses set out in Chapter III** of Part III indicate is responsible.

2. **Without prejudice to the rules set out in part IV of this Regulation, w**~~W~~here no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was registered shall be responsible for examining it.

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**, have been assessed at Union level,** the determining Member State shall continue to examine the criteria set out in Chapter II **or the clauses set out in Chapter III** of Part III in order to establish whether another Member State can be designated as responsible.

Where a Member State cannot carry out the transfer pursuant to the first subparagraph to any Member State designated on the basis of the criteria set out in Chapter II **or the clauses set out in Chapter III** of Part III or to the first Member State with which the application was registered, that Member State shall become the Member State responsible.

4. If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] has not been carried out **pursuant to that Regulation**, the first Member State in which the application for international protection was registered shall examine whether there are reasonable grounds to consider the applicant a danger to national security or public order of **the** ~~that~~ Member State**s** as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III.

If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] has been carried out, but the first Member State in which the application for international protection was registered has justified reasons to examine whether there are reasonable grounds to consider the applicant a danger to national security or public order of **the** ~~that~~ Member State**s**, that Member State shall carry out the examination as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III.

Where the security check carried out in accordance with Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] or in accordance with the first and second subparagraphs of this paragraph shows that there are reasonable grounds to consider the applicant a danger to national security or public order of ~~a the Member State,~~ **the Member State** carrying out the security check~~, that Member State~~ that Member State shall be ~~the Member State~~ responsible**, and Article 29 shall not apply**.

5. Each Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*].

Comment:
*Amendment in **para. 3** implies that systemic flaws should be assessed by the competent EU institutions and not by the authorities of a MS. Besides, mutual trust among MS, based on uniform standards, should instead enable transfer without previously ascertaining reception conditions.*

*In **para. 4**, the previous wording has been reinstated otherwise the wording proposed by the Presidency would entail that the risk for security and public order should be assessed by the MS carrying out the security check with respect to all Member States, which is apparently objectively impossible. Therefore, the existence of a risk for the MS carrying out the security check is enough to rule out the application of article 29.*

Article 9

Obligations ~~**regarding applications**~~ **of the applicant**

1. Where a third-country national or stateless person intends to make an application for international protection, the application shall be made and registered in the Member State of first entry.

2. By derogation from paragraph 1, where a third-country national or stateless person is in possession of a valid residence permit or a valid visa, the application shall be made and registered in the Member State that issued the residence permit or visa.

Without prejudice to article 19, w~~**W**~~here a third-country national or stateless person who intends to make an application for international protection is in possession of a residence permit or visa **whose validity has ceased**, the application shall be made and registered in the Member State where he or she is present.

3. The applicant shall fully cooperate with the competent authorities of the Member States in matters covered by this Regulation, in particular by submitting as soon as possible and at the latest during the interview referred to in Article 12, all the elements and information available to him or her relevant for determining the Member State responsible. **The applicant shall submit his or her identity documents if the applicant is in possession**

of such documents and cooperate with the competent auhorities in collecting the biometric data in accordance with Regulation EU XXX/XXX [Eurodac Regulation].

Where the applicant is not in a position at the time of the interview to submit evidence to substantiate the elements and information provided, the competent authority may set a time limit within the period referred to in Article 29(1) for submitting such evidence.

4. The applicant shall be required to be present in:

(a) the Member State referred to in paragraphs 1 and 2 pending the determination of the Member State responsible and, where applicable, the implementation of the transfer procedure;

(b) the Member State responsible;

(c) the Member State of relocation following a transfer pursuant to Article 57(9).

5. Where a transfer decision is notified to the applicant in accordance with Article 32(2) and Article 57(8), the applicant shall **cooperate with the authorities and** comply with that decision.

Comment:
*The **heading** referring to applicants is more suitable and consistent with the contents of the provision. Therefore the reinstatement of the previous wording is suggested.*
*In **para. 2** a reference to the specific rules provided for in article 19 should be made for the sake of clarity. Actually, the discussion in the meeting of July 13 showed the provision as it stands may lead to uncertain interpretations.*

Article 10

Consequences of non-compliance

1. The applicant shall not be entitled to the reception conditions set out in Articles 15 to 17 of Directive XXX/XXX/EU [*Reception Conditions Directive*] **in accordance with** ~~**pursuant to**~~ 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*]~~. This shall be without prejudice to the need to ensure a **dignified** standard of living in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations.

2. Elements and information relevant for determining the Member State responsible submitted after expiry of the time limit referred to in Article 9(3) ~~shall~~ **may** not be taken into account by the competent authorities.

Comment:
*In **para. 1**, the reinstatement of the wording on the date of effect is necessary for the sake of legal certainty.*
Besides, the reference to Article 8.2(b) of Screening Regulation doesn't seem appropriate. Actually, it stipulates the obligation to provide (inferred from the wording "shall receive") information on the obligation to apply in the Member State of first entry or legal stay. Reception is not specifically mentioned.
Nonetheless, alternatively to deletion (with the aim to exclude that the allegation of insufficient information may provide grounds to appeal against decisions to revoke material reception conditions), a reference to article 11.1(b) AMMR, which explicitly regulates the issue in terms of reception, would be more appropriate.

*The may clause **in para. 2** is proposed in order to avoid possible abuses by applicants who may not comply with time limits so as to hamper the determination process.*

Article 11

Right to information

1. As soon as possible and at the latest when an application for international protection is registered in a Member State, its competent authorities shall inform the applicant of the application of this Regulation and of the obligations set out in Article 9 as well as the consequences of non-compliance set out in Article 10, and in particular:

(a) that the right to apply for international protection does not encompass a choice by the applicant in relation to either the Member State responsible for examining the application for international protection or the Member State of relocation;

(b) of the objectives of **part III of** this Regulation and the consequences of making another application in a different Member State as well as the consequences of leaving the Member State where he or she is required to be present pursuant to Article 9(4), in particular that the applicant shall only be entitled to the reception conditions as set out in Article 10(1);

(c) of the criteria and the procedures for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration;

(d) of the aim of the personal interview pursuant to Article 12 and the obligation to submit and substantiate orally or through the provision of documents information as soon as possible in the procedure any relevant information that could help to

establish the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information, as well as any assistance that the Member State can offer with regard to the tracing of family members or relatives;

(e) of the obligation for the applicant to disclose, as soon as possible in the procedure any relevant information that could help to establish any prior residence permits, visas or educational diplomas;

(ea) of the obligation for the applicant to submit his or her identity documents where the applicant is in possession of such documents and to cooperate with the competent authorities in collecting the biometric data in accordance with the Regulation (EU) XXX/XXX [Eurodac Regulation];

(f) of the possibility to challenge a transfer decision within the time limit set out in Article 33(2) and of the fact that the scope of that challenge is limited as laid down in Article 33(1);

(g) **in case of an appeal against~~, or review of,~~ the transfer decision,** of the right to be granted, on request, legal assistance free of charge where the person concerned cannot afford the costs involved**, according to the requirements regulated by national legislation**;

(ga) of the fact that absconding will lead to an extension of the time limit in accordance with Article 35;

(h) that the competent authorities of Member States and the Asylum Agency will process personal data of the applicant including for the exchange of data on him or her for the sole purpose of implementing their obligations arising under this Regulation;

(i) of the categories of personal data concerned;

(j) of the right of access to data relating to him or her and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article 41 and of the national data protection authorities responsible for

hearing claims concerning the protection of personal data, and of the contact details of the data protection officer;

(k) in the case of an unaccompanied minor, of the role and responsibilities of the representative and of the procedure to file complaints against a representative in confidence and safety and in full respect of the child's right to be heard in this respect~~;~~

(l) where applicable, of the relocation procedure set out in Articles 57 and 58.

2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common information material drawn up in clear and plain language pursuant to paragraph 3 for that purpose.

Where necessary for the applicant's proper understanding, the information shall also be supplied orally, where appropriate in connection with the personal interview as referred to in Article 12.

Where the applicant is an unaccompanied minor, the information shall be supplied in a child-friendly manner, taking into account in particular the age and maturity of that minor.

3. The Asylum Agency shall, in close cooperation with the responsible national **authorities** ~~**agencies**~~, draw up common information material, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1. That common information material shall also include information regarding the application of Regulation (EU) XXX/XXX [*Eurodac Regulation*] and, in particular, the purpose for which the data of an applicant may be processed within Eurodac. The common information material shall be drawn up in such a manner as to enable Member States to complete it with additional Member State-specific information.

Comment:
*In **point (g),** the reference to review considerably extends the scope of the provision to the administrative stage, where no free legal assistance is granted (at least not in Italy). The specification concerning domestic legislation is deemed necessary.*
*As to **point (ga)**, a scrutiny reservation is raised due to its linkage with the issue of the length of responsibility, still to be discussed in depth.*
*As to deleted **point (l),** there is no reason either to exclude information on relocation or to move it elsewhere, given that this article is wide and encompasses many pieces of information. Therefore, the reinstatement of point l is supported.*

Article 12

Personal interview

1. In order to facilitate the process of determining the Member State responsible, the determining Member State **referred to in Article 28(1)** shall conduct a personal interview with the applicant **for the purpose of application of Article 29**. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article 11.

2. The personal interview may be omitted where:

   (a) the applicant has absconded;

   (b) the applicant has not attended the personal interview and has not provided justified reasons for his or her absence;

   (c) after having received the information referred to in Article 11, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible within the period referred to in Article 29(1).

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

4. The personal interview shall be conducted in a language that the applicant understands or **may** ~~**is**~~ reasonably **be expected** ~~**supposed**~~ to understand and in which he or she is able to communicate. Interviews of ~~**unaccompanied**~~ minors shall be conducted in a child-friendly manner, by staff who are appropriately trained ~~**and qualified**~~ under national law**, taking into account in particular the age and maturity of the minor,** in the presence of the representative and, where applicable, the minor's legal advisor~~**, taking into account in particular the age and maturity of the minor**~~. Where necessary, Member States shall have recourse to an interpreter **or a cultural mediator where requested by the national legislation**~~**, and where appropriate a cultural mediator, who is able to ensure appropriate communication between the applicant and the person conducting the personal interview**~~. 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.**

5. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law. Applicants who are identified as being in need of special procedural guarantees pursuant to Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], shall be provided with adequate support in order to create the conditions necessary for effectively presenting all elements allowing for the determination of the Member State responsible.

6. The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview.

The summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.

Comment:

The wording on maturity should be moved above, like proposed in red in the text, in order to be linked to the way of conducting an interview. Otherwise the provision may be interpreted as if the legal representative is not necessary where a minor is mature.

*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 legislation for minors. Therefore, in **para. 4**, we insist on making the alternative recourse to cultural mediators possible, according to domestic legislation.*

Article 13

Guarantees for minors

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.

2. Each Member State where an unaccompanied minor is present shall ensure that he or she is represented and assisted by a representative with respect to the relevant procedures provided for in this Regulation. The representative shall have the qualifications, training and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such representative shall have access to the content of the relevant documents in the applicant's file including the specific information material for unaccompanied minors.

   Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out its duties in respect of the minor. The first subparagraph shall apply to that person.

   The representative provided for in the first subparagraph may be the same person or organisation as provided for in Article 22 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].

3. The representative of an unaccompanied minor shall **represent and assist the minor** ~~**be involved**~~ **in front of the authority competent for the determination of** ~~the process of establishing~~ the Member State responsible under this Regulation. The representative shall assist

the unaccompanied minor to provide information relevant to the assessment of his or her best interests in accordance with paragraph 4, including the exercise of the right to be heard, and shall support his or her engagement with other actors, such as family tracing organisations, where appropriate for that purpose.

4. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development, taking into particular consideration the minor's background;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of any form of violence and exploitation, including trafficking in human beings;

(d) the views of the minor, in accordance with his or her age and maturity;

(e) ~~where the applicant is an unaccompanied minor~~, the information provided by the representative **of the unaccompanied minor** in the Member State where ~~the unaccompanied minor~~ **he or she** is present.

5. ~~Before transferring an unaccompanied minor **to the Member State responsible or, where applicable, to the Member State of relocation**, the transferring Member State shall **notify** make sure that the Member State responsible or the Member State of relocation**, which shall confirm that all appropriate** takes the measures referred to in Articles 14 and 23 of Directive XXX/XXX/EU [Reception Conditions Directive] and Article 22 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] **will be taken** without delay.~~ Any decision to transfer an unaccompanied minor shall be preceded by an assessment of his/her best interests~~.~~**, which shall be done without delay by the staff of the competent authority assisted by the representative referred to in para. 2.** The assessment shall be based on the **relevant** factors listed in paragraph 4 and the conclusions of the assessment **substantiating the best interest** ~~on these factors~~ shall be ~~clearly~~ stated in the transfer decision. ~~The assessment shall be done **without delay** swiftly by **appropriately trained** staff with the qualifications and expertise to ensure that the best interests of the minor are taken into consideration.~~

6. For the purpose of applying Article 15, the Member State where the unaccompanied minor's application for international protection was **first** registered shall, as soon as possible, take appropriate action to identify the family members or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

To that end, that Member State may call for the assistance of international or other relevant organisations, and may facilitate the minor's access to the tracing services of such organisations.

The staff of the competent authorities referred to in Article 41 who deal with requests concerning unaccompanied minors shall **receive** ~~**have received, and shall continue to receive,**~~ appropriate training concerning the specific needs of minors **relevant for the application of this Regulation.**

7. With a view to facilitating the appropriate action to identify the family members or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph 6, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Comment:
Para. 3: IT supports the PCY amendment. At any rate, an additional text is suggested in order to face concerns of some MS on a possible misinterpretation of the role of the representative in the process of determination of the MS responsible.

Para. 5: MS are supposed to implement UE standards when granting reception and access to asylum procedure. Therefore deletion of the first part of the paragraph is proposed.
Alternatively, the following wording is proposed:
"Before transferring an unaccompanied minor, where all appropriate measures referred to in Articles 14 and 23 of Directive XXX/XXX/EU *[Reception Conditions Directive]* and Article 22 of the Regulation (EU) XXX/XXX *[Asylum Procedure Regulation]* are not already in place, the MS responsible or the MS of relocation notifies the transferring MS that those measures will be taken without delay."

In the second part of para. 5, the appointment of a representative and his/her assistance, pursuant to para. 3, is a sufficient guarantee for minors. The provision, as it stands, entails administrative burdens to provide staff with appropriate training, which the assistance of a representative would make unnecessary. Accordingly, an alternative wording is proposed in the text.
The additional wording ("substantiating the best interest") is meant to clarify that the conclusions don't deal with each factor but concur altogether to determine the BIC.

CHAPTER II
CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Article 14
Hierarchy of criteria

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.

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.

Comment:
The request to reinstate para. 3 of the current article 7 is dropped in consideration of the wording of Article 17 and consistently with the additional text proposed in Article 24.1.

Article 15
Unaccompanied minors

1. Where the applicant is an unaccompanied minor, only the criteria set out in this Article shall apply, in the order in which they are set out in paragraphs 2 to 5 **and depending on the individual assessment of the best interest of the minor.**

2. The Member State responsible shall be that where a family member of the unaccompanied minor is legally present~~, unless it is demonstrated that it is not in the best interests of the minor.~~ Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present **~~unless it is demonstrated that it is not in the best interest of the minor.~~**

3. Where the applicant has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible~~, unless it is demonstrated that it is not in the best interests of the minor.~~

4. Where family members or relatives as referred to in paragraphs 2 and 3, are staying in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.

5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be that where the unaccompanied minor~~'s~~ **is present after having lodged asylum** application**s** for international protection **in more than one Member State or regardless Eurodac hits in other Member States** ~~was first registered~~, ~~unless it is demonstrated that this is not in the best interests of the minor.~~

6. The Commission is empowered to adopt delegated acts in accordance with Article 68 concerning:
(a) the identification of family members or relatives of unaccompanied minors;
(b) the criteria for establishing the existence of proven family links;
(c) the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor are staying in more than one Member State.

In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 13(4).

7. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Comment:
The wording "unless it is demonstrated that it is not in the best interests of the minor" may be moved in the chapeau (para. 1) instead of being repeated in all paragraphs.
Secondly, IT suggests to drop the negative form ("unless…it is not") and provide for the application of the criteria set out in para. 2 to 5 on the basis of the (positive) assessment of the BIC.

In para. 5, as previously argued, the amendment is in conformity with the CoJ judgment C-648/11 of 6 June 2013. As is well known, the judgment provides interpretation of Article 6 of the Regulation 343/03 (Dublin II) but the underlying grounds are still to be considered worthwhile in so far as they aim at avoiding, as a rule, unnecessary transfers of UAMs from one MS to another.

No comments on Articles 16 and 17

Article 18

Family procedure

1. Where **applications for international protection made by** several family members ~~**make submit** applications for international protection~~ **are registered** in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined as follows:

   (a) responsibility for examining the applications for international protection of all the family members shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;

   (b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

2. Where the applicant has family members as referred to in Articles 16 and 17 in more than one Member State, the Member State responsible shall be determined as follows:

(a) responsibility shall lie with the Member State responsible for the family member referred to in Article 2(g), points (i) to (iv);

(b) failing this, responsibility shall lie with the Member State which is responsible for the sibling to which the applicant states that he/she has the strongest ties and who expresses his/her desire in writing.

Comment:

The amendment proposed in para. 1 is consistent with the provision of registration as the stage triggering off the determination process.

In para. 2, the additional text is a suggestion aimed at making the applicant's statement on strongest ties more credible. A similar wording is foreseen in Article 16.

Article 19

Issue of residence documents or visas

1. Where the applicant is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.

2. Where the applicant is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009. In such a case, the represented Member State shall be responsible for examining the application for international protection.

3. Where the applicant is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:

(a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;

(b) where the various visas are of the same type the Member State which issued the visa having the latest expiry date;

(c) where the visas are of different types, the Member State which issued the visa having the longest period of validity or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.

4. Where the applicant is in possession of one or more residence documents or one or more visas **whose validity has ceased** ~~**which expired**~~ less than **one year** ~~three years~~ before the application was registered, paragraphs 1, 2 and 3 shall apply.

5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the Member State issuing the residence document or visa shall not be responsible if it can establish that fraud was committed after the document or visa was issued.

Comment:
Italy supports the current time limits. Where a uniform time span is to be introduced, one year is a reasonable alternative as a component of the overall balance.

No comments on Article 20

Article 21
Entry

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [Eurodac Regulation], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the first Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than ~~3 years~~ **1 year** after the date on which that border crossing took place.

2. ~~The rule set out in paragraph 1 shall also apply where the applicant was disembarked on the territory following a search and rescue operation.~~

3. Paragraph~~s~~ 1 ~~and 2~~ shall not apply if it can be established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [Eurodac Regulation], that the applicant was relocated pursuant to Article 57 of this Regulation to another Member State after having crossed the border. In that case, that other Member State shall be responsible for examining the application for international protection.

Comment:
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 system absconding to evade registration is quite unlikely. Therefore, there is no reason to extend the time span from 1 to 3 years. This is a component of the balance between responsibility and solidarity.

Para. 2 is deemed in conflict with the international obligation to save life at sea. Stricto sensu, *those persons who are rescued at sea and landed in a frontline MS are not illegal crossers. Therefore, the rule in para. 1 should not be applied to them as well.*
This paragraph is accordingly deleted.

Article 22
Visa waived entry

If a third-country national or a stateless person enters into the territory of the Member States through a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection. That responsibility shall cease if the application is registered more than ~~three~~ **one** year~~s~~ after the date on which the person entered the territory.

Comment:
The amended time limit is consistent with similar amendment proposed in Article 19.

No comment on Article 23

CHAPTER III
DEPENDENT PERSONS AND DISCRETIONARY CLAUSES

Article 24
Dependent persons

1. Where, on account of pregnancy, having a new-born child, serious illness, severe disability, severe **psychological** trauma or old age, an applicant is dependent on the assistance of his or her **family members** ~~child or parent~~ legally resident in one of the Member States, or his or her **family member** ~~child or parent~~ legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that **family members** ~~child or parent~~, provided that family ties existed before the applicant arrived on the territory of the Member States, that the **family member** ~~child or parent~~ or the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing.

   Where there are indications that a **family member** ~~child or parent~~ is legally resident on the territory of the Member State where the dependent person is present, that Member State shall verify whether the **family members** ~~child or parent~~ can take care of the dependent person, before making a take charge request pursuant to Article 29.

   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. A reply refusing the request shall state the reasons on which the refusal is based.

2. Where the **family member** ~~child or parent~~ referred to in paragraph 1 is legally resident in a Member State other than the one where the applicant is present, the Member State responsible shall be the one where the **family member** ~~child or parent~~ is legally resident unless the applicant's health prevents him or her from travelling to that Member State for a significant period of time. In such a case, the Member State responsible shall be the one where the applicant is present. Such Member State shall not be subject to the obligation to bring the **family members** ~~child or parent~~ of the applicant to its territory.

3. The Commission is empowered to adopt delegated acts in accordance with Article 68 concerning:

(a) the elements to be taken into account in order to assess the dependency link;

(b) the criteria for establishing the existence of proven family links;

(c) the criteria for assessing the capacity of the person concerned to take care of the dependent person;

(d) the elements to be taken into account in order to assess the inability to travel for a significant period of time.

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Comment:

The mere reference to child and parent may be misleading. In order to ease the concrete application of this provision the words "child or parent" are replaced by "family member(s)".

The rationale of the additional subparagraph in para. 1 is connected to the experience made over time by Italy of unjustified refusals by requested MS to, by contrast, well documented requests. The last sentence of the additional text is the same as in Article 25.2.

Article 25
Discretionary clauses

1. By way of derogation from Article 8(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.

2. The Member State in which an application for international protection is registered and which is carrying out the process of determining the Member State responsible, or the Member State responsible, may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations, even where that other Member State is not responsible under the criteria laid down in Articles 15 to 18 and 24. The persons concerned shall express their consent in writing.

The take charge request shall contain all the material in the possession of the requesting Member State necessary to allow the requested Member State to assess the situation.

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.

Comment:
The suggested presumption in the last subparagraph of para. 2 is justified by the obligation set in the provision ("The requested MS…shall reply…within two months").
The compliance with the time limit is especially relevant on account of humanitarian grounds.

CHAPTER IV
OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

Article 26
Obligations of the Member State responsible

1. The Member State responsible under this Regulation shall be obliged to:

(a) take charge, under the conditions laid down in Articles 29, 30 and 35, of an applicant whose application was registered in a different Member State;

(b) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, an applicant, **including the situations referred to in Article 28(4) and (5),** or a third-country national or a stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation];

(c) ~~take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a beneficiary of international protection in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation];~~

~~(d) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a resettled or admitted person who has made an application for international protection or~~

~~who is irregularly staying in a Member State other than the Member State which accepted to admit him or her in accordance with Regulation (EU) XXX/XXX [Union Resettlement Framework Regulation] or which granted international protection or humanitarian status under a national resettlement scheme.~~

2. For the purposes of this Regulation, the situation of a minor who is accompanying the applicant and meets the definition of family member shall be indissociable from that of his or her family member and the minor shall be taken charge of or taken back by the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, unless it is demonstrated that this is not in the best interests of the child. The same principle shall be applied to children born after the applicant arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

3. In the situations referred to in paragraph 1, points (a) and (b), **~~the Member State responsible shall examine or complete the examination of the application for international protection pursuant to~~** Regulation (EU) XXX/XXX [Asylum Procedure Regulation] **shall apply**.

Comment:
Italy keeps its reservation on the point 1(b) with regard to the notification system introduced in article 31 for take back. A request should be submitted for both cases (take charge and take back).

Points (c) and (d) have been deleted since beneficiaries (including resettled and admitted persons) are out of the scope of this Regulation. Actually, the responsibility has already been determined in relation to these categories.

Article 27
Cessation of responsibilities

1. Where a Member State issues a residence document to the applicant, decides to apply Article 25, or does not transfer the person concerned to the Member State responsible within the time limits set out in Article 35, that Member State shall become the Member State responsible and

the obligations laid down in Article 26 shall be transferred to that Member State. Where applicable, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of **or take back** the applicant ~~or has received a take back notification~~, using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

The first subparagraph shall not apply if the person has already been granted international protection by the responsible Member State.
The Member State which becomes responsible pursuant to the first subparagraph of this Article shall indicate that it has become the Member State responsible pursuant to Article 11(3) of Regulation (EU) XXX/XXX [Eurodac Regulation].

2. The obligation laid down in Article 26(1), point (b), of this Regulation to take back a third-country national or a stateless person shall cease where it can be established, on the basis of the update of the data set referred to in Article 11(2)(c) of Regulation (EU) XXX/XXX [Eurodac Regulation], that the person concerned has left the territory of the Member States, on either a compulsory or a voluntary basis, in compliance with a return decision or removal order issued following the withdrawal or rejection of the application, **or voluntarily on the basis of a personal decision.**

An application registered after **the EU territory has been effectively left** ~~an effective removal has taken place~~ shall be regarded as a new application for the purpose of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.

Comment:
The amendment to para. 1 is consistent with the Italian position with regard to the notification system introduced in article 31 for take back. A request should be submitted for both cases of take charge and take back.

The suggested wording in para. 2 is meant to clearly encompass, beside the cases of compulsory and voluntary returns, also the choice of voluntarily leaving the territory of Member States before a decision whatsoever is taken on an application.
Through the Entry/Exit System the circumstance of effectively leaving the EU territory will be easily recorded.

Furthermore, in order for this provision to be exhaustive, cessation/shift of responsibility concerning relocation and return sponsorship should be added.

LUXEMBOURG

- **Article 2**:
  - (g) We welcome the added text on married minors.
  - (p) The new definition of absconding goes into the right direction. However, we would like to join those delegations who expressed doubts about the use of an example ("such as …") in a definition, as it risks to hamper uniform interpretation. Moreover, we would like to inform you that our legal department, in light of the Jawo judgement (C-163/17), started to include the refusal to perform a Covid-19 test in order to carry out a Dublin transfer as a ground for applying article 29(2) of the current Dublin regulation. If an applicant who has been properly informed about the time, the place and the reason of the Covid-19 test, is not present for the test, or deliberately refuses to perform the test, we consider this as deliberately evading the reach of the national authorities responsible for carrying out his transfer, in order to prevent the transfer. We have yet to see the national administrative tribunal's reaction to this interpretation. It would be interesting for us to know if other Member States have the same interpretation of the Jawo judgement regarding the refusal to perform a Covid-19 test. If so, this could also be reflected in article 2(p) and article 35(2).

- **Article 9**: In our opinion, it is very important to have an article which clearly states the obligations of the applicant, therefore we would like to go back to the original title of this article. Moreover, the same article should not list obligations of two separate entities (applicants and Member States), so we would suggest to split the article or to include the reference to registering elsewhere in the text.

- **Article 12(4)**: We welcome the changes in this paragraph.

- **Article 13(3)**: We welcome the deletion of "be involved", but the text needs to be adapted further, as it still could be interpreted as if the representative of the minor plays an active role in establishing the Member State responsible. We would therefore suggest to delete the term "represent".

- **Article 20**: Luxembourg remains sceptical about the practical implementation, but also the added value of this new criteria. Without the cooperation of the applicant, this criteria will be impossible to substantiate for the authorities.

Article 27(2): We welcome the addition of voluntary return.

THE NETHERLANDS

General comments:

- In the following comments, we react to the changes proposed by the Presidency. For some articles, we reiterate our previously sent in comments that were not taken over by the Presidency, but that we feel are particularly important. We uphold our previously sent in written comments and reservations for the articles that are not listed below. We do not oppose the changes made in the amended text in the articles listed below, if we do not comment on them.

PART I

SCOPE AND DEFINITIONS

Article 1

Aim and subject matter

Comment:

We do not support the change in text, since we are opposed to a separate solidarity mechanism for SAR operations. We believe with a well functioning and predictable mechanism in place for dealing with situations of migratory pressure an additional mechanism is not necessary.

In accordance with the principle of solidarity and fair sharing of responsibility, and with the

objective of reinforcing mutual trust, this Regulation:

(a) sets out a common framework for the management of asylum and migration in the Union;

(b) establishes **a** mechanism for solidarity;

(c) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.

Article 2

Definitions

(…)

(g) 'family members' (…)

Comment:

- We reiterate our reservation regarding the definition of family members. We oppose the widening of the definition to brothers and sisters for several reasons. It will be very difficult to establish the stated relationship between alleged siblings in practice, in particular because the persons concerned will stay in different Member States and mostly be undocumented. This brings a serious risk of misuse.

- Regarding the new paragraph, we propose to delete the first part of the sentence, to make the procedure more effective in practice.

~~On the basis of an individual assessment, a~~ A minor shall be considered unmarried if his or her marriage would not be in accordance with the relevant national law had it been contracted in the Member State concerned, in particular having regard to the legal age of marriage.

(…)

(p) ‘absconding’

Comment:

This amended definition is a step in right direction, however ‘failure to notify’ is a vague term. Also we would like to retain the example of leaving the territory of the Member State, as this illustrates that crossing Member State boundaries is absconding. We therefore suggest the following wording (in line with the written comments we sent in earlier):

“absconding’ means the action by which **a person concerned** does not **comply with the transfer decision or does not** remain available to the competent administrative or judicial authorities **for reasons which are not beyond the person’s control**, such as **by leaving the territory of the Member State, or failure to notify absence from a particular accommodation centre or assigned area or residence, where so required by a Member State.**

(…)

CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE
CHAPTER I
GENERAL PRINCIPLES AND SAFEGUARDS
Article 8

Access to the procedure for examining an application for international protection

Proposed changes by Presidency:

4. If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] has not been carried out **pursuant to that Regulation**, the first Member State in which the application for international protection was registered shall examine whether there are reasonable grounds to consider the applicant a danger to national security or public order of **the** ~~**that**~~ Member State**s** as soon as possible after the registration of the application, before applying the

criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III.

If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] has been carried out, but the first Member State in which the application for international protection was registered has justified reasons to examine whether there are reasonable grounds to consider the applicant a danger to national security or public order of **the** ~~**that**~~ Member State**s**, that Member State shall carry out the examination as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III.

Where the security check carried out in accordance with Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] or in accordance with the first and second subparagraphs of this paragraph shows that there are reasonable grounds to consider the applicant a danger to national security or public order of **a** ~~**the**~~ Member State**, the Member State** carrying out the security check~~**, that Member State**~~ shall be the Member State responsible**, and Article 29 shall not apply**.

Comment:

We do not agree with this wording since it seems to imply that the security check has to be done for ALL Member States, which is time-consuming and undesirable. Also, in order to do this we need clarity on an EU-wide definition of danger to public order. We therefore suggest to retain the original wording:

"(…) shall examine whether there are reasonable grounds to consider the applicant a danger to national security or public order of **that** Member State (…)

has justified reasons to examine whether there are reasonable grounds to consider the applicant a danger to national security or public order of **that** Member State**, (…)**

(…) that there are reasonable grounds to consider the applicant a danger to national security or public order of **the** Member State carrying out the security check**, that Member State** shall be the Member State responsible**, and Article 29 shall not apply**.

Article 9

*Obligations **regarding applications** **~~of the applicant~~***

Comment regarding title:

Obligations regarding applications does not fully align with the substance of the article. We suggest to shorten the title to "obligations" or "compliance".

Proposed changes by Presidency:

(…)

Where a third-country national or stateless person who intends to make an application for international protection is in possession of a residence permit or visa **whose validity has ceased** **~~which has expired~~**, the application shall be made and registered in the Member State where he or she is present.

Comment regarding par. 2:

During the Working Group, the presidency explained that this proposal will be further amended, to clarify what is meant. We support the proposed clarification:

Where a third-country national or stateless person who intends to make an application for international protection is in possession of a residence permit or visa **which has expired, has been withdrawn or has been revoked.**

Comment regarding par. 4 and 5

We suggest to specify the text in these paragraphs further, because not everyone involved in a transfer procedure is an applicant:

4. The applicant, **third country national or stateless person** shall be required to be present in:

(…)

5. Where a transfer decision is notified to the applicant**, third country national or stateless person**, in accordance with Article 32(2) and Article 57(8), (…)

Article 11

Right to information

(…)

Comment regarding par. 1

- We reiterate the written comment we sent in earlier regarding the registration in a Member State. We would like to state explicitly that registration needs to take place in Eurodac.

1. As soon as **a person is registered in Eurodac for the purposes of Article 10, or Article 13 or Article 14bis Regulation (EU)XXX/XXX [Eurodac regulation]** ~~**possible and at the latest when an application for international protection is registered in by**~~ a Member State, its competent authorities shall inform the **person concerned** ~~**applicant**~~ of the application of this Regulation (…)

Comment regarding par. 1(l)

- In the asylum working group it was explained by the Presidency that this was deleted because it was a reference to part IV of the Regulation. We do not see why it is necessary to delete this text and propose to keep the previous text.

(l) where applicable, of the relocation procedure set out in Articles 57 and 58.

Comment regarding par. 3

We suggest to specify the text in these paragraphs further, because not everyone involved in

a transfer procedure is an applicant:

3. (…) That common information material shall also include information regarding the application of Regulation (EU) XXX/XXX [*Eurodac Regulation*] and, in particular, the purpose for which the data of an applicant, **third country national or stateless person** may be processed within Eurodac.

Article 12

Personal interview

Text proposed by Presidency:

(…)

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

Comment regarding par. 3

As stated in the Asylum Working Party meeting, we propose to amend the text as follows:

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~~.

4. …. Interviews of ~~**unaccompanied**~~ minors shall be conducted in a child-friendly manner, by staff who are appropriately trained ~~**and qualified**~~ under national law, in the presence of the representative and, where applicable, the minor's legal advisor**, taking into account in particular the age and maturity of the minor**.

Comment regarding par. 4

In the Netherlands accompanied minors are included in their parents' procedure and are, in principle, not heard separately. To clarify that the text does not introduce an obligation to hear all minors (as was clarified during the Working Group), we oppose the deletion of 'unaccompanied' and propose the following text:

4. …. Interviews of **unaccompanied** minors, **and where applicable accompanied minors**, shall be conducted in a child-friendly manner, by staff who are appropriately trained ~~**and qualified**~~ under national law, in the presence of the representative and, where applicable, the minor's legal advisor**, taking into account in particular the age and maturity of the minor**.

Article 13

Guarantees for minors

Text proposed by Presidency:

(…)

3. The representative of an unaccompanied minor shall **represent and assist the minor** ~~**be involved**~~ in the process of establishing the Member State responsible under this Regulation. The representative shall assist the unaccompanied minor to provide information relevant to the assessment of his or her best interests in accordance with paragraph 4, including the exercise of the right to be heard, and shall support his or her engagement with other actors, such as family tracing organisations, where appropriate for that purpose.

Comment regarding par. 3:

We feel that this wording still suggests that the representative has a say in the process of defining the responsible Member State. To make clear that this is not the case we suggest the following text:

3. **In the process of establishing the Member State responsible under this Regulation an unaccompanied minor shall have a representative.**

4. In assessing the best interests of the child, Member States shall closely cooperate (…)

Comment regarding par. 4

The assessment of the best interest of the child, will most often be done in practice in the case of unaccompanied minors. To clarify this, we oppose the deletion of 'unaccompanied' and we propose the following text:

4. In assessing the best interests of the (**unaccompanied)** child, Member States shall closely cooperate (…)

5. Before transferring an unaccompanied minor ~~**to the Member State responsible or, where applicable, to the Member State of relocation**~~, the transferring Member State shall **notify** ~~**make sure that**~~ the Member State responsible or the Member State of relocation**, which shall confirm that all appropriate** ~~**takes the**~~ measures referred to in Articles 14 and 23 of Directive XXX/XXX/EU [*Reception Conditions Directive*] and Article 22 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] **will be taken** without delay. (…)

Comment regarding par. 5

If the Member State responsible or the Member State of relocation has to confirm that all appropriate measures are taken, this creates an extra obligation (namely, to send a confirmation) for that Member State. Transfers are based on the principle of mutual trust, so we do not feel it is needed to create such an obligation. For that part of the sentence, we therefore suggest the following text:

5. Before transferring an unaccompanied minor ~~**to the Member State responsible or, where applicable, to the Member State of relocation**~~, the transferring Member State shall **notify** ~~**make sure that**~~ the Member State responsible or the Member State of relocation**, which shall take the** measures referred to in Articles 14 and 23 of Directive XXX/XXX/EU [*Reception Conditions Directive*] and Article 22 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] ~~**will be taken**~~ without delay. …

Article 15

Unaccompanied minors

Text proposed by the Presidency:

2. The Member State responsible shall be that where a family member of the unaccompanied minor is legally present unless it is demonstrated that it is not in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present**, unless it is demonstrated that it is not in the best interests of the minor**.

3. Where the applicant has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, unless it is demonstrated that it is not in the best interests of the minor.

Comment regarding par. 2 and 3:

In our opinion the Member State responsible should also be the one where a family member's application is being processed. We suggest the following text (also sent in as written comments earlier):

2. The Member State responsible shall be that where a family member of the unaccompanied minor is legally present **or that which is responsible for the application of a family member,** unless it is demonstrated that it is not in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present**, unless it is demonstrated that it is not in the best interests of the minor**.

3. Where the applicant has a relative who is legally present in **or who will be transferred to** another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, unless it is demonstrated that it is not in the best interests of the minor.

Article 18

Family procedure

Text proposed by the Presidency:

(…)

2. **Where the applicant has family members as referred to in Articles 16 and 17 in more than one Member State, the Member State responsible shall be determined as follows:**

(a) responsibility shall lie with the Member State responsible for the family member referred to in Article 2(g), points (i) to (iv);

(b) failing this, responsibility shall lie with the Member State which is responsible for the sibling to which the applicant states that he/she has the strongest ties.

Comment regarding par. 2

As already mentioned with regards to article 2, the Netherlands opposes a widening of the definition of family members to siblings. We have a scrutiny reservation on this proposal.

Article 19

Issue of residence documents or visas

Text proposed by the Presidency:

(…)

4. Where the applicant is in possession of one or more residence documents or one or more visas **whose validity has ceased** ~~**which expired**~~ less than three years before the application was registered, paragraphs 1, 2 and 3 shall apply.

Comment regarding par. 4

As mentioned above with regards to article 9, we do not agree with the proposed wording,

but we welcome the wording suggested by the Presidency during the Asylum Working Party meeting:

4. Where the applicant is in possession of one or more residence documents or one or more visas **which expired, was revoked or withdrawn** ~~**which expired**~~ less than three years before the application was registered, paragraphs 1, 2 and 3 shall apply.

Comment regarding adding a paragraph 4a

Also, in the written comments we sent in earlier, we suggested to add a paragraph 4a. We reiterate this suggestion. We would like to add that the fact that a visa, which enabled the applicant to travel to the territory of a Member State, is annulled or revoked in accordance with Article 34 of Regulation (EC) No 810/2009 shall not prevent responsibility being allocated to the Member State which issued it.

4a. The fact that a visa, which enabled the applicant to travel to the territory of a Member State, is annulled or revoked in accordance with Article 34 of Regulation (EC) No 810/2009 shall not prevent responsibility being allocated to the Member State which issued it.

CHAPTER III

DEPENDENT PERSONS AND DISCRETIONARY CLAUSES

Article 24

Dependent persons

Comment regarding par 1.

We suggest adding ‘fully’ as an adjective to ‘dependent’ for clarification purposes.

1. Where, on account of pregnancy, having a new-born child, serious illness, severe disability, severe **psychological** trauma or old age, an applicant is **fully** dependent on the assistance of his or her child or parent legally resident in one of the Member States, or his or her child or parent legally resident in one of the Member States is dependent on the assistance of the applicant, (…)

Article 26

Obligations of the Member State responsible

Comment regarding par. 1(b):

As mentioned in the Working Group, we feel it is important to list in this article all the relevant legal bases for a claim pursuant to the AMMR. A correct Eurodac registration is a necessary condition for the proper functioning of the procedure as set out in the AMMR. All the reasons to indicate a Member State as the Member State responsible should therefore be listed. We therefore suggest the following text:

(…)

(b) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, an applicant**, including the situations referred to in Article 28(4) and (5),** or a third-country national or a stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1), **11(3), 19(1), 19(4) or 19(6)** of Regulation (EU) XXX/XXX [*Eurodac Regulation*];

2. For the purposes of this Regulation, the situation of a minor who is accompanying the applicant and meets the definition of family member shall be indissociable from that of his or her family member and the minor shall be taken charge of or taken back by the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, unless it is demonstrated that this is not in the best interests of the child. The same principle shall be applied to children born after the applicant arrives

on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

Comment regarding par. 2

We propose to move this paragraph to article 28 of the AMMR.

Article 27

Cessation of responsibilities

Comment regarding par. 1

A correct Eurodac registration is a necessary condition for the proper functioning of the procedure as set out in the AMMR. We feel it is important to explicitly list all the reasons that could lead up to a cessation of responsibilities, in particular since the Eurodac regulation cross-references to this article. The list as it is currently proposed in the text is not complete. We therefore suggest the following text:

1. Where a Member State issues a residence document to the applicant, **does not transfer the person concerned pursuant to Article 8(3), must apply article 24,** decides to apply Article 25, or does not transfer the person concerned to the Member State responsible within the time limits set out in Article 35, that Member State shall become the Member State responsible and the obligations laid down in Article 26 **and 28(4)** shall be transferred to that Member State.

(…)

POLAND

Article 2 –

As we raised before PL sees the need to assure consistency on definitions within the whole CEAS package. We understand explanation of the EC on some specificity of each instrument and the differences that sometimes result from it but the consequences of such approach, including the issue of clarity, should be always taken into account.

> (c) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a decision has not been taken, or has been taken and is either subject to or can still be subject to a remedy in the Member State concerned, irrespective of whether **that person** ~~**the applicant**~~ has a right to remain or is allowed to remain in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], including a person who has been granted immediate protection pursuant to Regulation (EU) XXX/XXX [*Regulation addressing situations of crisis and force majeure in the field of asylum and migration*];

PL reiterates the scrutiny reservation due to the fact that mentioned definition is different than the wording under the APR proposal[1].

> (g) 'family members' means, insofar as the family already existed before the applicant or the family member arrived on the territory of the Member States, the following members of the applicant's family who are present on the territory of the Member States:
>
> (i) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,

[1] According to APR proposal (doc. 9870/21 15.04.2021) –
([…]j) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been **[…] taken**;

(ii) the minor children of couples referred to in the first indent or of the applicant or *of the spouse of the applicant*, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

(iii) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,

(iv) where the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present,

(v)sibling or siblings of the applicant;

On the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage would not be in accordance with the relevant national law had it been contracted in the Member State concerned, in particular having regard to the legal age of marriage.

PL reiterates its position presented before. We raise the scrutiny reservation, we are not opposing to extend the definition of family members and include siblings (v), although we should keep in mind possible difficulties in defining the kinship as well as fully explore consequences of possible multi-level/ cascading of family reunification process. The issue of the weighting of family ties remains unclear.

Moreover, PL is for changing subparagraph (ii) and implementing also the minor child/children of the spouse of the applicantr his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals. The proposed change is marked in yellow.

(h) 'relative' means the applicant's adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;

Concerning "aunt" and "uncle" in para (h): who should be considerate as aunt or uncle? Just the sibling of the parent or also other persons like the spouses of parents' siblings, cousins etc.?

(n) 'diploma or qualification' means a diploma or qualification which is obtained **in a Member State** after at least a ~~**three months**~~**'** period of **one year of** study **on the territory of that Member State** in a recognised, state or regional programme of education or vocational training at least equivalent to level 2 of the International Standard Classification

of Education, operated by an education establishment in accordance with national law or administrative practice of the Member States;

PL reiterates its position presented before. We raise the scrutiny reservation (in conjunction with art. 20).

(o) 'education establishment' means ~~**any type of**~~ public or private education or vocational training establishment established in a Member State and recognised by that Member State ~~**or considered as such**~~ in accordance with national law or whose courses of study or training are recognised in accordance with national law or administrative practice;

PL reiterates its position presented before. We raise the scrutiny reservation (in conjunction with art. 20).

(p) 'absconding' means the action by which **a person concerned** ~~**an applicant**~~ does not remain available to the competent administrative or judicial authorities, such as **failure to notify absence from a particular accommodation centre, or assigned area or residence, where so required by a Member State** ~~**by leaving the territory of the Member State without authorization from the competent authorities for reasons which are not beyond the applicant's control;**~~

PL is in favour of implementing to the definition of 'absconding' the fact of leaving the territory of the Member State by an applicant. Therefore we suggest the new wording:
"absconding" means the action by which a person concerned does not remain available to the competent administrative or judicial authorities, such as a failure to notify absence from a particular accomodation centre, or assigned area or residence, where so required by a Member State, **or leaving the territory of the Member State.**

Article 9 –

Obligations regarding applications ~~***of the applicant***~~

While para 1 and 2 regard the application itself, para 3-5 regard to the obligations of the applicant. Therefore PL suggests the change of *chapeau* into: ***Obligations regarding applications and applicants***

In art. **9(2)** there should be the word „*which*" instead of "*whose*".

Article 9.3 –

Obligations <u>regarding applications</u> ~~of the applicant~~

The applicant shall fully cooperate with the competent authorities of the Member States in matters covered by this Regulation, in particular by submitting as soon as possible and at the latest during the interview referred to in Article 12, all the elements and information available to him or her relevant for determining the Member State responsible. **<u>The applicant shall submit his or her identity documents if the applicant is in possession of such documents and cooperate with the competent auhorities in collecting the biometric data in accordance with Regulation EU XXX/XXX [Eurodac Regulation].</u>** Where the applicant is not in a position at the time of the interview to submit evidence to substantiate the elements and information provided, the competent authority may set a time limit within the period referred to in Article 29(1) for submitting such evidence.

PL is positive about the proposal in para 3 that is a balanced solution and leaves room for more flexibility when it comes to providing documents by the applicant. PL believes that we shouldn't further limit rights of the applicant in this context having in mind family reunification procedures.

Article 10.1 –

Consequences of non-compliance

The applicant shall not be entitled to the reception conditions set out in Articles 15 to 17 of Directive XXX/XXX/EU [*Reception Conditions Directive*] **<u>in accordance with</u>** **~~pursuant to~~** 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*]. This shall be without prejudice to the need to ensure a standard of living in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations.

We would be grateful for clarification whether, in accordance with Art. 10.1 AMMR the Member State will be obligated to lower the reception condition referred to in Art. 15-17 of the RCD, or if a MS decides that the limitation of this condition, even to a limited extent, will not ensure living standards in accordance with the EU law, including the Charter of Fundamental Rights of the European Union, and with international obligations - can the MS continue to ensure the reception condition in accordance with Art. 15-17 of the RCD. In simple terms, does "shall not" in article 10.1 mean “cannot"?

Article 13.5 –

Guarantees for minors

> Before transferring an unaccompanied minor ~~**to the Member State responsible or, where applicable, to the Member State of relocation**~~, the transferring Member State shall **notify** ~~**make sure that**~~ the Member State responsible or the Member State of relocation**, which shall confirm that all appropriate** ~~**takes the**~~ measures referred to in Articles 14 and 23 of Directive XXX/XXX/EU [*Reception Conditions Directive*] and Article 22 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] **will be taken** without delay[2]. Any decision to transfer an unaccompanied minor shall be preceded by an assessment of his/her best interests. The assessment shall be based on the **relevant** factors listed in paragraph 4 and the conclusions of the assessment on these factors shall be clearly stated in the transfer decision. The assessment shall be done **without delay** ~~**swiftly**~~ by **appropriately trained** staff ~~**with the qualifications and expertise**~~ to ensure that the best interests of the minor are taken into consideration.

In art. 13(5) what does “*appropriately trained staff*” mean? The Polish legislation, in the asylum procedure, provides specific requirements with regard to the qualifications of staff dealing with minors. Should this be understood as appropriately strained staff under the national law?

Article 18.2.b –

Family procedure

[2] explanatory recital to be added

2. Where the applicant has family members as referred to in Articles 16 and 17 in more than one Member State, the Member State responsible shall be determined as follows:

(a)responsibility shall lie with the Member State responsible for the family member referred to in Article 2(g), points (i) to (iv);

(b) failing this, responsibility shall lie with the Member State which is responsible for the sibling to which the applicant states that he/she has the strongest ties.

In our opinion despite BE's right remark that 'the applicant's choice of the State responsible is contrary to the Dublin system', the intensity/quality of family relationships between siblings is difficult to objectively assess for MS officials, hence the EC's intention to point to such a person seems to be very rational.

Article 19 –

Issue of residence documents or visas

1. Where the applicant is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.

2. Where the applicant is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009. In such a case, the represented Member State shall be responsible for examining the application for international protection.

3. Where the applicant is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:

(a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;

(b) where the various visas are of the same type the Member State which issued the visa having the latest expiry date;

(c) where the visas are of different types, the Member State which issued the visa having the longest period of validity or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.

4. Where the applicant is in possession of one or more residence documents or one or more visas **whose validity has ceased** ~~**which expired**~~ less than three years before the application was registered, paragraphs 1, 2 and 3 shall apply.

5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the Member State issuing the residence document or visa shall not be responsible if it can establish that fraud was committed after the document or visa was issued.

PL is firmly in favor of restoring the wording according to which:

- the document/visa must actually allow the applicant to enter the territory of the MS;

- responsibility expires when the foreigner leaves the EU territory.

Reffering to art. 19 para. 4 PL is in favour of shortening the time limit from 3 years to 1 year. If we want to unify time limits in the case of visas and residence documents, it should be changed. Therefore we suport IT and RO.

Article 20 –

Diplomas or other qualifications

1. Where the applicant is in possession of a diploma or qualification issued by an education establishment established in a Member State ~~**and the application for international protection was registered after the applicant left the territory of the Member States following the completion of his or her studies**~~, the Member State in which that education establishment is established shall be responsible for examining the application for international protection**, provided that the application is registered less than five years after the diploma or qualification was issued.**

2. Where the applicant is in possession of more than one diploma or qualification issued by education establishments in different Member States, the responsibility for examining the application for international protection shall be assumed by the Member State which issued the diploma or qualification following the longest period of study or, where the periods of study are identical, by the Member State in which the most recent diploma or qualification was obtained.

PL would like to reiterate its position reported previously – we raise the scrutiny reservation. Although we understand reasoning behind such a new criterion of responsibility (to provide more balance within the Dublin system) we have doubts on practical issues as verification of provided documents or clear added value of such criterion in relation to article 19. We agree that physical presence of the applicant during studies is crucial. The minimum duration of such education should also be provided. We must be careful and not to create room for any abuse.

Moreover, the time limit of 5 years seems to be too long. We support the time limit of 3 years and other remarks raised by RO, BE and CZ.

Article 21

Entry

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [*Eurodac Regulation*], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the first Member State thus entered shall be responsible for examining the

application for international protection. That responsibility shall cease if the application is registered more than 3 years after the date on which that border crossing took place.

2. The rule set out in paragraph 1 shall also apply where the applicant was disembarked on the territory following a search and rescue operation.

3. Paragraphs 1 and 2 shall not apply if it can be established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [*Eurodac Regulation*], that the applicant was relocated pursuant to Article 57 of this Regulation to another Member State after having crossed the border. In that case, that other Member State shall be responsible for examining the application for international protection.

PL would like to reiterate its position reported previously – we are in favor of the maximum strengthening the EU external borders and linking this element with responsibility of the MS under the Dublin criteria. However, in order to achieve more balanced approach we suggest keeping the period of 1 year as it is now. In this matter we support the remarks raised by IT, MT, RO, EL, ES, HU, EL.

Article 22

Visa waived entry

If a third-country national or a stateless person enters into the territory of the Member States through a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection. That responsibility shall cease if the application is registered more than three years after the date on which the person entered the territory.

PL would like to reiterate its position reported previously. We raise substantial reservation. We are strongly for keeping current wording of art. 14 Dublin III Regulation and responsibility of that MS

where a third country national lodged asylum application in case this MS also apply the visa-free regime to the applicant. We object to the removal of para. 2 of current Dublin III Regulation.

Article 26.1c

Obligations of the Member State responsible

1. The Member State responsible under this Regulation shall be obliged to:

(c) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a beneficiary of international protection in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*];

PL would like to reiterate its position reported previously – we raise the scrutiny reservation on including beneficiaries of international protection in the Dublin system. It is an important element of the whole compromise on AMMR (including solidarity mechanism). Which instruments / procedures will have a priority: take back or readmission procedure in such a case?

Article 27

Cessation of responsibilities

1. Where a Member State issues a residence document to the applicant, decides to apply Article 25, or does not transfer the person concerned to the Member State responsible within the time limits set out in Article 35, that Member State shall become the Member State responsible and the obligations laid down in Article 26 shall be transferred to that Member State. Where applicable, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of the applicant or has received a take back notification, using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

The first subparagraph shall not apply if the person has already been granted international protection by the responsible Member State.

The Member State which becomes responsible pursuant to the first subparagraph of this Article shall indicate that it has become the Member State responsible pursuant to Article 11(3) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].

Art. 27 para. 1 – scrutiny reservation to „take back" notification. Support to IT.

2. The obligation laid down in Article 26(1), point (b), of this Regulation to take back a third-country national or a stateless person shall cease where it can be established, on the basis of the update of the data set referred to in Article 11(2)(c) of Regulation (EU) XXX/XXX [*Eurodac Regulation*], that the person concerned has left the territory of the Member States, on either a compulsory or a voluntary basis, in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.

An application registered after an effective removal **or voluntary return** has taken place shall be regarded as a new application for the purpose of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible

PL would like to thank the Presidency for taking into consideration Polish remarks with regard to art. 27 AMMR. However, we would like to request for further clarification: is voluntary return (that has nothing in common with issueing a return decision or a decision about expulsion) also covered in art. 27 para. 2? We support remarks raised by IT, MT, ES, BG.

PL would like to thank the Presidency for taking into consideration Polish remarks with regard to art. art. 12 para. 4.

ROMANIA

Part I

Article 2 letter b) and g) – We generally agree with the proposed amendment, insofar as the definition of the application for international protection will be outlined in the AMMR in the same way as in the APR. In the same time, with regard to the insertion, after point (v), of the reference to the assessment by the Member States of the validity of a marriage concluded between minors, we would like to introduce a scrutiny reservation on this new text.

Part III

We maintain a scrutiny reservation on Part III of the AMMR.

We appreciate the fact that the new compromise document has removed some of the references to solidarity (mainly present in Part IV of the proposal) from Part III, which is intended for responsibility. However, in line with our previous position, we argue that the two parts of the AMMR should be clearly separated. In this respect, we would appreciate the removal from the content of Part III of the references to Part IV that are still maintained.

Article 9 – We ask for clarifications regarding the reason behind the rewording of the title of this article, from *obligations of the applicant* to *obligations regarding applications.*

Article 9 Paragraph 2 – We support the previous wording (…*is in possession of a residence permit or visa* ***which has expired***...) to the detriment of the new wording (...*is in possession of a residence permit or visa* ***whose validity has ceased***...).

Article 9 Paragraph 4 letter c) – We reiterate the need to carry out the procedure for determining the Member State responsible on the territory of the beneficiary Member State and not later in the transferring Member State. We consider it opportune to delete letter c).

Article 10 – In the previous form, the provisions of Article 10 made the non-granting of the rights under the RCD conditional on the notification of the alien regarding his transfer to the responsible

MS. We support the new text proposed, which removes the condition for notifying the applicant of the transfer decision. In the new wording, the applicant will no longer benefit from the conditions of reception in a Member State other than that in which he or she is in order to carry out the transfer, whether or not he or she has been notified of the transfer decision.

Article 12 – Any reference to the taking charge procedure should also mention the take back procedure. We reiterate the previous position according to which we support the use of take back requests, to the detriment of take back notifications.

With regard to the Article 13 Paragraph 5 – We ask for further clarifications for what is meant by 'without delay'. Has a well-defined timeframe been envisaged within which the authorities of the transferring Member State would carry out the assessment of the best interests of the child?

With regard to the Article 17 – Our understanding is that the previous text required the cumulative fulfillment of two conditions in order to engage the responsibility of a Member State, namely that a family member of the applicant has an application for international protection lodged in another Member State and also the presence in that Member State. By comparison, we wonder whether the proposed new modifications only requires the condition that the applicant's family member should have an application for international protection lodged on the territory of a Member State, without the need for him to be present in that State?

Article 19 Paragraph 4 – We support the previous wording (...*is in possession of a residence permit or visa* ***which has expired***...) to the detriment of the new wording (...*is in possession of a residence permit or visa* ***whose validity has ceased***...).

We also maintain our previous position on the need to differentiate the expiry period between visas and residence permits. Thus, we indicate and agree (as a flexibility) that **the term of 1 year from the expiration of the visa** should be taken into account at the time of registering the application for international protection (and not the 3-year term), while **the period of 2 years from the expiration of the residence permit** should be taken into account at the time of registering the application for

international protection (and not the 3-year period). We consider that extending the period would reduce the effectiveness of the procedure for determining the Member State responsible, while examining asylum applications.

Article 20 Paragraph 1 – In order to be able to engage the responsibility of the MS that issued a diploma or other qualification, we consider it appropriate that the respective diploma or qualification be issued no later than 2 years before the application for international protection is lodged. At the same time, while maintaining our previous position, we reiterate that the applicability of this responsibility criterion should be conditional on the alien remaining on the territory of the Member States from the time of the issuance of the diploma/qualification until the application for international protection is lodged.

Article 21 Paragraph 1 – We reiterate the proposal to reduce the indicated term of cessation of responsibility from 3 years to 1 year, considering that this would lead to a faster examination of the asylum application, at the same time reducing the secondary movements and the abuse to the asylum procedure.

Article 22 – We recall the previously stated position that we would support the reduction of the indicated term of cessation of responsibility from 3 years to 1 year, for the same reasons as in Article 21 (1).

At the same time, we propose a new paragraph according to which:

'**If a third-country national or a stateless person enters the territory of the Member States through a Member State in which he is exempted from the visa, and subsequently enters and crosses other Member States in which he is exempt from the visa requirement, the Member State responsible for examining his application for protection shall be the last Member State on whose territory the applicant entered last being visa-free before the application for international protection was registered**".

Article 26 Paragraph 1 letter c) – Since the purpose of the procedure for determining the Member State responsible is to determine the responsibility for examining applications for international protection lodged by applicants for international protection, we propose to delete letter (c) as it refers to beneficiaries of international protection, thus exceeding the scope of Part III of the proposal.

Article 27 Paragraph 2 – We welcome the introduction of the reference to voluntary return. We also propose the reintroduction of a new paragraph stating that a State's responsibility ceases when the alien has left the territory of the Member States for a period of at least 6 months, with clear and unequivocal evidence in this regard, as referred to in Article 30 (4).

SLOVAKIA

First of all we would like to reiterate that we maintain on all of our previous comments and reservations we made and sent during the first reading of Part III (Dublin) of AMMR proposal.

We also would like to raise scrutiny reservation to the whole changes made in Part III of the compromise text.

Art. 18 (2) – since we do not support the addition of the siblings to the definition of the family members, we also cannot support the amendments of the Article 18. Moreover, we consider the Article 18 par. 2 as whole to be confusing, it is unclear what situations it might cover and how it shall be applied in practice also because there are no precise rules to follow.

Art. 24 (1) – We have concerns regarding the addition of a new factor into the text. The word "psychological" trauma is vague and should be specified how said psychological trauma should be demonstrated (by a psychologist or other way). There is also not clear of what level of trauma it should be. The notion "psychological trauma" is a little bit tricky and we wonder how it should be assessed in practice.

Previous comments made during first reading, which still maintain:

Art. 2 (g) - same substantial reservation as we have raised during the negotiations on the Qualification Regulation, where we are against the extension of the definition beyond the family that existed in the country of origin. We are concerned that extension of this notion will rise number of marriages of convenience with the aim to avoid expulsion from the EU. We have substantial reservation to the extension of the definition to siblings of the applicant as well.

Art. 2 (n) – as we have reservation to the Art. 20 and the new criterion of diplomas or other qualifications, therefore we would like to raise a reservation to the definition of this criterion as well.

Art. 12(3) - we are not in favour of the new condition that the personal interview shall take place **in any event, before any take charge request is made**.

The personal interview should take place as soon as possible, however not necessarily before the „take charge request" is sent. Such condition is unnecessary strict, in practice unpredictable

objective circumstances may occur (e.g. the absence of an interpreter, pandemic or other situations) and render impossible to meet the time limit.

Art. 15(5) - we don't agree that it is in the best interest of a minor to transfer him/her from one Member State to another in case of the absence of a family member or a relative. To prove that it is not in the best interest of the minor could be difficult in practice and at the same time sensitive for the minor being vulnerable as such.

Art. 16, 17, 18 – reservation linked to our reservation to the extension of the definition of family members in Art. 2 (g).

Art. 20 – Reservation. We do not see added value of the criterion of diplomas or other qualifications. Moreover, we think that this article is overlapping with the content of the article 19.

If the person studies on the territory of any Member State, he or she must be legally residing on its territory and such criterion already exists in this Regulation.

We also perceive determination of responsibility based only on the submission of diploma or qualification risky. In current days of modern technology, it is easy to forge various documents, moreover documents proving education don't have minimum security standards as ID documents. Therefore, we suggest deleting the whole article.

Art. 21 – scrutiny reservation regarding the extension of the time limit related to the responsibility. We are still analysing the impact of this article.

Art. 26 para 1(c) – Reservation. We are against the inclusion of beneficiaries of international protection in the scope of this article, because the aim of the Part III of this Regulation is to set up the criteria and mechanisms for determining the Member State responsible and beneficiaries of international protection have different status than applicants for international protection or unsuccessful applicants for international protection. The Member State responsible has been already determined in these cases.

Art. 26 para 1(d) – reservation of a same nature as in Art. 26 paragraph 1(c).

SWEDEN

On a general level, SE warmly welcomes the revised proposals prepared by the Portuguese and Slovenian presidencies. SE would like to underline the importance of finding a balance between solidarity and responsibility and agreeing on a solution that contributes to a more equal distribution of asylum seekers among the EUMS. SE takes note of the concrete examples of other solidarity measures added in a footnote to Article 45 but recalls that the main purpose of the solidarity contributions is to support those EUMS who are affected by a disproportionate migration pressure. There is a need for clarification on how the value of those solidarity contributions that do not concern individual persons should be calculated. SE would like to emphasise that all EUMS have a responsibility to plan and establish robust systems that are capable of managing sudden migratory situations. In this respect, the national strategies referred to in Article 6(3) of the proposal are of great importance.

SE retains its scrutiny reservation to the entirety of the proposals.

Specific comments

Article 1: SE can accept the proposed amendments.

Article 2: SE can accept the proposed clarifications with regard to the definition of migratory pressure (item w) and vulnerable persons (item ab) and the proposed amendments to items n, o, p and q. The examples cited in item q should however be further elaborated.

From SE:s perspective, two main concerns remain in Article 2.

SE does not recognise child marriages. A definition of family member which would imply that a child, who in accordance with the legislation of his or her country of origin is married, would not be considered a family member of his/her parents or other relatives is unacceptable for SE. According to Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women the marriage of a child shall have no legal effect. The addition proposed in document ST 10450/21 rev1 is welcome but does not entirely solve the problems. On the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage would not be in accordance with the relevant national law had it been contracted in the Member State concerned, in particular having regard to the legal age of marriage. SE would suggest to further add "and the best interests of the child." SE also suggests to add "or Member States" before the word "concerned". In case the "spouse" resides in another Member State, the marriage would, in order to be recognised, also have to be in accordance with the relevant national law of that Member State. SE supports the interventions made by some delegations in the AWP meeting on 13 July who underlined that there may be other factors than the legal age that prevent the recognition of the marriage of a minor such as lack of consent, undue pressure or violation of the best interest of the child.

Even in the case that a marriage of a child is recognised, this recognition should not exclude the child's parents or other adults responsible for the child from the definition of family members. Therefore the reference to "on the condition that they are unmarried" should be deleted from point (g)(ii) and the wording "and unmarried" should be deleted from points (g)(iii) and (iv).

2) The proposed expansion of the definition of family member to include siblings is an important part in defining the balance between solidarity and responsibility. SE can agree to including siblings in the definitions, but only on the condition that the solidarity mechanism is not weakened in the process of the negotiations.

Article 6: SE can accept the clarifications proposed by the Presidency. SE remains concerned by the deadline specified in point 5 which we find too short. In addition, the consequences for an MS that does not adopt a national strategy, adopts an unsatisfactory national strategy or fails to secure sufficient national capacity need to be clarified.

Article 8: SE can accept the proposed clarifications.

Article 9: For SE it is of great importance that the independence of the national authorities and courts is respected. There should therefore be a possibility for the national authorities to consider facts brought forth also after the expiry of the deadline.

Article 10: SE can accept the suggested amendments. In line with the comments expressed on Article 9, SE wishes to underline the importance that the independence of the national authorities and courts is respected. Therefore point 2 needs to be amended in order to grant the authorities and courts the right to decide whether to take into account relevant information provided after the deadline.

Article 11: With regard to point 1 (e) and (ea), a reference to Article 9.3 could be added referring to the obligation of the applicant to submit all the elements and information available to him or her relevant for determining the Member State responsible. SE retains a substantive reservation to point 1 (f) regarding the proposed time limits. We will elaborate on this issue when discussing Article 33. SE can accept the additions in point 1 (g) and (ga) and the deletion of (l). SE welcomes the addition of child friendly information in point 2.

Article 12: The last sentence in point 2 (c) needs clarification. It is not clear whether the obligation to grant the applicant the opportunity to present all further relevant information within a certain period of time in case the oral interview is omitted applies only to point 2 (c) or to all situations where an oral interview is not held, regardless of the reasons for this. SE welcomes the deletion of the reference to cultural mediator in point 4. SE also welcomes the deletion of the word "unaccompanied" since this clarifies that all children have the right to an interview that is conducted in a child-friendly manner.

Article 13: SE welcomes the clarification of the role of the representative of the unaccompanied minor in point 3. If it is decided to retain the provision regarding "appropriate training" in point 5, it should be clarified which categories of staff this applies to. An obligation regarding specific education for judges would be problematic for SE. With regard to point 6, SE would like to see a clarification on how the obligation of the MS where an unaccompanied minor's applications has been registered to try to identify family members relates to the deadline for requesting the MS responsible under this Regulation to receive the applicant. Clarification may also be necessary in order to determine which State should be responsible for identifying family members if the child has made an asylum application in one State and shortly thereafter moves to another MS.

Article 14: This article corresponds to Article 7 of the Dublin III Regulation. However, SE would like to know the reasons why provisions corresponding to point 3 of Article 7 of the Dublin Regulation have been omitted. These provisions relate to the consideration of any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant.

Article 15: SE still finds point 2 problematic as there seems to be a presumption that child marriages, at least in a significant number of cases, may be considered lawful and are given certain legal effect in spite of the fact that Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women states that the marriage of a child shall have no legal effect. The definition of family member is regulated in Article 2. The unlikely event that a child is considered to be married and the "spouse" thereby a family member must not affect the obligation to make an assessment of the best interests of the child in accordance with point 4. It is very possible that it is in the best interest of the child to join a parent or sibling rather than the "spouse".

SE suggests the following wording of Article 15(2):

The Member State responsible shall be that where a family member of the unaccompanied minor is legally present, unless it is demonstrated that it is not in the best interests of the minor. ~~Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present~~**, unless it is demonstrated that it is not in the best interests of the minor**.

Article 18: SE would prefer a criteria relating to the residence permit of the sibling since "strongest ties" would be difficult to apply in practice.

Article 19: SE welcomes the extension of the period since the expiry of the visa/residence document (point 4) during which the MS having issued the visa/residence document shall be responsible.

Article 20: More detailed specifications regarding the types of diplomas and qualifications concerned might be necessary to ensure a consistent interpretation. SE can support the proposed deadline of five years.

Article 21: SE supports the suggested deadline.

Article 22: SE supports the suggested deadline.

Article 24: SE can accept to add “psychological” as proposed.

Article 25: There may be a need to clarify what the consequence, if any, would be in case the deadline of two months provided in point 2, third paragraph, is not respected. A failure to meet the deadline should not constitute an automatic acceptance of the request.

Article 26: SE welcomes the provision in point 1 (c) according to which a MS shall take back a person who has been granted international protection. Point 2 does not seem to cover the situation of a child whose parent has been granted international protection. It may therefore be necessary to reconsider this provision.

Article 27: SE welcomes that the three month time limit in Article 19 of the Dublin III Regulation is not included in the current proposal.

Article 45: SE welcomes the addition of concrete examples of other solidarity contributions but wishes to underline that all contributions must serve the overall purpose of assisting the EUMS under disproportionate migratory pressure. The solidary mechanism must also contribute to a more even distribution of asylum seekers among the EUMS. SE considers that if a person who has been granted international protection has resided in an EUMS for a significant period of time, any possible relocation to another EUMS should be subject to the written consent of the person concerned.

Article 47: SE can accept the revisions and clarifications proposed by the Presidency.

Article 49: SE can accept the revisions and clarifications proposed by the Presidency.

Article 50: SE would welcome a provision that regulates the responsibilities of an EUMS that considers itself to be facing disproportionate migratory pressure to undertake certain actions.

Article 51: SE can accept the additions proposed by the Presidency.

Article 52: SE can accept the clarifications proposed by the Presidency.

Article 53: SE can accept the proposed amendments.

Article 55: SE can accept the proposed clarifications. There remains a need to clarify if return sponsorship can serve as a solidarity contribution in a situation where the EUMS faced with migratory pressure has no need for return sponsorship, or where there are no persons that are to be returned.

Article 57: SE would like to underline that the consent of the person concerned referred to in point 3 of great importance for SE. SE supports the clarification that the person concerned does not have the right to request to be relocated to a specific MS. The term “cultural considerations” needs clarification or should be deleted.

Article 58: SE welcomes the clarifications proposed by the Presidency.

Articles 59 and 60: The proposed amendments are acceptable.