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NOTE

From: General Secretariat of the Council
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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL on asylum and migration management and amending
Council Directive (EC) 2003/109 and the proposed Regulation (EU)
XXX/XXX (Asylum and Migration Fund)
- Comments from the delegations

Following the Informal meetings of the Asylum Working Party on 12 and 19 October 2021, delegations will find attached a compilation of replies received from Member States on the abovementioned subject (Articles 45-60, Article 6(4) and corresponding definitions in Article 2).

In this revised version, a contribution from Greece has been added.

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 12 and 19 October 2021

Articles 45-60, Article 6(4) and corresponding definitions in Article 2

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AUSTRIA

Article 2 Definitions

Art. 2 (w): AT is concerned that the current wording of the definition “migratory pressure” could be interpreted in a way that MS, which are not located at the external borders would be excluded from receiving solidarity contributions. Therefore, the last part of the sentence “*notably as a result of the geographic location of a Member State and the specific developments in third countries*” should be deleted.

Art. 2 (g) (v): Furthermore, Austria has a **strong reservation against the extension of the definition of family members** as proposed in Art. 2 (g) (v). Siblings should not be included in this definition in particular considering the explanation given by the Commission that also half brothers and sisters would be covered.

Art. 2 (ab): AT enters a scrutiny reservation.

Article 6 Governance and monitoring of the migratory situation

The comments are to be read together with the comments on Art. 47 to 49. AT calls for only one solidarity mechanism in case of migratory pressure. Therefore, the respective wording relating to a separate solidarity mechanism for situations after disembarkations following Search and Rescue operations in Art. 6 (4) should be deleted.

Article 45 Solidarity contributions

As already mentioned, Austria maintains a general reservation on the proposed solidarity mechanisms, especially on a separate and permanent mechanism for S&R, as well as relocation as the key solidarity contribution. The general focus on relocation and return sponsorship as the – in some cases - sole (and in some cases mandatory) solidarity contribution is problematic and should be extended to other effective and equally weighted forms of solidarity.

Art. 45 (1) (a) According to the explicit wording of Art. 45 para. 1 (a) AMR, “applicants who are not subject to the border procedure” pursuant to Art. 41 APR are subject to relocation. As the legal text stands in conjunction with the numerous and extensive exceptions foreseen in Art. 41 APR, this provision would lead to peculiar and undesirable situations where **also applicants arriving from countries with a very low – even 0% -recognition rate would be relocated** from one MS to another.

The wording “*and who are therefore more likely to have a right to stay in the Union*” is not accurate on the substance and could be misleading or even prejudicial. The proposed border procedure as it is currently set out, does not cover all persons who are likely not to have a right to stay in the Union (which would be a core request by AT). Therefore, this wording should be deleted.

Austria proposes to change the wording of Art. 45 para. 1 (a) accordingly in order to make sure that only those applicants who do not fall in the (broadened) scope of the compulsory border procedure and of the exceptions of the border procedure are relocated. As a consequence, Art. 45 para. 1 (a) should not be applied to applicants who fall in the scope of the exceptions of the border procedure.

Additional solidarity contributions:

Austria proposes to add additional solidarity contributions:

- Recognizing challenges faced by “destination Member States” related to secondary movements (which lead to “de facto” relocation of asylum applicants to other EU Member States);
- Introducing “protection sponsorships” as an innovative “person-solidarity” contribution.

Art. 45 para. 1 (d): AT welcomes that capacity building measures are part of solidarity contributions. However, there is a strong need for a more flexible approach. New and innovative solidarity contributions should be introduced, for example in the external dimension.

Therefore, Austria also welcomes the possible solidarity contributions as listed in footnote 1. However, these solidarity contributions should be mentioned in the text and not only in the respective footnote.

Furthermore, as mentioned above, there should be additional solidarity contributions such as “protection sponsorships” and the deduction of secondary migration movements. We refer to our comprehensive concept papers and previous information shared on these new and innovative concepts and stand ready to go into more details should there be further questions.

Text proposal: Art. 45

1. Solidarity contributions for the benefit of a Member State under migratory pressure ~~or subject to disembarkations following search and rescue operations~~ shall consist of the following types:

(a) relocation of applicants who are not subject to the border procedure for the examination of an application for international protection established by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] irrespective of exceptions from the application of the border procedure foreseen in Article 41 paragraphs 4, 5 and 9 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];

(b) return sponsorship of illegally staying third-country nationals;

(c) relocation of beneficiaries of international protection who have been granted international protection less than three years prior to adoption of an implementing act pursuant to Article 53(1);

(d) taking over responsibility where the benefitting Member States would be responsible in line with the criteria laid down in this Regulation, also in cases where a transfer is not possible or indicated due to legal or practical reasons related to the situation in the benefitting Member State.

(e) protection sponsorships pursuant to Art. 56;

(f) capacity-building measures and support in the field of asylum and migration management

- in the benefitting Member State, including joint processing of cases, reception, border protection and return

- or operational support and measures in third countries such as integrated border management, disembarkation following SAR, combatting human smuggling, strengthening protection capacities as well as fostering perspectives in regions of origin aimed at responding to and preventing illegal migration flows towards the European Union.

2. Such contributions may, pursuant to Article ~~56~~57, also consist of: ~~(a)~~ relocation of applicants for international protection subject to the border procedure in accordance with Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];

~~(b) relocation of illegally staying third country nationals~~

Article 46 Solidarity Forum

The phrase “sufficiently senior” in Par. 1 should be further clarified.

Article 47 to 49 Solidarity for disembarkations following search and rescue operations

As explained a couple of times, Austria maintains a very critical position towards a special and permanent solidarity mechanism after SAR disembarkations and a preferential treatment of those who are disembarked in the EU. Austria is concerned that this could create a pull factor.

Therefore, Austria requires the deletion of the special solidarity provisions of Art 47-49 for SAR cases.

Article 51 Report on migratory pressure and Article 50 Assessment of migratory pressure

AT calls for a **stronger role of the Council** concerning the assessment of the migratory situation and the report on migratory pressure. The Council should be able to make the final decision in this regard, because the Member States are the ones who are highly affected by the outcome of such decision processes. Some amendments go into the right direction, but do not address the necessity of a crucial role of the Council in this process enough.

Art. 50 para. 3: The period of six months is too short, as there are many Member States who have been confronted with migratory pressure for years. Therefore, Austria proposes to take account of the preceding **five years**.

AT welcomes the inclusion of the criteria of “number of third-country nationals who have been granted international protection” and “number of first instance and final asylum decisions” in the list of Art. 50 (3).

Article 52 Solidarity Response Plans in situations of migratory pressure

Art. 53 para. 5: A deduction of the share of 10% is not appropriate for Member States which were confronted with a high influx of applicants in the preceding years. Moreover, in this context, the number of the first instance recognitions of international protection should be relevant for the deduction. A deduction of 50% would be necessary.

Article 54 Distribution key

In order to determine the share of solidarity contributions in a fair and balanced way, AT considers it as essential to add another criterion reflecting the pressure on national asylum and migration systems in the past, which is taken into account in an appropriate way.

Text proposals: Art. 54

(a) *the size of the population (50% weighting);*

(b) *the total GDP (~~50~~25% weighting).*

(c) the number of first instance decisions as an outcome of asylum procedures over the preceding 5 years (25% weighting)

Article 55 Return Sponsorship

Due to several open questions in relation to the concept of return sponsorship, AT maintains a **scrutiny reservation**.

Austria's position to the concept of return sponsorships is in principle **positive** provided that also **other equally weighted solidarity measures** can be applied, and no transfer is conducted if the return cannot be carried out for **reasons beyond the sponsoring MS' control**.

There are concerns that persons without prospects to remain would be transferred within the EU. Therefore, **clear rules to effectively prevent absconding and secondary migration** of the persons concerned are of particular importance in this context.

Regarding the issue of **absconding of migrants** Austria has identified the following important points:

- It is the responsibility of the benefitting Member State to ensure that irregular migrants are available and do not abscond during the (asylum and) return procedure.
- The **effective prevention of absconding**, including by applying detention or alternatives to detention, is a crucial part of a functioning asylum- and return system.

- We need to ensure **clear measures of sanctions in case of non – cooperation** of the third country national to avoid situations where the third country national does not cooperate with the aim of being transferred after 8 months.
- Art. 55 AMR has to be clarified. The **consequence of transfer** according to Article 55(2) **should not apply** in cases where return cannot be carried out due to **absconding** of the person concerned **or due to other reasons beyond the control of the sponsoring Member State**. In the current proposal only “absconding” is partly covered by the text.
- A temporary suspension of the deadline of 8 months would not be sufficient to tackle this issue and would lead to inefficient procedures. The sponsoring Member State would not be in the position to engage in return preparations adequately.
- In case the irregular migrant **reappears in another Member State**, as a general rule, the person **should be brought back for the return to the Member State from which she or he had absconded** in order to prevent secondary migration. Practical implications have to be further examined.

Moreover, we need to make best use of **Frontex** in the context of border procedures and during return sponsorship. Given the operational capacities of Frontex and its standing corps, a strong supporting and coordination role of the agency for the benefitting as well as the sponsoring Member State is required during all envisaged solidarity measures regarding return.

BELGIUM

BE maintains its scrutiny reservation on the AMMR proposal and on the amendments introduced by the Portuguese et Slovenian presidencies.

Article 46

- We would like that the expression ‘at a level sufficiently senior’ be clarified in the text.

Article 47

- §2: in order to align the wording of §2 to the new structure of article 45(1)(d), we suggest to replace “The report shall also identify any capacity-building measures...” by “The report shall also identify any other solidarity contributions...”. Indeed, if the words “capacity-building measures” were kept, they would seem to refer to article 45(1)(d)(i) although the intention is to refer to the whole point (d).

Article 55

- Due to the complexity of the implementation of the return sponsorship mechanism, BE makes the following proposal: if after the eight month period it was not possible to return some persons, then an alternative form of solidarity (relocation) would kick in. Thus, if after 8 months, the sponsor Member State was not able to return a certain number of illegally staying TCNs, instead of transferring them to its territory, the sponsor Member State would relocate an equivalent number of applicants. This proposal has the advantage of showing solidarity with the benefitting Member State via return sponsorship and, if the return is unsuccessful, of still lightening its burden thanks to a much simpler procedure.

Article 57

- §7: The deadlines are too short.
- §7, subparagraph 2: Asylum services are not allowed to communicate to other Member States about the nature and the underlying elements of an alert concerning a person who represents a danger to national security or public order. An amendment similar to the one made to article 38 AMMR (which we are still scrutinizing but which goes in the good direction) would be welcome.

THE CZECH REPUBLIC

It is necessary to reiterate that the Czech Republic (“CZ”) has the substantial reservation regarding all parts of the proposal which enable direct or indirect mandatory redistribution of the foreigners among Member States.

Article 2 – definitions

Letter w) – Definition of migratory pressure covers the word “disproportionate” and compares the situation in MS concerned to the overall situation in the Union. Mentioned elements are acceptable for CZ.

On the other hand we prefer the original wording related to “arrivals”. In other words we do not prefer the using of notion “recurring disembarkations”.

Article 6 par. 4

We also advocate for clear setting a time limit for the consultation with the Member State concerned.

Article 45

CZ prefers the inclusion of concrete list of measures under Article 45 par. 1 letter d) (Now in the footnote) in the text of the Regulation itself.

The measures (solidarity contributions) according to Article 45 par. 1 letter d) should have the same weight as other measures especially the relocation of asylum applicants.

Moreover the list of measures should be added with the assistance in the screening procedure according to new Screening Regulation.

Article 46

We propose to delete **marked** part of the newly inserted text. We are of the opinion that the proposed text for deletion has no added value.

*“1. In order to ensure the smooth functioning of Part IV of this Regulation, a Solidarity Forum shall be established. It shall comprise representatives of the competent authorities of the Member States **at a level sufficiently senior to carry out the tasks conferred on the Forum.**”*

We welcome more concrete wording in terms of the role of Solidarity Forum, nevertheless we find the time limit of 5 working days too short.

Article 51

As has been already mentioned, CZ is of the opinion that the report on migratory pressure should be agreed by the Council.

Article 52

The reference to Article 45 par. 1 lett. d) should be added to paragraph 1 of this Article.

Article 55 – return sponsorship

We have to reiterate our scrutiny reservation regarding return sponsorship. We think that it should be clarified what parts of the proposal will be applied for the persons transferred following unsuccessful return sponsorship.

Please find bellow concrete drafting suggestions.

Paragraph 2a second subparagraph

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

Paragraph 3 letter a) should be amended in the same way as letter b) i.e. „return decision is issued **and delivered**“.

Article 57

New paragraph 9a should be amended as follows (better wording is more than welcomed):

*“The benefitting and the contributing Member States ~~shall~~ **may** continue the process of relocation or return sponsorship **started during the validity of implementing act** even after the timeframe for the implementation or the validity of implementing acts has expired.”*

The aim of the suggestion is to provide clearly in the legal text that process of relocation and/or return sponsorship may continue outside the timeframe for the implementation of the implementing act only in cases where the process started before the expiration of the validity of implementing act and only in cases where there is an bilateral agreement between the benefitting and the contributing Member State. In our view, it should not be the rule, but rather the exception.

Paragraph 10

We would like to ask whether this paragraph is also applicable in the cases of transfers related to unsuccessful return sponsorship.

Article 58

Regarding paragraph 6 we are of the opinion that Article 9 paragraph 1 and 2 should not be excluded in the cases of transfers of the persons under return sponsorship.

On the other hand we think that Article 8 paragraph 4 should not be applicable. We are of the opinion that only persons without security risks should be subject of the return sponsorship.

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 scrutiny and substantial reservations remain the same. Main aspects in short: Relocation should be voluntary and not prioritized, all solidarity measures assessed as necessary should have an equal value, SAR should be considered as one of the aspects of migratory pressure and not as the separate triggering criteria of a separate solidarity mechanism, there should be one mechanism with flexible measures.
-

Article 2

Point (w)

Proposal to partly stay with the previous wording and to amend the text in order to cover the situations of instrumentalized migration pressure in following lines:

- (w) ‘migratory pressure’ means a situation ~~where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries~~ which generates migratory movements that place a **disproportionate burden on Member States compared to the overall situation in the Union**, even on well-prepared asylum and reception systems and requires immediate action. **It covers situations where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from recurring disembarkations arrivals following search and rescue operations, notably as a result of the geographic location of a Member State and, the specific developments in third countries and or a hybrid attack characterised by politically motivated and intentionally created large scale migratory flows by third countries.**

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. The way of entry cannot be a factor on its own to trigger separate migration management mechanism. The pressure is not created by the way of arrival of migrants but the quantity of migrants. It is created by the number and frequency of arrivals irrespective of the *modus operandi*. When creating a separate mechanism for SAR there is a clear risk of creating an additional pull factor. The pressure itself is important. Therefore we cannot support SAR as a separate category and would like to delete the notion of the separate category throughout the text.

We do not support the amendment to enact the element of comparison. It is unclear how it would be done.

The last part of the definition covers the open list of references to the situations, which may be the root causes of the situations of migratory pressure. In our opinion the new migratory phenomenon of instrumentalized migratory flows purposefully generated by third countries to target Member States for destabilizing its asylum system and national security or public order, should be included.

Article 46 Solidarity Forum

Paragraph 2

Proposal to make the technical change into substantial change.

Reasoning: we can support the amendments in Article 46. However, it is evident that named amendment in paragraph 2 does not pose any substantial influence at the moment. The Articles 52 subparagraph 4 does not foresee an adjustment of the number and/or the type of their contributions in the Solidarity Response Plans. It provides for the opportunity to adjust the type of the contribution. In Article 47 subparagraph 5 it is possible to adjust the number and the type of the contribution in case of SAR mechanism. We would like to reiterate our previous position according to which the SAR as a separate category is not needed and all necessary contributions must be seen as bearing the equal value. Member State should be

able to have an opportunity to adjust upon a need the amount and the type of the contribution.

Article 55 Return sponsorship

General note – we are sceptical of the principal that even when the specific and needed measures have been agreed upon and implemented by the sponsoring Member States, but for reasons not deriving by those Member State it was still not possible to return a person, then the efforts of the sponsoring Member States are not regarded as fulfilled.

Paragraph 1 subparagraph 1 last sentence

Questions – We read, that the new wording is confirming, that benefitting Member State is starting the preparation of the return proceedings at once. At the same time there might be a partial overlap with the paragraph 2a. Perhaps a clear timeframe would help that a benefitting MS is required to implement the Return Directive until the person has been transferred? Could you please clarify the following – in case a person is detained in the third MS (person has absconded from the sponsoring MS to where s/he has been transmitted), which MR would be responsible to implement the Return Directive?

Paragraph 1 subparagraph 2

Question - Please specify, what specific information the list is intended to cover and how it will be shared.

Paragraph 4

Question - Please specify, how or in what form the agreement on measures and administrative arrangements should be fixed.

Article 57 Procedure before relocation

Paragraph 6

Proposal – we do strongly support the amendment. We propose to prolong the time limit from 1 week to 2 weeks and to include the topic of refugee status determination questions along the following lines:

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

Reasoning – according to our assessment, two weeks is more realistic to arrange and conduct an interview. In our opinion it is needed to have an opportunity upon a need not only to interview a person in connection of security but also on the topics connected to the need for the protection. According to the national law the relocation is only possible when the need for the protection has been established. In practice the questions of security and protection need are interlinked.

Paragraph 3

Question – what is foreseen to be the “cultural considerations”.

Article 2 (ab), Article 6(4), Articles 50 (m), 51 – 53 and 55 - 60

We can support the technical amendments made. We can also support the amendments to timeframe the mechanism.

FRANCE

Remarques générales

La France remercie la Présidence de cette version de compromis, qui précise le travail entrepris par la Commission, et considère que ces deux versions de compromis techniques (portugaise et slovène) sont utiles pour la poursuite des négociations. Il est en effet essentiel que les États bénéficiaires disposent de garanties solides pour assurer l'effectivité de la solidarité, ce qui suppose de fixer des procédures claires, objectives et prévisibles.

- **Sur l'article 2 (définitions)**

w) Pression migratoire :

La France accueille favorablement l'ajout du terme « disproportionnée » pour définir la pression migratoire. Il est en effet essentiel que cette définition soit la plus claire et objective possible, dans la mesure où elle structure le déclenchement du mécanisme de solidarité obligatoire.

La France demande toutefois que la pression soit définie comme s'exerçant sur un seul État membre ou quelques États membres, et non sur tous les États membres.

La France rappelle que tout État membre doit être en mesure de faire appel à la solidarité européenne si sa situation le justifie. Ainsi, l'ajout des termes « *situation géographique d'un État membre* » ne peut être accepté que s'ils sont précédés du terme « *notamment* » comme ajouté par la Présidence à la demande de la France dans ses commentaires écrits.

- **Sur l'article 6, paragraphe 4 (rapport annuel sur la gestion de la migration)**

La France soutient l'esprit des amendements à cet article qui renforcent la prévisibilité du mécanisme de solidarité SAR et l'implication des États membres bénéficiaires.

- **Sur l'article 45 (contributions de solidarité)**

La France s'interroge sur le champ d'application du paragraphe 1, sous a), (pour la relocalisation des demandeurs de protection internationale qui ne sont pas en procédure à la frontière) à la suite de l'ajout de la précision « *and who are therefore more likely to have a right to stay in the Union* ». Quel est le sens de cet ajout et comment se traduira-t-il concrètement pour l'éligibilité des personnes à la relocalisation ? A ce titre, quel est le champ d'application de la procédure d'asile à la frontière retenu pour cette évaluation ? (champ facultatif, obligatoire, y compris les exceptions). Il conviendrait de préciser à quels demandeurs d'asile il est fait référence au a).

La France rappelle également que la relocalisation de bénéficiaires d'une protection internationale (paragraphe 1, sous c)) devrait être limitée à ceux qui se sont vus reconnaître cette protection depuis moins d'un an pour être en cohérence avec la situation de pression migratoire récente rencontrée par l'État membre et ne pas interrompre un processus d'intégration déjà enclenché.

Par ailleurs, concernant la question posée par la Présidence sur cet article, la France pose une réserve d'examen sur le contenu de la liste d'exemples des autres contributions de solidarités (paragraphe 1, sous d)) et demande à ce que cette liste soit incluse dans un considérant, et non dans un nouveau paragraphe (1a) de l'article 45 du texte du règlement.

Pour que l'équilibre entre les contributions de natures diverses soit assuré et prévisible, il apparaît nécessaire qu'une clé d'équivalence soit proposée par la Commission. Cette clé permettrait de comparer les différentes mesures de solidarité entre elles afin que chaque contribution soit évaluée à sa juste valeur. Une discussion devrait être organisée à ce sujet.

- **Sur l'article 46 (forum de solidarité)**

La France est satisfaite du travail de clarification entrepris par la présidence. Il est en effet essentiel d'encadrer ce forum, à la fois temporellement et dans son niveau de représentation.

La France considère toutefois que les termes « *at a level sufficiently senior* » sont trop imprécis et que les termes « *at a decision-making level* » seraient plus adaptés. En effet, le forum de solidarité suppose une dynamique de négociation qui ne pourra exister sans la présence de personnes mandatées politiquement pour prendre des décisions, notamment sur l'ajustement du montant et du type de contribution apportée.

- **Sur l'article 47 (solidarité en matière de débarquements à la suite d'opérations SAR)**

La France soutient l'amendement prévoyant que les États membres soumis à une pression migratoire ne contribuent pas aux mécanismes de solidarité SAR dans un souci de cohérence, car ils bénéficient déjà de la solidarité européenne. Il est important de souligner que cela renforce d'autant les contributions des autres États membres.

Le mécanisme de solidarité établi par cet article doit être précisé afin de faire ressortir plus clairement que les personnes vulnérables visées au premier paragraphe sont des ressortissants de pays tiers issus de débarquements à la suite de sauvetages en mer.

La France propose l'amendement suivant :

*This Article and Articles 48 and 49 shall apply to **recurring disembarkations** search and rescue operations that generate recurring arrivals of third-country nationals or stateless persons onto the territory of a Member State following search and rescue operations and to vulnerable persons as set out in Article 2 (ab) ~~and Article 49(4)~~.*

- **Sur l'article 49 (réserves de solidarité pour les opérations de recherche et de sauvetage)**

En miroir avec nos commentaires sur l'article 47, paragraphe 1, la France propose l'amendement suivant :

4. Where the Migration Management Report identifies that a Member State referred to in Article 47(2) is faced with capacity challenges due to the presence of ~~applicants who are~~ vulnerable persons regardless of how they crossed the external borders, the solidarity pool established under Article 48(1) or Article 48(4)(2) may also be used for the purpose of relocation of vulnerable persons. In such cases, the provisions of paragraph 2 shall apply.

- **Sur les articles 50 (évaluation de la pression migratoire) et 51 (rapport de la pression migratoire)**

La nouvelle version des articles 50 et 51 va dans le bon sens, dans la mesure où elle renforce l'implication de l'État membre concerné dans l'évaluation de son état de pression migratoire et dans la mise au point du rapport subséquent.

- **Sur l'article 52 (plans de réaction de solidarité dans les situations de pression migratoire)**

La France rappelle que le pourcentage de déduction de 10 % devrait être augmenté en cas d'absence de compromis satisfaisant sur le volet « Responsabilité » du règlement, afin de mieux refléter les mouvements secondaires des demandeurs d'asile.

- **Sur l'article 54 (clé de répartition)**

Dans le même esprit - si la responsabilité des États membres n'est pas suffisamment renforcée dans le volet « Responsabilité » du règlement - la France envisagera de soutenir la demande de plusieurs États membres consistant à créer un troisième critère de répartition, lié au nombre d'enregistrements de demandes d'asile *per capita*.

- **Sur l'article 55 (prise en charge des retours)**

La France soutient les précisions proposées par la Présidence, notamment sur la procédure de prise en charge du retour et sur les compétences des États membres bénéficiaires et États membres prenant en charge les retours.

Toutefois, la France rappelle que pour être totalement efficace, le système de prise en charge des retours doit déterminer beaucoup plus précisément les responsabilités respectives de l'État bénéficiaire et de l'État prenant en charge les retours pour notamment ne pas laisser de doute sur lequel de ces États est responsable du ressortissant de pays tiers.

La France s'interroge sur l'articulation de la nouvelle obligation prévue au paragraphe 1 pour l'État membre bénéficiaire de fournir une liste des ressortissants de pays tiers concernés avec le début du délai de 8 mois prévu au paragraphe 2 (à partir de l'acte d'exécution de la Commission pour la pression migratoire ou de la liste de la Commission pour la solidarité SAR). De plus, **il faudrait prévoir que l'État prenant en charge le retour donne son accord sur la liste qui est fournie par l'État bénéficiaire. En effet, celle-ci pourrait être établie par l'État bénéficiaire de manière à ne retenir que les étrangers dont l'éloignement est impossible (i.e. des ressortissants irakiens par exemple).**

La France propose l'amendement suivant :

4. *Before starting the return sponsorship, the benefitting Member State and the sponsoring Member State shall agree **on the list referred to in paragraph 1 and** on the measures to be taken by each party and on the necessary administrative arrangements so that the return of the third-country nationals concerned may be implemented.*

Le paragraphe 2 prévoit également que les Etats membres peuvent convenir bilatéralement d'une période plus courte, ce qui convient en l'état à la France.

Le paragraphe 2a, alinéa 3, nécessite également d'être précisé. En effet, l'État membre bénéficiaire ne doit pas seulement informer de la disponibilité de l'individu, mais également de la fuite ou de tout motif justifiant de l'indisponibilité de l'individu dans la perspective du retour. Ceci participerait à garantir la fiabilité de la prise en charge du retour entre les États membres et éviterait d'entraver des procédures de retour qui sont déjà complexes à effectuer.

La France partage enfin l'avis de la Commission dont le but est de spécialiser les Etats membres en matière de retour par pays tiers. Pour ce faire, la France soutient ainsi la nécessité d'établir une liste des individus concernés sur la base de la nationalité du pays d'origine.

- **Sur l'article 57 (procédure précédant la relocalisation)**

Les amendements proposés par la présidence portugaise et slovène sont positifs puisqu'ils encadrent précisément le rôle de chacun des États membres participant à la relocalisation et renforcent les garanties pour les États membres contributeurs en matière de risque sécuritaire.

Paragraphe 2 :

La France ne soutient pas l'amendement au paragraphe 2, alinéa 1, qui prévoit que l'État membre bénéficiaire évalue la menace sécuritaire, que peuvent représenter des ressortissants de pays tiers relocalisés, par rapport à tous les États membres et non plus par rapport au seul État membre contributeur.

Paragraphe 3 :

La France souhaite ajouter l'obligation, pour l'État bénéficiaire de la relocalisation, de déterminer si un État membre est responsable de la demande d'asile avant d'inclure la personne dans un programme de relocalisation.

La procédure de relocalisation ne doit pas s'appliquer aux personnes pour qui un État membre (autre que l'État membre bénéficiaire) a été reconnu responsable de l'examen la demande. La France propose dès lors l'ajout d'une phrase au début du troisième alinéa du paragraphe 3 :

Where relocation is to be applied, the benefitting Member State, or, upon request of the benefitting Member State, the Asylum Agency, shall identify the persons who could be relocated. Where the person concerned is an applicant for or a beneficiary of international protection, that Member State shall take into account, where applicable, the existence of meaningful links such as those based on family or cultural considerations, between the person concerned and the Member State of relocation. Where the identified person to be relocated is a beneficiary for international protection, the person concerned shall be relocated only after that person consented to relocation in writing. ~~This consent shall include permission to exchange the information mentioned in paragraph 5.~~ The person concerned shall not have the right to request to be relocated to a specific Member State pursuant to this Article.

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

The benefitting Member State shall carry out, without delay, the examination of the Member State responsible of the application and the first subparagraph shall not apply to applicants for whom the benefitting Member State can be determined as the Member State responsible pursuant to the criteria set out in Articles 15 to 20 and 24, with the exception of Article 15(5). Those applicants shall not be eligible for relocation.

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

Paragraphe 6 :

La France renouvelle sa demande que le paragraphe 6 autorise les États membres contributeurs à effectuer des entretiens d'examen de la demande d'asile, en plus de la possibilité de mener des entretiens sécuritaires, telle que permise par l'amendement de la présidence slovène.

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

Where the Member State of relocation deems it necessary, it can proceed to the interview of the person, including to examine if there are no reasonable grounds to consider the person concerned a danger to its national security or public order.

Paragraphe 7 :

La France rappelle que les délais prescrits dans la procédure de relocalisation sont trop courts (une ou deux semaines selon les cas) et devraient être de deux et quatre semaines, afin d'être moins contraignants pour l'État membre contributeur. Les délais prévus sont notamment inadaptés lorsqu'il y a des enjeux sécuritaires dans le dossier de la personne à relocaliser.

Paragraphe 9a :

La France soutient la précision au paragraphe 9a selon laquelle les États membres doivent poursuivre la procédure de relocalisation même après l'expiration des actes d'exécution pris par la Commission.

- **Sur l'article 58 (procédure suivant la relocalisation)**

Paragraphe 2 :

La France rappelle sa position constante : l'évaluation des critères et règles pour la détermination de l'État membre responsable de l'examen de la demande d'asile d'une personne faisant l'objet d'une procédure de relocalisation doit impérativement être réalisée avant la relocalisation. La procédure de relocalisation doit être efficace, rapide et éviter, tant pour les États membres que les personnes relocalisées, un risque de transferts successifs.

Par suite, la France propose la suppression de l'article 58, paragraphe 2, et renvoie à sa proposition de modification de l'article 57, paragraphe 3.

Paragraphe 5 :

La France rappelle sa proposition de prévoir que si l'étranger en situation irrégulière relocalisé dépose une première demande d'asile après sa relocalisation, l'État membre bénéficiaire ne peut être considéré comme responsable de la demande que dans les cas prévus à l'article 58, paragraphe 2, comme cela est prévu pour les demandeurs relocalisés après une prise en charge des retours (paragraphe 6).

5. Where the Member State of relocation has relocated a third-country national who is illegally staying on its territory, of Directive 2008/115/EC shall apply.

Where the Member State of relocation has relocated a third-country national who makes a first application after the relocation, the Member State in which the application was registered shall apply the procedures set out in Part III, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5), and Article 21(1) and (2)

COURTESY TRANSLATION OF FR COMMENTS TO EN

General comments

France thanks the Presidency for this compromise version, which clarifies the work undertaken by the Commission, and considers these two technical compromise versions (Portuguese and Slovenian) to be useful for the continuation of the negotiations. It is essential that benefiting states have strong guarantees to ensure the effectiveness of solidarity, which presupposes establishing clear, objective and predictable procedures.

- **Article 2 (Definitions)**

(w) migratory pressure:

We welcome the addition of the word ‘disproportionate’ to define migratory pressure. It is essential that this definition be as clear and objective as possible, since it forms the basis for triggering the compulsory solidarity mechanism.

We would request, however, that the pressure be defined as pressure on only one Member State or some Member States, not on all Member States.

We would point out that every Member State must be able to call on European solidarity if its situation so warrants. Thus, the addition of the words ‘geographic location of a Member State’ can be accepted only if they are preceded by ‘notably’, as added by the Presidency in response to the request made by France in our written comments.

- **Article 6(4) (annual Migration Management Report)**

We support the logic of the amendments to this article, which increase the predictability of the SAR solidarity mechanism and the involvement of the benefiting Member States.

- **Article 45 (Solidarity contributions)**

We are uncertain about the scope of paragraph 1(a) (as regards the relocation of applicants for international protection who are not subject to the border procedure) following the addition of the clarification ‘and who are therefore more likely to have a right to stay in the Union’. What is the purpose of this addition and how will it actually translate into the eligibility of persons for relocation? In this regard, what is the scope of the asylum border procedure chosen for this assessment (optional, mandatory, including exceptions)? It should be made clear which asylum seekers are referred to in point (a).

We would also point out that relocation of beneficiaries of international protection (paragraph 1, point (c)) should be limited to those who have been granted such protection for less than a year, so as to be consistent with the situation of migratory pressure encountered recently by the Member State and not to interrupt an integration process which has already begun.

Furthermore, with regard to the Presidency’s question on this article, we wish to enter a scrutiny reservation on the content of the list of examples of other solidarity contributions (paragraph 1, point (d)) and request that this list be included in a recital, and not in a new paragraph (1a) of Article 45 of the text of the Regulation.

To ensure a predictable balance between contributions of various kinds, it seems necessary for the Commission to propose an equivalence key. This key would make it possible to compare the various solidarity measures so that the value of each contribution is assessed fairly. A discussion should be held on this subject.

- **Article 46 (Solidarity Forum)**

We are pleased with the clarification work undertaken by the Presidency. It is indeed essential to define a framework for this forum, in terms of both time and its level of representation.

In our view, however, ‘at a level sufficiently senior’ is too imprecise, and ‘at a decision-making level’ would be more appropriate. The Solidarity Forum requires negotiation dynamics that cannot exist without the presence of persons politically mandated to take decisions, in particular on the adjustment of the amount and type of contribution made.

- **Article 47 (Solidarity for disembarkations following search and rescue operations)**

We support the amendment stipulating that Member States under migratory pressure will not contribute to the SAR solidarity mechanisms in the interests of coherence, as they already benefit from European solidarity. It is important to stress that this will increase the contributions of the other Member States accordingly.

The solidarity mechanism established by this article needs to be clarified in order to make it clearer that the vulnerable persons referred to in the first paragraph are third-country nationals who have been disembarked following rescue at sea.

We propose the following amendment:

*This Article and Articles 48 and 49 shall apply to **recurring disembarkations** search and rescue operations that generate recurring arrivals of third-country nationals or stateless persons onto the territory of a Member State **following search and rescue operations** and to vulnerable persons as set out in **Article 2 (ab) and Article 49(4)**.*

- **Article 49 (Solidarity pool for search and rescue operations)**

In line with our comments on Article 47(1), we propose the following amendment:

*4. Where the Migration Management Report identifies that a Member State referred to in Article 47(2) is faced with capacity challenges due to the presence of ~~applicants who are~~ **vulnerable persons** ~~regardless of how they crossed the external borders~~, the solidarity pool established under Article 48(1) or Article 48(4)(2) may also be used for the purpose of relocation of vulnerable persons. In such cases, the provisions of paragraph 2 shall apply.*

- **Articles 50 (Assessment of migratory pressure) and 51 (Report on migratory pressure)**

The new version of Articles 50 and 51 goes in the right direction, as it reinforces the involvement of the Member State concerned in the assessment of its situation in terms of migratory pressure and in the drawing up of the subsequent report.

- **Article 52 (Solidarity Response Plans in situations of migratory pressure)**

We would point out that the deduction percentage of 10 % should be increased in the absence of a satisfactory compromise on the responsibility component of the Regulation, in order to better reflect secondary movements of asylum seekers.

- **Article 54 (Distribution key)**

In the same vein – if the responsibility of the Member States is not sufficiently strengthened in the responsibility component of the Regulation – we will consider supporting the request by several Member States to create a third distribution criterion, linked to the number of asylum applications registered per capita.

- **Article 55 (Return sponsorship)**

We support the clarifications proposed by the Presidency, in particular on the return sponsorship procedure and on the competences of benefiting Member States and sponsoring Member States.

However, we would point out that, in order to be fully effective, the return sponsorship system must determine much more precisely the respective responsibilities of the benefiting state and the sponsoring state, in particular so as not to leave any doubt as to which of these states is responsible for the third-country national.

We are uncertain about the link between the new obligation laid down in paragraph 1 for the benefiting Member State to provide a list of third-country nationals concerned and the start of the eight-month period provided for in paragraph 2 (starting from the Commission implementing act for migratory pressure or the Commission's list for SAR solidarity). In addition, **provision should be made for the sponsoring Member State to give its agreement to the list provided by the benefiting state. This could be drawn up by the benefiting state in such a way as to include only aliens whose removal is impossible (Iraqi nationals, for example).**

We propose the following amendment:

*4. Before starting the return sponsorship, the benefiting Member State and the sponsoring Member State shall agree **on the list referred to in paragraph 1 and** on the measures to be taken by each party and on the necessary administrative arrangements so that the return of the third-country nationals concerned may be implemented.*

Paragraph 2 also provides that Member States may agree bilaterally on a shorter period, which is acceptable to France as it stands.

Paragraph 2a, third subparagraph, also needs to be clarified. The benefiting Member State must not only communicate that the individual is available, but also if he or she absconds or if there is any reason why the individual is unavailable with a view to return. This would help to ensure the reliability of return sponsorship between Member States and would avoid hindering already complex return procedures.

Lastly, we share the Commission's view that the aim is to establish a specialisation among Member States as regards returns by third country. We agree that, to this end, it is necessary to draw up a list of the individuals concerned on the basis of the nationality of the country of origin.

- **Article 57 (Procedure before relocation)**

The amendments proposed by the Portuguese and Slovenian Presidencies are positive, as they precisely define the role of each of the Member States participating in relocation and strengthen the security risk safeguards for contributing Member States.

Paragraph 2:

We do not support the amendment to the first sentence of paragraph 2 which provides that the benefiting Member State is to assess the security threat which relocated third-country nationals may present in relation to all Member States and no longer in relation to the contributing Member State alone.

Paragraph 3:

We would like to add the obligation for the state benefiting from relocation to determine whether a Member State is responsible for the asylum application before including the person in a relocation scheme.

The relocation procedure should not be applied to persons in respect of whom a Member State (other than the benefiting Member State) has been identified as responsible for examining the application. We therefore propose adding a sentence at the beginning of paragraph 3, third subparagraph:

Where relocation is to be applied, the benefitting Member State, or, upon request of the benefitting Member State, the Asylum Agency, shall identify the persons who could be relocated. Where the person concerned is an applicant for or a beneficiary of international protection, that Member State shall take into account, where applicable, the existence of meaningful links such as those based on family or cultural considerations, between the person concerned and the Member State of relocation. Where the identified person to be relocated is a beneficiary for international protection, the person concerned shall be relocated only after that person consented to relocation in writing. ~~This consent shall include permission to exchange the information mentioned in paragraph 5.~~ The person concerned shall not have the right to request to be relocated to a specific Member State pursuant to this Article.

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

The benefitting Member State shall carry out, without delay, the examination of the Member State responsible of the application and the first subparagraph shall not apply to applicants for whom the benefitting Member State can be determined as the Member State responsible pursuant to the criteria set out in Articles 15 to 20 and 24, with the exception of Article 15(5). Those applicants shall not be eligible for relocation.

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

Paragraph 6:

We reiterate our request that paragraph 6 allow contributing Member States to conduct interviews to examine the asylum application, in addition to the possibility of conducting security interviews, as permitted by the Slovenian Presidency amendment.

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

Where the Member State of relocation deems it necessary, it can proceed to the interview of the person, including to examine if there are no reasonable grounds to consider the person concerned a danger to its national security or public order.

Paragraph 7:

We would reiterate that the deadlines laid down in the relocation procedure are too short (one or two weeks depending on the case) and should be two and four weeks, in order to be less restrictive for the contributing Member State. In particular, the deadlines laid down are inappropriate where there are security issues in the file of the person to be relocated.

Paragraph 9a:

We support the clarification in paragraph 9a that Member States must continue the relocation procedure even after the expiry of the implementing acts adopted by the Commission.

- **Article 58 (Procedure after relocation)**

Paragraph 2:

We would reiterate our consistently held position: it is imperative that the criteria and rules for determining the Member State responsible for examining an asylum application made by a person in respect of whom a relocation procedure is in progress be assessed before relocation. The relocation procedure must be efficient and rapid and avoid any risk, for both Member States and relocated persons, of successive transfers.

We therefore propose the deletion of Article 58(2) and refer to our proposal to amend Article 57(3).

Paragraph 5:

We would reiterate our proposal for a provision stating that if an illegally staying third-country national who has been relocated makes a first asylum application after relocation, the benefiting Member State can only be considered responsible for the application in the cases provided for in Article 58(2), as is stipulated for applicants relocated after return sponsorship (paragraph 6).

5. Where the Member State of relocation has relocated a third-country national who is illegally staying on its territory, ~~of~~ Directive 2008/115/EC shall apply.

Where the Member State of relocation has relocated a third-country national who makes a first application after the relocation, the Member State in which the application was registered shall apply the procedures set out in Part III, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5), and Article 21(1) and (2).

GERMANY

General preliminary remarks:

Germany believes that solidarity and a responsibility regime based on the fair-share principle are crucial for CEAS reform. Asymmetries in the distribution of burdens should therefore be avoided when determining which member state is responsible for examining applications for international protection. The mechanism should aim to achieve effective and reliable relief for heavily burdened member states. This could be done through capacity building or measures in the external dimension, for example, but often the only way to provide effective relief is through the relocation of people.

The German comments refer solely to the amendments in the text of October 4, 2021 (including the amendments of June 16, 2021). We would like to point out that we maintain our previous position. Germany maintains a scrutiny reservation on the entire AMR (all articles and recitals). Germany also reserves the right to make further comments.

Article 2 (w)

Due to its consequences, the legal definition of migratory pressure in Article 2 (w) is very important. Germany believes that it must be assessed in the relevant context. We therefore welcome the addition of a comparison to the overall situation in the EU. In particular, it is necessary to clarify that an MS of disembarkation must also demonstrate solidarity vis-à-vis another MS facing migratory pressure. However, we believe that it is still necessary to weight the criteria and to include examples of when migratory pressure is present and when it is not so that the threshold for when migratory pressure exists is clear and transparent.

In addition, further specification with regard to irregular secondary movement should be carried out. In our view, this would be possible if the actual situation were assessed, for example using Eurodac and Eurostat entries.

As we are examining the other legal definitions in the relevant context, we maintain our scrutiny reservation and reserve the right to make further comments.

Article 2 (ab)

The special concerns of vulnerable groups with a special need for protection and procedural guarantees must be taken into account when drafting all key points. We therefore welcome in principle the Presidency's addition of a reference to the Reception Conditions Directive. We ask for

a clarification if it was intended to exclude special procedural guarantees under Asylum Procedure Regulation.

Art. 6 Governance and Monitoring of the Migratory Situation

Germany welcomes the addition of the clarification in Art. 6 para. 4 regarding the “recurring disembarkations” and in general, we believe that it makes sense to add a time limit in para. 4. The report should also define measures and requirements for the benefiting member state, as it does for example in Art. 51 (3) (b).

Art. 45 Solidarity Contributions

In the event of migratory pressure, we need effective and reliable solidarity. Germany therefore welcomes the fact that relocation continues to be the most important form of solidarity. We have no fundamental concerns with regard to paragraph 1. The border procedure sends an important signal. Applicants who are subject to the border procedure should therefore not be relocated– as far as possible. Nonetheless we would like to know why the addition in Art. 45 lit a has been made.

Further, we explicitly welcome ~~of~~ the other solidarity contributions which were added in Art. 45 para 1 lit. d.

Art. 46 Solidarity Forum

In principle, we welcome the Solidarity Forum as a suitable bridge between voluntary and mandatory solidarity. For this reason, we believe the addition regarding the member states’ possibility to adjust the number and/or the type of their solidarity contributions is useful.

Art. 47 Solidarity for Disembarkations following Search and Rescue Operations

Rescuing people in distress at sea is not only in line with our European values but is also a humanitarian obligation and an obligation under international law. In general, we seek a regime for determining responsibility that is based on the fair-share principle. We can only consider a solidarity mechanism specifically for SAR if the overall system is otherwise in balance. This would mean in particular effective measures to prevent irregular secondary movement, rapid procedures at the EU’s external borders and compliance with the rule-of-law principles. We therefore agree with including the exception in Art. 47 para 3.

In addition, we believe it certainly makes sense to include a time frame as proposed in paragraph 5.

Art. 48 Commission Implementing Acts for Search and Rescue Operations

In principle, we believe it makes sense to establish a solidarity pool for future needs. The same applies to the increase when 80% of the solidarity contributions was already used.

We consider the insertion of the time component in paragraph 2 to be sensible in principle with a view to streamlining the procedure.

We are still examining whether the implementing act referred to in Art. 48 para 4 is the right way to achieve a political decision. We therefore maintain our scrutiny reservation.

Art. 49 Solidarity Pool for Search and Rescue Operations

To avoid double transfers, we call for conducting the complete procedure for determining responsibility. Therefore, we have scrutiny reservations regarding "meaningful links". In our view, there is in any case no subjective right to relocation.

Art. 50 Assessment of Migratory Pressure

Germany continues to seek a balance between responsibility and solidarity at the highest possible level. We are therefore working to achieve a high and binding level of solidarity under the condition that much better solutions are found for the pre-entry procedure and for preventing irregular secondary movements. To achieve this, the CEAS needs a strong solidarity mechanism that enables rapid, reliable and effective solidarity, including mandatory relocation when there is migratory pressure. This objective is to have a mechanism for determining the existence of migratory pressure reliably and predictably, based on specific criteria and examples. For this, we see the need for transparent and objective criteria based on reliable, Union-wide data sources, such as Eurostat and Eurodac. When assessing migratory pressure in countries of destination, irregular secondary movement should be taken into account in order to ensure and reinforce the acceptance and reliability of the solidarity mechanism.

We are therefore in favour of the additions to the catalogue of criteria in (l) ("the number of third-country nationals who have been granted international protection") and (m) ("the number of first instance and final asylum decisions").

Specific criteria should nonetheless be taken into account in order to ensure and reinforce the acceptance and reliability of the solidarity mechanism. We are therefore in favour of including additional relevant criteria and examples of rules to clearly define the threshold for when migratory pressure exists. This could also be done by weighting the criteria.

In our view, the criterion of the number of return decisions in paragraph 3 (c) should be expanded to include whether the person was in fact returned or whether the return was unsuccessful due to obstacles to return.

Moreover, with regard to Art. 50 para. 3 li. e): The notions of resettlement and humanitarian admission are currently under debate in different CEAS legal acts in parallel. The Com is asked to ensure that these notions are used in a uniform manner which is not the case at the moment. Currently, the only existing EU legal act where these notions are defined is the new AMIF-Regulation.

Further, with regard to Art. 50 para 4 lit (aa), we would like to know which parts of the vulnerability assessment report of the European Border and Coast Guard Agency do you mean?

Art. 51 Report on Migratory Pressure

We welcome the addition in Art. 51 para. 1. But with regard to the shorter time limit in Art. 51 para 4 we prefer a wording which indicates that the time limit is not solely based on the Commission's assessment alone, but rather may be reported by the affected member state.

Art. 52 Solidarity Response Plans in situations of migratory pressure

Art. 52 is subject to further examination. Based on our current assessment we see that the proposal drafts a reasonable system for flexible and thus tailored solidarity. However, reliable and effective solidarity in many cases won't be possible without relocations. We therefore welcome the possibility to start by identifying voluntary and flexible solidarity contributions which should not lead to a shortfall of more than 30% according to Art. 52 para. 2.

However, we remain opposed to the "double privilege" of member states that receive SAR solidarity without being under migratory pressure themselves.

Further, we are in favour of the possibility in Art. 52 para 5 to reduce solidarity contributions, because past burdens can have an impact on the present. However, a possible reduction of only 10% might not always result in fair outcomes.

Art. 53 Commission Implementing Acts on Solidarity in Situations of Migratory Pressure

Overall, we would like to see a reliable way for triggering solidarity obligations and relocation. Whether the comitology procedure is the appropriate approach for doing so requires further examination. We therefore maintain our scrutiny reservation.

Art. 55 Return Sponsorship

We welcome return sponsorships in principle as a new policy concept and as an important contribution to expanded cooperation and mutual support among the member states in the area of returns.

However, we still see a need for concrete discussions and eventually also for legal adjustments, as Return Sponsorships shall have an effective relief for the benefitting Member State. For example, the handling of subsequent applications under the APR and cases of absconding require further examination. This applies to the responsibility for examining subsequent applications for international protection both before and after the eight-month time limit expires as well as for the possible consequences for the time limits in cases of absconding. We therefore keep our scrutiny reservations.

Moreover, we welcome the clarification in Art. 55 para 2a that "appropriate measures" may be taken, in view of the proportionality expressed therein. We also wonder whether implementing return sponsorship requires legislation enabling the mutual recognition of return decisions?

For clarification, we would suggest to add the following in Art. 55 para. 1 subpara. 3:

“Upon the request of a member state and for the purpose of implementation of the previous subparagraph, the Commission and the European Border and Coast Guard Agency may provide support.”

Article 57 Procedure before Relocation

The German comments on Art. 57 refer exclusively to the amendments made, and we otherwise maintain our previous comments on Art. 57.

We welcome the procedure proposed in Art 57. In particular, we agree that a person should only be relocated if neither the benefiting member state nor the member state of relocation has previously determined that the person poses a security risk for the member states. We are also strongly in favour of including the possibility to conduct a personal interview. But the time limit of one week is

too short – so that an appropriate time limit with the possibility to extend it, as in Art. 57 para 7 subpara 2, would be desirable.

With regard to the addition in Art. 57 para. 2, according to which a person is to be excluded "from any future relocation", in our view a clarification is necessary that this only applies as long as the person continues to be considered a security risk. This should clarify that in cases where the MS reassesses the security risk (e.g. due to mistake in identity), the exclusion does not apply.

To avoid double transfers, we call here for conducting the complete procedure in Art. 57 para. 3 in order to determine the responsibility. Therefore, we maintain our scrutiny reservation with regard to "meaningful links". The same applies regarding the addition in para. 3 subpara. 4 on the joint transfer of family members. We recall our scrutiny reservation on the definition of family members. There is in any case no subjective right to relocation.

Regarding the modification in sentence 4 in Art. 57 para. 3 subpara.1, our understanding of the explanation by the Commission is, that according to COM proposal beneficiaries of international protection cannot request to be relocated to a specific MS, but may at any time withdraw their consent to be relocated. We would be grateful if the COM could confirm that our understanding is correct.

Article 58 Procedure after Relocation

As the Member State of relocation will be responsible for subsequent applications, regular examination including possible withdrawal procedures, and the further representation of the relocated person - including beneficiaries of international protection - we request that the obligation of the benefitting Member State to provide all information on which the decision is based will be included in Art. 58.

Furthermore, we suggest an addition in Art. 58 paragraph 7 to clarify that the withdrawal procedures are also covered by this stipulation.

Further, we would like to ask for clarification which protection status shall be included in the wording of Art. 58 para. 4 “respective status granted by the benefitting Member State”?

GREECE

As a general remark, EL maintains a substantial scrutiny reservation on the whole new text of the proposal, including Part IV, solidarity. As it stands, the proposal does not address our expressed concerns, since the balance between solidarity and responsibility as foreseen in Part IV does not satisfy the needs of MS at the external border of EU. EL has reiterated that the mechanism lacks automaticity and it is in this direction that any further work on the text should move.

EL reiterates its points of views and comments expressed in the Asylum WP meetings on the 12th and 19th of October and previous written comments.

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

Article 2

(w) 'migratory pressure' means a situation where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries which generates migratory movements that place a **disproportionate** burden **on Member States** ~~compared to the overall situation in the Union~~, even on well-prepared asylum and reception systems and requires immediate action. **It covers situations where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from recurring disembarkations** arrivals following search and rescue operations, notably as a result of the geographic location of **a Member State at the external borders of EU** and the specific developments in third countries;

(...)

(ab) 'vulnerable persons' means the persons referred to in the second subparagraph of Article 20 of Directive XXX/XXX/EU [Reception Conditions Directive], who were assessed to have special reception needs according to Article 21 of Directive XXX/XXX/EU [Reception Conditions Directive].

Comment:

(w)

EL retains its general substantial reservation about the definition of migratory pressure since considers that this definition is crucial about the implementation of solidarity mechanisms. This definition should be clear, and to set out specific and objective trigger points to launch solidarity mechanisms. These new amendments are more vague than in previous texts, as there are no reference with the art. 50

EL considers that the phrase “Compared to the overall situation in the Union”, is problematic, as it is not specified who has the responsibility to evaluate the overall situation in the Union and how this situation is defined. The factors that consist the situation of the Union are not be clearly determined. A comparison needs two specific sizes and here we do not have any.

EL proposes the deletion of the word recurring as further limits the scope of the provision. The word as it stands may not reflect the actual situation, as well as in the way of determination - calculation.

Article 6

(...)

4. The Commission shall adopt a Migration Management Report each year setting out the anticipated evolution of the migratory situation and the preparedness of the Union and the Member States.

In the case of ~~recurring~~ disembarkations following migratory flows generated by search and rescue operations, the Commission shall consult the concerned Member States. **It may set a time limit for such consultations, which shall not be less than one week. The Commission shall explain in the Report how the opinions received have been taken into account. The Report**, ~~which shall have a possibility to comment on the draft Report within one week, and the Report~~ shall set out the total number of projected disembarkations **for the following year** in the short term and the solidarity response that would be required to contribute to the needs of the Member States of disembarkation through relocation and **measures as referred to in Article 45(1), point (d) through measures in the field of capacity building, operational support and measures in the field of the external dimension.**

The Report shall also indicate whether particular Member States are faced with capacity challenges due to the presence **of vulnerable persons of third country nationals who are vulnerable according to the definition in Article 2 (ab)**, and include the results of the reporting on monitoring listed in paragraph 3 including the information gathered within the framework of the Migration Preparedness and Crisis Blueprint and propose improvements where appropriate.

(...)

Comment:

EL proposes the deletion of the word recurring as further limits the scope of the provision. The word as it stands may not reflect the actual situation, as well as in the way of determination - calculation.

Article 45

1. Solidarity contributions for the benefit of a Member State under migratory pressure or subject to disembarkations following search and rescue operations shall consist of the following types:

- (a) relocation of applicants who are not subject to the border procedure and who are therefore more likely to have a right to stay in the Union for the examination of an application for international protection established by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];
- (b) return sponsorship of illegally staying third-country nationals;
- (c) relocation of beneficiaries of international protection who have been granted international protection less than three years prior to adoption of an implementing act pursuant to Article 53(1);
- (d) other solidarity contributions consisting of (1):**
 - (i) capacity-building measures in the field of asylum, reception and return,
 - (ii) operational support, and
 - (iii) measures aimed at responding to migratory trends affecting the benefitting Member State through cooperation with third countries.

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

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

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

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

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

Comment:

EL has a substantive reservation on point (a) and is of the opinion that the pool of relocation, should comprise all applicants regardless of the procedure they fall under. Moreover, we consider that par. 1a does not align with the EU-Turkey Statement.

A MS facing recurring arrivals should receive the timely assistance of the other MS in order to prevent a situation from developing into a crisis. Furthermore, we would like to reiterate our substantial reservation to the mandatory border procedure as foreseen in art (41) of the APR, and raise once again our concern in “keeping” persons in the proximity of the external borders for a long period.

Regarding the amendment of Article 45 par. 1 (d), we have the position that any assistance to the MS under pressure should offer solutions to practical issues and should alleviate the burden efficiently and in short time, within national framework. Taking that into account, we have serious doubts about the practical implementation of measures such as joint processing of cases or measures about communication and information, as referred to footnote 1.

Moreover, EL reiterates its consideration that the support in EU agencies such as Frontex, should not count towards solidarity contribution.

Article 46

- 1. ~~In order to ensure the smooth functioning of Part IV of this Regulation, a Solidarity Forum shall be established. It shall comprise representatives of the competent authorities of the Member States at a level sufficiently senior to carry out the tasks conferred on the Forum. A Solidarity Forum shall comprise all Member States. The Commission shall convene and preside the Solidarity Forum in order to ensure the smooth functioning of this Part.~~**
- 2. ~~In the course of the Solidarity Forum, Member States shall have an opportunity to adjust, where relevant, the number and/or the type of their contributions in the Solidarity Response Plans. The proceedings of the Solidarity Forum shall not last more than five working days.~~**

Comment:

EL does not see the added value of Solidarity Forum and how it can contribute efficiently in tackling pressing situations and so we proposed the deletion of this article so to make the procedure simpler and more effective. We are in need of automatic procedures and not long and endless discussions.

Article 47

This Article and Articles 48 and 49 shall apply to ~~recurring disembarkations~~ search and rescue operations that generate recurring arrivals of third-country nationals or stateless persons onto the territory of a Member State **following search and rescue operations** and to vulnerable persons as set out in ~~Article 2 (ab) and~~ Article 49(4).

Comment:

par.1: Same comment as on Article 2(w) with regards to the term 'recurring disembarkations'.

par. 2: EL maintains its substantive reservation on this paragraph due to the substantive reservation on the exclusion from relocation of persons subject to a border procedure. As already mentioned EL has the opinion that the pool of relocation, should comprise all applicants regardless of the procedure they fall under.

par. 3: In respect with the distribution key and the share of the benefitting MS, same comment as in art 53 and 54

par 5: EL maintains its reservations on the use of the words 'not *sufficiently close*', since such vague wording leaves room for interpretation which ultimately could have an impact on the support to be provided to Member States.

Article 48

Comment:

par. 4: Same comment as on Article 47 with regards to the wording "sufficiently".

In the context of the correction mechanism it is not clear enough on what basis the Commission will compare the measures under art. 45. 1d and those of art.45. 1a. Detailed simulations and examples are needed to clarify how the mechanism would work in practice and how and to what extent the actual needs of the benefitting MS will be met, since as the text stands now, there is a possibility, that only 50% of the needs in measures referred to as "people solidarity" may be covered.

Article 50

Comment:

par. 1: EL thinks that this amendment is a positive step thus we are of the position that Member States are best placed to determine whether or not they are under migratory pressure and consequently the assessment of migratory pressure should take place jointly between the Commission and MS concerned.

par.3 and 4: Concerning the methodology of the assessment, more clarity is called for as regards the interplay between these two pg. The criteria under para. 3 are numerical so to speak, whereas

under para. 4 they comprise assessments of an operational/political nature. The assessment of migratory pressure now depends on more criteria than in previous texts, without light being shed on the methodology that have been followed by the Commission.

Article 51

1. The Commission shall consult the Member State concerned during its assessment undertaken pursuant to Article 50(1). **The Commission may set a time limit for such consultations, which shall not be less than a week ~~three days~~, and will give this Member State an opportunity to comment on the draft Report within three days.** The information presented by the Member State may be updated until the adoption of the report, in order to better capture a developing situation. **The report shall explain how the comments received have been taken into account.**

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

4. Where the Commission considers **on the basis of the information presented by the Member State** that a rapid response is required due to a developing situation in a Member State, it shall submit its report **on migratory pressure to the European Parliament and the Council** within two weeks **after the Commission informed them at the latest from the date on which it informed the European Parliament, the Council and the Member States pursuant to Article 50(2)** that it was carrying out an assessment **pursuant to Article 50(2).** **The provisions of the first subparagraph of Article 51(1) shall apply.**

Comment:

par 1: EL is of the opinion that the amendments are a step in the right direction. However, the timeframe to comment on the draft report is too short and should be extended to at least 1 week.

par. 2: What happens when the Commission refuses to find a State under migratory pressure?

par 3: EL would like to raise its concerns in respect with point (b) (i) and (iii).

A MS under pressure needs measures for the fast and smooth support in order to prevent a situation from developing into crisis. The wording as it stands in the text implies long term measures.

par 4: EL reiterates its thesis, that Member States are best placed to determine whether or not they are under migratory pressure. Therefore, this assessment should only be triggered following the information provided by the Member State in need, and not on the basis of available information.

Article 53

3. The implementing act shall set out:

[...]

c. the distribution of persons to be relocated and/or those to be subject to return sponsorship among the Member States including the benefitting Member State with the exception of the benefitting Member State, on the basis of the distribution key set out in Article 54;

Comment:

EL is of the position that the solidarity measures in terms of relocations and return sponsorship should be covered by Member States, who are not affected by flows generating a situation of migratory pressure. In that aspect the share of the benefitting Member State should not be taken into account in the calculations of the fair share, since this could actually lead to a significant shortfall in relocations and/or return sponsorship.

In addition EL would like to raise its concerns, if the committee procedure is the appropriate instrument to take timely decisions on solidarity measures.

Article 54

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

(a) the size of the population (50% weighting);

(b) the total GDP (50% weighting).

Comment:

The distribution of all persons identified for relocation or return sponsorship should be covered by all Member States with the exception of the benefitting Member States. EL cannot accept a proposal where the share of the benefitting Member State(s) is still taken into account and subsequently deducted from the total number of persons subject to relocation or return, since this could lead to a significant shortfall in the number of persons who will actually be relocated or returned.

Article 55

Comment:

EL considers the idea of return sponsorship interesting but still examines the practical implementation and the added value of this solidarity measure.

However, we would like to reiterate our substantive reservation in relation to the proposal of Screening Regulation and the foreseen provisions of APR for the border procedure, in respect to the legal fiction of non – entry and the obligation to “keep” third country nationals at the borders or in locations in proximity to the external borders. With this consideration the 8 months period provided in art 55 for the return sponsorship is too long, therefore we suggest a period of **five months** for the completion of all actions needed for the return from the benefitting m-s.

Responsibility should shift to the sponsoring m-s and marked accordingly in Eurodac after the expiration of the given period for return sponsorship. Benefitting m-s has the responsibility to examine any subsequent application m-s, before return and/or transfer to the sponsoring m-s. Pending the examination of any subsequent application the period provided for return sponsorship **should not be suspended**. Given that return sponsorship is a measure to alleviate pressure from the benefitting m-s the timeframe should not be disrupted. Should the outcome of the first decision be overturned by the determining authority, the return sponsorship is terminated and the sponsoring m-s accordingly informed.

In the event that return has not been successful within the foreseen deadline, transfer to the sponsoring m-s shifts the responsibility to the sponsoring m-s. Relevant provisions should be included in the APR and Eurodac Regulation.

Moreover, EL considers that the provisions of solidarity **should align** with the EU-Turkey statement and consequently, MS should cooperate in order this statement to be fully implemented. The implementation of the return sponsorship in Greece would possibly create the paradox an asylum seeker to be rejected within 2 months at an island asylum office of the Aegean and must wait on the same island for up to 8 months to be returned - under the Joint Declaration - to Turkey with assistance of a third party.

Par 2a: EL needs clarifications about the wording “shall take all appropriate measures”

Par. 4: EL raises scrutiny reservations though we consider that these procedures are not going to alleviate the burden of front-line countries. Our experience demonstrates that these arrangements are extremely time consuming and delay the completion of the whole task.

Article 57

Par. 2: EL raises scrutiny reservations on this paragraph in view of our concerns on the Screening Regulation.

Par.6: EL raises scrutiny reservations about the possibility of personal interview with the person concerned, conducted by the MS of relocation. From our experience, these interviews extremely delay the process and do not contribute in the alleviation of the burden in front-line MS.

HUNGARY

General comments

Hungary maintains and reiterates its scrutiny reservation on the whole proposal on the entire Asylum and Migration Management Regulation and thus also on all the new amendments and proposals made. Hungary also refers to its substantive reservation along the lines of the concerns indicated at ministerial and SCIFA level. Hungary also indicates that the Hungarian Parliament, in its Decision No 40/2020 (XII. 16.) OGY, laid down that the principle of subsidiarity had been infringed in relation to the five draft regulations of the new Pact on Migration and Asylum.

Hungary maintains its position for a package approach and considers it important that the technical discussions of the proposals do not prejudice any decision to be taken at political level,

As certain content elements of the legislative proposals go beyond technical issues, Hungary recommends that decisions on issues that require political consensus should be taken at a higher level.

Hungary is skeptical regarding the solidarity mechanism, the proposal set out sends the message that the need of Member States demanding mandatory relocation outweigh those that would be searching another solution to alleviate the migratory pressure on Europe. Hungary opposes any solution that would result in mandatory relocation of migrants as part of solidarity. Solidarity between Member States is essential; however, upon choosing the instrument of solidarity, a flexible approach has to be taken. In addition, Hungary rejects the use of the distribution key and the correction mechanism. All supportive measures should be treated equally and the solidarity mechanism should be based on voluntary choice, tailored to the individual capabilities of the Member States, taking into account their national specificities on voluntary decision of Member State. Member States' efforts to protect the external border should be quantified solidarity instruments.

Hungary has also concerns about the solidarity mechanism regarding the situation of disembarkation as a result of SAR operations among many others due to the obligatory solidarity mechanism dedicated to SAR.

In addition, Hungary is of the viewpoint that the role of the Council should be strengthened within the solidarity mechanism.

Article 2

We propose to change the phrase *recurring disembarkation* to *illegal border crossing*. Furthermore, in line with our previous position, we maintain our concerns on the definition of migratory pressure, as the proposal would ultimately be that the Commission would determine the existence of migratory pressure, taking into account certain factors.

Article 45

The most concerning part of the Pact is the new mandatory solidarity mechanism, which is based on the mandatory distribution of asylum seekers and irregular migrants, using a distribution key, and does not allow for the adaptation of solidarity forms to the preferences and capacities of Member States. We are not opposed to mandatory solidarity, but we can only accept it in a much more flexible form than the proposed one.

We consider that any solidarity mechanism is acceptable if the efforts of Member States made in border management and in the external dimension of migration are considered as equal solidarity instruments and relocation, whether for integration or expulsion purposes, remains only a voluntary solidarity instrument. In this regard, there are some positive elements included in the footnote in Article 45(1)(d), however, we have concerns about measures regarding SAR operations. In our opinion, solidarity contributions should be inserted in the text of the Regulation. Furthermore, other solidarity instruments need to be laid down and this article should be extended accordingly with examples of other solidarity contributions.

Articles 6(4), 47-49

We cannot accept neither the creation of a special category for the disembarked persons after search and rescue operations, nor the proposed special solidarity mechanism created for it. In our view, this phenomenon is considered to be a form of illegal migration, in relation to which we need to focus solely on prevention. To this end, it must be ensured that the migrants concerned are rescued or readmitted by the countries of origin through disembarkation platforms.

With reference to our previous comments made earlier regarding this article, we cannot accept this special mechanism – regardless of the relevant procedures and possible future compromise proposals - under any circumstances. We submit reservation to the whole SAR part (Article 6(4) and Articles 47-49) and are against of introducing any permanent and obligatory mechanisms of solidarity dedicated solely for disembarked persons.

Article 50

When assessing the migratory situation under Article 50, we also consider it important to take into account the border protection efforts at the external borders and the financial and human expenditures spent on them, in order to assess the real extent of the pressure at each border section and its comparison.

Article 51

In our view, instead of the Commission, the Council should adopt the report declaring migratory pressure and laying down the necessary measures, and the Commission's findings can only serve as a proposal. We also consider it important to define not only the solidarity measures, but also the necessary actions to be taken by the benefitting Member State.

Article 52

In Article 52(1), we propose to use the term „which are not themselves Member States under pressure” instead of „which are not themselves benefitting Member States”. There may be a situation where a Member State, although it is under migratory pressure, does not yet need to make use of solidarity measures, but at the same time its obligation to show solidarity with another Member State would overburden its situation to such an extent that would jeopardize the proper management of its own situation under pressure. We do not agree with prioritizing relocation (including of unaccompanied minors), as there may be more important needs for action in order to decrease pressure.

The capacity-building measures should be given much more space than it is proposed, so we ask for the last sentence of Article 52(2) to be deleted.

The solidarity plan provided for in Article 52(3) may only foresee the instruments set out in Article 45(1)(a), (b) and (c). In line with our position on Article 45, we do not consider it appropriate to limit the actions solely to these instruments.

Article 53

We believe that solidarity measures should not be defined by the Commission, but by the Council. Moreover, the range of solidarity instruments indicated is not one that helps to reduce the pressure,

so we ask for a wider set of instruments. We also reject the use of the distribution key and the correction mechanism, and the value of capacity-building pledges is completely uncertain. Not knowing what value the offered capacity-building would have and consequently exactly how much capacity-building contribution the Member State's fair share would require in its solidarity plan, and the extent to which the capacity-building pledges would be taken into account, makes the planning by the governments practically impossible.

Article 54

We completely reject the application of the distribution key provided for in Article 54, which only creates a new quota system as this enforced form of solidarity cannot be effective. We still cannot support a proposal that envisages a quota-based distribution of the expelled persons within the European Union.

Article 55

Maintaining our previous position, we are concerned that, although the proposal provides for a choice between the relocation and the return sponsorship, in practice, the return sponsorship provided for in Article 55 can only be considered as a delayed relocation, which is clearly supported by the reference to Articles 57 and 58 in Article 55(2). It is also questionable whether individual Member States can successfully engage with the countries of origin concerned, especially as the proposed EU incentives have not yet been fully put into practice. Furthermore, we do not see how the sponsoring Member State could substantially intervene in the return procedure of the benefitting Member State, especially in the sensitive scope of identification, document obtaining and consular interviews. In addition, the whole concept raises several issues regarding the issues falling within the exclusive competence of the Member State and the responsibility of the sponsoring Member State. We see a high chance that the return sponsorship will fail, which in turn creates a relocation obligation regarding the illegally staying third-country national. It is unacceptable that, if the third-country national concerned does not return within 8 months, the Member State sponsoring the person concerned is obliged to transfer that person to its territory from the Member State of first entry and to proceed with the removal there.

Article 56

We agree that our primary objective should not be to manage migratory pressures, but to prevent them, and to this end, these voluntary measures should be allowed and counted much more widely. Furthermore, other instruments of solidarity also need to be set out in more details, so this chapter needs to be expanded accordingly with additional articles. Article 56 is too restrictive in its application of capacity building contributions.

Article 57

Based on our position expressed earlier, we have serious concerns with regard to solidarity mechanism setting out the mandatory relocation and return sponsorship of asylum seekers as well as illegal migrants.

As for the certain procedural provisions, the relationship between relocation and the traditional Dublin procedure is unclear. Paragraph 3 aims to clarify that where the benefitting Member State was determined responsible based on the criteria set out in Articles 15-20 and 24 (family relations, residence permit, diplomas, dependent persons), relocation to another Member State cannot take place. This, however, assumes that before relocation, the Dublin procedure for responsibility has taken place. Subsequently, it is important to clarify, whether this responsibility procedure is carried out before relocation. Furthermore, we have a reservation with regard to the new definition of family members. As a result of Paragraph 4, return sponsorship would lead to mandatory relocation, thus, we cannot accept its content. We ask the deletion of the paragraph.

Articles 58-60

In our view, relocation can only take place after the Dublin procedure. We can accept the obligation to provide information in Article 59 and the coordinating role of the Commission in Article 60, in our view, the Commission should primarily play a coordinating role with regard to the solidarity mechanism and not a decision-making role. At the same time, we insist that other solidarity actions may also be included in replacing the sponsorship and the relocation, we therefore ask that the text include a reference to this.

IRELAND

Article 45: Paragraph 1(d) – We can support the text of footnote 1 either in the Article itself or in the recitals.

Article 47: In order to simplify the procedure we would prefer that the relocation of persons disembarked following SAR operations be linked to an assessment of migratory pressure and not as a separate solidarity mechanism.

Article 52: Para 1 – Member States who are benefitting from solidarity in respect of persons disembarked following SAR operations and who have not also been determined as being under pressure/at risk of pressure should not be exempt from providing solidarity to Member States under pressure.

Article 55: Paragraph 1 requires the benefitting Member State to apply the provisions of the (recast) Return Directive and paragraph 2 requires the sponsoring Member State to apply the (recast) Return Directive where the person is relocated to that Member State after the 8 month period expires.

As Ireland does not take part in the Return Directive, we have concerns that that as currently drafted this would prevent Ireland from either benefitting from return sponsorship or from providing return sponsorship as part of our solidarity contribution.

Article 55: Paragraph 2a – where return does not take place for reasons that are outside of the control of the sponsoring Member State then the obligations of the sponsoring Member State should cease. We support including a maximum time for extending the 8 month time frame after which the sponsoring Member State’s obligations end, rather than having an open-ended process.

Article 57: Paragraph 6 – We welcome the new text allowing for a security interview to be carried, however, the timeframe of one week (extended to two weeks in certain circumstances) is too short. Under the voluntary relocation process that Ireland has taken part in, face-to-face interviews are undertaken by An Garda Síochána (the Irish Police Force) as a matter of State security. This involves Members of An Garda Síochána interviewing the proposed applicants for relocation in the benefitting Member State and thereafter on return to Ireland conducting security checks (including fingerprint checks – which are confirmed on location in the Benefitting Member State by An Garda Síochána) through national database systems and submissions to both Interpol and Europol. The timeframe for receiving a reply to these submissions is outside of our control.

We would also support extending the scope of this interview to include asylum matters.

Article 58: Paragraph 2 – In order to avoid a situation whereby applicants are transferred a number of times between Member States, the determination of the Member State responsible should take place prior to relocation.

LITHUANIA

General remarks regarding LT position on solidarity

We retain a substantial reservation on provisions that relate to mandatory redistribution of third country nationals and the proposal of a separate solidarity mechanism concerning disembarkations following SAR.

We believe that solidarity should be mandatory but this should not mean mandatory relocations or quotas. The mandatory solidarity mechanism should be flexible providing the member state with the opportunity to choose its forms, for example, relocations, deployment of officers, experts, providing technical equipment, financial contributions, and etc. At the same time we do not support any measures that could create pull factors.

For relocations several conditions must be fulfilled. First, they should be voluntary. Then prior to relocations a security check should be conducted by Lithuanian security service staff and only those applicants that do not pose threat to the national security and the public order can be relocated. The last condition to be fulfilled in relocating applicants is their being in a genuine need of international protection (in that regard, we view the recognition rate of the 75% that we had in Council decisions on relocation from 2015 as adequate.)

The solidarity mechanism should be limited in time for as long as it is necessary to alleviate the burden of the benefitting member state during the migratory pressure situations. Thus, we support migratory pressure solidarity mechanism. We cannot accept the proposed SAR solidarity mechanism as it is a permanent and compulsory mechanism. It also treats a particular category of irregular migrants in a preferential way. It is of utmost importance to us that all asylum applicants undergo the same procedures, including those disembarked during SAR operations: screening, border procedure, asylum procedure, return. Where the number of disembarkations amounts to migratory pressure, the solidarity mechanism for migratory pressure situations should be applied.

As regards the triggering of the solidarity mechanism, we advocate for a greater involvement of the Member States in the decision-making. We believe the decisions on activation of the solidarity mechanism and on the measures necessary to address the migratory pressure/crisis situation should be taken by the Council, based on the proposal from the Commission. This will increase the ownership of the MS in relation to those decisions and will facilitate their implementation.

Article 2 (w)

Concerning the definition of the migratory pressure in Art. 2 letter w we propose to modify it by addressing the phenomenon of instrumentalisation of migration flows and by deleting the reference to disembarkations.

Text proposal:

- (w) “migratory pressure’ means a situation ~~where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries~~ which generates migratory movements that place a **disproportionate burden on Member States compared to the overall situation in the Union**, even on well-prepared asylum and reception systems and requires immediate action. **It covers situations where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from recurring disembarkations arrivals following search and rescue operations**, notably as a result of the geographic location of a Member State ~~and~~, the specific developments in third countries and a hybrid attack characterised by an artificially created large scale migratory flows by third countries.

Article 52 (3)

With regard to Article 52 para 3, we are afraid that 2 weeks’ timeframe for submitting solidarity response plan is not sufficient because internal procedures to take decisions on types of contributions to be included in the solidarity response plan take time. We propose at least 3 weeks.

Article 55 Return sponsorship

We have been in principle sceptical about the return sponsorship. We do not view it as an option because we as a small country will not have leverages at our disposal in dealing with the authorities of the third countries, so some measures like those foreseen in letter c or d could hardly be regarded implementable for us. Furthermore, different return sponsorship measures or activities are not equal

and clear in terms of the weight or value. It is not clear for us how it would work in practice bearing in mind that the return activities should be shared by the benefiting MS and the contributing MS and that the return sponsorship should end in return to fulfil the commitment (as explained by the Commission).

We propose releasing the contributing Member State from commitment in cases where it has carried out the activities, agreed upon with the benefiting Member State, even if the returns of third country nationals did not take place.

Article 57 Procedure before relocation

We welcome the amendment in para 6. However, alongside the security interview, the asylum interview should take place as well. This is related to our position that only third country nationals in need of international protection should be relocated. Concerning the time frame we join the member states who consider it much too tight.

Text proposal

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

MALTA

Article 2(w)

MT would like a clarification on the new wording ‘*disproportionate burden on Member States compared to the overall situation in the Union*’, and how will this be calculated?

To give a practical example, if a small island like Malta receives a 1,000 new applications in a quarter it might not be disproportionate compared to the overall situation in the Union, but being a small, densely populated Member State, such a number, or even less would still mean that we are facing migratory pressure.

The term ‘recurring disembarkations’ is still found to be vague as it is not clear to us in which circumstances it actually applies. Would a scenario where a Member State is faced with a relatively small number of disembarkations spread over a number of months qualify as recurring disembarkations? Furthermore, we would also like to once again highlight our position that in our view arrivals following SAR should be the shared responsibility of the Union and not of individual Member States who are simply fulfilling international obligations. This shared responsibility should apply irrespective of the number of disembarkations or the nationality of the persons who have been disembarked.

Article 6(4)

Same comment as on Article 2(w) with regards to the term ‘recurring disembarkations’.

Article 45

MT maintains its substantive reservations on this Article, which are being reproduced hereunder for ease of reference.

- Paragraph 1

- i) MT has a substantive reservation on point (a) and is of the opinion that this should be amended as follows:

*relocation of applicants **for international protection** ~~who are not subject to the border procedure and who are therefore more likely to have a right to stay in the Union for the examination of an application for international protection established by Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]~~;*

Justification: In order to properly ease the burden on front line Member States, effective solidarity and a fair share of responsibility amongst all Member States needs to be ensured, all asylum seekers should be subject to relocation, regardless of the procedure they fall under. Furthermore, MT would once again like to highlight the fact that it is opposed to the mandatory nature of the border procedure as envisaged under Article 41 of the amended proposal for the APR.

- ii) MT has a substantive reservation on point (b) and is of the opinion that this should be amended as follows:

return sponsorship of ~~illegally staying third country nationals~~ third country nationals or stateless persons whose application has been rejected following a final decision;

Justification: MT is of the opinion that the current wording is too wide and does not necessarily alleviate the burden on front line Member States. Therefore, return sponsorship should be limited to failed asylum seekers.

Alternatively, MT can accept the current formulation if the text is amended in such a way that the benefitting Member State decides which category/categories of illegally staying third country nationals are to be included in the return sponsorship (e.g. failed asylum seekers, over stayers, etc.).

MT, while not opposed to the provision in point (c), is of the opinion that priority should be duly given to those individuals who were granted international protection less than 1 year prior to adoption of an implementing act pursuant to Article 53(1).

- Paragraph 2

MT is of the opinion that this paragraph should be re-worded as follows:

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

~~*(a) relocation of applicants for international protection subject to the border procedure in accordance with Article 41 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation];*~~

~~*(b) relocation of ~~illegally staying third country nationals~~ third country nationals or stateless persons whose application has been rejected following a final decision.*~~

Justification: Amendment in view of our general position and substantive concerns pertaining to paragraph 1(a) and (b).

Article 47

- Paragraph 1

Same comment as on Article 2(w) with regards to the term ‘recurring disembarkations’.

- Paragraph 2

MT maintains its substantive reservation on this paragraph due to the substantive reservation on the exclusion from relocation of persons subject to a border procedure. As already mentioned in previous meetings, MT recalls that all asylum seekers should be subject to relocation. Excluding applicants who are in a border procedure could lead to a situation where a substantial number of applicants are not eligible for relocation. The current proposal raises serious questions on the effectiveness and tangible impact that these measures will have on alleviating the burden on front line Member States.

- Paragraph 3

This paragraph should be amended as follows:

Within two weeks of the adoption of the Migration Management Report, the Commission shall invite all other Member States that are not expected to be faced with arrivals on their territory as referred to in paragraph 1 or are not under migratory pressure, to provide the solidarity contributions referred to in paragraph 2. In its request, the Commission shall indicate the total number of applicants to be relocated by each Member State in the form of solidarity contributions referred to in Article 45(1), point (a) by each Member State, calculated according to the distribution key set out in Article 54. ~~The distribution key shall include the share of the benefitting Member States.~~

Justification: MT cannot accept a proposal where the share of the benefitting Member State(s) is still taken into account and subsequently deducted from the total number of persons subject to relocation, since this could lead to a significant shortfall in the number of persons who will actually be relocated.

- Paragraph 4

MT has a substantive reservation on point (a) of paragraph 4 due to the substantive reservation on the exclusion from relocation of persons subject to a border procedure.

- Paragraph 5

MT maintains its reservations on the use of the words ‘not *sufficiently close*’, since such vague wording leaves room for interpretation which ultimately could have an impact on the support to be provided to Member States.

Article 48

- Paragraph 1

MT maintains its reservations on the use of the words ‘*sufficiently close*’, since such vague wording leaves room for interpretation which ultimately could have an impact on the support to be provided to Member States.

MT also has a reservation on this paragraph due to the concerns already raised with regards to Article 47(4) and (5).

- Paragraph 4

MT maintains its reservations on the use of the words ‘not *sufficiently close*’, since such vague wording leaves room for interpretation which ultimately could have an impact on the support to be provided to Member States.

Furthermore, point (b) should be amended as follows:

*the number and share referred to in point (a) for each Member State, **with the exception of including** the benefitting Member States, calculated according to the distribution key set out in Article 54;*

Justification: MT cannot accept a proposal where the share of the benefitting Member State(s) is still taken into account and subsequently deducted from the total number of persons subject to relocation, since this could lead to a significant shortfall in the number of persons who will actually be relocated.

- Paragraph 7

MT maintains its reservation on this paragraph due to the concerns raised in relation to point (b) of paragraph 4.

Article 50

- Paragraph 1

MT is of the opinion that paragraph 1 should be amended as follows:

The Commission shall, in close cooperation with the Member State concerned, assess the migratory situation in a Member State where:

- ~~*(a) that Member State has informed the Commission and the other Member States that it considers itself to be under migratory pressure. The Member State may include in its information an estimate of the measures needed to address and respond to the situation;*~~
- ~~*(b) on the basis of available information, it considers that a Member State may be under migratory pressure.*~~

Justification: MT maintains its position that Member States are best placed to determine whether or not they are under migratory pressure. Therefore, this assessment should only be triggered following the information provided by the Member State in need, and not on the basis of available information.

- Paragraph 3

MT is of the opinion that paragraph 3 should be amended as follows:

*The assessment of migratory pressure shall cover the situation in the Member State concerned during the preceding ~~six~~ **twelve** months, compared to the overall situation in the Union, and shall be based in particular on the following information:*

Justification: MT is of the opinion that the assessment should be based on the situation in the preceding 12 months since a 6 months' timeframe might not necessarily give the full picture of the pressure faced by Member States.

MT has a reservation on point (f) due to our concerns pertaining to the shortening of timeframes for sending/replying to take charge/back requests as well as the change from take back requests to take back notifications.

Article 51

- Paragraph 1

MT is of the opinion that the changes made by the Presidency are a step in the right direction. However, the timeframe to comment on the draft report is too short and should be extended to at least 1 week (minimum).

- Paragraph 4

MT is of the opinion that paragraph 4 should be amended as follows:

*Where the Commission considers, **on the basis of the information presented by a Member State**, that a rapid response is required due to a developing situation in ~~a~~ **that** Member State, it shall submit its report on migratory pressure to the European Parliament and Council within two weeks after the Commission informed them that it was carrying out an assessment pursuant to Article 50(2). The provisions of the first subparagraph of Article 51(1) shall apply, **provided that the timeframe for consultation with the Member State concerned shall not be less than three days.***

Justification: MT is of the opinion that Member States are best placed to determine whether or not they are under migratory pressure. Therefore, this assessment should only be triggered following the information provided by the Member State in need, and not on the basis of available information.

Furthermore, MT is of the opinion that in this case, being a situation that requires a rapid response, the time limit for consultation should be reduced to 3 days.

Article 52

- Paragraph 3

MT is of the opinion that the second sub-paragraph of paragraph 3 should be amended as follows:

*Where the Solidarity Response Plan includes return sponsorship, Member States shall indicate the nationalities of ~~the illegally staying third-country nationals~~ **third country nationals or stateless persons whose application has been rejected following a final decision** present on the territory of the Member State concerned that they intend to sponsor.*

Justification: amendment in view of our substantive concerns pertaining to Article 45(1)(b). Without prejudice to this, MT could accept the current formulation if the text is amended in such a way that the benefitting Member State decides which category/categories of illegally staying third country nationals are to be included in the return sponsorship (e.g. failed asylum seekers, over stayers, etc.).

Article 53

- Paragraph 3

MT is of the opinion that point (c) should be amended as follows:

*the distribution of persons to be relocated and/or those to be subject to return sponsorship among the Member States **with the exception of including** the benefitting Member State, on the basis of the distribution key set out in Article 54;*

Justification: The distribution of all persons identified for relocation or return sponsorship should be covered by all Member States with the exception of the benefitting Member States. MT cannot accept a proposal where the share of the benefitting Member State(s) is still taken into account and subsequently deducted from the total number of persons subject to relocation or return, since this could lead to a significant shortfall in the number of persons who will actually be relocated or returned.

Article 54

MT is of the opinion that the chapeau should be amended as follows:

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

Justification: The distribution of all persons identified for relocation or return sponsorship should be covered by all Member States with the exception of the benefitting Member States. MT cannot accept a proposal where the share of the benefitting Member State(s) is still taken into account and subsequently deducted from the total number of persons subject to relocation or return, since this could lead to a significant shortfall in the number of persons who will actually be relocated or returned.

Article 55

- Paragraph 1

MT is of the opinion that paragraph 1 should be amended as follows:

*A Member State may commit to support a Member State to return ~~illegally staying third-country nationals~~ **third country nationals or stateless persons whose application has been rejected following a final decision** by means of return sponsorship whereby, acting in close cooperation and coordination with the benefitting Member State, it shall take measures to prepare for and carry out the return of those third-country nationals **or stateless persons** from the territory of the benefitting Member State. This is without prejudice to the obligation of the benefitting Member State to apply the provisions of the [recast Return Directive].*

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

Upon the request and for the purpose of implementation of the previous subparagraph, the Commission and the European Border and Coast Guard Agency may provide support.

Justification: MT maintains its reservations on this paragraph due to the concerns already expressed in relation to Article 45(1)(b). Without prejudice to this, MT seeks a clarification in relation to the second sub-para. Does this mean that the benefitting Member State provides a list and the sponsoring Member States can only return illegally staying third country nationals who are on said list?

- Paragraph 2

MT is of the opinion that paragraph 2 should be amended as follows:

*Where a Member State commits to provide return sponsorship and the ~~illegally staying third-country nationals~~ **third country nationals or stateless persons whose application has been rejected following a final decision and** who are subject to a return decision issued by the benefitting Member State do not return or are not removed within **8 4** months, the sponsoring Member State shall transfer the persons concerned onto its own territory in line with the procedure set out in Articles 57 and 58 and shall apply the provisions of the [recast Return Directive]. This period shall start from the adoption of the implementing act referred to in Article 53(1) or, where applicable, from the communication of the list referred in Article 49(2) to the sponsoring Member State. Member States may bilaterally agree on a shorter period.*

Justification: MT maintains its reservations on this paragraph due to the concerns already expressed in relation to Article 45(1)(b).

Furthermore, whereas the proviso pertaining to the possibility of having a shorter timeframe through bilateral agreements is welcome, MT maintains its position that considering the fact that while return proceedings are taking place the illegally staying third-country national is still on the territory of the benefitting Member State, the 8 months' timeframe is too long and should be shortened to 4 months.

- Paragraph 2a

Do the provisions outlined in the second sub-paragraph also apply in case of subsequent applications? In the affirmative, MT is of the opinion that considering the fact that there is no capping to the number of subsequent applications that can be lodged, such a provision could lead to a systematic flaw and abuse of the system, due to the lengthening of return proceedings or of an eventual transfer to the sponsoring Member State.

Furthermore, MT is of the opinion that the second dub-paragraph should be amended as follows:

*When an illegally staying third country national either absconds or makes an application for international protection, during the ~~8~~ **4** month period or any bilaterally agreed shorter period as referred to in paragraph 2, the counting of this period shall be suspended until the illegally staying third-country national is again available for the return process.*

Justification: Amendment in view of our concerns on the 8-month timeline to finalize return.

- Paragraph 3

MT has a scrutiny reservation on paragraph 3(b) since the decision rejecting an application for international protection and a return decision are currently issued by two separate authorities and at different points in time.

It should be noted that the words ‘together with’ and ‘without undue delay’ create a contradiction. Furthermore, MT is of the opinion that in case a return decision is issued in a separate act, this should not be issued together with the decision rejecting the application for international protection but without undue delay following the issuance of said decision.

- Paragraph 4

MT is of the opinion that points (a) and (b) should be amended as follows:

- (a) providing counselling on return and reintegration to ~~illegally staying third country nationals~~ **third country nationals or stateless persons whose application has been rejected following a final decision**;
- (b) using the national programme and resources for providing logistical, financial and other material or in-kind assistance, including reintegration, to ~~illegally staying third country nationals~~ **third country nationals or stateless persons whose application has been rejected following a final decision** willing to depart voluntarily;

Justification: Amendments in view of our concerns in relation to Article 45(1)(b).

Article 57

- Paragraph 1

MT has a reservation on this paragraph in view of our substantive reservations on the current wording of Article 45(1) points (a) and (b), and our concerns on Article 55.

- Paragraph 2

MT has a reservation on this paragraph in view of our concerns on the Screening Regulation.

- Paragraph 3

MT has a reservation on the third and fourth sub-paragraphs due to our reservations on the new definition of ‘family members’, specifically the addition of siblings, and on the new criterion for the determination of responsibility based on diplomas or other qualifications.

- Paragraph 4

MT has a reservation on this paragraph in view of our reservation on the current time limit envisaged in Article 55(2), which we deem as being too long. Furthermore, MT is of the opinion that this paragraph should be re-worded as follows:

*When the period referred to in Article 55(2) expires, the benefitting Member State shall immediately inform the sponsoring Member State that the procedure set out in paragraphs 5 to 10 shall be applied in respect of the ~~illegally staying third country nationals concerned~~ **third country nationals or stateless persons whose application has been rejected following a final decision.***

Justification: amendments in view of our concerns in relation to Article 45(1)(b).

- Paragraph 9

MT would like to once again raise the following questions which to date remain unanswered:

- What happens if an applicant absconds and subsequently applies for protection in another Member State? Would a request be sent to the benefitting Member State or the Member State of relocation?

Article 58

- Paragraph 4

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

- Paragraph 7

MT is uncertain how in the case of subsequent applications the Member State of relocation can carry out a preliminary examination without being aware of what the applicant claimed in the previous proceedings (i.e. when applying for international protection in the benefitting Member State).

In this regard, it should be noted that even if the documentation to be forwarded by the benefitting Member State to the Member State of Relocation under Article 57(5) includes the asylum file kept by the determining authority of the benefitting Member State, one would assume that these documents would be in the administrative language of that Member State.

THE NETHERLANDS

In the following comments, we react to the latest 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.

Article 2

Sub w: the Netherlands welcomes the addition of the text “compared to the overall situation in the Union”. We noticed however that the definition here still sees the geographical location of a Member State as a relevant factor in determining migratory pressure. In our view, the geographical location does not hold inherent value in this regard and could therefore be deleted. The relevant aspect is the finding that a Member State is subject to a persistent disproportionate migratory pressure. This could as well be a non-border state.

Article 6

Paragraph 4: in the view of the Netherlands, it will be very difficult, if not impossible, to come up with a valid number of projected future disembarkments/SAR-operations. In this regard, we would also like to reiterate our earlier point of view that migratory pressure should include SAR-operations; we therefore oppose a separate solidarity mechanism for SAR in this regard. This of course also applies to all the SAR-articles in the current text.

Article 45

Paragraph 1: The wording ‘shall consist of’, implies an obligation to the Member States for all (three) options of solidarity. This is not in line with the solidarity-mechanism in article 55 (1), in which a choice is left for Member States to choose from those options. This could easily be resolved by deleting the word ‘shall’.

Paragraph 1, sub c: In the view of the Netherlands, sub c should be deleted because the relocation of beneficiaries creates a number of practical en legal problems. For example, in cases where the situation in the country of origin improves, a reassessment of the need of international protection will not be possible while there will be no file available of the former assessment.

Sub d: i and ii: the Netherlands is of the opinion that it should be clarified here that the mentioned measures would see to the benefitting Member State concerned (and not to a third country). Also we welcome the proposed text in footnote 1. The Netherlands agrees with setting out the proposed text in a recital.

Paragraph 2, sub b: the Netherlands does not agree with relocation of illegally staying persons, as this would lead to many practical issues and will also send out the wrong signal, that illegal stay is somehow tolerated/institutionalised. Regarding the practical issues: it is likely that the illegally staying person would lodge an application for international protection immediately after his arrival in the Member State of relocation. For that Member State, it will not be possible to assess this application quickly, because that Member State has no file of the previous application for international protection. The same applies if the person concerned would contest the return decision issued by the benefitting Member State as soon as he arrives in the Member State of relocation.

Article 46

The Netherlands welcomes the addition of the first sentence, however we would propose to speak of “each Member State” in stead of “the Member States” to make clear it concern all Member States.

Article 50

Paragraph 1, sub a: the Netherlands would propose to specify more clearly here what it is exactly that the Member State would need, out of both categories. So, on the one hand, what the Member State itself can do to make its own asylum system more robust, and on the other hand, what specific solidarity needs this Member State has.

Paragraph 3, sub 1: In L (the number of third-country nationals who have been granted international protection) the Netherlands proposes to add that it concerns persons that still reside in the Member State that granted the international protection. Also we miss the category of family reunification here and we would propose to add this.

Paragraph 4: We propose to add the relevant parts and recommendations of the monitoring, that will be introduced by the EUAA-regulation.

Article 51

Although the previous article provided an insight into which elements are involved in determining migratory pressure, it remains unclear how exactly those elements are weighted, in particular also in relation to the situation in the EU. The Council should therefore be given a role in determining the migratory pressure on the basis of the Commission's report. The Netherlands believes that this issue should be part of larger and more in-depth considerations at a later stage.

Article 52

Paragraph 1: This article stipulates that a benefitting MS does not have to offer solidarity to another benefitting Member State. This seems illogical if the former Member State is not under migratory pressure, but only is a benefitting Member State because of SAR arrivals. As has been pointed out, the Netherlands is in favour of one single solidarity mechanism and not multiple mechanisms for different situations.

Artikel 55

The Netherlands has a scrutiny reservation on this article.

In general, we would like to emphasize again that the supporting Member State can fail in its obligations and take insufficient actions in the context of the return sponsorship on the territory and under the jurisdiction of the benefitting Member State. The supporting Member State also remains dependent on the benefitting Member State on many parts.

There needs to be a clear system to denote who will fall under the scope of this article. Also it must be crystal clear how the period of 8 month is measured. This is now insufficiently clarified. How does the Regulation take into account periods of absconding – are they subtracted? Or does that mean that someone is no longer eligible for transfer? How do we ensure that the information about return, or information on refusal to meet with return counselors is available to parties concerned? How do we take into account situations where the host state will not, or cannot due to national law, enforce compliance with the return procedure? Applying detention, as a last resort to ensure availability for the return process will be up to the host state. We must make sure the system cannot be influenced by the third country national concerned. Furthermore, it has to be clear how to deal with subsequent asylum applications that are submitted after the third country national has been taken over. The supporting Member State will then have to settle the subsequent application on the basis of a decision, file and legal system of another Member State.

Paragraph 1:

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

The Netherlands would like to know how this relates to the procedure (art. 50-53) of inventory of the number of illegally staying persons and their nationalities on the territory of the Member State concerned and the indication of the nationalities of the illegally staying persons the supporting Member State intends to sponsor. When this relates to the actual illegally staying persons who need to be sponsored, not only the names, but all known data and files should be supplied at this point.

Paragraph 2:

We suggest the following *textual adjustments*:

‘This period shall start from the adoption of the implementing act referred to in Article 53(1) and the agreement of the benefitting Member State and the sponsoring Member State on the measures to be taken by each party as referred in Article 55 (4), or, where applicable, from the communication of the list referred in Article 49(2) to the sponsoring Member State .’

We are proposing this insertion because it can take quite some time before the Member States have agreed on how cooperation will take shape. This should not be deducted from the 8 months period.

‘Member States may bilaterally agree on a shorter or longer period’.

It should not be the case that the return from the benefitting Member State is arranged in the short term after the period of 8 months and this return is thwarted by the process of relocation.

Paragraph 2a

Our primary position is that we cannot agree with suspending the 8 month period when an illegally staying person absconds. We therefore suggest ending the responsibility of the supporting Member State. After all, the fact that the illegally staying person has absconded is at the expense and risk of the benefitting Member State. Our subsidiary position is that the period of 8 months will start again when the illegally staying person is available again, so that there is enough time to organize the return.

We suggest the following textual adjustments:

‘The benefitting Member State shall also inform the sponsoring Member State if the return decision is annuled, after which the supporting member state ends the return sponsorship’.

We propose to draw a conclusion from annulling the return decision.

‘The benefitting Member State shall inform the sponsoring Member State of the availability of the third country national for the return process as soon as possible within one week’.

In order to avoid delays in the process, this term must be stated explicitly.

Paragraph 3:

We wonder how this paragraph relates to the description of sponsorship, which refers to arranging the return process of illegally staying persons who must have received a return decision.

Article 57

The Netherlands is of the opinion that the terms in this article are too short. In paragraph 7 a one-week period is suggested. However, in order to assess whether the person is a danger to national security or public order, a period of 4 to 6 weeks is more feasible. Also when there is no risk, as a mission to the Member State in question will be required to make this assessment.

Article 58

Paragraph 2: Aiming at minimizing the possible number of procedures and transfers for the individuals concerned, we propose that the responsible Member State is determined before relocation, in order to avoid unnecessary transfers of the same person.

Paragraph 7: it it will not be possible to assess this subsequent application for international protection quickly nor on its merits, because the Member State tasked with doing so has no file of the previous application for international protection. We therefore have a serious concern about creating an inefficient system.

POLAND

Poland thanks the Presidency for the preparation of the compromise text. We maintain our position presented previously. We submit a scrutiny reservation to all new elements and we reiterate our substantial reservation on the references to relocation and to the whole SAR part (art.6 (4) and art. 47-49, art. 55, art. 57-58).

We are of the opinion that the progress on the AMMR and the Pact as a whole depends on the proper balance between solidarity and responsibility which requires further political negotiations.

Art. 2 – Definitions

(w) ‘migratory pressure’ – PL is skeptical about this definition in the scope of the risk of such a situation.

Art. 45.1.d – Other solidarity contributions

PL thanks the PRES SI for a footnote explaining what can be understood as other solidarity measures.

Art. 47-49 – SAR

PL reiterates its position presented before and sets substantial reservation to the whole SAR part (Article 6(4) and Articles 47-49). PL is against of introducing any permanent and obligatory mechanisms of solidarity dedicated solely for disembarked persons.

PL perceives this mechanism as a strong incentive, being contrary to our efforts to reduce illegal migration undertaken to reduce the risk of loss of life and to fight against migrants smuggling.

PL does not agree to the introduction of the permanent solidarity mechanisms covering persons disembarked after the search and rescue operations at sea. PL does not oppose to the voluntary initiatives in this area, but the mandatory redistribution of such people, including in a situation of standard influx, where neither migratory pressure nor crisis occurs.

Thinking of systemic approach regarding SAR we should rather develop solutions in terms of external dimension i.e. disembarkation platforms as well as jointly focus on the border procedure and rapid returns of those who do not have a right to stay in the EU.

Summing up, PL is in favor of removal art. 47-49 from the AMMR.

Art. 55 – Return sponsorship

PL reiterates raising the scrutiny reservation to the whole article.

Poland is positive about the initiative to strengthen returns in terms of solidarity with the MS under pressure but at the same time does not agree to the structure of proposed instrument that obliges the sponsoring MS to admit irregular migrants to its territory after certain period of time if return cannot take place.

There is no doubt that the returns of irregular migrants should be more effective and a closer cooperation between MSs in this regard is desirable. While the assumptions of the return sponsorship concerning the actions taken by the sponsoring MS in the territory of the benefitting MS in order to expel an irregular migrant are acceptable, further transfer contradicts the assumed idea. The entire procedure of transferring of an irregular migrant, including legal remedies, will lead to an administrative burden and lengthy proceedings, which will divert the attention from the original goal - the expulsion of the person from the territory of the EU.

Such rules could lead to the necessity to legalize the stay of foreigners who do not have the right to stay in the EU territory, causing a counterproductive effect of decreasing in the efficiency of return operations. It may lead to new abuses and create an additional pull factor.

A strong link between the concept of return sponsorship and relocation (clearly visible when it comes to procedural rules – Articles 57-58) proves that this measure cannot be considered as an alternative to relocation. It also lies in the contrary to the Recital 26 of AMMR according to which only foreigners who are more likely to have a right to stay in the EU should be relocated.

A more effective solution would be to establish the principle that in case when the return of an irregular migrant under the return sponsorship failed, the sponsoring MS undertakes to expel another irregular migrant in order to fulfil the obligations regarding the number of persons that is obliged to expel. Other solidarity measures could be also included as an alternative way of support.

Therefore looking for compromise solution Poland proposes to delete mentioned obligation from para 2 or introduce an alternative wording, by adding the following sentence:

(...) the Member State providing return sponsorship shall transfer the person concerned onto its own territory in line with the procedure set out in Articles 57 and 58 *or sponsor the return of another illegally staying third-country national of the same nationality from the reserve list or participate in solidarity through other measures under Article 45.1.*

It goes in line with our general position that under solidarity mechanism, all support measures should be treated equally and those related to the redistribution of migrants should not be prioritized. Such a wording may also help avoiding additional abuses or lack of cooperation on the part of a foreigner.

PL thanks the PRES SI for adding para. 2a specifying the consequences of making an application for international protection by illegally staying third-country national qualified to sponsored return especially in the context of suspension of the return procedure. Moreover, we support the idea of having 8-month time limit suspended when it comes to absconding.

In paragraph 4 we support the idea of having an open list but it should be clear from the text that the provision leaves more flexibility in this regard.

The next question is to resolve the responsibility for asylum applications in conjunction with the concept of return sponsorship including responsibility for subsequent applications in case of transfer. In our view it should be clearly defined within AMMR. If the application is made before the transfer, then it should definitely be examined by the benefitting MS. It is worth to mention that examining the admissibility is much easier when a country already has information on the grounds raised by the applicant in first application.

Finally in order to ensure greater efficiency of returns Poland is of the opinion that sponsoring MS should have possibility to indicate preferred nationalities of returnees, taking into account its bilateral cooperation with third countries in the field of return and readmission. We need more coherent approach to this element within the whole regulation and Article 55 is the right place for provision guaranteeing such possibility.

Artykuly 57-60

PL written comments on Articles 57 – 60 (relocation procedure + operational coordination)

Substantial reservation to the whole part as the structure and nature of the solidarity mechanism is under negotiations and Poland consequently opposes to mandatory relocation in any case.

Additionally we would like to support these Member States that are in favor of carrying out the Dublin procedure before the relocation procedure takes place (in the benefitting Member State). On the one hand, we could avoid the unnecessary extension of the pool of relocation, on the other, reduce the related costs for the EU budget (AMIF funds).

Referring to the concrete provisions:

Article 57- Procedure before relocation

Paragraph 1

Reservation to the scope of relocation. We are of the opinion that such procedure should cover only persons more likely eligible for protection.

Paragraph 2

Support for the exclusion from relocation of those who may pose a security risk.

PL thanks the PRES SI for: 1) a change in the text showing that a person concerned a danger to national or public security poses a threat not only to benefitting MS but to the all MSs; 2) adding the sentence about excluding a person concerned a danger to national security or public order from any future relocation or transfer to any MS.

Paragraph 3

PL would like to thank the PRES SI for: 1) adding the sentence about relocating family members to the territory of the same MS; 2) clarification of a *meaningful links*.

Paragraph 4

Strong objection to para 4 that provides clear connection between return sponsorship procedure and relocation of irregular migrants when the period of 8/ 4 months (mentioned in art. 55.2) expires.

Paragraph 7

Poland is concerned about the proposed time limits for carrying out the pre-relocation security check. One or two weeks is not enough. The clarification of doubts in the field of security requires the involvement of many institutions at the national and international level, including law enforcement agencies and secret services. Therefore the timeframe should be sufficient to allow for all necessary arrangements between interested EU and national institutions. Only providing more time for the exchange of information will make it possible to take appropriate operational actions in relation to persons being subject to relocation, which may pose a threat to public order and internal security (establishing the identity of foreigners, identification of terrorists as well as searching all relevant systems and databases is crucial in this regard). We believe that such time limit should not be shorter than a month. By proposing more realistic and practical time limits we may also avoid excessive bureaucracy in the context of extending the deadline for a reply each time. At the same time the earlier examination of security issues will be always possible depending on the individual situation.

Moreover it is crucial to provide possibility for MS of relocation to conduct an interview within security check whenever necessary.

Article 58 - Procedure after relocation

Paragraph 4

We have serious doubts about the wording of this article that leaves many questions unsolved. How this concept is related to the QR? It becomes even more important due to the Council Legal Service opinion according to which the concept of relocation of beneficiaries of international protection should be located in QR instead of AMMR (and in general we are against the concept of the relocation of the beneficiaries of the international protection)

Paragraph 5

Reservation to the wording. PL is against the inclusion of illegal migrants in the relocation procedure.

SLOVAKIA

First of all we would like to reiterate that we maintain all of our reservations made during the previous meetings (first reading). We also would like to raise scrutiny reservations to the amendments made in the compromise text.

Art. 2(w) – a scrutiny reservation.

Art. 45 - Our general position to the solidarity remains unchanged. We oppose mandatory relocations in any form. We prefer flexible solidarity where we are of the opinion that all forms of solidarity measures should be perceived as equal and contributing Member States should have a real possibility of choice, in what way they would like to contribute.

Art. 45(1)(b) - our reservation regarding the reference to return sponsorship remains. In certain way we perceive this concept as an innovative form of solidarity. However, we do not agree with the relocation to the Member State providing return sponsorship in case the person is not returned within the 8-month period.

Art. 45(1)(d) – we prefer to have the examples of other forms of solidarity contributions stated directly in the normative text. For example as a new paragraph (1a), as it was mentioned in the footnote of the compromise text.

Art. 47 - We reiterate our position that we do not agree with the automatic mandatory solidarity in an event of disembarkation following SAR operations. We are of the opinion that in case that a Member State faces recurring disembarkations following SAR operations, solidarity contributions of the Member States should always be provided exclusively on a voluntary basis. We are also of the opinion, that automatic relocation following SAR operations could especially create a strong pull factor.

Art. 48(5) - We have a reservation on the whole article. We do not agree with the possibility to adjust solidarity contributions of a Member State in the area of capacity building and other measures in a way that 50% of the contributions will be changed to relocation or return sponsorship. Member States should have a possibility to choose form of solidarity contributions they want to provide and this choice should be exclusively in the competence of the Member State concerned.

The implementing act of the Commission should therefore contain only those contributions, which were offered by the Member States in their Solidarity Response Plans.

Art. 49(2) – a scrutiny reservation. It is still not clear to us, on basis of which criteria will EASO and FRONTEX, draw up the list of eligible persons to be relocated.

We are also of the opinion that the Member State should have a possibility to take part in the selection of persons to be voluntary relocated, when it would assess eligibility criteria for international protection, as well as integration potential of a particular person.

The selection of eligible persons should therefore be a subject to a consent of the contributing Member State.

Art. 52(1) – a substantial reservation. We are of the opinion that the Member States should always have possibility to choose freely which form of solidarity contribution they would like to provide. In this regard all forms of solidarity should be perceived as equal. We do not agree that some forms of solidarity (such as capacity building) could be excluded. Therefore, we suggest adding here also the reference to the point d) of Art. 45 (1) as follows: **“shall contribute by means of the solidarity contributions referred to in Art. 45(1).”**

Art. 53 – we would like to support those Member States which stipulated that the role of the Council should be strengthened in this Article, we are of the same opinion.

Art. 53(2) - We also would like to reiterate our position to the paragraph 2, which is the same as we have in the Art. 48. We do not agree with the possibility to adjust solidarity contributions of the Member State in the area of capacity building and other measures in a way that 50% of the contributions will be changed to relocation or return sponsorship. Member States should have possibility to choose form of solidarity contributions, they want to provide, and this decision should be exclusively in the competence of the Member State concerned.

The implementing act of the COM should therefore contain only those contributions, which were offered by the Member State in their Solidarity Response Plans.

Art. 55 – we maintain on our position to return sponsorship presented during previous meetings.

Art. 55(2a) - the last added sentence. We welcome this sentence. We just wonder what will happen if the return decision will be annulled after a few months of the efforts of sponsoring MS to support the benefiting MS to carry out the return. Will such efforts be counted as fulfilling the commitment of the sponsoring MS or another person will be assigned to that sponsoring MS?

Art. 57(6) – we welcome the addition of the last sentence into this provision, however we also would like to support those Member State which would like to see here the possibility to carry out the asylum interview as well (not just a personal interview regarding the national security or public order).

Art. 57(7) - We have to reiterate that we still have concerns regarding time limits of one and two weeks. We do not consider that these time limits are sufficient to thoroughly check whether the person does not constitute a danger to national security or public order. We understand the reason of effectivity, but from the practical point of view, time is needed to carry out security check consistently. Therefore, there is a need to extend both deadlines.

Art. 57(9) – we take note of the Commission’s comment that paragraph 9a relates to the process of relocation or return sponsorship where certain actions have already been done before the implementing act has expired. However for the better clarity of the text we think that this fact should be more clearly stated in the text. The provision as it is written now is little bit confusing in this regard. We ask whether this provision covers only situation where the process has already started or also where no action has yet been taken.

Art. 58 – a scrutiny reservation. We still analyse the changes made in this Article.

Art. 58(2) – a reservation due to our position to the process of determination of the Member State responsible where we are of the opinion that the responsibility should be determined before relocation takes place.

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 retains its scrutiny reservation to the entirety of the proposals.

Specific Comments

Article 2 (definition of “migratory pressure” and” vulnerable persons”): SE can accept the revised draft definitions of “migratory pressure” and “vulnerable persons”.

Article 45: SE takes note of the concrete examples of other solidarity measures in the benefitting MS, added in a footnote to Article 45. SE can support that a broad spectrum of different solidarity contributions will be available to MS to choose from, if this will facilitate achieving agreement on the regulation. However, SE recalls that the main purpose of the solidarity contributions is to support those EUMS who are affected by a disproportionate migration pressure. The solidary mechanism must also contribute to a more even distribution of asylum seekers among the EUMS. Introducing a broad variety of solidarity contributions also poses challenges when measuring the value of these.

SE would also 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.

Article 46: The representatives of Member States in the Solidarity Forum should have the *necessary mandate*. What level they represent in the national administrative hierarchy is irrelevant.

Article 47: The clarification in paragraph 3 is logical since the challenges faced by Member States with migration pressure stemming from land border crossings are similar to those where the migrations pressure is a result of repeated disembarkations following search and rescue operations.

Article 48: SE is not convinced that the proposed solidarity mechanisms are sufficient to guarantee that Member States under migratory pressure receive necessary assistance, for instance in a situation where there are no persons eligible for return sponsorship. SE welcomes the new paragraph 8 which takes into account an issue raised by SE in the first reading.

Article 49: The report referred to in Article 6.4 sets out the total number of projected disembarkations. In case the projection turns out to be wrong and no asylum seekers disembark, there should be a possibility for the MS concerned *not* to request solidarity measures. Consequently,

the word “shall” in the first sentence of Article 49.1 should be replaced with “may”. SE does not support the reference to “cultural considerations” that has been added in 49.2.

Article 50: SE would like to see an additional provision that regulates the responsibilities of an EUMS that considers itself to be facing disproportionate migratory pressure to undertake certain actions and to inform the Commission of these action under Article 50.1 (a).

Article 55: There remains a need to clarify if return sponsorship can serve as a solidarity contribution in a situation where the MS faced with migratory pressure has no need for return sponsorship, or where there are no persons that are to be returned. SE also suggests replacing the wording “remain at the disposal of” with “remain available for” in the new paragraph 2a.

Article 57: SE would like to underline that the consent of the person concerned referred to in point 3 is 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. As in Article 49, the reference to “cultural considerations” should preferably be deleted.