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NOTE

From: General Secretariat of the Council
To: Delegations

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

Following the Informal meeting of the Asylum Working Party on 10/11 November 2021,
delegations will find attached a revised compilation of replies received from Member States on the
abovementioned subject (Articles 3-7 and 61-75).

This version includes further comments from Germany as well as comments received from Greece.

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 10/11 November 2021

Articles 3-7 and 61-75

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DENMARK

Re.: Article 3:

- We think it is important that the chapeau of article 3 specifically mention the reduction of irregular migration to Europe as the overall aim of a comprehensive approach to asylum and migration management.

Litra a)

We propose to include “return” as part of capacity building of third country partners i.e. in the sentence ...” Building their capacities in search and rescue, border, asylum and migration management **including return**, preventing and combatting irregular migration.....”

Litra g) what is meant by : “effective access to procedures for granting and **withdrawing** international protection?

Litra ha) what is meant by “unauthorized movements” – is it between member states?

Re. Article 4:

- We agree to move article 4 to the recital due to its general nature

Re. Article 5

- We note that “the Union... and the relevant Union Agencies “ have been inserted in the chapeau of art 5. What are the reason for this insertion? We note that the last sentence in the chapeau states only what the Member States shall do in relation to litra a) to e) .

Re. Article 6:

We agree with the deletion of paragraphs 1 and 2.

GERMANY

As a purely precautionary measure, we would like to clarify that the DEU comments refer solely to the amendments in the text of 29 October 2021 and that we maintain our previous positions including a scrutiny reservation for the entire AMMR Regulation.

Article 3

Initial comment: DEU supports in principle provisions that enable a more coherent approach to the migration policy of the EU and the Member States. The principles of shared responsibility and solidarity are very essential. In the desired balance between responsibility and solidarity, all EU Member States must make their contribution; disadvantages for EU external border states, but also for states affected by irregular secondary migration, must be avoided.

However, in terms of numbers, regular migration accounts for the largest share of migration to the EU and, to the extent that the EU has the competence, is regulated separately and manifold cases under EU law. Part II of the AMMR, however, focuses on asylum and irregular migration, and the rest of the Regulation is the successor to the Dublin III Regulation.

Therefore, the general language in many parts of the draft should be replaced with more focused terms that more clearly express the limits of the intended regulatory scope.

Background: Specific requests for change were:

- *Due to the wording "shall take actions", it is also necessary to add that the Article does not constitute an independent basis of authorisation for action by the Union and does not justify any derogation from the rules of the CEAS for the MS, but is **exercised within the framework of existing Union law**.*
- *We also ask for clarification on "includes all migration routes": The wording of this sentence seems to imply all migration routes without geographical limitation. Is this intended? We ask to clarify that we are talking about migratory movements that can affect the **EU's** asylum and migration management.*

Of the two options proposed by Presidency, option A is the preferable one from DEU's point of view:

Option A

"With the overall aim of effectively managing asylum as well as managing migration flows

*to and between the territories of the Member States, actions taken by the Union and the Member States in the field of asylum and migration management shall be guided by a comprehensive approach addressing the entirety of relevant migratory routes and consisting of the following components, **within the framework of the applicable Union law:**"*

Option B

"With the overall aim of effectively managing asylum as well as managing migration flows

to and between the territories of the Member States, the Union and the Member States shall take actions in the field of asylum and migration management on the basis of a comprehensive

approach addressing the entirety of relevant migratory routes and consisting of the following

components, within the framework of the applicable Union law:"

Regarding (a):

Explanation is needed what is meant here in each case:

Does "legal access pathways for third-country nationals in need of international protection" refer to the discussion on "complementary pathways"?

And should 'persons granted residence in the Member States on other legal grounds' mean all third-country nationals with a residence permit, irrespective of the legal basis for residence? If this is the case, our initial assessment is that this is critical. Coherence is important, but it would have to fit into the existing legal framework.

We would be grateful for an explanation as to how the statement made here on capacity building in border management relates to letter e) and the provisions of the FRONTEX Regulation.

Regarding (d):

OK; corresponds to DEU position.

Regarding (f):

Expressly welcomed by DEU.

Regarding (g):

OK for DEU.

Regarding (h):

OK for DEU.

Regarding (ha):

OK; scrutiny reservation; Replace: "unauthorised" by "irregular", because it should not be discussed here whether the secondary migration in question here is "authorised" from a legal perspective or not. **Add "... including irregular secondary movements"**: (no concerns if option A - above - prevails).

Regarding (i):

OK.

Article 4¹

Regarding 3:

The proposal of the Pres. to put this in a **recital is OK and welcome from DEU's point of view. Likewise, another solution could be sought - on Articles 4 and 5 - with sufficient inclusion of measures against irregular secondary migration, in order** to address the problem that there is a risk that the MS present national strategies that differ greatly from one another, are empty of content and / or can hardly be consolidated.

Reference is made to the comments on Art. 6 (6).

Pres. proposal for recital would also be acceptable:

*"The Union and Member States should ensure, each within their respective competencies, and whilst respecting the applicable law and international obligations, the coherence of asylum and migration management policies, including both the internal and external components of those policies. The Union and Member States, acting within their respective competencies, are responsible for the implementation of asylum and migration management policies. Member States, with the support of Union Agencies **where requested**, should ensure that they have the capacity to effectively implement asylum and migration management policies, taking into account the **components of the** comprehensive approach referred to in this Regulation, including the necessary human and financial resources and infrastructure. "*

As a fallback position, we refer to the previous submission:

Re paragraph 1:

We ask for the following addition: Coherence can only be demanded within the framework of the applicable law and the respective competencies. Therefore, similar to paragraph 2, the

¹ Suggestion for an alternative wording of Article 4 is included in the Presidency document WK 13019/2021.

following should be added: "shall ensure, within their respective competencies and the applicable law and international obligations, ...".

Note: This is basically the same concern we have with Article 3 and Article 6. A clarification that is "drawn before the parenthesis" is possible. Repetition should then be avoided to avoid reverse inference.

Re paragraph 3:

Article 3 does not present a "concept", but the article contains a list of interrelated components (that's what it says) and mandates for action. Proposal: "with the components referred to in Article 3". Question: Why are only the "agencies of the Union" mentioned here and not the Union itself as in paragraph 2 or Article 5(2)?

Article 5

Regarding 1:

This is a programme sentence and not a legal norm and could therefore be moved to a recital (in line with previous instructions).

Comment: In the desired balance between responsibility and solidarity, all EU Member States must make their contribution; disadvantages for EU external border states, but also for states affected by irregular secondary migration, such as DEU, must be avoided.

Regarding (a):

OK for DEU.

Regarding (b):

OK for DEU.

Regarding (d):

OK for DEU.

Regarding (e):

Why was this amendment made? The valuation intended by "reasonable" is lost by the amendment. In addition: Replace "unauthorised" by "irregular", because it should not be discussed here whether the secondary movements in question are "authorised" from a legal point of view or not. Insert after "movements": "including irregular secondary movements".

Regarding 2:

Shift OK for DEU.

Article 6

Regarding 2 (d):

Of the two options proposed by Präs, option A is preferable.

Option A

Deletion of paragraphs 1 and 2.

Option B

Consultation of Member States:

"1. the Commission shall, **after consultation of the Member States**, adopt a European Asylum and Migration Management Strategy setting out the strategic approach to managing asylum and migration at Union level and on the implementation of asylum and migration management policies in accordance with the principles set out in this Part. The Commission shall transmit the Strategy to the European Parliament and the Council.

As a Fallback position, we refer to the previous submission:

Should COM really have the competence to define a comprehensive migration policy that binds MS, without prior involvement of the co-legislators, who would only be informed afterwards? DEU would not agree with that.

Another question: why has no provision been made for a procedure under Article 67, where it could be argued that the interests of the MS would be better taken into account?

It should be made clearer that there is overarching planning for asylum and migration management

- within the framework of the existing distribution of competences,
- on the basis of the law in force,
- on the basis of the international obligations of the Member States, and
- is carried out in accordance with the rule of law, in particular the right to asylum, and takes into account the concerns and rights of vulnerable groups with special protection needs and procedural guarantees.

This could be incorporated here or in one of the previous articles verbatim like this.

What is the procedure in practice? COM draws up the "strategy", MS flesh it out, and COM takes account again of what the MS have drafted in the next revision of the "strategy"? This should be clearly regulated here in terms of procedure.

Regarding 3:

Insert OK for DEU. Deletion OK and desirable.

However, the question **remains**: what range of topics should really be covered by the programmes in the first place? This should not extend to regular migration if there is no direct CEAS reference (the scope of instruments such as AMIF remains defined as existing, of course; but they are not regulated here either).

Further questions:

- In the event that option A is not adopted: How do we avoid establishing excessive bureaucratic burdens without tangible added value? Does every point of the EU strategy - just like an EU directive - have to "transpose" demonstrably to the national level?
- What is the relationship between the obligations of the MS to create national strategies with contingency plans, which are formulated extensively here, and the fact that the continuation and not the deletion of Articles 8(6) and 9(3) of the Frontex Regulation? Which area exactly is not covered by the already existing obligations? Or, even more briefly, where is the added value of this regulation?

Is monitoring too narrow?

Regarding 4:

Suggestions (amendments / deletions) OK for DEU.

Regarding 5:

How will these strategies be announced and linked? They should at least be announced to the COM and the other MS. Is there a "review" process? Are there possibilities to classify parts of the strategies? Transparency would be desirable here.

Regarding 6:

Suggestions OK for DEU.

A prerequisite for a fair and functioning common European asylum system is that all MS make their contribution. This means that, in addition to the efficient granting of protection to

those entitled to protection and a balance between responsibility and solidarity at the highest possible level, disadvantages for EU external border states, but also for so-called destination states of irregular secondary migration, must be avoided.

The reform of the CEAS must therefore include the creation of more effective instruments to prevent irregular secondary movements.

On the other hand, mechanisms need to be put in place to enforce these rules. Freedom of movement in an area free of internal border controls presupposes that the compensatory measures provided for in the Schengen acquis are fully operational. It is therefore important that existing legal provisions, including those of the common European asylum policy, are implemented in practice and that the necessary capacity for implementation is in place.

The Commission and the EU agencies must therefore have a much stronger duty than hitherto to monitor existing obligations and to work towards compliance with them through concrete measures. This should be anchored in Article 6 or in another appropriate place in Chapter II of the AMM Regulation.

The financial and operational support of the MS by the Union or the EU agencies, as provided for in the new Art. 7a, is a step in the right direction and is expressly welcomed against this background.

Article 7

DEU still welcomes in principle the proposed mechanism to create appropriate and proportional incentives in relevant policies to improve cooperation with third countries in the area of return and readmission.

An improvement can also be achieved through positive incentives in appropriate cases. In any case, the costs and benefits of such measures need to be carefully weighed, with the timely involvement of all EU bodies responsible for the subject matter. In particular, adverse effects on those who are not responsible for such policies and actions - especially the local civilian population - must be avoided. In addition, the general relations of the Union with the respective third country must be taken into account (cf. Art. 7 para. 1). This may include, inter alia, foreign and development policy concerns.

But we still have some open questions regarding Art. 7:

Regarding 1:

We would still ask for a clarification how Art. 25a regulation (EU) 810/2009 relates to this article. We would also appreciate clarification as to whether discussions with third countries with a view to possible measures should already be held at this stage of the procedure.

We welcome the clarification regarding "other available information".

We still want to clarify how the reference to the procedure in Art. 25a (5) Visa Code is to be understood. Does this mean that with regard to proposed measures within the competence of the COM, the general procedure according to Art. 67 and 68 of the AMM Regulation applies and no implementing decision of the Council is required analogous to Art. 25a (5) of the Visa Code?

Regarding 2 and 3

We refer here in particular to our scrutiny reservation. As this aspect is of particular importance for the understanding of Article 7, we would kindly ask COM to explain in writing if the proposed measures only refer to EU policies.

As far as the coordination of measures would be in question, which could fall under the national competence of the Member States, the participation in these measures is, in our understanding, voluntary for the respective Member States in any case. We understand that COM sees the process to be rather coordinating, without imposing specific obligations on Member States. Given this, we request to explicitly include language in the Article which reflects the concept that the participation of Member States within the areas of their national competences is voluntary.

We ask that consideration be given to adding a sentence 2: "In any case, the measures shall be limited in time."

In order to understand the procedure foreseen, could the different steps be clarified? In other words: We would like to see adequately clarified the procedural steps under para 2 and 3, e.g. decision level for measures (Council or Coreper-2); consultation of third countries; participation of Council working groups concerned; participation of the Council in the case of measures falling under the competence of COM.

In addition, we would like to see an insertion in paragraph 3 with the words "**after a careful impact assessment**".

Regarding 4

We suggest Parliament's involvement not below the threshold of Article 25a (3); (4); (7) Visa Code.

Article 7a

OK for DEU. Editorial remark: "2121" should be "2021"

Art. 62 (Data security and data protection)

We think it is important that this Regulation is fully aligned with the relevant applicable Union data protection legislation. To that aim, we still see some need for amendments in Article 62. We are therefore sending you the following suggested wording and kindly ask that it is taken into further consideration by the Presidency:

<p>1aa. This Regulation is without prejudice to Union law on the protection of personal data, in particular Regulation (EU) 2016/679, Regulation (EU) 2018/1725 [and Directive (EU) 2016/680].</p>	<p>We suggest to add this paragraph in order to clarify the relationship between this Regulation and EU data protection law. This is fully aligned with wording in other recent EU legislation, such as the NIS2 Directive.</p> <p>If also Directive (EU) 2016/680 should be referenced is to be assessed after the articles referencing the exchange of security-relevant information have been finalised.</p>
<p>1. Member States shall implement provide that the controller implements, in accordance with applicable data protection legislation, appropriate technical and organisational measures to ensure the security of personal data processed under this Regulation and in particular to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed.</p>	<p>In data protection law, the <u>controller</u> is obliged to take technical and organisational measures. As the Member State would not be the controller itself, but presumably the competent authorities, we suggest amend this paragraph accordingly (unless there is a specific reason why the wording has been chosen here).</p>
<p>2. The competent supervisory authority or authorities of each Member State shall monitor independently, in accordance with its respective applicable national law, the lawfulness of the processing of personal data by the authorities referred to in Article 41 of the Member State in question.</p>	<p>This paragraph should be deleted: The GDPR, the EUDPR and the Directive 2016/680 each have adopted a regulation on the independence and also the competences and tasks of data protection supervisory authorities. The obligation to monitor data processing under this Regulation already arises from these legal acts, as does the independence of data protection supervision</p>

	<p>(which is based on EU primary law, see Article 16 (2) TEU and Article 8 (2) of the Charta).</p> <p>We do not see the added value of a specific regulation on supervision here. By contrary, we are concerned that this could give rise to misunderstandings, which should in any case be avoided.</p>
<p>2. The processing of personal data by the Asylum Agency shall be subject to Regulation (EU) XXX/XXX [<i>European Union Asylum Agency</i>], in particular as regards the monitoring by the European Data Protection Supervisor.</p>	<p>Amendment in order to avoid ambiguities (the EDPS should monitor, not be the one monitored).</p> <p>It could also be considered to move this paragraph to paragraph 1aa for reasons of context.</p>

Art. 64 (Penalties)

DEU maintains the scrutiny reservation.

As commented, DEU still believes that the choice of sanctions to be attached to a breach of provisions of the Regulation should be left to the discretion of the MS. It is already guided by the requirement that MS must provide for sanctions that are "effective, proportionate and dissuasive".

We appreciate the explanation of the COM that the wording "including administrative or criminal penalties" does not intend to create concrete specifications for the sanctions to be implemented and there is no obligation to introduce new sanctions, when there are already sanctions according to the Dublin III regulation.

Art. 67 (Committee)

DEU asks for clarification on how the procedure should look like with the inclusion of Art. 5 of Directive (EU) No. 182/20211.

Art. 68 (Exercise of delegation)

DEU expressly welcomes the extension of the deadline in Art. 68(6).

Art. 71 (Amendments to the Long-Term Residence Directive)

In principle, Germany considers it preferable to reserve possible amendments to the Long-Term Residence Directive and maintains a scrutiny reservation here.

Art. 72 (Amendments to Regulation (EU) AMIF)

DEU scrutiny reservation is maintained. We take a very cautious view of the proposed increase in the AMIF Regulation's flat rates for resettlement and relocation

Art. 73 (Repeal)

DEU welcomes the clarifying additions of the Presidency to Art. 73 AMM Regulation. We consider these to be useful, particularly in view of the transitional period to the implementing acts.

Art. 74 (Transitional measures) and Art. 75 (Entry into force and applicability)

DEU welcomes the shift from Art. 75 UA para. 2 to Art. 74 para. 2 AMM Regulation.

GREECE

As a general remark, EL maintains a substantial scrutiny reservation on the whole new text of the proposal. In respect to Part II of the AMMR EL would like to reiterate its concerns, especially in respect to art 3-5 and the legal consequences of including in directly applicable secondary legislation provisions of a declaratory nature, which also touch on measures regulated in other legal instruments.

EL reiterates the views expressed in the Asylum WP meetings of the 10th and 11th November and previous written comments.

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

Article 3

[The Union and the Member States shall take actions in the field of asylum and migration management on the basis of a comprehensive approach. That comprehensive approach shall address the entirety of the migratory routes that affect asylum and migration management and shall consist of the following components:²

- (a) mutually-beneficial partnerships and close cooperation with relevant third countries, including on legal pathways for third-country nationals in need of international protection and for those otherwise admitted to reside legally in the Member States addressing the root causes of irregular migration, supporting partners hosting large numbers of migrants and refugees in need of protection and building their capacities in **search and rescue**, border, asylum and migration management, preventing and combatting irregular migration and migrant smuggling, and enhancing cooperation on readmission;
- (b) close cooperation and mutual partnership among Union institutions and bodies, Member States and international organisations;
- (c) full implementation of the common visa policy;
- (d) effective management and prevention of irregular migration **and migrant smuggling, while ensuring the right to apply for international protection;**
- (e) effective management of the Union's external borders, based on the European integrated border management;
- (f) full respect of the obligations laid down in international and European law concerning persons rescued at sea;
- (g) **effective** access to procedures for granting and withdrawing international protection ~~on~~ **Union territory** and recognition of third-country nationals or stateless persons as refugees or beneficiaries of subsidiary protection, **in accordance with Regulation (EU) XXX/XXX [Qualification Regulation];**

² Suggestion for an alternative wording of the chapeau of Article 3 is included in the Presidency document WK 13019/2021.

- (h) determination of the Member State responsible for the examination of an application for international protection, based on **the principle of solidarity and fair sharing of shared** responsibility ~~and rules and mechanisms for solidarity~~;
- (ha) effective management and prevention of unauthorised movements:**
 - (i) access for applicants to adequate reception conditions, **in accordance with Directive XXX/XXX [Reception Conditions Directive]**;
 - (j) effective management of the return of illegally staying third-country nationals;
 - (k) effective measures to provide incentives for and support to the integration of beneficiaries of international protection in the Member States;
 - (l) measures aimed at reducing and tackling the enabling factors of irregular migration to and illegal stay in the Union, including illegal employment;
 - (m) full deployment and use of the operational tools set up at Union level, notably the European Border and Coast Guard Agency, the Asylum Agency, EU-LISA and Europol, as well as large-scale Union Information Technology systems;
 - (n) full implementation of the European framework for preparedness and management of crisis.

Comment:

EL welcomes the sentence added to the Presidency's proposal (namely "*(...) within the framework of the applicable Union law*"), as this makes clear that the Article does not constitute an independent legal basis. On the whole, we prefer the alternative drafting provided by Option A, as it offers more flexibility to MS.

Point d: EL raises substantive reservations on this new addition and proposes the deletion of the phrase "while ensuring the right to apply for international protection". In this par. the goal is to highlight the prevention of irregular migration and smuggling. We think that access to international protection procedures is covered by point g. There is thus a duplication. EL wants to reiterate our previous comment about the inclusion of a number of distinct policies, without a clear reference to their interrelation. Moreover, it is unclear how all these internal EU policies are connected with the external dimension which is projected at the forefront of the different components and in a rather detailed way.

Point. ha: About this par, EL needs clarifications about the term unauthorized movements, thus we consider that the phrase "illegal movements" may be more suitable in this case.

Article 4

Comment:

EL is of the opinion that the content of this Article would justify its inclusion in the recital. Moreover, we consider that the capacity "to effectively implement asylum and migration management policies" should be in accordance with the fair sharing principle as provided in Art. 5.

Article 5

Comment:

Point e: EL has the same concerns as above about the phrase “unauthorized movements” and we also propose the deletion of the word “correct” because we do not understand how and in which way unauthorized movements can be corrected.

Article 6

3. Member States shall have national strategies **setting out the strategic approach to managing asylum and migration at national level and in place** taking into account other national strategic and contingency planning adopted in compliance with relevant legislation in force. ~~to ensure sufficient capacity for the implementation of an effective asylum and migration management system in accordance with the principles set out in this Part. Those strategies shall include contingency planning at national level, taking into account the contingency planning pursuant to Regulation (EU) XXX/XXX [European Union Asylum Agency], Regulation (EU) 2019/1896 (European Border and Coast Guard Agency) and Directive XXX/XXX/EU [Reception Conditions Directive] and the reports of the Commission issued within the framework of the Migration Preparedness and Crisis Blueprint. Such national strategies shall include information on how the Member State is implementing the principles set out in this Part and legal obligations stemming therefrom at national level. They shall take into account other relevant strategies and existing support measures notably under Regulation (EU) XXX/XXX [Asylum and Migration Fund] and Regulation (EU) XXX/XXX [European Union Asylum Agency] and be coherent with and complementary to the national strategies for integrated border management established in accordance with Article 8(6) of Regulation (EU) 2019/1896. The results of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, of the evaluation carried out in accordance with Council Regulation No 1053/2013 as well as those carried out in line with Article 7 of Regulation (EU) XXX/XXX [Screening Regulation], **shall should** also be taken into account in these strategies.~~

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.

5. The Member States shall establish the national strategies by [**18 months** ~~one year~~ after the entry into force of this Regulation] at the latest. ~~[The first European Asylum and Migration Management Strategy shall be adopted by [24-18 months after the entry into force of this Regulation] at the latest and] the first Migration Management Report shall be issued by [one year after the entry into force of this Regulation] at the latest. [...]~~

Comment:

We maintain our reservations about par. 3. We do not agree with it being a “shall” clause. The legislative documents referenced are quite distinct in scope, giving rise to a number of obligations. Therefore, EL is against the formulation of paragraph 3.

Between the given two options, we prefer option A.

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.

Article 3

Regarding the Presidency discussion paper presented on the AWP meeting on November 10, we do not support the first of the sentence (*with the overall aim of effectively managing asylum as well as managing migration flows to and between the territories of the Member State, actions taken by*) of the alternative drafting suggestions for the chapeau of Article 3, regarding our position on relocation. Therefore, we ask for its deletion. Given the deletion, we would prefer option A.

In the case of point a), maintaining our previous position, we cannot accept the reference to the provision of legal pathways (which practically refers to resettlement) unless the text states that this can only be done on a voluntary basis. In addition, in the case of legal migration, national competences should be referred to in the text. Furthermore this point shall mention the necessity for the access to international protection in third countries, especially in countries close to the region of origin.

Concerning point f) on persons rescued at sea, we note that the EBCG Regulation states that the European integrated border management concept includes requirements for the execution of search and rescue operations and since we consider this activity to be equal to illegal border crossing, it is sufficient to mention only point e), as it also covers SAR operations.

The Member States responsible to be determined on the basis of the rules and mechanism for solidarity is treated with reservations and we propose to delete the phrase „the principle of solidarity and fair sharing of”. However, Hungary could also consider the use of the following wording *fair balance between responsibility and solidarity*.

We request the deletion of point k) because, in accordance with the Treaties, integration is a matter for the Member States.

Article 4

Regarding the Presidency discussion paper presented on the AWP meeting on November 10, we would welcome the reference to the respective competences of Member States, as our position is that the measures taken by the Union and the Member States in the field of asylum and migration, based on the comprehensive approach, as well as relevant policies, must be implemented in full respect of national competences as set out in the Treaties. Making Article 4 a recital is still under consideration.

Article 5

Our position on this article remains unchanged. During the drafting of the Pact, we made it clear that the planned reform of EU migration policy must be based on a balance between responsibility and solidarity and in this regard we consider it as important to highlight this (balance) in the title, as well as in the text of the article. We also emphasize the need for a greater flexibility in solidarity. We propose to add in point b) a sentence referring to the prevention of the systematic abuses of asylum.

Article 6 – Governance and monitoring of the migratory situation

Maintaining our previous position, we are not convinced of the added value of the proposed strategic approach as, with regard to the different strategies, we see the risk of duplication and increased administrative burdens. However, if such a strategic approach is to be established, we would like to highlight the importance of involving the Member States in the drafting of the European Asylum and Migration Management Strategy, especially as it would be of utmost importance to ensure that all the prioritized elements of the national strategies are reflected properly in the European Asylum and Migration Management Strategy. We therefore support option A of the alternative drafting suggestions in the Presidency discussion paper presented on the AWP meeting on November 10.

In paragraph 4, we consider it necessary to define the term "recurring disembarkation following search and rescue", and more specifically, when it can be considered recurring. In this regard, we stress that we do not support a special solidarity mechanism to be set up in connection with search and rescue operations, as we consider this phenomenon as a form of illegal migration. With regard to the Commission's annual Migration Management Report, maintaining our previous position, we believe that several external and internal factors influence the number of arrivals, be it a pandemic or

the actions and decisions of governments. Furthermore, a one-year forecast pledge can be an explicit invitation up to the indicated number, especially if an automatic solidarity system is assigned to it.

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

Maintaining our previous position, we generally support the mechanism established by Article 25a of the Visa Coda to improve cooperation with third countries in the field of return and readmission.

Article 61 and 72

As regards Article 61 and 72, we refer to our reservation on relocation, which we can only be accepted in a voluntary form.

Article 71

We maintain our previous position that the three-year deadline proposed in Article 71(1) is too short, and we support maintaining the current five-year deadline.

IRELAND

Article 3

It is important to ensure that no new direct or interpretive obligations are placed on Member States by this Article. This is of particular concern to Ireland as some of the matters listed such as (c) full implementation of the common visa policy (e) effective management of the Union's external borders and the reference to the EBCGA in (m) are Schengen related matters which Ireland is not part of.

With regards to the text suggestions circulated by the Presidency (WK 13019/21) our preference is for Option A.

“With the overall aim of effectively managing asylum as well as managing migration flows between the territories of the Member States, actions taken by the Union and the Member States in the field of asylum and migration management shall be guided by a comprehensive approach addressing the entirety of relevant migratory routes and consisting of the following components, within the framework of the applicable Union law”

Article 4

We can support the text of the proposed recital set out in document WK 13019/21 in place of Article 4.

Article 6

In order to ensure that Strategy referred to in paragraphs 1 and 2 of Article 6 could not be given some legal effect by the Courts we support Option A presented in the discussion paper - the deletion of these two paragraphs.

The last part of paragraph 3 lists a number of Schengen related matters that MS must take account of when developing their national strategies. These measures do not apply to Ireland and we would suggest adding 'where applicable' at the end of paragraph 3.

THE NETHERLANDS

In the following comments, the Netherlands reacts to the latest changes proposed by the Presidency. For some articles, we reiterate our previously written comments that were not taken over by the Presidency, but that we feel are particularly important. We uphold our previously 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 3

We believe option B takes into account the obligations that the member states have in this regard and would prefer that option. However we are still reflecting on the legal objections other member states have put forward in this regard. This is still an ongoing analysis, also taking into account the context and explanation given by the council legal service.

Moreover, the Netherlands would like to point out that it has proposed to add a paragraph that includes the rules and mechanisms for solidarity. In the view of the Netherlands, solidarity is an essential part of the AMMR and should be included in this article.

Article 5

This article lists the responsibilities of member states to ensure the effective functioning of the Union's asylum and migration management policies. However, what happens if a member state does not establish or maintain a well-prepared and -functioning national asylum system or does not take all measures necessary to prevent secondary movements? Article 5 nor 6 address the current lack of a mechanism to bring deficiencies to the attention of the Council and nor do they foresee in a provision for sanctioning the member state involved. The fair balance between responsibility and solidarity needs to be reflected in the title as well as content of this article. In its current form the article gives the impression that solidarity is mandatory whereas member states responsibilities seem less so.

In paragraph 1 (a) we propose to clarify that these concern migration flows within the borders of the European union.

Article 6

This article is crucial to ensure effective implementation of the acquis. The Netherlands strongly supports the development of the European Asylum and Migration Strategy, the development of supporting national strategies as proposed in article 6.1.

Article 7

The Netherlands is in favour of a comprehensive approach on migration and the effective use of relevant EU instruments. The Netherlands wonders how the Commission views the relationship of article 7 of the AMMR with article 25a of the Visa Code and specifically the possibility therein for positive measures in case a country shows good cooperation on return. In addition, the Netherlands underlines the importance of a balanced approach and taking into account the notions of effectiveness and proportionality.

Article 64

We maintain our scrutiny reservation on this article.

Article 68

Paragraph 6: The Netherlands is still reviewing the proposed change in this paragraph and would like to maintain a scrutiny reservation on this paragraph.

Article 71

The Netherlands proposes to delete this article. An amendment to the Long Term Residence Directive should be made in that directive but has no place in the AMMR.

If deletion will not take place, the Netherlands wants to put forward its stance on the possible amendment in the LTR-directive. The amendment will not address the underlying problems that cause beneficiaries to leave the member state that gave them international protection. Often, beneficiaries will leave a member state that granted them international protection, sometimes only after a very short period of time, since they are not provided with facilities that they are entitled to according to EU-law. By changing the directive in the proposed way, the underlying cause for secondary migration of this group is not addressed. The proposed amendment does not address this root cause of migration flows of beneficiaries.

Article 72

It is noted that the reference to the AMIF-articles is not correct; changes must be made in article 19 and 20 (not article 16 and 17).

Article 74 en 75

The Netherlands wants to point out that it has put forward a proposal for a third paragraph. In the current text, a category of migrants is missing, that is people for whom responsibility was determined under the current Dublin-regulation, but have – since the implementation of the AMMR – left that member state and applied for asylum in another member state. We therefore again propose the following addition:

3. *Where an application has been registered in accordance with Regulation (EU) No 603/2013 of 26 June 2013 and the responsibility for that application was determined in accordance with Regulation (EU) No 604/2013 of 26 June 2013, the responsibility shall remain with the Member State that was deemed responsible, unless the Member State concerned can demonstrate that its responsibility has ceased pursuant to Article 27.*

PORTUGAL

Part II

Article 3

Portugal fully supports the implementation of a comprehensive approach to asylum and migration management. However, as pointed out by several delegations during the first examination of the proposal, and taking into account the explanations given by the Council Legal Service during the AWP on 23 February and 10 November, these provisions should not lead to unforeseen legal obligations to the MS.

Considering this, Portugal welcomes the sentence added to the Presidency's proposal "(...) *within the framework of the applicable Union law*", as we consider it clarifies that the Article does not constitute an independent legal basis and improves the legal framework for this provision.

On the whole, we prefer the alternative drafting provided by **Option A**, as it offers more flexibility to MS.

Article 4

Portugal can accept the proposed text as a recital in place of Article 4. The content of this article contemplates more general and political aspects which would fit in the context of a recital.

Article 6

Portugal shares the concerns raised by several delegations during the first reading, related with the legal nature of the Strategy to be adopted by the Commission and the role for the Council which was not envisaged.

It must be assured that a balanced relation between the added value of the Strategies and its administrative burden is established.

Considering this, we can support **Option A**, keeping in mind that some questions related to the Strategy require further clarification, namely its practical implications. We also support and appreciate the extension of the deadlines in paragraph 5.

Article 7a

Portugal welcomes the addition of this article.

SLOVAKIA

We would like to reiterate that we maintain all of our comments made during the previous meetings (first reading of the text). We still have general scrutiny reservation to the whole proposal.

Art. 3 – we fully support the implementation of comprehensive approach to asylum and migration management. As some of the delegations, and notably CLS, mentioned during the AWP, the responsibilities of Member States are too vague and can lead (through the CJEU’s interpretation of EU law) to unforeseen obligations. Taking into account that we are talking about general principles that should be guiding our work in the area of asylum and migration, we are of the opinion that it should be considered whether it would not be possible to place this text in the Preamble. Alternatively, we can support option A mentioned in PRES discussion paper.

Art. 3 point h) – a scrutiny reservation.

Art. 4 – we agree with the PRES proposal to move this article into the recitals with the wording proposed in the discussion paper.

Art. 5 - We would like to reiterate our general position that we do support solidarity, but it should be flexible and all forms of solidarity measures should be perceived as equal. In this regards we do not agree with the concept of mandatory relocations in any form.

We also do not agree with the correction mechanism throughout which the solidarity contributions of the Member State in the area of capacity building and other measures could be adjusted in a way that 50% of the contributions will be changed to relocation or return sponsorship. The choice of the form of solidarity contributions should be exclusively in the competence of the Members State concerned.

Art. 5 point d) – we prefer previous wording (“*take all reasonable and proportionate measures to prevent and correct unauthorised movements between Member States*”).

Art. 6 - We would like to reiterate, that it is essential to ensure balance between added value of the relevant provisions and the administrative burden they could create.

Regarding the two proposed options, due to similar concerns as were presented by several Member States and also by CLS related to the legal nature of the EU migration strategy and the fact that the role of the Council in adoption of the EU migration strategy is not sufficient, we agree with the

opinion of CLS that deletion of the paragraphs 1 and 2 will be the best and the easiest way how these concerns can be addressed. Therefore we support the option A.

Art. 71 – we would like to reiterate our substantial reservation. We disagree with the reduction of the required 5 years period of legal and continuous residence, with regard to beneficiaries of international protection, to 3 years (detailed reasoning was sent in writing during the first reading of the proposal).

Art. 75 – we would like to joint to those Member State which would like to have the deadline for entering into force of the AMMR to be at least 24 months instead of 13 months.

SWEDEN

General Comments

On a general level, SE warmly welcomes the revised proposals prepared by the Presidency. SE would like to underline the importance of finding a way forward, while maintaining 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 3: SE can accept both alternatives proposed by the Presidency in WK 13019/2021. In the case of alternative B, however, the consequences of making a reference to issues that are national competence should be clarified. This also applies to the original proposal by the Commission (point a) and the reference to legal pathways. Along the same lines, SE wonders if it is appropriate to include guidelines for co-operation with third countries in a regulation that is to be directly applicable. The term “enabling factors” in point (1) needs clarification. SE can accept the amendments to Article 3 proposed in ST 13360/21. Together these amendments constitute a balance between migration control and the right to seek asylum.

Article 4: SE can welcome the proposal to move the content of Article 4 to the recitals together with the amendments suggested by the Presidency.

Article 6: SE finds that there would be an added value in adopting a strategy on the EU-level. However, the relationship between the EU-strategy and that of the MS needs to be clarified. Clarification is also needed as concerns the situation where a MS adopts a faulty national strategy or a strategy that fails to secure sufficient national capacity. SE welcomes the deletion of the reference to legal consequences of the national strategies in paragraph 3 and the extension of the deadline from one year to 18 months in paragraph 5-

Article 7a: SE can support the proposal to regulate financial and organisational support in the new Article 7a.

Article 71: SE would like to have more information about the reasons behind the proposal to reduce the residence requirement for beneficiaries of international protection in Directive 2003/109/EC. The proposal might have far-reaching consequences for the balance between solidarity and responsibility. If it is decided to proceed with this proposal, it should be clarified whether the person concerned, in addition to residence, must have enjoyed international protection during the entire three-year period.

Article 75: The 13-month deadline should be extended to at least 24 months.