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From:	Presidency
To:	Delegations
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The Czech Presidency is steadily progressing in the negotiations on the Pact on Migration and Asylum, acknowledging the need to improve the overall functioning of the system as quickly as possible. Work within the Council and in relations with the European Parliament is showing positive progress, which will need to be assessed again at the strategic level.

Based on the progress made and on recent developments, the Czech Presidency would like to focus the SCIFA debate on 29 November 2022 on three issues that reflect the need for improvements in the current situation, and prepare the ground for concluding the pending legislative work.

## **I. Way forward on the EU migration solidarity, responsibility and crisis response mechanism**

The Czech Presidency developed a proposal for a ‘Way forward on the EU migration solidarity and crisis response mechanism’, which – following the debate at the technical level and in SCIFA – was presented at the October JHA Council.

In the Council, Member States supported the continuation of work on the concept at the technical level based on the principles contained in the proposal. In the follow-up debates of the JHA Counsellors (held on 24 October, 11 November and 23 November), the Czech Presidency focused on the most sensitive elements of the reform with a view to finding common ground that would enable swift translation of the concept into legislation. To acknowledge the need for a balance between solidarity and responsibility, the Presidency has extended the initial scope of its work to include the main elements of the responsibility part of the reform. The updated version of the concept, covering these two key elements, is annexed to this discussion document (see Annex I).

Based on the SCIFA debate, the Presidency may update the concept before presenting the final document to ministers at the JHA Council on 8 December 2022 as a basis for resuming work on the legislative text under the Swedish Presidency. The Presidency does not intend to hold a detailed debate during the December Council meeting.

### Questions for discussion:

- 1. Bearing in mind the need to make progress on the reform and acknowledging, on one hand, the positions of Member States on the key elements of the concept, and on the other hand, the need to reach a compromise, do you believe that the presented concept is a good basis for striking the right balance between responsibility and solidarity?*
- 2. Do you agree that work on the relevant legislative texts (AMMR, Crisis Regulation, border procedure in APR) should resume on the basis of the key elements of the concept?*

## **II. Relations with the European Parliament – possible agreement on way forward**

The informal SCIFA and the October SCIFA paid very close attention to relations with the European Parliament, with a view to making progress on the files on which the Council has already adopted a general approach.

During the October SCIFA, Member States supported the Presidency's intention to propose to the European Parliament a set of legislative proposals consisting of the 2018 provisional agreements on the Qualification Regulation, the Resettlement Framework and the launch of trilogues on the Eurodac Regulation<sup>1</sup>. This idea was then presented to the European Parliament during the Asylum Contact Group meeting on 10 October, where it was well received, though individual rapporteurs underlined the need to also include the Reception Conditions Directive in its 2018 provisional agreement version. At a meeting between the Presidency and the Asylum Contact Group at the technical level on 17 November, based on a proposal from the Presidency, the European Parliament showed openness to the idea of extending the set of legislative texts on which the interinstitutional negotiations could start so as to include the Screening Regulation, under the condition that the Reception Conditions Directive would also be covered. The European Parliament further confirmed that it would probably be in a position to start the trilogues on Eurodac this year (after its plenary meeting on 12 December), while the trilogues on Screening could start as soon as January or February 2023.

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<sup>1</sup> The Qualification Regulation - 10010/18 ADD 1; the Resettlement Framework – 10018/18 ADD 1.

The provisional agreement on the Reception Conditions Directive between the Bulgarian Presidency and the European Parliament was reached on 14 June 2018. The text of this provisional agreement was presented to Coreper<sup>2</sup> at its meeting on 20 June 2018, but it did not gain the necessary support. Based on further technical debates, on 21 November 2018 the Austrian Presidency presented possible amendments to Coreper<sup>3</sup> for approval. Based on that discussion and debate, the Presidency concluded that further attempts at the technical level should be made to gain further support from delegations. After the follow-up efforts of the Romanian Presidency, Coreper confirmed support for the proposed amendments with a view to continuing negotiations at the technical level with the European Parliament. Re-negotiation of the provisional agreement has not, however, been possible since the European Parliament does not wish to reopen the debate, a position that was reiterated by the Parliament to the Czech Presidency repeatedly. Both versions of the document were shared with JHA Counsellors on 25 October.

It is important to recall that the European Parliament has accepted many of the Council's positions which they were initially sceptical about, including, in particular, the notion that applicants have no right to reception conditions, with the exception of basic needs being met to ensure a dignified standard of living, if they are in the 'wrong' Member State, and the notion that Member States may allocate applicants to geographical areas without individual decisions. The European Parliament has also almost entirely accepted the Council's position on access to the labour market, in exchange for which the Parliament obtained strengthened guarantees for minors, language courses and the possibility to provide the daily expenses allowance not only in products but also partially in cash. This fragile balance could be difficult to maintain, should the negotiations be reopened, as the European Parliament might want to renegotiate many of the issues already accepted and the Council might end up losing some of the concessions obtained.

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<sup>2</sup> The Reception Conditions Directive – 10009/18 ADD 1

<sup>3</sup> The Reception Conditions Directive – 5458/19

While awaiting official confirmation of the European Parliament's to the above extended set of proposals, the Czech Presidency would like to reassess the positions of the Member States on the Reception Conditions Directive, with a view to enabling the opening of trilogues on Eurodac and Screening Regulations.

As regards the Roadmap and intensified contacts between the Czech Presidency and the European Parliament, the three conditions on the European Parliament's side for making progress remain: (1) its insistence that none of the three proposals should be reopened for further negotiations (i.e. the EP wants to keep to the 2018 provisional agreements); (2) its strong preference for freezing the files after the trilogues are formally concluded, so that they can be *adopted* later as part of a package; and (3) its desire to see progress on the solidarity aspects of the reform.

The Council would therefore need to formally accept the 2018 versions of all three regulations, which might not, however, then be adopted yet. This would give the Council the assurances and leverage needed with regard to the trilogues on Eurodac and Screening Regulations.

Questions for discussion:

1. *Do you agree to extend the set of proposals on which negotiations with the European Parliament could soon start/resume, so that it would consist of the Qualification Regulation, the Resettlement Framework, the Reception Conditions Directive and the Eurodac and Screening Regulations?*
2. *Concerning the Reception Conditions Directive, would you agree that the text of the 2018 provisional agreement could be accepted in the context of the extended set of proposals?*

### **III. Roadmap on improving the implementation of transfers under the Dublin III Regulation**

The need to reform the common asylum and migration system is as relevant as the implementation of the current *acquis*, in particular the Dublin III Regulation (Dublin III). Being one of the key tools to avoid abuse of the common European asylum system and prevent secondary movements, the effective implementation of the binding rules on transfers under Dublin III remains high on the agenda, including as a part of the debate on the gradual approach under the Pact.

In the wake of the particular challenges faced as a consequence of the migration crisis and the COVID-19 pandemic, the disruption of the system is felt across the whole of the EU. Following the discussion at the Contact Committee meeting on Dublin III held on 25 June 2022, the Member States, the Commission and the EU Agency for Asylum (EUAA) agreed to work on a roadmap to improve and ensure proper and better implementation of transfers under Dublin III in all Member States.

Based on the follow-up debates of the Committee and written proceedings, the draft roadmap was finalised by the European Commission (see Annex II) and provisionally agreed on by experts at the technical level. It focuses on several key objectives and includes a timeline for implementing the actions called for. Member States' commitment to jointly implement the roadmap is a prerequisite for improving the implementation of the current *acquis* until the negotiations on the Asylum and Migration Management Regulation (AMMR) are concluded.

#### Questions for discussion:

1. *Can Member States agree with the draft roadmap on 'Improving the implementation of transfers under the Dublin III Regulation' and commit to its swift implementation?*

**Way forward on the reform of EU asylum system based on balanced solidarity and responsibility**

**Czech Presidency concept**

**November 2022**

The EU Pact on Migration and Asylum was proposed by the European Commission in September 2020. The majority of Member States agree that a structural reform, based on the proposals associated with the Pact are necessary to create a sustainable and resilient common legislative framework. Most notably, the key pillars encompassing the areas of responsibility and solidarity need to be developed in a balanced way, reflect the recent developments in migration and provide forward-looking solutions.

Since the reform was proposed, several major events have affected the EU and many lessons can be therefore learnt from them to better shape a common EU migration solidarity and responsibility aspects of the reform.

The instrumentalisation of migrants at the EU's external borders, the arrival of large numbers of refugees from Ukraine, the growing uncertainty of the volume of mixed flows along various migratory routes and the large scale secondary movements of migrants across the EU call for a progress on the reform, including the solidarity and responsibility mechanisms that should take into account the articulated need for sustainability, predictability and simplicity as well as for flexibility, proportionality and fair-sharing of responsibility.

In view of the above, the Czech Presidency developed a proposal for a 'Way forward on EU migration solidarity and crisis response mechanism' that was, after first exchange of views on the technical level and in SCIFA, presented at the October JHA Council.

At the Council, Member states supported the continuation of work at the technical level. Follow-up debates on the technical level and in SCIFA were held and the concept was further elaborated both in the area of solidarity, as well as in the area of responsibility.

In view of the Presidency, a significant progress has been achieved on this concept since September, building further on the need for a balanced approach between the principles of solidarity and responsibility. The concept presents various ideas that received a sound support from majority of Member States and were welcomed throughout the negotiations as possible viable solutions to be considered during the necessary legislative work, notably on the Asylum and Migration Management Regulation (AMMR), the Crisis and Force Majeure Regulation and the border procedure in the Asylum Procedures Regulation (APR).

The proposed mechanism<sup>1</sup> would allow for a legally binding, but tailor-made and needs-based approach (mandatory, but flexible solidarity), reflecting the ever-evolving migratory challenges the EU and its Member States are facing, including the structural phenomenon of disembarkation after search and rescue operations or secondary movements. The same balanced approach outlined for the solidarity mechanism is followed for responsibility, notably regarding the border procedure and the rules on responsibility determination.

The work on this concept is now being concluded by the Czech Presidency. Following the commonly expressed interest to progress on the reform as speedily as possible, the Presidency is therefore proposing to renew the necessary work on the respective legislative proposals, building both on the concept outlined below and on the various concrete elements for flexible and adequate solidarity and responsibility, as detailed in an annex to this concept (see Annex to this Annex I).

In this regard the Czech Presidency is committed to work closely with the incoming Swedish Presidency when drafting the amendments to the three legislative proposals mentioned above.

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<sup>1</sup> This concept is drawn without prejudice to other existing mechanisms, such as the one provided for in the EU-Turkey statement of 18 March 2016.



## 1) AREA OF MANDATORY SOLIDARITY

### I. Annual Migration Management Cycle and the Solidarity Mechanism

#### a. Annual Migration Management Report of the Commission

The whole mechanism would be based on an *Annual Migration Management Report* (Report) that would assess the situation along all migratory routes and in all Member States, serving as an early warning and awareness tool for the Union in the area of migration and asylum, while acknowledging the possible rapid nature of developments in terms of migratory flows towards the EU. The Report would be prepared, for each coming year, before the end of the third quarter of the previous year by the Commission, following close consultation with all Member States and relevant EU agencies. Existing reporting mechanisms, primarily the ISAA and Blueprint reports, would be used to their full potential to avoid duplication of efforts. Other relevant sources should be also taken into consideration while drafting the Report (e. g. EEAS, Eurostat, EMN, JRC, UNHCR, IOM, etc.).

When assessing the overall situation in the EU and its Member States, the Commission should take into account the set of information still to be agreed under Article 50 of the AMMR proposal, taking into account the annual level of responsibility the EU as a whole shares to manage migration. This shared responsibility can be expressed notably by the number of annual arrivals, taking into account, among other quantitative and qualitative criteria, the overall number of annual arrivals, the average recognition rates as well as the average return rates.

Moreover, the Report would also focus on all relevant areas, notably on possible developments in the area of irregular arrivals through EU external borders, disembarkations after search and rescue operations, applications for international protection, secondary movements, cooperation with key third countries especially in the area of returns, as well as on push factors (including possible situations of instrumentalisation of migrants). The compilation and the analysis of all these qualitative and quantitative data would create a strategical situational picture, both at the level of the EU and at the level of individual Member States. Moreover, the report would provide forward-looking projections for the coming year. Such comprehensive picture should be also a useful tool for Member States when considering their own migratory challenges and deciding about their solidarity support.

Based on the overall situation of the previous year and on the current situation, a forecast for the following year will be developed. A list of selected permanent EU tools, suitable to react to these possible future developments, could also be highlighted in the report (based on the *Permanent EU Migration Support Toolbox* as described below in point b).

The Report would, furthermore, assess whether tailor-made solidarity is needed to support the Member States most likely-to-be affected in the coming year, taking fully into account all migratory routes, as well as the specificities of disembarkations after search and rescue operations or secondary movements. For the purpose of such assessment, Member States would have an opportunity to identify and express their likely support and solidarity needs for the coming year, to be taken into account by the Commission.

Based on such assessment, the Report would include recommendations from the Commission for concrete annual solidarity measures (and their numerical scale) likely to be required for the upcoming year, following a close consultation with Member States. These recommendations could include *minimum annual thresholds* (relocation and financial contributions) for predictable annual solidarity contributions (see also Annex to Annex I, point I. 1.).

These recommendations, together with the main outcomes of the Report, would then be assessed and addressed during the *annual High-Level Forum*, while the respective solidarity contributions would be collected in an *Annual Solidarity Pool*, as described below.

The Report should also consider the level of Member States preparedness and may propose recommendations on relevant actions in the area of preparedness and resilience that could mitigate, on the level of the EU or Member States, the impacts of possible situations of migratory pressure or a crisis.

The above-mentioned recommendations should not be made public.

b. Permanent EU Migration Support Toolbox

A *Permanent EU Migration Support Toolbox* (Toolbox) for Member States (likely to be) under migratory pressure or in a crisis would be developed in order to provide for a wide range of responses consisting of the following tools (not exclusively) that are currently, or should soon be, at the disposal of the EU:

- *(enhanced) Support by the EU Agencies*
- *Enhanced support through the EU Funds*
- *Adaptable responsibility*, notably by way of targeted derogations from the respective acquis (such derogations could be tailor-made to specific migratory challenge and not limited to instrumentalisation. This would include flexibility set in the respective legal instruments of the asylum acquis, or in the amended Crisis regulation proposal - for more details see below)
- *Activities in the external dimension of migration*

- *Cross-sectoral initiatives and actions applicable in the external dimension*
- *Enhanced return actions*
- *Tools and actions available in the area of visa policy*
- *Support provided through the Union Civil Protection Mechanism*
- *Diplomatic and political outreach*
- *Communication strategies*

c. Annual Solidarity Pool

This Pool would serve as the main stand-ready solidarity response tool. Annual contributions, being pledged each year during the annual High-Level Forum, would bring significant element of predictability for both the Member States in need and for the contributing Member States. While contributing to this Pool shall be mandatory, Member States would be able to determine the nature of their contributions. The Pool could consist (not exclusively and selectively) of the following measures:

- *Voluntary relocations*
- *Direct financial contributions by Member States* primarily aiming at projects related to the area of migration, border management and asylum or at projects in third countries that may have a direct impact on the flows at the external borders, thus reducing the migratory pressure on these borders.
- *Other alternative forms of solidarity to be provided directly by Member States<sup>2</sup>* primarily focusing on capacity building, services, skilled personnel, facilities and technical equipment - in fields such as registration, reception, border management, screening, detention and return.

There should be a recognition that the various, above listed, types of solidarity are of equal value.

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<sup>2</sup> Such solidarity should always be complementary Member States' contributions to the activities of the respective EU Agencies and should be counted as financial solidarity.

Furthermore, if the annual relocation target recommended by the Commission in the Annual Report would not be met in full by Member States in terms of relocation, the mechanism would allow for a topping-up of the remaining unfulfilled relocation pledges, when providing people's solidarity, through so-called *Dublin offsets*.

Under such scenario, all relevant Member States could consider to resume responsibility and cancel a proportional number of Dublin transfers to Member States under a particular pressure/crisis, in addition to their relocation, financial or *other* forms of solidarity pledges. This would therefore shift the responsibility to Member States providing solidarity. Guarantees to avoid possible negative effect on pull-factors and secondary movements would be considered (see also Annex to Annex I, point I. 3.).

d. High-Level EU Migration Forum

Following the publication of the Report, a *High-Level EU Migration Forum* (Forum) would be organised each year as part of the JHA Council meeting (possibly in the last quarter) in order to take stock of the overall situation and agree on a follow-up, including regarding possible urgent actions in terms of preparedness and contingency, as well as in the area of external dimension of migration, to be implemented by the relevant EU bodies at appropriate level and as necessary.

At this Forum, Member States would be obliged to pledge a contribution to the Pool, taking into account the recommendations by the Commission included in the Report. Member States would retain full flexibility to decide on the concrete type of their contributions. In doing so, Member States could follow a fair share distribution key based on a formula to be agreed. This fair share distribution key could be established as a guiding or a mandatory principle (see also Annex to Annex I, point I. 2.).

Those Member States benefiting from solidarity in the time of pledging (or very likely to be) may be excluded from pledging for the following year.

As a result, a concrete Pool consisting of numerical contributions of each Member State would be established for the following year (for people's solidarity, direct financial support and the other forms of direct solidarity). The outcome of this exercise (the content of the Annual Pool) shall be adopted by the JHA Council and would not be made public.

## **II. *Simplified* procedure in case of a sudden and/or continuous and significant migratory pressure<sup>3</sup>, on a notification of the affected Member State(s) - making use of the Annual Solidarity Pool and/or the toolbox**

In case a Member State would be confronted with a sudden increase and/or continuous *and* significant migratory pressure, including where it stems, for example, from disembarkations after search and rescue operations or secondary movements, it should notify the Commission and the Council on its intent to make use of the Pool (and/or the Toolbox), highlighting which individual components the Member State would need to benefit from to address the situation.

Such notification to the Commission and the Council should always include a duly substantiated reasoning, describing clearly the requesting Member State's solidarity needs and the significance of the migratory pressure on the affected Member State and how the proposed the Pool (and the Toolbox) components could stabilise the situation, including the possibility of using the Dublin offsets. The notification should also mention in what way the notifying Member State will address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience.

Following this notification, the Commission would proceed with a fast-track, simplified and speedy assessment of the notification, taking into account (comparatively) the overall situation in the EU and the needs expressed by the notifying Member State. As soon as a positive assessment would be presented to and acknowledged by the Council, the Technical-Level EU Migration Forum (see in part IV) would be tasked to immediately operationalise the specific measures needed by the affected Member State (both from the Pool, the Toolbox and possibly through the Dublin offsets), in close cooperation with the benefiting Member State. A definite timeframe for its implementation would also be set. Such simplified procedure should not take more than a few working days.

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<sup>3</sup> As to be defined in the Regulation on asylum and migration management (art. 2).

In cases where the Solidarity Pool would likely to be insufficient and/or the overall situation would call for further assistance and additional solidarity support, the Council (on its own initiative or on the invitation of the Commission) should further discuss the situation and agree on a way forward in order to meet the possible additional needs, including through the Dublin offsets. If needed, the Council should agree on additional solidarity contributions, retaining full flexibility of the Member States to decide on the concrete type of their contributions, based on the additional needs identified.

The above-described procedure for the adoption of the Solidarity Pool, as well as the simplified procedure would be anchored in a modified version of the Commission's proposal for the Asylum and Migration Management Regulation.

### **III. *Full-fledged* procedure in case of a crisis<sup>4</sup>, on a request of the affected Member State(s)**

If a Member State would find itself in a situation that might require mobilising additional measures and contributions, it should request a formal, full-fledged, assessment of the situation. Following such request, the Commission, in close cooperation with the requesting Member State and relevant EU agencies, would make an assessment taking into account the particular situation in that Member State and on the basis of a number of criteria and the information available to avoid duplication of efforts. Where this joint assessment indicates that the Member State is in a crisis, it would identify appropriate specific measures needed both, in the area of solidarity and responsibility, to address the situation.

#### **- Solidarity Response Plan(s) for crisis situations**

The results of the assessment would be in a format of a draft ***Solidarity Response Plan*** (the Plan) indicating specific solidarity and responsibility measures needed, taking full advantage of the Pool, the Toolbox and possibly of the Dublin offsets. The draft Plan would be prepared jointly by the Commission and the affected Member State.

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<sup>4</sup> As defined in the draft Regulation addressing situations of crisis and force majeure in the field of migration and asylum (art. 2).

Should the contributions to the solidarity Pool not be sufficient or appropriate for the given situation, the Plan should also identify additional solidarity measures or contributions needed and their scope.

The Plan should be, without undue delay, presented to the Council (the High-Level EU Migration Forum), which, on its own initiative or on the invitation of the Commission, could call, if necessary, for an extraordinary meeting to enable the Member States to agree speedily on the additional solidarity response and formally adopt the Plan. Member States would be obliged to contribute adequately, possibly based on the fair share principle, while retaining the flexibility to decide on the concrete type of their contributions and taking into account the overall needs identified in the draft Plan.

As a principle, the time needed to agree on the Plan should be as short as possible and the whole process should be treated with the upmost priority.

If needed, the Plan could be subsequently amended and adopted by the Council, reflecting the actual situation and adjusting the actions and measures as needed.

The above-described procedure for the adoption of a Solidarity Response Plan would be anchored in an amended version of the Commission's proposal for the Crisis and Force Majeure Regulation (see below).

#### **IV. Operationalisation of the Permanent EU Support Toolbox and the Annual Solidarity Pool and the Solidarity Response Plans: Technical-Level EU Migration Forum**

As soon as the notification of the affected Member State to use the Toolbox and/or the Pool would be approved by the Council (see section II) or the Plan would be adopted by the Council (see section III), a meeting of the *Technical-Level EU Migration Forum* (Technical Forum) would be organised in order to promptly operationalise the agreed solidarity measures or operationalise the Plan. The operationalisation should be coordinated by the Commission.



The share of each Member State's solidarity contributions to be implemented in concrete situations should reflect the share of their overall annual pledge to the Pool for the given year or to the Plan.

Should it be agreed that the fair share principle is applied mandatorily, Member States would still be able to request a partial or full reduction of their contribution as committed to in the Solidarity Pool or the Plan. In order to do so, such Member States should demonstrate clearly that a significant migratory situation on its own territory, leading to their reduced capacities in the area of asylum, reception and/or irregular migration, does not allow for (full) participation in providing solidarity to other Member States. The Commission should be able to confirm this, through a simplified and speedy assessment.

#### **V. Other crisis-related elements to complement the proposed system:**

This proposal also suggests modifications to the Commission's proposal for the Crisis and Force Majeure Regulation, reinforcing the elements related to derogations with a view to having a comprehensive legal tool to react to situations of crisis of any nature (including in cases of instrumentalisation of migration).

The objective would be to provide for adequate flexibility in the EU's ability to react to the ever-evolving migratory reality and cover various types of crises, notably in cases where the existing flexibility set in the respective legal instruments would be deemed inadequate. While such instrument must respect all necessary safeguards, it would bring the necessary adaptability specifically for the Member States in a crisis and would allow for temporarily adapting their obligations in the area of responsibility.

Within the limits set in the Regulation, any derogations to be triggered for the specific crisis should be used selectively, should be tailor-made to each individual situation and should be closely monitored. The scope of such derogations should be set in a Solidarity Response Plan, based on the assessment made by the Commission and in close cooperation with the affected Member State and adopted by the Council. Any derogations should always be limited in time and respect all fundamental rights of migrants.

Additionally, the part related to the immediate protection should be subject to further analysis, notably in relation to the recent activation of the Temporary Protection Directive and the respective lessons learned.

## **2) AREA OF RESPONSIBILITY**

As with the solidarity part of the reform, responsibility should be based on a set of functional and sustainable rules and well adaptable to ever-evolving migratory circumstances and the various migratory challenges Member States are facing. The following pillars stand at the core of the responsibility area and its rules.

- 1) Fast and effective migration procedures at the external borders*
- 2) Rules on responsibility determination*
- 3) The fight against secondary movements*

The above-mentioned pillars must be well balanced in terms of usability and adaptability, taking into account the specificities of the migratory situation in all Member States, while maintaining the necessary and stable level of responsibility. This stable responsibility should be, on the other hand, adaptable enough to reflect operational needs and realities, without compromising the whole system as such. As with the solidarity component of the system, the responsibility component should be designed with simplicity, practicability and predictability in mind.

## I. Fast and effective migration procedures at external borders

An initial **screening procedure**, which is a necessary step to allow for proper identification, fingerprinting and channelling of the person to the adequate procedure, be it return or asylum, including, where applicable, to a border procedure is a key element of the responsibility part of the system.

In this respect, a balanced compromise was reached by the French Presidency regarding the **Screening Regulation**, which should contribute to an effective and controlled migration management at the external borders and the Czech Presidency is in close contact with the European Parliament in order to initiate the inter-institutional negotiations as soon as possible.

### a) Variability in the maximum nationality threshold establishing the scope of the mandatory border procedure

While the discussion on the border procedure is still to take place based on the Commission proposal for the Asylum Procedures Regulation, in order to reflect the operational reality and sustainability of the border procedure, an adaptable system could be considered taking into account both the adequate capacity to process applications within the border procedure of each Member State, as well as the prospects for return. Such a system should allow, on the one hand, for greater adaptability to the actual situation of a Member State *facing migratory pressure*, while, on the other hand, establishing a rigorous system *for normal situations*.

The purpose of the asylum border procedure is to quickly assess at the external border, whether applications are unfounded or inadmissible and to swiftly return those with no right to stay, while ensuring that those with well-founded claims are channelled into the regular procedure and provided quick access to international protection. In this regard, **establishing a maximum nationality threshold** would allow for a simple and quick identification during the screening of those who should be channelled to the border procedure.

For that purpose, it could be considered that the **maximum threshold, for normal situations**, could be between **20%** (current proposal in the APR) and **30%** (see also Annex to Annex I, point II. 1. a)).

Additionally, a Member State finding itself under migratory pressure with direct effect on its capacity to process eligible applications in the mandatory border procedure, including its reception capacity, could have the **possibility to request a reduction of the mandatory border procedure nationality threshold in clearly defined cases of exceeded adequate capacity in a Member State under migratory pressure**. Presidency proposes three possible ways how to reduce the to-be-agreed threshold for the mandatory border procedure: 1) by requesting to reduce the nationality threshold by half; 2) by requesting not to apply the mandatory procedure to nationalities with low return rates; or 3) by a combination of both previous options.

For a Member State to be able to benefit from reducing the threshold, it will need to notify the Commission and the Council, upon which the Commission will confirm such request through a simplified and speedy assessment, while the requesting Member State and the Commission would also agree on in what way should the threshold be lowered (see also Annex to Annex I, point II. 1. b)).

b) Possible derogation from the mandatory border procedure in exceptional crisis situations

In exceptional and very clearly defined crisis situations, time-limited derogations may be necessary to ease the burden on an affected Member State. It could therefore be considered to extend the scope<sup>5</sup> of possible derogations to be part of the Crisis Regulation also by including derogations from the mandatory border procedure as an exceptional and time-limited measure. As for any other derogation, it would need to be agreed and adopted by the Council in the Solidarity Response Plan by a Council Implementing Decision.

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<sup>5</sup> The scope of derogations to be included under the Crisis Regulation, and which would be applicable to all possible migration-related crisis situations, should be otherwise similar to the scope as proposed under the draft Instrumentalisation Regulation.

c) Hierarchical application of the above criteria

In order to ensure that the above criteria defining the scope are being applied in a harmonised manner in all Member States, it could be considered to apply the above-proposed criteria in a hierarchical order, as follows:

- Mandatory scope of the border procedure check (within the screening procedure)
- The nationality threshold
- Possible reduction of the mandatory border procedure threshold in clearly defined cases of exceeded adequate capacity in a Member State under migratory pressure
- Possible derogations from the mandatory border procedure

**II. Rules on responsibility determination**

The importance of **registering all migrants** as soon as possible after crossing the external EU border is indisputable. It is a prerequisite for correctly establishing the Member State responsible. This does not only provide for orderly migration management and increases the EU internal security, it is also an important element in terms of limiting secondary movements (see part III.). In this respect, a balanced compromise was reached by the French Presidency regarding the **Eurodac Regulation** that should contribute to an effective implementation of the asylum and migration acquis. The Czech Presidency is in close contact with the European Parliament in order to initiate the inter-institutional negotiations as soon as possible.

The core of the **responsibility determination** then lays with the so-called Dublin system. Well-balanced **Dublin rules**, reflecting the situation of both the Member States at external borders and those Member States that suffer the most from secondary movements, are another determinative part of the whole EU asylum system. It is widely acknowledged that the present rules for determining responsibility for asylum applicants across the EU are not working in a satisfactory manner, neither from the perspective of striking the appropriate balance nor from the perspective of effectiveness or reducing secondary movements.

Taking into consideration the above, the Presidency is of the opinion that the following areas could be revisited when returning to the negotiations of the Dublin rules under the AMMR by the Council, to achieve a more balanced system (see also Annex to Annex I, point II. 2. ii.):

- (a) Responsibility criteria for a more balanced system should aim at ensuring a more balanced distribution of responsibility across the EU.
- (b) Non-shift and cessation of responsibility rules that eliminate incentives for abuse and secondary movements should aim at the system's capacity to fight abuses and incentives for secondary movements.
- (c) New (shorter) time-limits for sending requests and receiving replies, to ensure faster determination of the Member State responsible and bringing sufficiency to the system.

### **III. The fight against secondary movements**

Effectively fighting secondary movements is undeniably another key element of the whole system. Without limiting this phenomenon to the extent possible, most of the other parts of the system will likely not work properly, including the solidarity part of the system.

Given this is a cross-cutting issue, the tools making the fight against secondary movements more effective must be considered across the acquis. The current legislative proposals already include a number of such tools, some of which could be developed further (see also Annex to Annex I, point II. 3.).

The below proposals should be read together with the Presidency concept “**Way forward on the reform of EU asylum system based on balanced solidarity and responsibility.**”

They represent a result of extensive consultations and negotiations in the Council, both at technical level (JHA Counsellors held on 16 September, 24 October, 11 November and 23 November) and in SCIFA (held on 4. October and 29. November).

Furthermore, it is important to underline that the below proposals, as well as the Concept as such, should be considered as a commonly understood “springboard”, allowing the current and the incoming Presidency to restart, as soon as possible, the legislative work, making use of the elements presented in the concept as well as in this annex. It is however clear that each element proposed below will still need to be reviewed and ultimately considered within the legislative work itself.

#### **I. AREA OF MANDATORY SOLIDARITY**

The Presidency proposes a system of three safeguards described below to secure enough predictability, assurances and flexibility in terms of the solidarity mechanism encompassing relocations as well as, direct financial and other direct solidarity support.

The mechanism should be based on a premise that the EU as a whole shares the responsibility to manage migration, governed by a set of common European rules (CEAS). When drafting the Annual Migration Report and the attached recommendations for annual solidarity, the Commission shall take this duly into account, in order to provide a comprehensive picture of the migratory situation in the EU and its Member States and when setting the level of ambition for annual solidarity at EU level. The level of shared responsibility should take into account, among other quantitative and qualitative criteria, primarily the overall number of annual arrivals, the average recognition rates as well as the average return rates. Such comprehensive picture should be also a useful tool for Member States when considering their own migratory challenges and deciding about their solidarity support.

1) Minimum threshold for predictable annual solidarity contributions

- A minimum annual threshold necessary for people's solidarity, as well as for direct financial support, could be agreed (in the Asylum and Migration Management Regulation) to reflect the solidarity needs arising from various structural challenges in the area of migration.
- This would allow predictable planning by contributing Member States. It would also provide minimum guarantees in terms of people's solidarity and financial support for the benefiting Member States.
- Such minimum thresholds should be understood as a starting point on which the Commission should base its annual solidarity recommendation, not as a mandatory minimum for pledging.
- These thresholds could be set for both relocations and financial contributions and should reflect the structural and sustained nature of various migratory pressures on the EU.
- While relocations should primarily apply to persons in need of international protection, with priority for those most vulnerable, its application should be kept flexible. Given its voluntary nature, relocating and benefiting Member States should have the option to express their preferences in terms of persons to be considered for relocations. EUAA could support Member States with matching.
- Regarding the other forms of direct solidarity (focusing primarily on capacity building, services, skilled personnel, facilities and technical equipment - in fields such as registration, reception, border management, screening, detention and return), these would not be included in these thresholds, for practical reasons. However, during the pledging exercise itself, their financial value should be assessed and applied, recognising that the various types of solidarity are of equal importance.



- Irrespective of these minimum annual thresholds, the Commission will always have the possibility to propose, through the recommendations to be included in the Annual Migration Report, a higher annual relocation or financial target, as well as concrete proposals for the other forms of solidarity, if necessary and based on projected needs.
- Those needs would be based on the overall assessment of the past and current situation in all Member States. When assessing the overall situation in the EU and its Member States, the Commission should take into account the set of information to be agreed under Article 50 of the AMMR proposal, taking in to account the annual level of shared responsibility. Member States would also have an opportunity to express their solidarity needs for the coming year, to be taken into account by the Commission.
- In the same vein, in exceptional situations, where there would be no projected need for people's and/or financial solidarity for the coming year or a possibility to implement it (e.g. a health-related crisis with cross-border effect), the Commission could propose that the above-mentioned thresholds are not (fully) applied.
- A review clause could be included in the AMMR, allowing for an amendment of these minimal thresholds, should the overall migratory situation substantially change at EU level. Both the Commission and the Council could have the possibility to initiate such targeted amendment of AMMR.

2) Fair share as a distribution key for calculating solidarity commitments

- On the basis of the Commission recommendation for solidarity (people's solidarity, financial support and the *other* forms of solidarity), when pledging to the Solidarity Pool or the Solidarity Response Plan, Member States could follow a distribution key (fair share) based on a formula to be agreed. However, Member States would retain the right to choose which solidarity measure(s) they wish to contribute with.
- Should there be a need for the *other* forms of solidarity support, its financial (market) value would be assessed, allowing the fair share principle to be applied.
- The fair share principle could be established as a:
  - a) *Guiding principle*
  - b) *Mandatory principle*
- Should it be agreed that the fair share principle is applied mandatorily, Member States will still be able to request a partial or full reduction of their contribution as committed to in the Solidarity Pool or the Plan.
- In order to do so, such Member States should demonstrate clearly that a significant migratory situation on its own territory, leading to their reduced capacities in the area of asylum, reception and/or irregular migration, does not allow for (full) participation in providing solidarity to other Member States. The Commission should be able to confirm this, through a simplified and speedy assessment.

- When a Member State is a recipient of solidarity measures, it is also excluded from providing solidarity to others.
  - Such a fair share should also serve as one of the guiding indicators to be used by the Commission when assessing Member States' notifications/requests for solidarity and when considering the significance of the migratory pressure or a crisis (compared with the EU average over the last 12 (rolling) months of all irregular arrivals to the EU) in an affected Member State.
- 3) Supplementary people's solidarity for situations where there are not enough relocation pledges – Dublin transfer offsets:
- If the annual relocation target recommended by the Commission in the Annual Report is not met in full by Member States, the mechanism would allow for a topping-up of the remaining unfulfilled relocation pledges, when providing people's solidarity. This would provide an option for the Member States that are under particular pressure/crisis, to also benefit from a corresponding reduction of the Dublin cases under the Dublin rules for which they would be otherwise responsible. This would shift the responsibility to Member States providing solidarity.
  - Under such scenario, all relevant Member States could consider assuming responsibility and cancel a proportional number of Dublin transfers to Member States under a particular pressure/crisis, in addition to their relocation, financial or *other* forms of solidarity pledges.

- Such offsets would only be possible as a *second level* solidarity support, while relocations should always be considered as the preferred option, in terms of people's solidarity. The preferences of the benefiting Member States should be taken into account in this regard. These offsets would therefore be possible only when the recommendations by the Commission regarding relocations, financial or other solidarity support are not met by the Member States to a satisfactory level (therefore after the annual pledging exercise is concluded). Such level could be set (for example at 75 % of the Commission's recommendations on relocations).
- To motivate Member States to primarily pledge for relocations, financial support and the *other* alternative solidarity support, the Dublin offsets would not be considered when calculating the fair share/distribution key.
- The Dublin offsets could work as a supplementary solidarity tool on:
  - a) *Voluntary basis*
  - b) *Mandatory basis*
- For this proposal to work in practice, a system of guarantees is necessary, to avoid to the extent possible, a negative effect on pull-factors, secondary movements in the EU and the functioning of the Dublin system.
- Therefore, (some of) the following rules could be envisaged regarding the scope:
  - o Persons subject to a transfer (accepted requests/notification), where the time limit from the acceptance of the request by the responsible Member States has not yet reached 6 months.

- Persons who have absconded from the Dublin procedure in the second (requesting) Member States would not be included in the scope.
  - Cases in which the obligation to register a person in the Eurodac database is not fulfilled by a Member State would be excluded from the scope.
  - Persons that were resettled or relocated would not be included in the scope in order not to undermine these frameworks.
  - Unaccompanied minors and family unity related requests and transfers would be excluded from the scope.
  - Additionally, and on a voluntary basis, cases where the application has already been finally rejected in the first Member State could be included, so that the second Member State could consider the application as subsequent and carry out the return.
- The offsetting and benefiting Member States should be able to put forward their preferences in terms of persons to be considered for these offsets.
  - It is also important to note that the tools making the fight against secondary movements more effective have to be considered comprehensively throughout the proposed reform (see part II. 3).

## II. AREA OF RESPONSIBILITY

In order to create a functional and sustainable system, a balance must be struck between Member States' commitments towards responsibility and solidarity. It is therefore a prerogative that any such system is based on a set of functional and sustainable rules, well adaptable to ever-evolving migratory circumstances that can be followed and implemented by all.

The following pillars stand at the core of the responsibility area and its rules.

- 1) Fast and effective migration procedures at the external borders
- 2) Rules on responsibility determination
- 3) The fight against secondary movements

**1) Fast and effective migration procedures at external borders**

i. The mandatory border procedure

Besides well-functioning initial screening procedure, the border procedure is a crucial element supporting the Member States in managing their external borders. In order to reflect the operational reality and sustainability of the border procedure the Presidency is presenting the following ideas.

**a) Setting up the maximum nationality threshold for normal situations**

Establishing a maximum nationality threshold is an element that should allow for a simple and quick identification during the screening of those who should be channelled to the border procedure.

Therefore, to provide for a balanced, but adaptable system, the below options for the nationality threshold for normal situations could be considered:

- a) 20% (as proposed in the current APR proposal)*
- b) 25%*
- c) 30%*

**b) A possibility to request a reduction of the mandatory border procedure nationality threshold in clearly defined cases of exceeded adequate capacity in a Member State under migratory pressure**

A Member State finding itself under migratory pressure with direct effect on its capacity to process eligible applications in the mandatory border procedure, including its reception capacities, would have the option of lowering the threshold for nationalities subject to such procedure.

Three possible ways how to reduce the to-be-agreed threshold for the mandatory border procedure could be considered:

- 1) by requesting to reduce the nationality threshold by half;
- 2) by requesting not to apply the mandatory procedure to nationalities with low return rates; or
- 3) by a combination of both previous options.
  - In order for a Member State to be able to benefit from reducing the threshold, the given Member State will need to notify the Commission and the Council and demonstrate clearly that given a significant migratory situation on its own territory, its annual *adequate* capacity<sup>1</sup> to process relevant cases in the border procedure is reaching its limits.
  - The Commission will confirm such request through a simplified and speedy assessment, focusing notably on the overall *adequate* capacity of that Member State to process applicants subject to the border procedure, taking into account a last XX-year average number of persons subject to border procedure in a given Member State, the reception capacities and other relevant criteria<sup>2</sup>.

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<sup>1</sup> The Presidency acknowledges that such annual reasonable capacity would need to be clearly defined and agreed by the Council.

<sup>2</sup> For example, by taking into account the set of information to be agreed under Article 50 of the AMMR proposal.

- The requesting Member State and the Commission would also agree on in what way should the threshold be lowered (e.g. by reducing the nationality threshold by half; by not applying the mandatory procedure to nationalities with low return rates; or by a combination of both previous options).
- Should that Member State and the Commission agree on a need to lower the threshold by not applying the mandatory procedure to nationalities with low return rates, they should agree on a list of nationalities that should be excluded. For that purpose, the Commission should carry an additional tailor-made assessment, also considering possible negative impact of this measure on a cooperation on returns with the given third countries.
- The possibility to lower the threshold could be accompanied by other measures, aiming at alleviating the pressure and improving the overall situation (e.g. the Support Toolbox) and have a clearly defined time-frame.

**c) Possible derogation from the mandatory border procedure in exceptional crisis situations**

It has been acknowledged by the majority of Member States that in exceptional and very clearly defined crisis situations, time-limited derogations may be necessary to ease the burden on an affected Member State. To this end, the Presidency is proposing to extend the scope<sup>3</sup> of possible derogations to be part of the Crisis Regulation also by including derogations from the mandatory border procedure as an exceptional and time-limited measure.

As for any other derogation, it would need to be agreed and adopted by the Council in the Solidarity Response Plan (by a Council Implementing Decision).

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<sup>3</sup> The scope of derogations to be included under the Crisis Regulation, and which would be applicable to all possible migration-related crisis situations, should be otherwise similar to the scope as proposed under the draft Instrumentalisation Regulation.



#### **d) Hierarchical application of the above criteria**

It could be considered to apply the above-proposed criteria in a hierarchical order, in order to ensure that the above criteria defining the scope are being applied in a harmonised manner, as follows:

- Mandatory scope of the border procedure check (within the screening procedure)
- The nationality threshold
- Possible reduction of the mandatory border procedure threshold in clearly defined cases of exceeded adequate capacity in a Member State under migratory pressure
- Possible derogations from the mandatory border procedure

#### **2) Rules on responsibility determination**

##### **i. Proper and timely registration of all irregular migrants**

The necessity to register all migrants as soon as possible after crossing the external EU border is indisputable. Moreover, the new Eurodac Regulation stipulates that persons found to be illegally staying within the territory of a Member State must be registered. In both cases, such registration should happen primarily within the screening procedure.

In this respect, a balanced compromise was reached by the French Presidency regarding the Eurodac Regulation that should contribute to an effective implementation of the asylum and migration acquis.

ii. The Dublin system

Well-balanced Dublin rules that reflect the situation of both the Member States at external borders, and those Member States that suffer the most from secondary movements are another determinative part of the whole EU asylum system.

Taking into consideration the above, as well as the input received from the delegations, the following key elements should be considered when negotiating the Dublin rules under the AMMR, to achieve a more balanced system:

**(d) Responsibility criteria for a more balanced system**

The AMMR proposal includes new criteria aiming at ensuring a more balanced distribution of responsibility across the EU. Some additional elements could be considered to ensure the overall balance of the system:

- **Family criteria:** the proposal to include families formed in transit, *as proposed in the current AMMR proposal*, should be maintained. Additionally, the possibility to also include siblings could be explored further.
- **Residence documents and visas:** assuming responsibility, if the application is registered within 1 year from the expiry of a visa or 3 years from the expiry of a residence permit (*3 years for both in the current AMMR proposal*).
- **Diplomas or other qualifications:** this criterion, *as proposed in the current AMMR proposal*, could be maintained. If so, it would need to be assured that such criterion cannot be easily abused by applicants<sup>4</sup>.

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<sup>4</sup> E.g. by adding in the definition a condition that the studies must have taken place in the territory of MS (thus excluding online courses), lasted at least one year, and that the asylum application was registered within five years after the diploma/qualification was obtained, as discussed during previous negotiations on the AMMR. More detailed specifications regarding the types of diplomas and qualifications concerned could also be included to ensure a consistent interpretation.

- **Irregular entry criterion:** the same responsibility criterion should be established for all irregular migrants arriving to the EU, to avoid pull factors. Member States are invited to consider the following time limits:
  - a) *18 months*
  - b) *3 years (as in the current AMMR proposal)*
- **Visa waived entry:** if the first application is lodged in a second Member State where the need for a visa is also waived, that Member State is responsible. *The current AMMR proposal establishes that the responsibility always falls on the Member State of first entry within 3 years from when the date of entry into the territory of the EU.*
- **Discretionary clause:** could be extended beyond family and humanitarian grounds (e.g. for relocation purposes, on cultural and social ties). The time limit for a reply to a request made by the second Member State should be maintained, while the reply by the first Member State could be considered as acceptance in case of no reply.
- **The reasoning of Dublin requests and replies:** Member States should always provide solid reasoning for all criteria according to their hierarchical nature. A negative reply should be reasoned in relation to every relevant criterion. A standard form could be developed to facilitate this proposal and reduce the risk of an excessive administrative burden.

**(e) Non-shift and cessation of responsibility rules that eliminate incentives for abuse and secondary movements**

The AMMR proposal enhances the system's capacity to fight abuses and incentives for secondary movements. Some additional elements could be considered to ensure the overall balance of the system:

- **Cessation of responsibility:** responsibility ceases if there is proof<sup>5</sup> that the applicant stayed outside the territory of the EU for at least three months (*the current AMMR proposal does not foresee such a cessation of responsibility*).
- **Expiration of time limits:** as regards absconding, a suspension of the transfer deadline could be as follows (compared with the current AMMR proposal for an indefinite period):
  - a) 3 years
  - b) 5 years
- **Take back notification:** take back should be triggered by a notification, the time limit for replying to this notification could, however, be extended to 2 weeks (*1 week is proposed in the AMMR proposal*).

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<sup>5</sup> Eurodac proposal in the version of a partial general approach from June 2022 contains extension of the scope of the Entry/Exit System and allows the access of competent asylum as well as competent authorities for „Dublin issues“ to the Entry/Exit System, therefore the system would for a sound implementation the cessation clause in practice.

**(f) New time-limits for an efficient system**

The AMMR proposal significantly shortens the time limits for sending requests and receiving replies, to ensure faster determination of the Member State responsible.

- The presidency does not propose, at this moment, to change the time-limits *as proposed in the AMMR proposal*.

**3) The fight against secondary movements**

The fight against secondary movements is undeniably another key element of the whole system. Without limiting this phenomenon to the extent possible, most of the other parts of the system will likely not work properly, including the solidarity part of the system.

Given this is a cross-cutting issue, the tools making the fight against secondary movements more effective must be considered across the acquis. The current legislative proposals already include a number of such tools. Examples of the most important tools, are provided below:

- The recast **Eurodac Regulation** will serve as one of the most important tools in terms of proper management and monitoring of the migration situation in the EU, contributing to the fight against secondary movements.
- The new **Screening Regulation** will significantly reduce the number of migrants who are not fingerprinted and checked, also with regard to security threats. Moreover, this regulation provides for the possibility of restrictive measures, including detention.
- The recast **Reception Conditions Directive** stipulates that applicants who apply in a Member State that is not responsible (especially after secondary movement) will not be eligible to receive standard reception benefits. This shall serve as one of the main tools in the fight against secondary movements.

- The new **Asylum and Migration Management Regulation** aims at simplifying the currently overregulated Dublin procedure to revive a functional Dublin system.
- The new **Asylum Procedure Regulation** contains several elements that enable applicants to be treated more effectively after secondary movements. CZ PRES builds on the work of previous Presidencies and is working, together with Member States, to make these rules even more effective, while maintaining necessary procedural guarantees. To highlight a few: new rules for implicit withdrawal that are also applicable in cases of absconding; a strong obligation on the part of the applicant to cooperate, with clear procedural consequences; special rules for those who are already beneficiaries of international protection; and the obligation to issue a return decision together with a negative asylum decision or non-automatic suspensive effect of appeal. Other areas such as the safe countries concept, withdrawals or appeals are about to be discussed at upcoming Asylum WP meetings.
- The fight against secondary movements is also one of the main objectives of the **Instrumentalisation Regulation** through the introduction of the extended scope of the border procedure.
- Further work at higher **convergence of decision on international protection** applications is necessary in order to eliminate abuse of the system (so-called asylum shopping) that is directly linked with secondary movements. The work of the French Presidency and the activities of the EUAA should be therefore further developed.

## Roadmap

### Improving the implementation of transfers under the Dublin III Regulation

Following the discussions at the Contact Committee meeting on the Dublin III Regulation<sup>1</sup> held on 24 June 2022, the Member States, the Commission and the European Union Agency for Asylum (‘EUAA’) agreed to work on a roadmap in order to improve and ensure better implementation of transfers under that Regulation in all Member States.

The contributions from the Member States revealed multiple issues over a wide range of areas that authorities face when implementing transfers. The Commission has grouped the issues and ideas received from Member States into five areas: absconding, communication between the Member States, practical obstacles when implementing transfers, resources, and legal obstacles.

The aim of this roadmap is to ensure that Member States comply with their obligations pursuant to the EU asylum *acquis*, and in particular the Dublin III Regulation, in order to ensure that Dublin transfers can take place to all Member States. Therefore, it sets out the practical steps Member States should commit to take in order to improve the implementation of transfers under the Dublin III Regulation.

This roadmap complements the existing recommendations, guidance and tools developed by the EUAA. The Member States should therefore also commit to effectively use and implement those tools.

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<sup>1</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (‘the Dublin III Regulation’)

In order to ensure the effective implementation of the roadmap, a concrete timeline is foreseen in Annex to this Annex II for the improvement of transfers under the Dublin III Regulation in all Member States. The implementation of the roadmap should be regularly discussed in the context of the Contact Committee meetings on the Dublin III Regulation.

### **Objective 1: Limiting absconding**

Applicants absconding from the examination procedure or the Dublin procedure seems to remain one of the main reasons for the limited number of successful Dublin transfers. While the adoption of the Asylum and Migration Management Regulation<sup>2</sup>, which includes important legislative changes to limit absconding, will solve many issues, in the meantime, the main challenges seem to relate to the assessment of “a significant risk of absconding” and the measures available to Member States in order to limit this risk. Other important elements are also misconceptions of what awaits the applicant after the transfer to the responsible Member State, and the lack of provision of information on the application of the Dublin III Regulation.

#### Action 1. Better information to applicants for international protection:

- 1.1 As a general principle, Member States should ensure that applicants are informed about the Dublin III Regulation, in particular by complying with Article 4, and provide the information leaflet set out in Annex X of the Implementing Regulation<sup>3</sup>. Part A should be provided to all applicants for international protection, regardless of whether the Dublin Regulation is applicable, and part B should be provided to applicants found in a Dublin procedure. The applicant should also be informed of the obligation to remain in the Member States responsible pending the examination of the application.

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<sup>2</sup> COM(2020) 610 final

<sup>3</sup> Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, as amended by Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014.



- 1.2 Member States should provide supplementary information regarding their Member State that the transferring Member State can use to prepare the applicant for the upcoming transfer, and build trust about their application for international protection receiving equal treatment in each Member State. The EUAA, in close cooperation with the Member State authorities, will facilitate the development of templates and practical tools in this respect.

Action 2. Better preparation of the transfer:

- 2.1 Primarily, Member States should ensure that they have sufficient resources to start organising the transfer as quickly as possible.

In the case of appeals and possible suspensive effect, Dublin cases could be prioritised. Faster procedures could be achieved by the authorities providing information on the functioning of the Dublin system and the timely provision of country specific information to the courts in order to ensure thorough, yet focused and quick revision of Dublin decisions. These actions are without prejudice to the independence of the courts. Concluding the legal review of transfer decisions in a timely manner would result in a more predictable and coherent Dublin procedure.

- 2.2 Where the conditions for detention are not met, Member States could utilise alternative measures where appropriate, such as confiscating travel documents, designating an area where the applicant needs to stay during the procedure, applied together with the obligation to report frequently to the authorities, when applicable by national law.

- 2.3 The concept of absconding as interpreted by the Court of Justice of the European Union in case C-163/17, Jawo, should be implemented in a uniform way across all Member States. The Commission should provide guidance in the compilation of relevant case law referred to in point 1.4 of Objective 5. Where necessary, the Member States should establish national guidelines on the concept of absconding to ensure equal interpretation by all relevant authorities.
- 2.4 The EUAA should facilitate the development of judicial publications on the Dublin Regulation and offer regular tailor made activities to promote the professional development of judges in this regard.

## **Objective 2: Improving Communication between the Member States**

With only limited exceptions<sup>4</sup>, the use of DubliNet is mandatory for all communication between the Member States and must remain the main communication channel for all cases falling within the scope of the Dublin Regulation.

However, Member States highlighted that with the amount of messages being transmitted through the system, it is already difficult for Member States to identify and to follow up urgent or prioritized cases in a timely manner. These difficulties are exacerbated by the fact that DubliNet is currently the only communication channel the Member States use to communicate on any matter, including providing general information, such as public holidays etc. Therefore, where general information not specific for an individual case needs to be communicated, or in cases where there are issues that need to be solved immediately concerning an imminent transfer<sup>5</sup>, it could be useful for the Member States to have a point of contact outside DubliNet to limit generic information being sent through DubliNet. Regarding cases where immediate action is required, according to the EUAA recommendations on the technical and operational use of DubliNet, urgent cases should be marked in the subject of the message.

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<sup>4</sup> Commission Implementing Regulation Article 15(1) second subparagraph: “[...] correspondence between the departments responsible for carrying out transfers and competent departments in the requested Member State regarding the practical arrangements for transfers, time and place of arrival, particularly where the asylum seeker is under escort, may be transmitted by other means”

<sup>5</sup> Excluding any personal data on the applicant, which would require the information to be sent through DubliNet.

The rate of successful transfers relates to the continuous information exchange between the Member States. Therefore, it is of utmost importance to keep the communications channels clear and up to date.

- 1.1 The Commission should explore the possibility for setting up a way for the Member States to communicate with each other for all issues that are not mandatory to transmit through DubliNet. This could for example be done by setting up a specific email address. In order to ensure that the additional way of communication will not be overloaded, EUAA should include the specific information that could be shared through this alternative communication channel in the recommendations on Dublin transfers.
- 1.2 If the responsible Member State needs to delay an incoming transfer, for example for logistical reasons, it should actively and timely cooperate in order to implement the transfer within the transfer time limit. Such delays should be strictly limited to situations where the transfer time limit is not approaching and the person is not detained.

### **Objective 3: Overcoming practical obstacles when implementing transfers**

Member States reported several obstacles for the practical implementation of the transfers, such as limited choice of airports, limited number of total incoming transfers allowed per day by Member States, limited number of applicants allowed by airlines, lack of direct flights, lack of connecting flights, short arrival periods, and long notification time.

Challenges created by the COVID-19 pandemic and consequent restrictions introduced by the Member States have also had long term impact for the smooth implementation of the Dublin Regulation.

## 1.1 Increasing flexibility in the responsible Member State

- Pursuant to Article 29 of the Regulation, the transfer shall be initiated as soon as practically possible. Pursuant to Article 8 of the Implementing Regulation, the responsible Member State has an obligation to allow the applicant's transfer to take place as quickly as possible and to ensure that no obstacles are put in his way. In addition, when deciding the location on its territory to which the applicant will be transferred, the responsible Member State must take into account geographical constraints and modes of transport available to the transferring Member State. Therefore, adequate flexibility should be shown in order to support the transferring Member States, including by removing obstacles, in particular when the transfer time limit is approaching.

The responsible Member State should, when possible, provide for flexibility and support to the transferring Member State, in particular by:

- Increasing capacity by ensuring that there are sufficient resources at border crossing points;
- Allowing for dialogue, when the transferring Member State sees the need for group transfers or the use of charter flights, and both the transferring and the responsible Member State agree to such transfers;
- Allowing for dialogue, when the transferring Member State sees the need for transfers by land and both the transferring and the responsible Member State agree to such transfers;
- Allowing longer and more flexible arrival periods, in particular taking into account the geographical location of the transferring Member State and the limited availability for direct flights for some Member States;
- Showing more flexibility and cooperation between the Member States when the time limits set out in Article 29 of the Dublin Regulation are approaching;

- Showing more flexibility and cooperation between the Member States where a transfer is delayed due to e.g. lack of capacity or logistical reasons;
- In line with the EUAA recommendations on Dublin transfers, reduce the notification time in specific situations, for example if the transfer deadline is approaching, the applicant is detained, the applicant has intentionally frustrated the implementation of the transfer, the transfer is a rescheduled transfer, or the transfer is for other reasons urgent;
- In exceptional cases, or where there are limits due to lacking personnel or capacity, consider whether it is possible to allow single transfers to other airports, transfers after the normal hours or during a weekend.

## 1.2 Addressing capacity limitations

As a principle, Member States should ensure sufficient human resources and therefore restrictions due to such limitations should not be applied as a rule. However, where such situations are unavoidable in the responsible Member State:

- Applicants in detention should be prioritized.
- The Dublin Unit should facilitate the organisation of transfers by communicating any restrictions and specific capacity issues in a timely manner in order to prevent that already agreed transfers are cancelled on short notice, using DubliNet and the tools provided for by EUAA (transfer arrivals time table).
- The Dublin Unit should communicate an end-date when notifying the other Member States of such limitations, if possible.
- The responsible Member States should provide alternatives, in particular those listed in point 1.1 of Objective 3, if there are long-term capacity issues at specific border crossing points.

- The responsible Member State should also show flexibility for exceptional cases, such as where the applicant is detained, vulnerable or the transfer deadline is approaching.

### 1.3 Creating specific exceptions for COVID-19 or other exceptional circumstances:

Dublin transfers are the result of implementation of responsibilities set out in EU law, and the responsible Member State has an obligation to allow the applicant to enter its territory. Therefore, all Member States should cooperate in order to agree at EU level, taking into account the recommendation of relevant health authorities, that COVID-related entry conditions, such as a PCR test, do not apply to Dublin returnees where national law allows for derogations or exceptions for other travelers, in order to maintain a functioning Dublin system. Exceptions could include alternatives to a PCR test, such as a vaccination certificate, a quarantine period before or after a transfer, a transfer taking place from solitary detention or a COVID-19 symptom free certificate by a medical professional. The receiving Member State should show flexibility in order to support the transferring Member State, such as exceptionally allowing the transfer of special cases or cases where the time period for transfer would soon elapse.

Even in exceptional conditions, Member States should do its utmost to maintain continuity by allocating resources that would allow the acceptance of at least a low number of incoming transfers without the need to suspend incoming operations, while gradually increasing the numbers once regular conditions are restored.

#### 1.4 Long term planning

Events following the global pandemic such as war in Ukraine or gathering of asylum seekers at the border of Belarus clearly indicates that a coordinated and pre-discussed emergency plan is necessary for functioning of the Dublin system during any emergency circumstances.

- Member States should progressively return to pre-emergency practice and apply similar approaches towards postponed transfers and approaching time limits, full schedule or limited capacity in accordance with an agreed timeline.
- Member States that are constantly receiving influxes due to the war in Ukraine or may be impacted by future emergency situations should increase capacity as soon as possible to prevent gaps and reinforce the competent services, including the transfer units. In that way, the reception systems and asylum procedures are more likely to operate in a sufficient manner. EUAA may support increasing capacity where requested by the Member States and in accordance with the EUAA Regulation. Capacity limitations can also be addressed by utilising EU funds.

#### **Objective 4: Ensuring sufficient resources to effectively implement Dublin transfers**

The risk of absconding seems to increase the longer an applicant has to wait to be transferred to the responsible Member State. Therefore, it is crucial for the effective implementation of transfers that the transfer is prioritised and takes place as soon as practically possible, rather than at the end of the 6-month time limit.

However, Dublin transfers are subject to different internal procedures in all Member States. For different steps, many actors may be involved, in particular cases concerning arrest or detention, unaccompanied minors and other vulnerable persons, or persons with medical conditions, and the practical execution of transfers. Even if the transfer procedure is established in the Dublin Regulation, the asylum authorities are not necessarily the authority empowered by national law to put in place the measures needed to ensure the transfers.

Therefore, Member States must ensure that they have sufficient resources in place across the relevant authorities and ensure adequate coordination at national level to effectively deal with the number of applicants in the Dublin procedure and in a timely manner. The effective application of the Dublin Regulation is conditional on the quick identification of possible Dublin cases, and that applicants are informed about the Dublin procedure and the consequences of not complying with the procedure. For this purpose:

- 1.1 Member States should internally review whether there is a need for training or other restructuring to ensure quick identification of possible Dublin cases, and make full use of the EUAA training modules, so that caseworkers can further deepen their knowledge. Where necessary, the Member States should utilise EU funds to ensure that the Dublin Unit or other relevant units or authorities have sufficient staff to decrease the time between the acceptance of the request and the transfer can be carried out.
- 1.2 If necessary, adapt national legislation and internal coordination given that they are crucial measures to ensure the efficiency of the mandate stated in the Dublin Regulation and to increase the number of implemented transfers. The Member States should fully utilise the EUAA recommendations on Dublin transfers and other EUAA guidance for this purpose.
- 1.3 Member States should make all possible efforts to send requests, reply to requests, and make transfer decisions as soon as possible and without delays. Therefore, sufficient human resources should be available to ensure that transfer decisions are taken swiftly after the acceptance of the request and notified to the applicant. The capacity to arrange transfers should be adapted to the number of transfer decisions made.



- 1.4 Member States should ensure that efficient digital case management systems are in place. Member States should also provide effective access to critical IT systems to all relevant staff tasked with carrying out tasks in relation to the Dublin procedure, notably with regards to DubliNet and Eurodac.
- 1.5 A Member State that finds its asylum or reception system to be under disproportionate pressure may request operational assistance from the EUAA in accordance with the EUAA Regulation. Measures included in the operational plans may also support the Dublin procedure in a Member State. The Member States may also request support from the Commission, including financial support.

### **Objective 5: Increasing compliance with EU law, including court rulings**

The principle of mutual trust remains one of the fundamental principles underlying the Dublin system. However, in Article 3(2) second subparagraph, the Dublin Regulation already includes a guarantee that an applicant will not be transferred to the Member State primarily designated as responsible where there are substantial grounds for believing that there are systematic flaws in the asylum procedure and reception conditions for applicants in that Member States. Therefore, the assessment of whether a transfer can take place forms part of the responsibility determination made by Dublin units.

A series of rulings from the Court of Justice of the European Union and the European Court of Human Rights following the *M.S.S.* judgment<sup>6</sup> set the jurisprudence according to which a transfer cannot be carried out if the applicant risks inhuman or degrading treatment either during the transfer or after arrival in the responsible Member State. Some administrative authorities and national courts do not allow transfers to certain Member States either because they consider that there are risks of ‘chain *refoulement*’ or that the procedural safeguards, reception or detention conditions are below the Charter’s standards. Based on the above criteria, some Member States have taken the decision not to transfer applicants to certain Member States.

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<sup>6</sup> Judgment of the ECtHR. *M.S.S. v Belgium and Greece*, No 30696/09, 21 January 2011.

There seems to be a need for additional objective and reliable information on reception and detention conditions and the asylum procedure in specific Member States, which can serve as additional information in transfer decisions and can be used in national courts, without prejudice to the independence of the national courts. All Member States should undertake the necessary efforts to conform to requirements at EU level, including the full implementation of the EU asylum *acquis* in law and in practice, and in particular the rules set out in the Dublin Regulation, in order to ensure that Dublin transfers are correctly implemented.

Every Member State should make every possible effort to implement the measures set out in this roadmap as soon as possible and these measures are complementary to the monitoring mechanism of EUAA, once that mechanism enters into force.

- 1.1 The Commission, in cooperation with EUAA, should create a template that each Member State should fill out with reliable and up to date information that is relevant for and could be used as an additional source of information by the national authorities and courts of the transferring Member State when assessing the concrete situation in the responsible Member State. Such information could consist of, inter alia, access to the asylum procedure and procedural guarantees as required by the relevant Directives and Regulations following a transfer, access to basic care and medical services, and conditions for reception and detention, including conditions for vulnerable persons. The template should be dynamic and can be modified according to changing circumstances that could have an impact on Dublin transfers. EUAA will gather the templates filled out by the Member States and share them with the other Member States. Member States should provide updates as soon as possible if relevant changes occur. When needed, the transferring Member State should further transmit this information to their national courts.

- 1.2 Fact-finding missions could take place in only in exceptional situations, provided that there is an agreement with the Member State concerned, including on the modalities for such missions.
- 1.3 Both national authorities and EUAA should cooperate to raise awareness of the Dublin system in national courts (see Objective 1, points 2.1 and 2.4). Member States should provide the courts with comprehensive information on what awaits an applicant in the responsible Member State following a Dublin transfer, either in an individual case or on a general basis.
- 1.4 In addition to the EUAA Case law database, the Commission should provide for a compilation of relevant case law explaining further the CJEU jurisprudence in the Dublin context.
- 1.5 Where necessary or legally required in an individual case, and in addition to the information available on reception conditions and the asylum procedure, the transferring Member State may request the responsible Member State to issue individual guarantees on an ad-hoc basis (e.g. where the specific needs of the persons concerned need to be provided for upon transfer). The responsible Member State should make every effort to issue individual guarantees in a timely manner, including where responsibility was established on the basis of a tacit acceptance.

**Annex to the Roadmap to improve the implementation of transfers under the Dublin III  
Regulation**

**Timeline for implementing the roadmap actions**

***By December 2022***

- **Member States** to endorse the roadmap;
- **The Commission in cooperation with the EUAA** to develop a template for Member States fiches for courts purposes (*Objective 5, action 1.1.*);
- **The Commission** to propose an alternative way for Member States to communicate with each other (*Objective 2, action 1.1.*);
- **The EUAA**
  - to develop a template for information provision to applicants (*Objective 1, action 1.2.*);
  - to amend the existing recommendations on Dublin transfer to include the specific information to be shared through the new alternative communication channel under Objective 2 action 1.1 (*Objective 2 action 1.1.*).

***By March 2023***

- **Member States**
  - to provide to the other Member States the necessary information to applicants and the courts in accordance with the templates developed by the Commission and EUAA as per *Objective 1, action 1.2 and Objective 5 action 1.1.*;
  - to carry out the internal review of resources, capacity, and internal organization (*Objective 4, action 1.1.*) with a view to achieving *Objective 1, action 2.1* as well as the increased capacity at BCPs as per *Objective 2, action 1.1* and the increased reception and processing capacity as per *Objective 3 action 1.4.*;
  - to provide effective access to critical IT systems to all relevant staff tasked with carrying out tasks in relation to the Dublin procedure, notably with regards to DubliNet and Eurodac (*Objective 4, action 1.4.*);
- **The Commission** to provide a compilation of relevant case law on Dublin (*Objective 5 action 1.4.*).

**By June 2023**

- **Member States**
  - to implement the concept of absconding in a uniform way, including by establishing national guidelines if necessary (*Objective 1, action 2.3*);
  - Following the COVID-19 pandemic and the war in Ukraine, to go back to pre-emergency practices as per *Objective 3, action 1.4*;
  - to increase reception and processing capacity in order to prevent gaps and reinforce the competent services, including the transfer units (*Objective 3, action 1.4*) and in order to ensure that transfer decisions are taken swiftly after the acceptance of the request and are notified to the applicant (*Objective 4, action 1.3*).
  - to adapt legislation, if necessary,<sup>1</sup> and internal coordination as well as to fully implement the EUAA recommendations on Dublin transfers, with a view to increasing the number of implemented transfers (*Objective 4, action 1.2*);
  - to ensure that efficient digital case management systems are in place (*Objective 4, action 1.4*);

**On a continuous basis**

***With a view to limiting absconding (Objective 1)***

- **Member States** to ensure applicants are informed in accordance with Article 4 of Dublin III and provide the information leaflets (*Objective 1, action 1.1*);
- **Member State** to utilize alternative measures to detention (*Objective 1, action 2.2*);

***With a view to improving communication between Member States (Objective 2)***

- **Member State** to actively cooperate to implement a transfer in case of delays (*Objective 2, action 1.2*);

***With a view to overcoming practice obstacles when implementing transfers (Objective 3)***

- **Member State** to increase flexibility regarding incoming transfer when they are the responsible Member State as per the actions foreseen in *Objective 3 action 1.1*;
- **Member States** to address restrictions and capacity issues when receiving transfers as per *Objective 3 action 1.2*;

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<sup>1</sup> In case adaptation of national legislation is necessary, the timeline for implementation should be December 2023.

***With a view to ensuring sufficient resources to effectively implement Dublin transfers***

***(Objective 4)***

- **Member States** should make all possible efforts to send requests, reply to requests, and make transfer decisions as soon as possible and without delays (*Objective 4, action 1.3*);
- **Member States** to consider whether their asylum or reception systems is under disproportionate pressure and, if appropriate, request operational assistance from the EUAA in accordance with the EUAA Regulation, or the Commission (*Objective 4, action 1.5*);

**With a view to increasing compliance with EU law, including Court rulings**

***(Objective 5)***

- **Member States** to agree bilaterally on whether fact-finding missions can be carried out in specific situations and the modalities for such missions (*Objective 5, action 1.2*);
- **Member States** to issue individual guarantees in a timely manner upon request by the transferring Member State, where necessary for an individual case (*Objective 5, action 1.5*).
- Member States, in cooperation with the EUAA, to raise awareness of the Dublin system in national courts and provide the courts with comprehensive information on what awaits an applicant in the responsible Member State following a Dublin transfer – as per the templates developed (*Objective 5 action 1.3*).
- **The EUAA** to develop judicial publications on Dublin and organize activities to promote the professional development of judges (and then continue on a regular basis) (*Objective 1, action 2.4*).

**If Covid-related restrictions are reinstated:** immediately reach an agreement to extend any exceptions applicable to specific travelers to Dublin transfer including through the identification of alternatives to PCR tests or vaccinations (*Objective 3 action 1.3*).

**Monitoring and Review**

**By March 2023**

- Delivery of actions foreseen by that date;
- Progress in the implementation of actions to be taken on a continuous basis, and in particular, significant and tangible improvement in the flexibility regarding incoming transfers (in accordance with *Objective 3 action 1.1*) and in reducing the length of the Dublin procedure (in accordance with *Objective 4 action 1.3*);
- Overall progress in the acceleration and increase of Dublin transfers.

**By June 2023**

- Delivery of actions foreseen by that date;
- Significant progress in the implementation of actions to be taken on a continuous basis, particularly in relation to increasing capacity and continue the steady and tangible progress in increasing flexibility in incoming transfers and in reducing the length of the Dublin procedure;
- Overall significant acceleration and increase of Dublin transfers.

**By December 2023**

- Delivery of actions foreseen by that date;
- Continue the steady and tangible progress in increasing capacity (reception and processing), increasing flexibility in incoming transfers and in reducing the length of the procedure;
- Overall significant acceleration and increase of Dublin transfers.