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Following the meeting of the Asylum Working Party on 28 February – 1 March 2023, delegations will find attached a compilation of comments and drafting suggestions received in response to the request for comments from the Presidency on the above-mentioned proposal (CM 1916/23).

This revised version includes comments from Croatia.

Written comments submitted by the Member States

**Proposal for
a Regulation of the European Parliament and of the Council
on asylum and migration management and amending Council Directive (EC) 2003/109 and
the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]**

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AUSTRIA

Austria welcomes the new **proposal of the SE presidency** for an **Asylum and Migration Management Regulation**, based on the **CZ concept paper**.

AT would like to refer to the **concrete text proposals** already submitted in the comments for the AWP 18/19.1. These text proposals are still valid and reflect the AT positions

In this regard, AT would like to highlight a couple of **red lines**, **that** should be taken into account for the solidarity mechanism in the AMR:

1. Solidarity only for Member States applying the Asylum Acquis and having a functioning asylum system with sufficient resources

A precondition for the functioning of the solidarity mechanism in the AMR is that **all Member States fully implement the Asylum Acquis** in law and in practice, for example by the enforcement of transfers (ex Dublin transfers). Furthermore, under all circumstances MS should have sufficient asylum and reception capacities available enabling them to deal with a proportionate influx of migrants. Member States that do not fulfill this criterion should be excluded from becoming a beneficiary state.

2. Solidarity only for Member States under particularly pressure

Solidarity should be provided exclusively to those Member States that face a particular pressure situation. The geographical location, the way of arrival of migrants or the risk of such arrivals must not be relevant for the assessment whether or not a Member State is under pressure, requiring solidarity by other Member States.

3. Clarity on when a Member State is found to be under migratory pressure

The European Commission must make decisions regarding access to the solidarity pool based on objective facts. Arbitrariness must be avoided.

According to Art. 14 of the current proposal the EC has to use 14 different statistics, including sub-statistics and information in order to determine which MS is declared as a MS under migratory pressure. There is no information in the text whatsoever how this will be applied in practice and how the EC will come to the conclusions that a MS is under pressure. Taken the numbers of 2022 it can be anything from 2-20 MS that may be found to be under pressure,

depending on the interpretation of the EC. Therefore more clarity and more objective criteria are needed in this regard.

A pressure situation should be calculated based on the number of asylum applications as well as the asylum decisions that were taken in relation to the population.

4. MS should not be obliged to provide “solidarity” for MS with a lower per capita pressure

It must be ensured that no Member State with a bigger per capita migration pressure, for example over the past years, will be required to provide solidarity for Member States with a lower migration pressure per capita.

5. Previous, long term disproportionate burden must sufficiently be taken into account

Contributions and long-term migration pressure in a Member States has to be acknowledged throughout the solidarity mechanism of the AMR, in particular by the full or partial deduction of solidarity obligations, the assessment of a pressure situation as well as in the distribution key.

6. There must 3 equally treated and weighted solidarity contributions.

As also determined in the CZ proposal it is essential that there are **3 equally treated and equally valued solidarity contributions**, namely (voluntary) Relocation (or Dublin Offsets), financial contributions as well as alternative solidarity measures.

7. Responsibility Offsets as a real alternative to Relocation

The concept of **Responsibility Offsets** is welcomed. Dublin Offsets should be an **equal alternative** to Relocations. Furthermore, the contributing Member States should decide on making use of the concept. The practical implementation of Dublin Offsets must be dealt with in more detail.

Finally, the balance between responsibility and solidarity must be upheld. In the current draft the **principle of solidarity is further strengthened** while the **responsibility part is being undermined**. For example the shortening of the responsibility deadline of the entry requirement in Art. 21, the reintroduction of the cessation ground in Art. 27 Par. 1a or the upholding of the 6-months transfer deadline in Art. 35 will lead to a reduced application of responsibility elements. The “irregular entry criterium” should remain the primary responsibility criterium.

Further comments on the recent changes made by the presidency, that were discussed in the AWP:

Article 2 – Definitions

Regarding Art. 2, we refer to our already submitted comments.

(g) - family definition

As mentioned before, AT has a strong reservation about the expansion of the definition of family members as proposed in Art. 2 (g) (v). In particular, siblings should not be included in this definition.

Therefore, Art. 2 (g) (v) should be deleted

(w) - Migratory pressure and (wa) - significant migratory situation

We uphold our position to introduce our proposed definition of "particular migratory pressure" covering situations where a large number of third country nationals or stateless persons have entered currently or in the past.

In our opinion, "risk of such arrivals" should not be a relevant criterion for determining "migratory pressure" as such a risk is unclear and unpredictable. As a result, we suggest deleting this wording. In general, the mode of arrival should not be relevant.

We also believe that a Member State that is in a "significant migratory situation" should not only be able to use the toolbox and reduce the solidarity contribution, but should also be able to use the solidarity pool in the same way as Member States that are under "migratory pressure".

Article 6a – The Permanent EU Migration Support Toolbox

(1):

We welcome the possibility of using the toolbox to support migration policy in cases of a "significant migratory situation."

Article 7a – European Migration Management Report

In relation to Art. 7a, we refer to our previously submitted comments and propose to delete "disembarkations" and "risk of migratory pressure" in paragraph 3f and paragraph 3 penultimate sentence and paragraph 4.

Article 7b – Information for assessing migratory pressure

As mention under point 3 above this Article needs more clarity and objective criteria, when it come to the declaration of a MS found to be under particular pressure.

Article 44a – Solidarity Pool

(3):

We welcome the changes in (3) a (ii) since we support the ability of Member States to exclude beneficiaries of international protection and illegally staying persons from relocation, as this would prevent the creation of incentives for illegal secondary migration.

In our opinion, MS should be able to choose between relocation and responsibility offsets.

We also welcome the changes in (3) c, but in order to clarify that alternative solidarity measures are as valuable and equivalent as relocation and financial contributions, we deem it necessary to amend Art 44j, as alternative measures should not only be possible upon request. We assume that alternative solidarity measures are always appropriate and necessary in a situation where a Member State needs to make use of the Solidarity Pool.

Article 44fa – Full or partial reduction of the solidarity contribution by a Member State that is facing a significant migratory situation or that considers itself facing a significant migratory situation

It must be ensured that Member States that have been under pressure for years are not obliged to provide solidarity to MS with lower per capita numbers.

Futhermore we uphold a scrutiny reservation for the decision-making process.

Article 44h – Responsibility offsets

We understand the concerns of the Presidency regarding secondary migration, but we see an outweighing of the advantages, which is why we believe that the contributing Member States should be able to choose between relocation and responsibility offsets. We are also in favor of completely deleting the threshold of the current 75%.

Article 44i – Direct financial contributions

(3):

We support the new version of (3), as a clear link between financial contributions and projects to be funded is necessary for the value and effectiveness of these contributions.

However, we believe that the Commission should have a stronger role, namely by controlling the payment flows to ensure appropriateness and traceability.

Article 44j – Alternative solidarity measures

(1):

We think that alternative measures should not only be possible upon request, which is why we propose to amend this article.

Regarding the wording of "in a realistic manner" we suggest deleting the wording for its vague nature. Such wording would create more problems in practice.

BULGARIA

Article 2 Definitions

Under article 2 (w), we impose a scrutiny reservation. We consider that the migration situation may lead to pressures in one Member State, according to the particular circumstances and specificities of the countries, without prejudice to the situation at EU+ level. On this basis, we suggest deleting "the overall situation in the EU", and clarifying what this means in practical terms. We are concerned about the deletion of the reference to external borders, and it is primarily these that are affected by migratory pressure.

Article 44a Solidarity Pool

Scrutiny reservation changes to par. 3 (ii).

Refine the scope of solidarity by relocation. Member State under migratory pressure will have to carry out the whole procedure for granting international protection.

Article 44c Notification of the need to use the Solidarity Pool or the Toolbox by a Member State identified in the Report as under migratory pressure u Article 44d Notification of the need to use the Solidarity Pool or the Toolbox by a Member State that consider itself under migratory pressure

Regarding Article 44, paragraph 3, it remains unclear what the next steps are to provide solidarity measures to the affected State. On the basis of the text, it is not clear how the procedure will actually be carried out, legally how the Commission's proposal will be validated and a decision will be taken. In relation to the change in paragraph 2, are we to understand that support through the Solidarity Pool will come after the Toolbox has been exhausted?

We do not approve of the changes to both articles, we consider the toolbox insufficient and we are on the opinion that the amendments transform the system and the access to the solidarity mechanism. When a Member State asks for solidarity how will it be established that the toolbox is not sufficient, this is in our view practically impossible. On Article 44d(1), the words "or the Toolbox or both" to be deleted.

Article 44f Full or partial reduction of the solidarity contribution by a Member State under migratory pressure that has not notified the need to use the Solidarity Pool; Article 44fa Full or partial reduction of the solidarity contribution by a Member State that is facing a significant migratory situation or that considers itself facing a significant migratory situation

For us, the following questions remain unresolved: how many categories of countries can request a reduction in their solidarity contribution and on what criteria the request is based - type of migration situation, identification in the EC Report, notification for use of the solidarity pool. Also which criterion is the leading one or are applied cumulatively. Should the 44fa countries be mentioned in the Report or should they have requested the use of the solidarity pool.

Provisions should be reviewed.

Article 44h Dublin offsets

Scrutiny reservation on the deletion of "that have contributed to the annual Solidarity Pool through relocation" in par. 2, fourth subpar.

Regarding par. 3, we believe that the categories in points f) and g) should be deleted, in line with our position that beneficiaries of international protection and resettled persons should not be covered by the draft Asylum and Migration Management Regulation.

We reaffirm our positions on:

Article 5 Principle of solidarity and fair sharing of responsibility

We can support the deleting of par. -1.

Article 6 Strategic Governance and monitoring of the migratory situation

Regarding the provision in Article 6 of the European Asylum and Migration Management Strategy and the national strategies, we stick to our position as stated in the written comments. We do not believe that the provision should create a legal obligation for Member States with regard to national strategies.

Art. 7a European Migration Management Report

On par. 3(c), we stand by the comments we submitted in written comments on "level of preparedness."

In par. 5, we support the deleting of "where appropriate" and "likely".
Scrutiny reservation on changes to par. 6.

Article 7b Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure and a significant migratory situation

In par. 1 we can support the inclusion of par. (ba).

In par. (f) we have a reservation on take back notifications as we do not support in principle the introduction of a notification regime for take back requests.

Article 7c Commission Recommendation regarding the establishment of the Solidarity Pool and other appropriate measures

On a general note, in relation to paragraph 2, we consider it appropriate to have clarity on how the balance between financial solidarity measures and the number of relocations will be achieved according to the needs of the Member State concerned.

CROATIA

WRITTEN COMMENTS to the proposal for a Regulation on asylum and migration management (AMMR) no. 6553/23

Article 2 (Definitions), point (wa) “significant migratory situation“ - It is unclear what is meant by this: on the one hand this could be interpreted as a hypothetical situation that will happen, while on the other hand it also refers to a “*cumulative effect of current and previous annual arrivals of third country nationals or stateless persons leads*” which refers to the current situation and migratory pressure. It was not explained at the meeting whether the purpose of this definition/term is to ensure that an MS can prevent a situation that could lead to a crisis. This is something that we would welcome but only if there are clear parameters to assess a significant migratory situation. We support MS which believe that the situation in MS cannot be compared to the overall situation in the Union, and changing the words would not change the content of the text. Similarly to the FR delegation, we believe that it should be clearly emphasised e.g. in the recital what “limits of its capacity” means, i.e. whether this refers to the current MS capacities or whether it also covers the capacities from the e.g. contingency plan.

Article 3 (Comprehensive approach to asylum and migration management) - considering the concerns of the Council Legal Service expressed during SI PRES about the obligations that MS would have and what they would have to do in line with former Article 3, Croatia supports option A.

Another thing that we consider important in general when it comes to the comprehensive approach to asylum and migration management is to encourage legal pathways which cannot be interpreted from this Article. We believe that e.g. resettlement is an important factor in the reduction of illegal migration, which is also one of the objectives set out in Article 5.

Paragraph 1, point (a) - we propose that it be supplemented with the exchange of information/data with third countries since this is an important component in migration management.

Point (ha) - we propose that it be clearly pointed out whether this concerns “*unauthorised movements*” within the Union or attempts of illegal entry into the Union.

Point (m) - we propose that the external dimension also be pointed out, notably cooperation between agencies and third countries or at least within the mandate of the EUAA which supports third countries within the framework of the priorities under the External Dimension Strategy.

Article 4 Principle of integrated policy-making - we believe that, given its composition and content, this provision is not a legal norm but should rather be a part of the recital.

Article 5 Principle of solidarity and fair sharing of responsibility -

Paragraph 1, point (e) - we find the following sentence to be too general: *“take all measures necessary [...] and proportionate [...] to prevent and correct unauthorised movements between Member States”*. It is not clear what is meant under proportionate measures to prevent unauthorised movements. We therefore propose that a reference be added to some relevant legal grounds (regulation, RCD,...). We also believe that the word “correct” should be clearer so that it wouldn’t seem that there are any words included unnecessarily. Instead of the word “correct” we propose that “discourage and monitor” are used which would imply fingerprinting in Eurodac and non-provision of reception conditions in line with Article 17a of RCD.

Article 6 Strategic governance and monitoring of the migratory situation - As regards the proposal for Article 6 of AMMR, we support the deletion of paragraphs 1 and 2 since we believe that the Commission cannot adopt the European Asylum and Migration Management Strategy without active participation of MS and this is not the same as the fact that the Commission will take into account the national strategies, as referred to in paragraph 2, point 2 of this Article.

Paragraph 3 - although this is a *may* provision, we believe that such a proposal interferes with the competencies of MS and we are strictly against the Commission establishing the framework of national strategies which would be mandatory for MS. Even though SE PRES explained that the Commission guidelines will in no way be a binding document for MS, we propose that the wording in square brackets be deleted: *“taking into account the guidelines developed pursuant to paragraph 7”*. We also propose that the entire text in this paragraph following this sentence be deleted.

Paragraph 5 - we are sceptical about the 18-month deadline in which MS have to establish the national strategies and we propose a longer deadline of at least 24 months.

Paragraph 7 - we propose that this paragraph be deleted but we can be flexible and we propose that the word “assist” be replaced with the word “*facilitate*”.

Article 6a The Permanent EU Migration Support Toolbox - we propose that, in addition to operational support provided by EU agencies, technical support is also included, which is in line with their mandate (more specifically EUAA provides: “*operational and technical assistance will be delivered in a planned, phased and sustainable manner, through the deployment of Asylum Support Teams, working tools and needed equipment*”).

Article 7a European Migration Management Report - it is not clear what the “*level of preparedness*” in **paragraph 2, point (c)** means.

In point (d), it is not clear from the expression “capacity levels” which capacities in particular this covers, and it is also unclear who and how assesses “levels”. In this regard, we would like to point out that Article 6 mentions “sufficient capacity” and we therefore believe that these terms need to be correlated to a certain extent, which is not clear from this provision: different terms are used for capacity (levels, sufficient, capacity and preparedness...).

Paragraph 7 - we believe that it would be beneficial if Article 7b specified which information is expected from MS and which from the agencies in order to avoid overlapping and duplication. Moreover, once this Regulation is adopted, there will be no footnotes and thus no explanations so we propose that the term “*other relevant sources*” be clarified by adding “*other verified information*” as proposed by the HU delegation.

Article 7b Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure and significant migratory situation - As we understand it, and in accordance with the flowchart presented by SE PRES at the Asylum Working Party meeting, there is a difference between MS identified in the Commission Report as those under migratory pressure and MS which are not under migratory pressure but consider themselves to be. Furthermore, MS identified in the Report are differentiated by whether they are under migratory pressure, at risk of migratory pressure or facing a significant migratory situation. Therefore, taking into account Article 7a, paragraph 3 (f) which also states: “*whether a particular Member State is under migratory or at risk of migratory pressure during the upcoming year or is facing a significant migratory situation*”, we wonder if MS identified in the Report have a different status or position depending on whether they are under direct pressure or are at risk of pressure and facing a significant situation. If differentiating between these three types of migratory pressures does not bring them in somewhat more favourable positions, we propose that they be placed under a common denominator as it is confusing to mix specific threatening situations with possible future situations of that kind, namely those which are of such nature that they will soon become threatening.

Point (h) - we propose to also include efforts invested in the fight against migrant smugglers.

Article 44a Solidarity Pool - we propose that **paragraph 3, point (a)** (i) be supplemented so that it is clear that these are applicants who are in need of international protection.

Article 44e Operationalisation of solidarity measures - we enter a scrutiny reserve as we do not see the purpose of an MS under migratory pressure using the solidarity pool in proportion to its pledge/contribution. The question in that case is how to meet the real needs of MS under pressure.

Article 44h Responsibility offsets, paragraph 3, point (e) - we believe that this is poorly worded and that it should be more clearly set out that “responsibility offsets” include only e.g. applicants registered in Eurodac without prejudging the possibility that an MS is not meeting its obligations under the Eurodac Regulation.

CZECH REPUBLIC

Article 6a -Toolbox

Paragraph 2 – we propose following changes marked in yellow.

Letter d)

(d) ~~adaptable responsibility based on~~ derogations foreseen in the Union acquis providing Member States with the necessary tools to react to specific migratory challenges including those foreseen in Regulation XXX/XXX [Crisis and Force Majeure Regulation] [and Regulation XXX/XXX [Instrumentalisation Regulation]]

Justification:

As has been mentioned during AWP “adaptable responsibility” should not be limited only to derogations, but the notion of “adaptable responsibility” should cover also other measures foreseen for the situations of “migratory pressure” in other legal acts such as Asylum Procedure Regulation. Therefore, the deletion is suggested.

Letter h)

Taking into account the discussions held during AWP we think that the letter h) should not be deleted.

Article 44c and 44d

As regards Article 44c we are of the opinion that a kind of assessment by the Commission should be added. There should be a very quick assessment that the type and level of solidarity measures according to paragraph 2 are proportionate taking into account the needs of other Member States identified as under migratory pressure.

Paragraph 2

~~.....including that the use of the Toolbox is insufficient.~~

Justification:

We suggest to delete the part mentioned above in both Articles. We are of the opinion, that the using of the Toolbox and Solidarity Pool may be possible in parallel in particular case and depending on the nature of the migratory situation.

Moreover, the text, which we propose for the deletion, is not consistent with the other parts of the proposal. The provision of Article 7a para. 3 letter f) is a good example.

Article 44f and 44fa

Paragraph 2 letter c)

c) how that Member State **will intends to** address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience.

Justification:

The same wording is used for example in Article 44d. Our proposal aims to the consistency in the wording.

Article 44h – Responsibility offsets

- **Paragraph 1** – we propose to add the similar wording as in paragraph 2, because it seems as not clear, whether at the time described in para. 1, the MS concerned will be the benefitting one or not, i.e., if Member State concerned will notify the intention to use the Solidarity pool (according to Article 44c).

1. Where the relocation pledges to the Solidarity Pool have reached [75%] of the Recommendation referred to in Article 7c, a benefitting Member State **following the procedure set out in Article 44c or 44d** may request the other Member States to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a

- **Paragraph 2** – we agree, that we should replace “applications” with “applicants”.
- **Paragraph 2** second, third and fourth subparagraph should be read as the procedure, therefore should be moved close to Article 58a.

- As regards **paragraph 3** and list of the situations where responsibility offset shall only be applied, we agree with the delegations who asked for the deletion of letter f). On the other hand, we do not agree with the proposal to delete letters e) and g).
- **Paragraph 4** is not clear to us. In what situations may this paragraph be applied? In situation of para.1 (voluntary offsets) or para. 2 (mandatory offsets) or both? How contributing MS will proceed the “offset” according to this paragraph with benefitting MS?

Article 44j- alternative solidarity measures

Paragraph 1 – we propose the deletion of the wording “in a realistic manner”. In our view, this wording has no added value.

CYPRUS

Article 2(w)

The reference to the ‘overall situation in the Union’ remains problematic. Member States face different challenges. Cyprus’ suggestion:

‘migratory pressure’ means a situation [...] which is generated by arrivals of third country nationals or stateless persons and that places a disproportionate burden on Member States ~~taking into account the overall situation in the Union~~, even on well-prepared asylum and reception systems and requires immediate action.

Article 7b

- Paragraph 1

Reservation on point (f) due to our opposition to the notion of take back notifications. The current system of take back request should be maintained.

Regarding point (k), the text should clearly indicate if we are referring to persons claiming to be unaccompanied minors, or persons verified as being unaccompanied minors.

Article 7c

- Paragraph 2

Cyprus is against having a minimum number for relocations and financial contributions to be set out in the Regulation. The annual numbers should be calculated on a clearly defined formula which is

based on objective criteria: the number of arrivals, recognition rates as well as the number of effective returns.

Article 5(-1)

This paragraph should be maintained in the text instead of being shifted to the recitals.

Article 44b

- Paragraph 3

In line with the suggestions from other MS, we wish to see following change:

In implementing paragraph 2, contributing Member States shall have full discretion in choosing between the types of solidarity measures listed in Article 44a(3), points (a), and (b) and, where applicable, point (c), or a combination of them. **The Commission shall ensure that the needs identified in Article 7c are met through the contributions of Member States.**

Article 44c

- Paragraph 2

The changes imply that the solidarity pool is a second level of support to be used when the toolbox is not enough, instead of an element to be used together with the toolbox. We prefer the previous wording:

*The notification of the Member State shall include the type and level of solidarity measures as referred to in Article 44a **or components referred to in Article 6a** needed to address the situation and a substantiated reasoning in support, ~~including that the use of the Toolbox is insufficient.~~*

Article 44d

- Paragraphs 1 & 2(b)

See comment on 44c:

*A Member State that is not identified in the Report referred to in Article 7a as being under migratory pressure, but considers itself as so being, may notify the Commission and the Council of its intention to make use of the Solidarity Pool **or the Toolbox or both.***

The notification shall include:

*(b) the type and level of solidarity measures as referred to in Article 44a **or components as referred to in Article 6a** needed to address the situation and a substantiated reasoning in support, ~~including that the use of the Toolbox is not sufficient;~~*

- Paragraph 4

It should be clear that the objection comes from the Council, not from the majority of the Member States.

Article 44e

- Paragraph 3

We maintain our concerns on the practical implementation. Derogations from the pledged solidarity contributions need to be offset by an increase in pledges from the remaining Member States.

- Paragraph 5

We are of the opinion that the needs identified are fully met. This is not guaranteed in the current text.

Article 44f and 44fa

Scrutiny reservation, the current text does not guarantee that the needs identified are met.

Article 44g

The benefitting Member State should maintain the possibility to request additional support if previous ones prove insufficient.

DENMARK

Article 6a para 2

Denmark suggest to add the two following points:

(k) Cooperation with safe third countries regarding transfers.

(l) Cooperation with third countries regarding disembarkation to the closest safe port following a search and rescue operation.

Article 7c para 2 (a)

Denmark don't support a threshold for relocation in the text as quantifying this data could create a pull factor.

Article 44 para 3 (b)

Denmark suggests adding the following (marked in **bold**):

b) "direct financial contributions provided by Member States primarily aiming at projects related to the area of migration, border management, ~~and~~ asylum **and return** or at projects in third countries that may have a direct impact on the flows at the external borders or may improve the asylum, reception, ~~and~~ migration **and border management as well as return** systems of the third country concerned, including assisted voluntary return and reintegration programmes and antitrafficking or antismuggling programmes, in accordance with Article 44i;

GERMANY

Introduction

We wish to thank the Presidency for revising the proposed provisions on solidarity; we continue to support rapid progress in the negotiations.

We reserve the right to make further comments and reiterate our scrutiny reservation on the entire Regulation.

Our comments focus mainly on the amendments made. We also refer to our previous comments.

Following a preliminary initial examination, we comment on the individual articles as follows.

Annual Migration Management Cycle

Articles 7a to 7d and Article 69

Article 7a

We agree with the Presidency's (mainly editorial) amendments. We welcome the deletion of "where appropriate" in paragraph 5. We also support the classification procedure, as laid down in paragraph 6.

We expressed our preference for an amendment of the reporting period (e.g. two biannual reports) to allow for all circumstances to be fully considered. Should there not at least be the option to adjust the report if exceptional circumstances arise (for example in the case of Ukraine)?

We enter a scrutiny reservation on the amendments to the solidarity mechanism regarding SAR arrivals.

Article 7b

Paragraph 1:

We welcome the addition of letter ba) ("the number of third country nationals or stateless persons enjoying temporary protection") and have no objections to the specification under letter I).

Article 7c

No objections to the amendments.

Article 7d

No objections to the amendments.

Article 69 [no amendments]

Solidarity and EU Migration Support Toolbox

Articles 2 (w) and (wa), 6a, 44a–44k, 58a

Article 2

(w)

The legal definition of migratory pressure is a key element because of the legal consequences associated with it. The definition should be consistent with the overall package.

Irregular secondary movements in the countries of destination should also be taken into account in the assessment of migratory pressure. We therefore welcome the addition made at the end.

However, the threshold of migratory pressure should be defined as clearly and transparently as possible. As presented at the last meeting, we believe this would be possible if the actual situation were assessed, for example using Eurodac entries.

We are not sure how to interpret the term “risk” in “risk of such arrivals”. We are in favour of deletion.

(wa)

We still need to examine this further. The term “significant migratory situation” needs to be defined more precisely using specific parameters, to distinguish it from the definition of a crisis.

The term “well prepared asylum, reception and migration system” is too vague. We therefore ask the Presidency to concretise.

Article 6a

Paragraph 2:

Letter a): We support the specification, particularly with regard to the agencies’ mandates.

Letter d): We remain sceptical of the notion of “adaptable responsibility”. Derogations from the asylum acquis must not become the rule and should be considered only in specifically defined situations such as those governed by the draft Crisis Regulation. In this regard, “including those foreseen” should be replaced with “according to”.

Letter h): Why was this deleted?

Article 44a

Paragraph 3 (a):

No comments.

Article 44b

No objections to the amendments.

Article 44c

Paragraph 2: We welcome the addition.

Paragraph 3: No objections to the extension from five to ten days.

Article 44d

Paragraph 2:

Letter b): We welcome the addition.

Letter d): We prefer the previous wording.

Article 44e

Paragraph 3:

With regard to the operationalisation of the solidarity measure, we would still like further explanation of the determination of the proportion of pledged solidarity contributions to the overall pledge of contributing member states.

Paragraph 5: We believe it is important that the preferences of the member states be taken into account with regard to persons to be considered for relocation and with regard to planning.

Articles 44f and 44fa

The revision has made these articles easier to understand. We are still examining the proposed procedure and the criteria listed.

For reasons of simplification we suggest the following wording in Article 44fa Paragraph 6: “The Commission shall assess the request within four weeks.”

Article 44g

We have no objection to the addition of “by simple majority” in paragraph 1.

Article 44h

We are sceptical of “responsibility offsets” and need to examine this instrument further. We refer to our previous comments.

Article 44i

We still need to examine the amendments. We wonder whether a third entity should be included or whether monitoring should be provided for. What options are there to enforce a claim if a member state does not pay (on time)? One option would be for financial contributions to be paid into a fund, trust account or the like managed by the Commission, instead of being transferred directly from a contributing member state to the benefiting member state; all contributing member states could then

pay into this account, and the benefiting member states could receive funds from the account to pay for the necessary measures. In our view, it would be better if the member states would pay the contributions referred to in Article 44i (1) into the EU budget as “external assigned revenues”.

Article 44j

We wonder whether the secondment of national experts for voluntary EUAA support operations (i.e. operations which are not part of the obligatory asylum reserve pool) could be an alternative solidarity measure.

Article 44k

This is an important and appropriate clarification.

Article 58a

We are generally sceptical of the offsets and need to examine this instrument further.

Comprehensive Approach (Articles 3-6 and 7)

Art. 3-6: see written comments of 20 February 2023.

Article 7

All levers must be available, suitable, necessary, proportionate and appropriate.

In any case, the costs and benefits of such measures must be carefully weighed and the relevant EU bodies involved in a timely manner.

It is important to us to include the EU's overarching relationship with the relevant third countries. This may include, for example, foreign and development policy concerns. In particular, we think it is doubtful whether development as well as trade policies are meaningful policy levers

GREECE

The comments concern the articles requested by the Presidency and discussed at the last AWP meeting: Articles 7a–7d, 69, 5(-1), 6a, 44a–44k, 58a, 2 (w) and (wa), 3-6 and 7.

EL maintains a general scrutiny reservation on the whole text of the proposal.

EL reiterates the views expressed in the AWP meeting of the 28th February and 1st March and **previous written comments**.

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

Article 2

(w) ‘migratory pressure’ means a situation [...] which **is generated by arrivals of third country nationals or stateless persons migratory movements and** that places a disproportionate burden on Member States **taking into account compared to the overall situation in the Union, even on well-prepared asylum and reception systems and requires immediate action. It covers situations where there is a large number of irregular arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from recurring disembarkations [...] following search and rescue operations, notably as a result of the geographic location of a Member State and the specific developments in third countries or from unauthorised movements of third country nationals between the Member States;**

(wa) EL retains its reservation on the definition of significant migratory situation and especially as far as concerned the calculation of the **cumulative effect** and the **limits of its capacity**, since it may lead to reduction of solidarity. Furthermore, the relation between the new definition and the definition of migratory pressure is not clear.

Article 3

(ha): EL would suggest the deletion of point (ha) which refers to unauthorized movements. We are of the opinion that the subject is covered by the points (d) and (e).

Article 4

Comment: EL suggests that the provisions of Article 4 are transferred to the recitals.

Article 5 (-1)

Comment: EL does not support the deletion of this provision and we we retain our previous written position.

Article 6a

2. The Toolbox shall include at least the following components:

d. adaptable responsibility based on derogations foreseen in the Union acquis providing Member States with the necessary tools to react to specific migratory challenges including those foreseen in Regulation XXX/XXX [Crisis and Force Majeure Regulation] [~~and~~ Regulation XXX/XXX [Instrumentalisation Regulation][~~and~~ Regulation XXX [Asylum Procedure Regulation]

Comment: EL raises scrutiny reservation on the reference of significant migratory situation (par.1).

Article 7a

2. The Report, together with the Recommendation referred to in Article 7c, shall *be the basis for support* decisions at the Union level on the measures needed for the management of the migratory situation. The Report and the Recommendation shall support Member states in deciding about their solidarity pledges in accordance with Article 44b and shall may also support Member States when assessing migratory challenges at the national level. ~~and deciding about their solidarity pledges in accordance with Article 44b.~~

Comment: We would like the proposed wording "shall support Member states in deciding about their solidarity pledges in accordance with Article 44b", to be further strengthened, in order to highlight the importance of the support provided to the MS in this matter. For this purpose, the above mentioned rewording is provided.

4. When assessing the overall migratory situation including the migratory pressure, and the risk of migratory pressure, and the significant migratory situation, the Commission shall take into account the information set out in Article 7b. ~~and the risk of migratory pressure,~~

Comment: EL raises scrutiny reservation on the reference of significant migratory situation.

Article 7b

2....

(b) *the level of cooperation on migration as well as in the area of return with third countries of origin and transit, first countries of asylum, and safe third countries as defined in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and without prejudice to existing EU readmission arrangements.*

Comment: no reference to pre-existing EU readmission arrangements with third countries has been introduced in para.(b), therefore we retain our reservation.

2...

~~(m) scale and trends of unauthorised movements of third country nationals or stateless persons between Member States building on the available information from the relevant Union agencies and data analysis from relevant information systems.~~

(m) “scale and trends of irregular arrivals to the EU, through all migratory routes and of unauthorised movements between member states”

Comment: We propose rephrasing as above.

Article 7c

~~2. The Recommendation shall identify the annual numbers for relocations and for direct financial contributions, which shall at least be:~~

~~(a) [Xxx] for relocations~~

~~(b) [Xxx] for direct financial contributions~~

~~“(2) The Recommendation shall identify the minimum annual numbers for relocations and for direct financial contributions, which shall at least be: counted on an equal share and value and calculated in accordance with the formula set out in Annex, based on the anticipated number of irregular arrivals, including the number of projected disembarkations following migratory flows generated by search and rescue operations, the average recognition rates and the average return rates [...]~~

Comment: our position is that the calculation of contributions **should be based on a formula**, taking into account objective criteria (e.g. number of arrivals/requests/returns). For par. 2, the above-mentioned wording is proposed.

Article 7d

1. *In order to ensure the effective implementation of Part IV of this Regulation, a High-Level EU Migration Forum shall be established. It shall comprise all Member States.*

Third countries that have concluded with the Union an agreement on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or lodged in that third country may, for the purpose of contributing to solidarity on an ad hoc basis be invited to participate in the High Level Migration Forum and the Technical-Level EU Migration Forum as appropriate

Comment: With the redrafting of the provision, the third countries are better specified. However it is still not clear whether associated countries (e.g. Switzerland, etc.) are included and it is also not

precisely specified which countries have signed such agreements with the EU, as this needs clarification from the Presidency.

Article 44a

1. *The Solidarity Pool shall serve as the main solidarity response tool on the basis of the Recommendation referred to in Article 7c.*
2. *The Solidarity Pool shall consist of the level of contributions pledged for the upcoming year by each Member State during the meeting of the High-Level EU Migration Forum referred to in Article 7d.*
3. *The Solidarity Pool shall consist of the following types of solidarity measures, which shall be considered of equal value:*
 - (a) *relocation, in accordance with Articles 57 and 58:*
 - (i) *of applicants for international protection;*
 - (ii) *where agreed by the contributing and benefitting Member States, of beneficiaries of international protection who have been granted international protection less than three years prior to the adoption of the Council decision establishing the Solidarity Pool, or for the purpose of return of illegally staying third-country nationals or stateless persons;*
 - (b) *direct financial contributions provided 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 or may improve the asylum, reception and migration systems of the third country concerned, including assisted voluntary return and reintegration programmes and anti-trafficking or anti-smuggling programmes, in accordance with Article 44i;*
 - (c) *~~4. — The Solidarity Pool may also consist of alternative solidarity measures focusing on capacity building, services, staff support, facilities and technical equipment in accordance with Article 44j. Alternative solidarity measures shall be based on the specific request of the benefitting Member State. Such measures shall be counted as financial solidarity, and their concrete value shall be established by the contributing and the benefitting Member States.~~*

General comment: We disagree with the addition of the alternative solidarity measures (capacity development, services, personnel support, infrastructure and technical equipment) as sub-para.c which is of equal value with a and b, considering that, in that case, no MS will probably opt for the measure of relocation and that, also, the solidarity provided through the alternative measures is not sufficient and substantial.

It should be clear that alternative measures cannot replace relocations and financial support and more generally, on our part, we consider it important to clarify the concept of "equal value".

Moreover, as mentioned in previous EL comments, it is important that the needs of the MS, as they have been identified, are covered.

Comment: in par. 3 a (ii) regarding the beneficiaries of international protection, we notice that a reference was added that those who have been recognized in the last three (3) years are included in the relocations. As a result, the scope of the solidarity pool is limited. It is therefore appropriate to clarify why this change was made, while, at the same time, it was defined in the provision that illegal residents fall under relocation specifically for the purpose of return.

Article 44h

1. Where the relocation pledges to the Solidarity Pool have reached from 60 to 75% of the Recommendation referred to in Article 7c, a benefitting Member State may request the other Member States to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a.

Comment: EL position is that beneficiaries of international protection should not be included in the scope of “Dublin System”. In this respect, no reference to beneficiaries of international protection is needed, as they fall outside its scope.

Articles 44e (para 5) and 44f and 44fa

Comment: in order for the solidarity measures to be operationalised effectively and alleviate the burden on frontline MS, it is important that the needs of the MS concerned are adequately identified and met.

Article 69

By [18 months after entry into force] and from then on annually, the Commission shall review the functioning of the measures set out in [...] Part IV of this Regulation.

[Three years after entry into force, the Commission shall report on the implementation of the measures set out in this Regulation.]

On a regular basis and as a minimum every three years, the Commission shall review the relevance of the numbers set out in Article 7c(2) against the overall migratory situation and shall initiate targeted amendments of these numbers where the overall migratory situation has substantially changed at Union level.

Comment: Regarding the evaluation by the Commission, we propose that the review takes place every year and not every three (3) years. In any case, we reiterate our position that the calculation of contributions should be based on a formula, in which case, we could examine the possibility of a review every 3 years.

HUNGARY

Article 2

With regard to the definition of migratory pressure (w), Hungary has the following wording suggestion:

‘migratory pressure’ means a situation [...] which is generated by arrivals of third country nationals or stateless persons migratory movements and that places a disproportionate burden on Member States taking into account compared to the overall situation in the Union, even on well-prepared asylum, border management and reception systems and requires immediate action. It covers situations where there is a large number of arrivals of third-country nationals or stateless persons, ~~, including where this stems from recurring disembarkations [...] following search and rescue operations,~~ or from unauthorised movements of third country nationals between the Member States;

Hungary does not support the separated treatment of persons disembarked after SAR operations from those who have crossed the border illegally.

With regard to the definition of significant migratory situation (wa), Hungary asks the following wording:

significant migratory situation’ means a situation different from migratory pressure where the cumulative effect of current and previous annual arrivals of third country nationals or stateless persons leads a well prepared asylum, reception, border management and migration system to reach the limits of its capacity;

Articles 3, 4 and 5

We maintain our position that these articles should be removed from the operational part of the text to the recitals.

Regarding Article 3 (and as a general comment) we would like to point out that illegal migration is to be prevented and not managed.

Article 6

In line with the concerns expressed by the CLS and taking into account the questionable added value, as well as the unforeseen consequences of the whole Article 6, Hungary is ready to support the deletion of Article 6 in its entirety. However, after our discussion at the last AWP, Hungary would be ready to support the deletion of Paragraphs (1) and (2).

We would also welcome more information on the possible effect of Article 6 to the evaluations carried out in the framework of the Schengen Evaluation and Monitoring Mechanism (SEMM). We would particularly like to know if the content and the practical implementation of the national strategies mentioned in Paragraph 3 of Article 6 would be subject, and to which extent, to evaluations carried out under the SEMM?

Finally, if we intend to develop guidelines to assist the Member States in developing their national strategies, we insist to mention that these guidelines will be developed by the Commission together with the Member States with the assistance of the relevant Union agencies (where appropriate).

Article 7a

Hungary asks the following wording for Paragraph 3:

The Report shall contain the following elements:

- (a) **an assessment of the overall situation covering all migratory routes in the Union and the Member States;**
- (b) **a forecast and a forward-looking projection for the coming year, including the number of ~~projected disembarkations~~ **illegal border crossings**, based on the overall migratory situation in the previous year and considering the current situation, while also reflecting the previous pressure;**
- (c) **information about the level of preparedness in the Union and in the Member States and the possible impact of the forecasted situations;**
- (d) **information on the capacity levels of the Member States;**
- (e) **the result of the monitoring referred to in Article 6(3);**
- (f) **an assessment of the following:**
 - **whether a particular Member State is under migratory pressure or at risk of migratory pressure or is facing a significant migratory situation;**
 - **whether tailor-made solidarity and other measures under the permanent EU Toolbox are needed to support the Member State or Member States concerned.**

The assessments referred to in paragraph 3 points (a) and (f) shall fully take into account all migratory routes, ~~as well as the specificities of the structural phenomenon of disembarkations after search and rescue operations and unauthorised movements~~. It shall also reflect the previous pressure and consider the current situation.

Regarding Paragraph (7) we would like to make it clear, that the Commission has to verify the information provided by any other relevant sources before using these information.

The Commission may also take into consideration verified information provided by EMN, UNHCR, IOM and other relevant sources.

Article 7b

In point (ba) we would like to add a reference to the number of residence permit based on humanitarian reasons.

Hungary does not support introducing take back notifications, thus we would like to change the text in Paragraph (1) point (f) to take back request.

In Paragraph (1) Point (h), Hungary asks to replace the „**number of persons apprehended in connection with an irregular crossing of the external land, sea or air border**” with the „**number of prevented irregular crossings of of the external land, sea or air border**”. Our reasoning is, that the irregular crossing of a person can be prevented multiple times, and each time it means a burden to the border policing authorities. This indicator would be much more realistic when assessing the pressure at the external borders.

We can not support the content of point (j) as illegal crossing of the sea borders is already covered by Point (h).

With regard to Paragraphs 2 and/or 3, we think that they shall also take into account the national financial resources spent on border management. Otherwise, the Commission will not have a clear picture on the situation in the Member States, thus its evaluation will not be based on the knowledge of all the relevant factors.

Article 7c

We are convinced that by setting out the minimum number of relocations, it will only result in a pull-factor, as this number will guarantee the minimum number of people crossing illegally the EU external border. Additionally, if we revise this number and increase it, it will automatically lead to the increase of the minimum yearly number of illegal border crossings.

We have the following wording suggestion for Paragraph (2):

The Recommendation shall identify the annual numbers for relocations and for direct financial and other alternative contributions, ~~which shall at least be:~~

~~(a) — Xxx for relocations~~

~~(b) — Xxx for direct financial contributions~~

Article 44a

We would like to better understand how would be the value of relocations and other means of solidarity calculated and compared.

We suggest to mention the Responsibility offsets under Paragraph (3) Point (a), as this type of solidarity would mean an indirect relocation of persons and in this regard it shall only concern Member States taking part in relocation. Without this modification, Hungary would not be able to accept this Article.

Article 44b

Hungary asks the following wording in Paragraph (2):

During the High Level Migration Forum meeting refererd to in Article 7d, Member States shall pledge their contributions to the Solidarity Pool, taking fully into account the level of solidarity needs identified in the Recommendation referred to in Article 7c ~~and in accordance with the mandatory fair share calculated according to the distribution key set out in Article 44k.~~

Article 44d

In Paragraph (4) we are convinced that the five-day deadline will not be enough to properly involve the Council and to take into account all the aspects which are necessary to make the proper decision on this matter.

Article 44f and 44fa

In Paragraph (7), we still think that in this phase the Commission should only assess the request of a Member State and in every case propose a Council decision, and the Council shall be the one to decide if the request is well-founded or not. We still suggest the following modification:

After assessing the request of a Member State the Commission shall propose to the Council to adopt a Council decision authorising the Member State to derogate from the Council Decision establishing the Solidarity Pool.

Article 44h

As a general comment we would like to highlight that having mandatory Responsibility offsets as a form of solidarity is only acceptable for Hungary if this type of solidarity is mandatory only for Member States taking part in relocation. Without clarifying that this solidarity form is mandatory only for Member States taking part in relocation, we do not consider relocations as being a voluntary form of solidarity in the AMMR Regulation.

As we do not support setting up an annual minimum level for relocations, we suggest to find another criterion for triggering the Responsibility offsets instead of the number referred to in Article 7c(2)(a).

Thus, in Paragraphs (1-2), we ask the following modifications:

1. Where the relocation pledges to the Solidarity Pool have reached 75% of the Recommendation referred to in Article 7c, a benefitting Member State may request the other Member States **taking part in relocation** to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a.
2. Where, following the meeting of the High Level Migration Forum in accordance with Article 44g, the relocation pledges to the Solidarity Pool are below the number referred to in Article 7c(2)(a), the contributing Member States **taking part in relocation** shall take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the number referred to in Article 7c(2)(a).

An alternative solution to this would be to mention in Paragraph (2) that:

2. Where, following the meeting of the High Level Migration Forum in accordance with Article 44g, the relocation pledges to the Solidarity Pool are below the number referred to in Article 7c(2)(a), the contributing Member States **may** take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the number referred to in Article 7c(2)(a).

With regard to Paragraph (3), we can not accept a reference to the distribution key set out in Article 44k, as we still do not know how would this distribution key work in practice and we consider it in its current form as not being adequate.

Article 44j

We ask the following modifications in the Article:

1. Alternative solidarity measures shall be based on the specific request of the benefitting Member State. Such measures shall be ~~counted as financial solidarity~~, **based on and** their concrete **operational and practical added** value **which** shall be established in a realistic manner by the contributing and the benefitting Member States.

Article 44k

We would appreciate to have examples on the calculation of the different solidarity means by using the Article's formula. It would be of great value to understand how the different types of equal solidarity means would be weighted and what would be the alternating unit of measurement when it comes to relocation, financial contribution and the added value of the alternative contributions to solidarity. We are convinced that if we want to achieve a true fair share, we have to introduce a much more complex formula which takes into account a variety of different factors such as the national financial contributions spent to protect the EU external border, which shall be considered as contribution to the solidarity as well.

Article 69

We ask the deletion of the added subparagraph:

~~On a regular basis and as a minimum every three years, the Commission shall review the relevance of the numbers set out in Article 7e(2) against the overall migratory situation and shall initiate targeted amendments of these numbers where the overall migratory situation has substantially changed at Union level.~~

IRELAND

Article 7a

Para 3: There is a reference to ‘unauthorised movements’ in the last sub para of para 3. If this refers to unauthorised movements between Member States this may need to be clarified as it has been in the definition of migratory pressure.

Para 5: We welcome the deletion of ‘where appropriate’.

Para 6: What is the rationale of having the recommendation classified as Restricted EU for a limited period of time. Previously it was to be sensitive non-classified but with no time limit.

Para 7: While we understand that it is the intention that the Member States etc. will only have to provide the information in Article 7b where this is not otherwise available to the Commission. However, we don’t think that this is sufficiently clear in the text. We note that the Presidency mentioned at the meeting that they may introduce a recital to clarify this.

Article 7b

Para 1: Welcome the inclusion of beneficiaries of temporary protection in para (ba). Why has (n) been moved to para 2.

Para 2 Re point (f) – Article 7a(3) states that the Migration Management Report shall contain an assessment of whether a particular Member State is under migratory pressure, at risk of migratory pressure or facing a significant migratory situation and for the purpose of this assessment the Commission must take into account the information in Article 7b. The Migration Management Report is listed as one of the matters in Article 7b however, at the point of drafting the Report, the Report cannot be taken into account. However, we recognise that the Report could be taken into account for the assessment under Article 44d.

We also think that the reference to “benefiting” Member State in point (j) should just refer to the Member State. Our understanding is that a Member State only becomes a ‘benefiting’ Member State after the assessment has been made and after they have requested and been authorised to use the solidarity measures – at the point of the assessment being carried out they wouldn’t be a benefiting MS.

Article 7c: No comments.

Article 7d

Para d: The new text states that the Commission must convene the technical forum following the High Level Forum meeting. The text is vague and is not clear as to when following the High Level Forum meeting the Technical Forum should be convened. We note that Article 44b states that the Technical Forum is to be convened when the Council Decision establishing the Solidarity Pool has been adopted and this wording would seem to more appropriate to use in Article 7d also. If the purpose of the Technical Forum is to operationalise the Solidarity Pool there would be no need to convene it before the Pool has been established.

Article 5(-1) We can support the deletion of this paragraph.

Article 6a: Para 1 states that the Toolbox is available to Member States who are under Migratory Pressure and facing a significant migratory situation. This is fine in relation to MS who have been identified in the Report (they have already been determined as being under pressure) however it is not clear if the Toolbox is available to MS who consider themselves to be under migratory pressure. We note the Presidency explanation that access to the toolbox is governed by the individual measures themselves. We think that the reference to Member States under migratory pressure or facing a significant migratory pressure and not referring to a MS who considers themselves to be under pressure may cause difficulty as these terms have specific meanings under the proposal.

Article 44a: We could support the French proposal to include Responsibility Offsets in paragraph 3 and thank the Presidency for their clarification that Responsibility Offsets will be counted as relocations and would be included in a Member State's fair share. We think that this could be made clearer in the text. Please see our comments on Article 44h for further information.

Article 44b:

Para 2: Our preference is for fair share as a guiding principle.

Para 4: We do not think that a Member State who is benefitting from solidarity measures at the time of pledging should be exempted from pledging for the following year. Article 44e now clearly states that Member States who are themselves benefitting Member States are not obliged to implement their pledged solidarity contributions.

Article 44d

Para 3: We think the cross reference here should be to Article 7b and not Article 7a.

Article 44e

Para 5: We would prefer may instead of shall in the last sentence of para 5. There should be flexibility for MS to match those being relocated to their reception capacities.

Article 44f:

Para 7: The text here suggests that an implementing decision is required even if the Council decide not to allow the reduction. In this case there would be no change to the Solidarity Pool and don't think that this is necessary.

Article 44fa

Para 1 second sub para. For those under migratory pressure in Article 44f the request is sent to the Council for information only. Is there a reason for the difference here? If it is only to be sent for information this should be clear in the text.

Article 44g: No comments

Article 44h

Firstly, we would like to confirm our support for the concept of responsibility offsets, however we think that there are still a number of issues in relation to how this will operate in practice.

In paragraph 1 and the voluntary operation of Responsibility Offsets we thank the presidency for their clarification that this paragraph would operate after the solidarity pool has been established and Member States have been authorised to use the Pool (i.e. after a Member State has become a benefitting Member State for the year concerned). However, this should be made clearer in the text - the first sentence which states “ Where the relocation pledges to the solidarity pool have reached 75%,,,” would suggest that this paragraph could be invoked at any stage including at the initial pledging stage when there is not yet a benefitting Member State for the year in question.

As these Offset are included in a Member States fair share and are to be considered as relocations then Member States previous pledges would have to be adjusted and the Solidarity Pool amended which would require a Council implementation Decision.

Para 2 last sub paragraph: While we had raised concerns about this para previously and welcome the deletion of the text which means that no Member State will be required to contribute more than their fair share we still have some concerns about how this would operate in practice. While responsibility offsets are mandatory, the last sub paragraph states that no Member State shall be obliged to take responsibility above their fair share. Given that all Member States will have pledged the fair share by one or a combination of the three methods listed in Article 44a what does this mean in practice. We can see two possible scenarios 1. the mandatory offsets would not apply or 2. The previous solidarity pledges would be readjusted.

We thank the Presidency for their clarification that in cases where a MS had pledged financial contributions or other solidarity these pledges would be reduced to take account of responsibility offsets. However, this is not clear from the text. This also raises the question of how relocations/responsibility offsets would equate to financial contributions. In addition, our understanding is that as the Solidarity Pool would need to be changed a Council Implementing Decision would be required. This may also need to be provided in the text.

It is also not clear what would happen in cases where a Member State had pledged their fair share by way of relocations only. If the mandatory offsets are applied could they opt for responsibility offsets instead of the relocations or a proportion of the relocations they had pledged. This would appear to defeat the aim of the Responsibility Offsets - to increase people solidarity. However, there is nothing currently in the text that would differentiate between a Member State who had pledged their fair share solely by relocations and Member States who may have pledged other methods or a combination of methods.

For the reasons outlined about, we consider that for a more simple and streamlined system, responsibility offsets should be included in Article 44a(3).

Article 3: We can support the new text of the Chapeau.

Article 4: We support moving this Article to a recital as per the footnote.

Article 5: We can support the deletion of para -1.

Article 6: In line with previous comments made in October 2021. We support the deletion of paragraphs 1 and 2.

ITALY

The Italian delegation wishes to submit the following contribution to the discussion of the compromise text as per the document No. 6553/23 of 21/02/2023.

This contribution only features those provisions where amendments have been proposed.

Article 2 - Definitions

Point g(v): **sibling or siblings of the applicant should be included.**

Point (w) 'migratory pressure' means a situation [...] which **is generated by arrivals of third country nationals or stateless persons migratory movements and** that places a **disproportionate burden on Member States taking into account** compared to the **overall situation in the Union**, even on well-prepared asylum and reception systems and requires immediate action. **It covers situations where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from recurring disembarkations [...] following search and rescue operations, as a result of the geographical location of a Member State, or from unauthorised movements of third country nationals between the Member States;**

(wa) 'significant migratory situation' means a situation different from migratory pressure where the cumulative effect of current and previous annual arrivals of third country nationals or stateless persons leads a well prepared asylum, reception and migration system to reach the limits of its **reception** capacity;

Article 3 - Comprehensive approach to asylum and migration management

(a) mutually-beneficial partnerships and close cooperation with relevant third countries, including on legal pathways for third-country nationals in need of international protection and for those otherwise admitted to reside legally in the Member States addressing the root causes of irregular migration, supporting partners hosting large numbers of migrants and refugees in need of protection and building their capacities in **search and rescue**, border, asylum and migration management, preventing and ~~combating~~ **managing** irregular **migration** flows, ~~and~~ **combating migrant smuggling and trafficking**, and enhancing cooperation on readmission;

(d) effective management and prevention of irregular migration, ~~and~~ **migrant smuggling and trafficking**, while ensuring the right to apply for international protection;

- (f) full respect of the obligations laid down in international and European law concerning persons rescued at sea **and enhancing cooperation among Member States concerned**;

Article 4 – Principle of integrated policy making

Italy can support the alternative text as reworded during the SI Presidency, to be moved to the recitals section.

Article 5 – Principle of solidarity and fair sharing of responsibility

The para. -1 should stay in the operative part and be reworded as follows:

- 1. The principle of solidarity and fair sharing of responsibility shall be the basis ~~based on~~ **premise of a system where** ~~that~~ the EU as a whole shares the responsibility to manage migration, governed by the set of common rules included in the Common European Asylum System.
- 1(e) take all **measures necessary** [...] and proportionate [...] to prevent and ~~correct~~ **manage** unauthorised movements between Member States.

Article 6 – Strategic governance and monitoring of the migration situation

Italy supports option b), that is keeping para. 1 and 2.

Para. 4 should be partially reinstated, since the Migration Management Report should be considered part and parcel of the strategic governance. Furthermore, when it comes to SAR-related disembarkations, the EU strategy needs to involve affected MS.

The second part of the paragraph, instead, may be deleted, being MMR regulated in Article 7c:

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

In the case of recurring disembarkations following search and rescue operations, the Commission shall consult the concerned Member States. It may set a time limit for such consultations, which shall not be less than one week. The Commission shall explain in the Report how the opinions received have been taken into account.

~~The Report, which shall have a possibility to comment on the draft Report within one week, and the Report shall set out the total number of projected disembarkations for the following year in the short term and the solidarity response that would be required to contribute to the needs of the Member States of disembarkation through relocation and measures as referred to in Article 45(1), point (d) through measures in the field of capacity building, operational support and measures in the field of the external dimension.~~

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

Para. 7 of the same Article should be kept.

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

Scrutiny reservation. Given the current adoption of an annual report pursuant to Article 25a of Visa Code, this provision seems lacking added value.

Article 7a – European Migration Management Report

3(b) a forecast and a forward-looking projection for the coming year, including the number of projected disembarkations, based on the overall migratory situation in the previous year and considering the current situation and the information provided by the relevant EU and national agencies, pursuant to Article 7b, while also reflecting the previous pressure;

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Article 7b - Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure and a significant migratory situation

1. (f) the number of incoming and outgoing take charge ~~and take back requests~~ ~~and take back notifications~~ in accordance with Articles **29** and **31**;
- (m) the number of first instance and, ~~where available~~, of final asylum decisions;

Article 7c - Commission Recommendation regarding the establishment of the Solidarity Pool and other appropriate measures

1. **The Recommendation shall identify the annual numbers for relocations and for direct financial contributions, which shall at least be:**
 - (a) **[Xxx] for relocations**
 - (b) **[Xxx] for direct financial contributions**

The best option would be identifying the annual numbers for relocation on the basis of objective criteria, which are actually mentioned, in this compromise text, in the second paragraph of the Article: the overall number of arrivals, the average recognition rates as well as the average return rates.

The solution of a set threshold would be a second best option, if it is put in relation and balanced with other relevant elements of the whole system, i.e. the adequate capacity concept in the border procedure and the responsibility offsets.

Article 7d - The High-Level EU Migration Forum and Technical-Level EU Migration Forum

3. **The Council shall convene the High-Level Migration Forum [within 15 days] following the adoption of the Report referred to in Article 7a and the Recommendation referred to in Article 7c.**

Article 44a - Solidarity Pool

1. The Solidarity Pool shall serve as the main solidarity response tool on the basis of the Recommendation referred to in Article 7c.
 2. The Solidarity Pool shall consist of the **level of** contributions pledged for the upcoming year by **each the contributing** Member States during the meeting of the High-Level EU Migration Forum referred to in Article 7d.
 3. The Solidarity Pool shall consist of the following types of solidarity measures, which shall be considered of equal value **and meet the needs indicated by the benefiting Member States:**
 - (a) relocation, **in accordance with Articles 57 and 58:**
 - (i) of applicants for international protection;
 - (ii) **where agreed by the contributing and benefiting Member States, of beneficiaries of international protection who have been granted international protection less than three years prior to the adoption of the Council decision establishing the Solidarity Pool, or for the purpose of return of illegally staying third-country nationals or stateless persons;**
 - (b) direct financial contributions provided by Member States primarily aiming at projects related to the area of migration, border management and **asylum in the benefiting Member States** or at projects in third countries **related to the same areas**, including assisted voluntary return and reintegration programmes and anti-trafficking or anti-smuggling programmes, **in accordance with Article 44i;**
 - (c) **where requested by the benefiting Member States,**~~4. The Solidarity Pool may also consist of~~ alternative solidarity measures focusing on capacity building, services, staff support, facilities and technical equipment **in accordance with Article 44j.** ~~Alternative solidarity measures shall be based on the specific request of the benefiting Member State. Such measures shall be counted as financial solidarity, and their concrete value shall be established by the contributing and the benefiting Member States.~~
- ~~Member States shall provide alternative solidarity measures in addition to and that do not duplicate those provided by operations by Union agencies or by Union funding in the field of asylum and migration management in the benefiting Member States.~~

Member States shall provide alternative solidarity measures in addition to what they are required to contribute through Union agencies.

Article 44c - Notification of the need to use the Solidarity Pool by a Member State identified in the Report as under migratory pressure

1. The notification of the Member State shall include the type and level of solidarity measures as referred to in Article 44a ~~or components referred to in Article 6a~~ needed to address the situation and a substantiated reasoning in support, **including that the use of the Toolbox is insufficient.**

Article 44d - Notification of the need to use the Solidarity Pool by a Member State that consider itself under migratory pressure

1. A Member State that is not identified in the Report referred to in Article 7a as being under migratory pressure, but considers itself as so being, may notify the Commission and the Council of its intention to make use of the Solidarity Pool **or the Toolbox or both** ~~or the Toolbox or both~~.
2. The notification shall include:
 - (a) a duly substantiated reasoning on the **scale** of the migratory pressure in the notifying Member State;
1. **the type and level of solidarity measures as referred to in Article 44a** ~~or components as referred to in Article 6a~~ **needed to address the situation and a substantiated reasoning in support;**
 - (a)

Article 44e - Operationalisation of solidarity measures

3. In operationalising the solidarity measures identified, Member States ~~which are not themselves benefitting Member States~~ shall implement their pledged solidarity contributions referred to in Article 44a in proportion to their overall pledge to the Solidarity Pool for the given year **and in compliance with the needs identified by the Recommendation of the Commission.** **Member States which have been granted a full reduction in accordance with Article 44f or 44fa or are themselves benefitting Member States in accordance with Article 44c and 44d are not**

obliged to implement their pledged solidarity contributions referred to in Article 44a for the given year.

5. In the course of the first meeting of the Technical-Level EU Migration Forum in the annual cycle, Member States contributing with and benefitting from relocations may express reasonable preferences in light of the needs identified for the profiles of available relocation candidates and a potential planning for the implementation of their solidarity contributions. Member States shall **may** prioritise the relocation of unaccompanied minors and other vulnerable persons.

Article 44f - Full or partial reduction of the solidarity contribution by a Member State under migratory pressure that has not notified the need to use the Solidarity Pool

1. A Member State that, ~~at any time, is under migratory pressure or confronted with a significant migratory situation on its own territory or considers itself to be in one of these two situations,~~ is identified in the Report as set out in Article 7a as being under migratory pressure or that considers itself as so being and which has not notified the need to use the Solidarity Pool in accordance with Articles 44 c and d, may, at any time after pledging, request a partial or full reduction of its pledged contributions set out in the Council Decision referred to in Article 44b(1).
The Member State concerned shall submit ~~notify~~ its request to the Commission. For information purposes, the Member State concerned shall submit its request to the Council.
7. Where the Commission concludes that ~~the situation in the requesting Member State does not enable that Member State to provide solidarity to other Member States in accordance with its pledged contribution~~ the pledged contributions of the requesting Member State should be partially or fully reduced, the Commission shall inform the Council, which shall adopt an implementing act to determine whether or not to authorise the Member State to derogate ~~the Commission shall propose to the Council to adopt a Council decision authorising the Member State to derogate~~ from the Council Decision establishing the Solidarity Pool

and the way the pledged contributions, partially or fully reduced, are compensated in order not to alter the overall measures decided for the benefitting Member States.

Article 44fa - Full or partial reduction of the solidarity contribution by a Member State that is facing a significant migratory situation or that considers itself facing a significant migratory situation

The two provisions (Article 44 f and fa), concerning the reduction of solidarity contributions, are substantially the same but for the notification, which is lacking in Article 44f. As it stands, this Article seems unclear and redundant.

Article 44h - ~~Dublin~~ Responsibility offsets

1. Where the relocation pledges to the Solidarity Pool have reached [50%] of the Recommendation referred to in Article 7c, a benefitting Member State may request the other Member States to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a.
2. Where, following the meeting of the High Level Migration Forum convened in accordance with referred to in Article 44g, the relocation pledges to the Solidarity Pool are below **50% of the Recommendation referred to in Article 7c** ~~the number referred to in Article 7c(2)(a)~~, the contributing Member States shall take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the number referred to in Article 7c(2)(a).

The contributing Member State shall identify the individual applications for which it takes responsibility, and shall inform the benefitting Member State, using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

The contributing Member State shall become the Member State responsible for the identified applications and shall indicate its responsibility pursuant to Article ~~11(3)XX~~ of Regulation (EU) XXX/XXX [Eurodac Regulation].

Member States ~~that have contributed to the annual Solidarity Pool through relocation~~ shall not be obliged to take responsibility pursuant to the first subparagraph above their fair share calculated according to the distribution key set out in Article 44k.

The contributing Member States, applying the measures pursuant to Article 44a.3(b) and (c), shall be obliged to take responsibility for examining applications for international protection for which

the benefitting Member State has been determined as responsible, up to their fair share calculated according to the distribution key set out in Article 44k.

The contributing Member States, applying the measures pursuant to Article 44a.3(b) and (c), shall be obliged to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible, up to their fair share calculated according to the distribution key set out in Article 44k.

3. This Article shall only apply where:

- (a) the applicant is not an unaccompanied minor;
- (b) the benefitting Member State was determined as responsible for examining the application for international protection on the basis of the criteria set out in Articles 19-23;
- (c) the transfer time limit set out in Article 29(1) has not yet expired;
- (d) the applicant has not absconded from the contributing Member State;

4. Where requested, the contributing Member State ~~may~~ shall apply this Article to third-country nationals or stateless persons whose applications have been finally rejected in the benefitting Member State. Articles ~~xx~~ 42 and 43 in the Asylum Procedure Regulation (XXX) shall apply.

Article 44j - Alternative solidarity measures

1. Alternative solidarity measures shall be based on the specific request of the benefitting Member State. Such measures shall be counted as financial solidarity, and their concrete value shall be established jointly in a realistic manner by the contributing and the benefitting Member States.

Article 58a - Procedure for ~~Dublin~~ Responsibility Offsets under Article 44h(1)

1. Where a benefitting Member State may request another Member State to take responsibility for examining a number of applications applicants for international protection pursuant to Article 44h(1), it shall transmit its request to the contributing Member State and include the number of applications applicants for international protection to be taken responsibility for instead of relocations up to the number identified by the Recommendation of the Commission pursuant to Article 7c.

2. **The contributing Member State shall notify a decision on the request to the benefiting Member State within [15 days] as from the receipt of the request. The contributing Member State may decide to accept to take responsibility for examining a lower number of applications applicants for international protection than requested by the benefiting Member State but no less than 75% of its request. Failure to notify within the set time limit shall be tantamount to acceptance of the request.**

3. **The Member State which has accepted a request pursuant to paragraph 2 shall identify the individual applications applicants for international protection for which it takes responsibility for, shall indicate its responsibility pursuant to Article 11(3) of Regulation (EU) XXX/XXX [Eurodac Regulation] and shall inform the benefiting member State by using the electronic communication network set up pursuant to Article 18 of Regulation (EC) No. 1560/2003.**

FRANCE

La France remercie la Présidence pour ce nouveau compromis, qui va dans le bon sens et clarifie certaines procédures.

1. Sur le cycle annuel de gestion des migrations (articles 7a à 7d et 69)

Article 7a : rapport européen de gestion de la migration

Pas de commentaire.

Article 7b : informations permettant d'évaluer la situation migratoire globale, la pression migratoire, le risque de pression migratoire et une situation migratoire significative

Paragraphe 2 :

La France propose d'ajouter une référence à l'évaluation prévue au paragraphe 2 de l'article 25bis du Code communautaire des visas pour que la Commission puisse étayer son évaluation de la coopération avec les pays tiers dans le champ des migrations.

Proposition rédactionnelle :

2. (b) the level of cooperation on migration, as well as in the area of return **on the basis of the annual evaluation provided for in article 25a of the Visa Code, paragraph 2,** with third countries of origin and transit, first countries of asylum, and safe third countries as defined in Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*];

Article 7c : recommandation de la Commission concernant l'établissement d'une réserve de solidarité et d'autres mesures appropriées

Paragraphe 2 & 4 :

La France pourrait lever sa réserve de fond sur l'inclusion de seuils chiffrés pour les mesures de solidarité, dans le règlement AMMR, uniquement si un seuil chiffré est également prévu dans le règlement APR pour fixer la capacité adéquate de traitement, au niveau européen, des demandes en procédures à la frontière, comme demandé lors du CSIFA du 16 février.

Il est toutefois essentiel que les seuils prévus par le règlement AMMR puissent évoluer en fonction des flux migratoires et des besoins constatés. C'est pourquoi la France s'oppose à ce que ces seuils ne puissent être revus à la baisse que dans des cas exceptionnels. Il conviendra que des dérogations à ces seuils soient prévues lorsque ceux-ci sont manifestement trop élevés compte tenu de la situation migratoire globale.

En tout état de cause, si le règlement APR n'était pas amendé comme mentionné plus haut, la France rappelle ses propositions rédactionnelles :

Propositions rédactionnelles :

2. The Recommendation shall identify the annual numbers for relocations and for direct financial contributions **necessary to establish the Solidarity Pool,** ~~which shall be at least be:~~

~~(c) — Xxx for relocations~~

~~(d) — Xxx for direct financial contributions~~

3. When identifying the level of Union shared responsibility and the consequent level of solidarity, the Commission shall take into account relevant qualitative and quantitative criteria, including, for the relevant year, the overall number of arrivals, the average recognition rates as well as the average return rates.

The Commission may identify **a higher number for relocations or direct financial contributions than those provided for in paragraph 2 and may identify** other forms of solidarity as set out in Article 44a(3)(c) depending on the needs arising from the specific challenges in the area of migration in the Member State concerned.

4. ~~In exceptional situations,~~ **where** the information provided by the Member States and the Union agencies pursuant to Article 7a(7) or the consultation carried out by the Commission pursuant to Article 7a(5) do not indicate a need for relocations or direct financial contributions for the upcoming year, the Recommendation shall take this duly into account.

Article 7d : Forum européen de haut-niveau sur la migration et Forum européen de niveau technique sur la migration

Paragraphe 1 :

La France souligne qu'il sera important de s'assurer que le *High-level EU Migration Forum* et le *Technical-level EU Migration Forum* ne viennent pas doubler les autres enceintes de travail du Conseil sur les questions migratoires, et qu'ils soient bien informés du travail de ces enceintes.

Paragraphe 3 :

La France soutient l'ajout d'un délai précis et propose la durée d'un mois (soit au plus tard le 15 novembre, le délai de transmission du rapport de la Commission étant au plus tard le 15 octobre de chaque année). Ce délai offre le temps nécessaire aux États membres pour analyser le rapport et la recommandation de la Commission, tout en permettant à la Commission de convoquer le Forum technique avant la fin de l'année et aux États membres de planifier leurs politiques de l'asile en conséquence pour l'année suivante.

Article 69 : suivi et évaluation

La France rappelle que sa réserve de fond sur la procédure d'évaluation des seuils chiffrés prévue par le règlement pourrait être levée selon les conditions indiquées à l'article 7c.

2. Sur la solidarité et la boîte à outils de l'UE pour le soutien à la migration (articles 5(-1), 6a, 44a-44k, 58a et 2 (w) et (wa))

Article 5 : principe de solidarité et de partage équitable de la responsabilité

Pas de commentaire.

Article 6a : boîte à outils permanente de l'Union européenne de soutien à la migration

Pas de commentaire.

Article 44a : réserve de solidarité

Paragraphe 3 :

Les mesures de solidarité doivent prioritairement concerner les personnes en besoin de protection.

Comme l'a rappelé la Commission lors du groupe Asile, le consentement de ces personnes n'est pas nécessaire pour procéder à leur relocalisation prévue par l'article 57, paragraphe 3, d'AMMR.

Il est cependant nécessaire qu'un dispositif contraignant garantisse l'efficacité des relocalisations, lorsque le choix laissé aux demandeurs d'asile ne permet pas cette efficacité. Ce mécanisme devra également permettre d'éviter les mouvements secondaires subséquents.

Ainsi, si un demandeur refuse de coopérer lors de la procédure de relocalisation et de se rendre vers l'État de relocalisation pour que sa demande d'asile soit instruite, toute demande qu'il présentera dans un État autre que celui de relocalisation ne lui permettra pas de bénéficier des conditions matérielles d'accueil. À cette fin, la France rappelle que le demandeur doit demeurer dans l'État de relocalisation en vertu de l'article 9, paragraphe 4, sous c), d'AMMR et qu'il ne bénéficie plus des conditions matérielles d'accueil dès lors que la décision de transfert ou de relocalisation lui a été notifiée selon les termes de l'article 10, paragraphe 1, d'AMMR et de l'article 17a de la directive Accueil. La France demande la confirmation de cette lecture et indique que la préservation de ce dispositif est une priorité.

En outre, la France rappelle son opposition ferme au principe de relocalisation de ressortissants de pays tiers en situation irrégulière et demande la suppression de la possibilité de les relocaliser. En France, en 2022, 82 500 décisions de refus d'entrée à la frontière (toutes procédures confondues) ont été prononcées, ce qui démontre que les États membres de première entrée ne sont pas les seuls à

être concernés par les entrées irrégulières sur leurs territoires. L'exécution des décisions d'éloignement est particulièrement complexe comme en témoigne le taux d'exécution d'environ 20 % au sein de l'Union. Si une telle discussion doit être tenue, elle devrait également se faire avec des experts de l'immigration irrégulière en groupe IMEX du Conseil.

La France demande également que :

- Les compensations de responsabilité (*Responsability offsets*) soient mentionnées dans cet article. En effet, elles constituent une forme de solidarité de la part des États contributeurs, qui acceptent de prendre en charge des demandeurs qui ne relèvent pas de leur responsabilité.
- Les États membres contributeurs aient plus facilement la possibilité de proposer les compensations de responsabilité comme contribution de solidarité.

Propositions rédactionnelles :

3. The Solidarity Pool shall consist of the following types of solidarity measures, which shall be considered of equal value:

(a) relocation, in accordance with Articles 57 and 58:

(i) of applicants for international protection;

(ii) where agreed by the contributing and benefitting Member States, of beneficiaries of international protection who have been granted international protection less than three years prior to the adoption of the Council decision establishing the Solidarity Pool, ~~or for the purpose of return of illegally staying third country nationals or stateless persons;~~

(b) direct financial contributions provided 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 or may improve the asylum, reception and migration systems of the third country concerned, including assisted voluntary return and reintegration programmes and anti-trafficking or anti-smuggling programmes, in accordance with Article 44i;

(c) alternative solidarity measures focusing on capacity building, services, staff support, facilities and technical equipment in accordance with Article 44j.

(d) responsibility offsets in accordance with Article 44h.

Article 44b : établissement d'une réserve de solidarité

Paragraphe 3 :

La France remercie la Présidence pour la précision que l'État membre contributeur a une entière discrétion sur le choix des mesures de solidarité. En effet, il est essentiel que les États contributeurs puissent proposer des mesures adaptées aux capacités de leurs systèmes d'asile et d'accueil.

Article 44c : notification de la nécessité de recourir à la réserve de solidarité ou à la boîte à outils par un État membre identifié dans le rapport comme étant en pression migratoire

Paragraphe 2 :

La France soutient fortement la nouvelle rédaction : la réserve de solidarité ne doit être utilisée que si la boîte à outils ne propose pas des mesures suffisantes pour aider l'État membre à faire face à la pression migratoire. C'est une mesure de cohérence d'ensemble et de gradation dans les mesures de soutien dont peuvent bénéficier les États membres.

Paragraphe 3 :

La France remercie la Présidence pour l'allongement du délai à 10 jours qui laisse suffisamment de temps aux États membres pour formaliser leurs contributions.

Article 44d : notification de la nécessité de recourir à la réserve de solidarité ou à la boîte à outils par un État membre qui se considère lui-même en situation de pression migratoire

Paragraphe 3 :

La France souhaite qu'un délai précis soit prévu pour l'évaluation par la Commission, plutôt que le terme vague « *expeditiously* ».

Proposition rédactionnelle :

3. The Commission shall expeditiously assess the notification as soon as possible and no later than [two weeks] after the Commission received the notification, taking into account the information set out in Article 7a, the overall situation in the Union and the needs expressed by the notifying Member State.

Paragraphe 4 :

La France soutient la nouvelle rédaction qui clarifie la procédure. Toutefois, le délai d'objection à l'évaluation positive de la Commission devrait être porté à dix jours pour permettre au Conseil de se prononcer dans des conditions acceptables et en cohérence avec la modification du délai prévue à l'article 44c, paragraphe 3.

Proposition rédactionnelle :

4. The Commission shall submit its assessment to the Council ~~(and the European Parliament)~~ without delay after the Commission received the notification and ~~convene the Technical Level Migration Forum after five days of the submission of its positive assessment to the Council.~~ It shall also forward the assessment to the European Parliament for information purposes. It shall convene the Technical-Level Migration Forum after **[five ten days] of the submission of its positive assessment to the Council. The Commission shall ~~not~~ convene the Technical EU Level Migration Forum unless the majority of its members objects ~~where the Council has objected to the assessment within [five days25] of the submission by the Commission.~~**

Paragraphe 5 :

La France demande que soit prévue la conséquence en cas d'objection du Forum technique à l'évaluation positive de la Commission mentionnée au paragraphe 4.

Article 44e : opérationnalisation des mesures de solidarité

Paragraphe 5 :

La France exprime sa forte opposition au terme « *reasonable* » dépourvu de signification juridique et rappelle que le consentement des demandeurs d'asile pour la relocalisation n'est pas nécessaire, mais un simple élément pour faciliter celui-ci. Elle reste toutefois la solution à privilégier, dans la mesure du possible. Les États membres doivent pouvoir exprimer leurs préférences concernant les profils des candidats à la relocalisation, qui sont fondées sur leurs capacités d'accueil et leurs procédures nationales.

De même, la France s'oppose à l'obligation de prioriser les MNA et des autres personnes vulnérables et demande une « *may clause* ». Au vu des contraintes opérationnelles fortes pour relocaliser les personnes les plus vulnérables dans les conditions adéquates, il est important que l'État de relocalisation puisse disposer d'une marge de manœuvre sur les publics qu'il accueille compte tenu de ses capacités d'accueil. En outre, la France soutient la proposition des Pays-Bas tendant à ce que les MNA éligibles à la relocalisation soient seulement ceux dont l'évaluation de la minorité a déjà été effectuée par l'État membre bénéficiaire.

La France demandera la modification du terme « *available* » au paragraphe 5 par « *eligible* » s'agissant des candidats de relocalisation en cohérence avec nos précédentes remarques sur le caractère plus contraignant du dispositif de la relocalisation.

Proposition rédactionnelle :

5. In the course of the first meeting of the Technical-Level EU Migration Forum in the annual cycle, Member States contributing with and benefitting from relocations may express reasonable preferences in light of the needs identified for the profiles of **available eligible relocation candidates and a potential planning for the implementation of their solidarity contributions. Member States **may shall, where possible according to their national available reception capacity**, prioritise the relocation of **identified** unaccompanied minors and other vulnerable persons.**

Article 44f : réduction partielle ou totale de la contribution de solidarité de l'État membre sous pression migratoire qui n'a pas notifié le besoin d'utiliser la réserve de solidarité

Paragraphe 1 :

La France remercie la Présidence pour sa confirmation que les États membres sous pression migratoire ayant notifié le besoin d'utiliser la réserve de solidarité sont automatiquement dispensés de proposer des contributions.

En réponse aux propos de Malte, la France estime qu'une réduction partielle ou totale de solidarité au bénéfice d'un État membre ne doit pas conduire mécaniquement à une augmentation des contributions de tous les autres États membres, faute de quoi la cohérence d'ensemble du mécanisme proposée serait détériorée. En effet, la décision du *High-level EU Migration Forum* fixant les contributions l'année précédente devrait être modifiée à chaque demande de réduction et cela conduirait les États membres contributeurs à n'avoir aucune prévisibilité sur leur contribution contrairement au principe de l'exercice annuel. Ainsi, la France considère qu'en cas de réduction en faveur d'un État membre, les contributions des autres ne sont pas augmentées, sauf dans des cas exceptionnels, évalués dans le cadre du High-level Migration forum, comme prévu au paragraphe 3 de l'article 7d.

Article 44fa : réduction partielle ou totale de la contribution de solidarité de l'État membre se trouvant en situation migratoire significative ou se considérant comme tel (nouvel article)

La France remercie la Présidence pour les modifications rédactionnelles qu'elle a proposées sur cet article, que ce soit sur la notification du Conseil ou sur les motivations de celle-ci.

Article 44g : nouvelle convocation du Forum de haut niveau de l'UE sur la migration

Pas de commentaire.

Article 44h : compensation de responsabilité (« Responsabilité offsets »)

La France maintient sa réserve d'examen.

Paragraphe 1 :

La France réitère sa demande selon laquelle un État contributeur doit pouvoir proposer au titre de son « offre » de solidarité une part de compensation de responsabilité.

Proposition rédactionnelle :

1. Where the relocation pledges to the Solidarity Pool have reached 75% of the Recommendation referred to in Article 7c, a benefitting Member State may request the other Member States to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a.

1a. Alternatively, where a contributing Member State has reached 50% of relocations, as part of its contributions according to the Distribution key, that Member State may propose to the benefitting Member State to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a.

Paragraphe 3 :

La France demande la suppression de la phrase “*where applicable, the benefitting member State has fulfilled its obligations pursuant to the Eurodac Regulation*”. La France considère en effet que les États membres doivent toujours remplir leurs obligations découlant du règlement Eurodac. La France souhaite préciser que les compensations Dublin ne peuvent s'appliquer qu'aux demandeurs présents sur le territoire de l'État membre contributeur.

Proposition rédactionnelle :

3. [...]

(d) the applicant **is located on the territory of the contributing Member State, in particular he has not absconded from the contributing Member State the territory of that Member State ;**

~~(e) where applicable, the benefitting Member State has fulfilled its obligations pursuant to Regulation (EU) XXX/XXX [the Eurodac Regulation]~~

Paragraphe 4:

La France demande la suppression de ce paragraphe, en cohérence avec sa demande au paragraphe 3 de l'article 44a : les personnes dont la demande d'asile a déjà été rejetée par l'État membre bénéficiaire ne doivent pas être incluses dans le dispositif des compensations Dublin.

Proposition rédactionnelle :

~~4. The contributing Member State may apply this Article to third country nationals or stateless persons whose applications have been finally rejected in the benefitting Member State. Articles 42 and 43 in the Asylum Procedure Regulation (XXX) shall apply.~~

Article 44i : contributions financières directes

Pas de commentaire.

Article 44j : mesures alternatives de solidarité

La France n'est pas favorable à l'ajout de la mention « de façon réaliste » (« *a realistic manner* ») qui apparaît peu juridique.

La coordination par la Commission des mesures alternatives de solidarité serait souhaitable, de façon similaire à celle proposée par la Présidence à l'article 44i. Une telle coordination permettra, d'une part, d'assurer le suivi de la mise en œuvre de ces mesures et d'autre part, d'assurer la cohérence de l'ensemble des mesures prises pour soutenir l'État membre bénéficiaire, y compris, en particulier, les opérations des agences européennes dans cet État.

Proposition rédactionnelle :

Article 44j Alternative solidarity measures

- 1. Alternative solidarity measures shall be based on the specific request of the benefitting Member State. Such measures shall be counted as financial solidarity, and their concrete value shall be established ~~in a realistic manner~~ by the contributing and the benefitting Member States. **The Commission shall draw up an inventory of these measures and shall liaise closely with the benefitting Member State to ensure that these measures correspond to the objective as set out in Article 44a(3)(c). The Commission shall make the inventory available to facilitate the matching between the contributing and the benefitting Member States concerned.****
- 2. Member States shall provide alternative solidarity measures in addition to and that do not duplicate those provided by operations by Union agencies or by Union funding in the field of asylum and migration management in the benefitting Member States. Member States shall provide alternative solidarity measures in addition to what they are required to contribute through Union agencies.**

Article 44k : clé de répartition

Pas de commentaire.

Article 58a : procédure relative aux compensations de responsabilités

Paragraphe 1 :

La France demande d'adapter cet article conformément à ses remarques sur les articles 44a et 44h : les compensations Dublin doivent pouvoir être proposées par les États contributeurs à leur initiative.

Paragraphe 2 :

En réponse à l'intervention de l'Espagne, la France indique que la requête de l'État bénéficiaire ne concerne qu'un nombre de requalifications Dublin à réaliser et non pas des dossiers individuels. Il n'est donc pas possible de prévoir une procédure de « silence vaut acceptation » et de justification de tous les critères. En tout état de cause, ces deux points (« silence vaut acceptation » et « justification de tous les critères ») sont des lignes rouges pour la France.

En réponse aux interventions de l'Italie et de l'Espagne sur une durée de deux semaines, la France indique y être opposée, car cette durée n'est pas opérationnelle. En effet, l'État membre contributeur doit réaliser une phase de pré-identification des demandeurs en procédure Dublin éligibles afin d'apporter une réponse adaptée à la requête de l'État membre bénéficiaire.

Paragraphe 3 :

La France remercie la Présidence pour l'ajout de cette référence et demandera que le règlement Eurodac III soit également amendé pour faire référence à cette disposition du règlement AMMR.

Article 2 : définitions

Point w) : pression migratoire :

La France soutient l'intervention de l'Autriche : le risque d'arrivée ne constitue pas un critère concret pour évaluer la pression migratoire et doit être supprimé. En outre, la dernière phrase de la définition comprend des exemples qui devraient être déplacés dans un considérant.

Proposition rédactionnelle :

(w) 'migratory pressure' means a situation [...] which **is generated by arrivals of third country nationals or stateless persons and that places a disproportionate burden on Member States taking into account the overall situation in the Union**, even on well-prepared asylum and reception systems and requires immediate action. **It covers situations where there is a large number of arrivals of third country nationals or stateless persons, or a risk of such arrivals, including where this stems from recurring disembarkations [...] following search and rescue operations, or from unauthorised movements of third country nationals between the Member States;**

Point wa) : situation migratoire significative :

La France propose de lier le concept de « pression migratoire significative » aux stratégies nationales des États membres prévues à l'article 6, paragraphe 3, afin de renforcer la cohérence d'ensemble d'AMMR. Pour rappel, ce paragraphe prévoit que « *les États membres mettent en place des stratégies nationales afin de garantir une capacité suffisante pour la mise en œuvre d'un système de gestion effective de l'asile et de la migration, conformément aux principes énoncés dans la présente partie* ». En outre, ces stratégies prennent en compte les résultats du mécanisme de surveillance prévu aux articles 14 et 15 du règlement de l'Agence de l'Union européenne pour l'asile.

Dès lors, en liant la situation migratoire significative aux stratégies nationales de l'article 6, paragraphe 3, d'AMMR, l'évaluation de la notion de « *well prepared asylum, reception and migration system* » sera objectivée : un État membre qui ne s'est pas doté d'une stratégie nationale adaptée ne pourra pas se prévaloir de la notion de situation migratoire significative.

Proposition rédactionnelle :

(wa) ‘significant migratory situation’ means a situation **different from migratory pressure** where the cumulative effect of current and previous annual arrivals of third country nationals or stateless persons leads a well prepared asylum, reception and migration system to reach the limits of its capacity **described in its national strategy foreseen in article 6(3) for a period of at least three months in the last three years;**

3. Sur l’approche globale des migrations (articles 3 à 6 et article 7)

Article 3 : approche globale de la gestion de l’asile et de la migration

La France préfère l’option A, dans la mesure où il est important de préciser que les politiques européennes en matière d’asile doivent être « guidées » par une approche globale, sans que cette dernière n’impose pour autant de nouvelles obligations aux États membres. Il est également important de préciser que cette approche globale s’inscrit « dans le cadre du droit européen applicable ».

Article 4 : principe de l’élaboration de politiques intégrées

La France soutient la proposition de transformer cet article en considérant.

Article 5 : principe de solidarité et de partage équitable des solidarités

Cf. éléments précédents.

Article 6 : gouvernance et suivi de la situation migratoire

La France soutient la première option proposée par la Présidence slovène, à savoir la suppression de la stratégie européenne. En l’absence de prise en compte de ses demandes répétées de précisions sur ces dispositions, la France soutient sa suppression dans le cadre des deux options proposées, en rappelant que si une telle stratégie pourrait avoir une plus-value, la rédaction actuelle demeure trop imprécise : une telle stratégie nécessite d’être clairement définie, en particulier s’agissant de ses aspects opérationnels et de sa nature juridique. La France réitère ses commentaires en ce sens sur le sujet.

Article 7 : coopération avec les pays tiers pour faciliter le retour et la réadmission

La France regrette le manque d'intelligibilité de cet article et estime que la rédaction proposée par la Commission mélange la reprise parcellaire de dispositions législatives existantes à des déclarations d'intention sans fondement juridique à ce stade.

La France souhaiterait avoir des éléments supplémentaires sur les mesures envisageables dans le cadre d'autres politiques de l'UE, les conditions juridiques d'une telle procédure et le lien possible avec d'autres leviers de réadmission. Ces éléments semblent nécessaires pour rendre cette disposition opérationnelle et pour pouvoir poursuivre les discussions sur son contenu.

Par ailleurs, la France souhaiterait débattre de l'ajout d'un paragraphe précisant les domaines dans lesquels les mesures pertinentes pourront être actionnées et soutient qu'une décision du Conseil, sur proposition de la Commission, devrait permettre l'adoption de telles mesures.

En revanche, le paragraphe 2 n'apparaît pas nécessaire et rompt au contraire l'harmonie de l'article.

Proposition rédactionnelle :

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

1. Where the Commission, on the basis of the analysis carried out in accordance with Article 25a(2) or (4) of Regulation (EU) No 810/2009 of the European Parliament and of the Council⁹ and of any other information available **from Member States, as well as from Union institutions, bodies, offices and agencies**, considers that a third country is not cooperating sufficiently on the readmission of illegally staying third-country nationals, and without prejudice to Article 25(a)(5) of that Regulation, it shall submit a report to the Council including, where appropriate, the identification of any measures which could be taken to improve the cooperation of that third country as regards readmission, taking into account the Union's overall relations with the third country.

~~2. Where the Commission considers it appropriate, it shall also identify in its report measures designed to promote cooperation among the Member States to facilitate the return of illegally staying third country nationals.~~

3. On the basis of the report referred to in paragraph 1, the Commission and the Council, within their respective competencies, shall consider the appropriate actions taking into account the Union's overall relations with the third country.

LITHUANIA

General comments

We would like to thank the presidency for the job done in translating the Czech presidency concept into the AMMR text.

Lithuania has always been in favour of mandatory but flexible solidarity where a MS could choose forms of solidarity measures. We also are among those member states that reject any permanent solidarity mechanisms and solidarity contributions that would be calculated according to a distribution key without evaluation of individual capacities of the member states. Therefore in this compromise text we welcome very much the flexibility to decide on the concrete type of contributions acceptable to us. However, we have concerns about the permanent nature of pledging to the Solidarity Pool as well as the mandatory fare share calculated according to a distribution key. We were ready to accept this fair share distribution key as a guiding principle as such an option had been proposed in the CZ concept document.

We submit general scrutiny reservation.

Article 2

Point (w) – migratory pressure

Our understanding is that the first sentence of the definition is more general while the second sentence specifies what is said in the first. Bearing this in mind, it seems logical to assume that the notion of ‘migratory movements’ (in the first sentence) include arrivals and the risk of arrivals (the two notions in the second sentence). However, it would be illogical to place ‘arrivals’ and ‘risk of arrivals’ in the second sentence under the notion of arrivals (in the first sentence) as per presidency’s suggestion:

Furthermore, we remain of the view, as set out in our last written comments, that the definition of migratory pressure should reflect not only statistics, but also the Member State's efforts to protect the external border against the phenomenon of instrumentalisation of migration and the negative effects that this phenomenon creates (putting at risk the maintenance of law and order of a Member State, threat to security, generating secondary movements). Hence, we would like to refer to our written comments following AWP of 18-19 January where we proposed the following text amendment:

‘migratory pressure’ means a situation [...] which generates migratory movements that place a **disproportionate burden on Member States compared to the overall situation in the Union**, even on well-prepared asylum and reception systems and requires immediate action. **It covers situations where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from recurring disembarkations [...] following search and rescue operations**, notably as a result of the geographic location of a Member State and the specific developments in third countries **including due to unauthorised movements**; **it also covers situations of instrumentalisation of migrants.**

We also support the delegations (FR, AT and others) that would appreciate presenting by the Presidency examples of the three notions: migratory pressure, significant migratory situation and risk of arrivals. The risk of arrivals is especially unclear: what kind of situations this would cover and how it would be taken into account in terms of striking the balance between responsibility and solidarity. For example, would a significant number of instrumentalised migrants at EU external borders attempting to cross the border illegally constitute the risk of arrivals?

Article 7a European Migration Management Report

Paragraph 2

Substantial reservation due to the reference to Article 44b (2)(mandatory fare share calculated according to the distribution key).

Paragraph 3, points b and f

Scrutiny reservation due to mentioning disembarkations following SAR. This category is already covered by the notion ‘all migratory routes ‘therefore we propose to delete **‘including the number of projected disembarkations’** in para 3 (a) and to delete **‘as well as the specificities of the structural phenomenon of disembarkations after search and rescue operations’** in para 3 (f)

Paragraph 5

We support deleting ‘where appropriate’.

Article 7b Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure and a significant migratory situation

Paragraph 1 (j)

Scrutiny reservation due to mentioning disembarkations following SAR as forming a separate category of third country nationals.

Paragraph 1 (ba)

We welcome adding ba point (beneficiaries of temporary protection).

Paragraph 2 (m)

We support moving para 1 point n to para 2 point m.

Article 7c Commission Recommendation regarding establishing the Solidarity Pool and other appropriate measures

Paragraph 2

Scrutiny reservation. Our previous written comments with a text proposal on this article remain valid.

Text proposal suggested in previous written comments:

Article 7c

Commission Recommendation regarding the establishment of the Solidarity Pool and other appropriate measures

1. <...>
 2. The Recommendation shall identify **indicative** annual numbers for relocations and for direct financial contributions, ~~which shall at least be:~~
 - (a) Xxx for relocations
 - (b) Xxx for direct financial contributions
 3. When identifying the Union shared responsibility and the consequent level of solidarity, the Commission shall take into account relevant qualitative and quantitative
-

Article 7d The High-Level EU Migration Forum and Technical-Level EU Migration Forum

Paragraphs 2-3

We maintain our substantial reservation due to the reference to Article 44b (2) (mandatory fare share calculated according to the distribution key).

Article 44 (a)

We welcome moving **alternative** solidarity measures in para 4 to para 3 as point c. It is clear now that all three forms of solidarity are considered of equal weight.

We also welcome stating of the purpose of relocation of illegally staying third country nationals (i. e. for return purposes), in para 3 point a letter ii.

Article 44 (b)

We maintain our substantial reservation. In line with our position on solidarity, we cannot agree to the mandatory fare share calculated according to the distribution key. The fair share principle should be established *as a guiding principle*.

Text proposal as in our previous written comments:

Article 44b

Establishment of the Solidarity Pool

1. <...>
2. During the High Level Migration Forum meeting referred to in Article 7d, Member States shall pledge their contributions to the Solidarity Pool, taking fully into account the level of solidarity needs identified in the Recommendation referred to in Article 7c and in accordance with the mandatory fair share calculated according to the distribution key set out in Article 44k.

Article 44e Operationalisation of solidarity measures

We believe that relocation of vulnerable persons much depends upon availability of suitable reception conditions for this category applicants. It should be left to a Member State's discretion. Therefore we suggest either deleting the last sentence or making it a 'may' clause.

Article 44g Reconvening the High-Level EU Migration Forum

Substantial reservation. Paragraph 2 refers to the procedure in Article 44b involving calculation of the mandatory fare share according to the distribution key.

Article 44k Distribution key

Application of the distribution key is acceptable to as long as it has no binding effect.

We maintain our substantial reservation due to the reference to Article 44b (2) (mandatory fare share calculated according to the distribution key).

Article 3

We voted for the Option A presented in WK 13019/2021.

Article 4

We support SI presidency's proposed alternative text in the footnote to be placed in recitals.

Article 5

We can support proposal to move paragraph -1 to recitals.

Article 6

We voted for the Option A presented in WK 13019/2021.

LUXEMBOURG

AMMR – Comments from Luxembourg on Articles 7a–7d, 69, 5(-1), 6a, 44a–44k, 58a, 2(w) and (wa)).

Article 2w: In order to make the definition more clear, and underline that arrivals need to be of a certain scale that they put a disproportionate burden on Member States, LU proposes the following wording

« arrivals **that are of such scale that they place** ~~that places~~ a disproportionate burden on Member States»

Article 2 (wa): LU maintains a scrutiny reservation on this new concept and its definition. We evaluate this concept and its effects in light of the overall balance between solidarity and responsibility.

Article 3(a): LU believes that the terminology related to irregular migration should be moderate, and therefore proposes the following wording:

«~~combatting~~ **prevention of irregular migration and combatting migrant smuggling**»

or as an alternative adapting to the wording of (d): «**prevention of irregular migration and migrant smuggling**»

Article 6a: Scrutiny reservation on point (d) in light of our position regarding the Instrumentalisation Regulation and derogations proposed therein.

Article 44i4 LU proposes the following wording:

«Member States, in consultation with the Commission, shall ensure that direct financial contributions are additional and complementary to financial support provided under other Union instruments».

Article 7a6. We consider it necessary to maintain a transparent communication on solidarity measures and the Commission's recommendations in this regard. Political accountability is an important component of the functioning of the new system. We would also need more clarity on the implication of the classification of the Recommendation on the ensuing outcomes, e.g. of the High Level EU Migration Forum.

Article 7c2: Regarding point (2), LU is open to consider a more flexible formula that is based on the real needs defined by the Commission rather than defining a fixed annual number.

MALTA

Article 2(w)

MT is still concerned with the reference to the ‘overall situation in the Union’. Member States face different realities and therefore a situation that might lead to migratory pressure in one Member State might not lead to migratory pressure in another Member State. In view of this MT is of the opinion that the reference to the overall situation in the Union should be deleted:

‘migratory pressure’ means a situation [...] which is generated by arrivals of third country nationals or stateless persons and that places a disproportionate burden on Member States ~~taking into account the overall situation in the Union~~, even on well-prepared asylum and reception systems and requires immediate action.

Without prejudice to this, MT would like a clarification in relation to how disproportionate burden will be calculated in practice when taking into account the overall situation in the Union.

Article 7b

- Paragraph 1

MT maintains its reservation on point (f) due to our opposition to the notion of take back notifications. In this regard, it should be recalled that in our view the current system of take back request should be maintained.

Regarding point (k), MT is of the opinion that the text should clearly indicate if here we are referring to persons claiming to be unaccompanied minors, or persons verified as being unaccompanied minors following the necessary checks by the competent authorities, or to both. In this regard, MT is of the opinion that data should be captured in relation to both claimed and verified unaccompanied minors.

Article 7c

- Paragraph 2

MT is not in favour of having a minimum number for relocations and financial contributions to be set out in the Regulation. Instead, MT is of the opinion that the annual numbers should be calculated on a formula established on the basis of objective criteria: the real overall number of arrivals, recognition rates and implemented returns.

Article 69

In view of our comment on Article 7c, MT is of the opinion that the added text in Article 69 (third sub-paragraph) is redundant and should therefore be deleted.

Article 5(-1)

MT is of the opinion that this paragraph should be retained instead of being shifted to the recitals.

Article 44b

- Paragraph 3

While not opposed to the notion that Member States should have flexibility in terms of the type of solidarity measures to be provided, MT would like to reiterate its position that in order for this system to work in practice and to effectively alleviate the burden on frontline Member States, it is essential that the provision includes safeguards that the needs identified will be fully met.

MT is of the opinion that this point should be clearly reflected in the text as follows:

In implementing paragraph 2, contributing Member States shall have full discretion in choosing between the types of solidarity measures listed in Article 44a(3), points (a), and (b) and, where applicable, point (c), or a combination of them. **The Commission shall ensure that the needs identified in Article 7c are met through the contributions of Member States.**

Article 44c

- Paragraph 2

MT cannot support the changes that have been made with regard to the toolbox which seem to suggest that the solidarity pool is a second level of support to be used when the toolbox is not enough, instead of an element to be used together with the toolbox depending on the needs of the Member State concerned. Hence, MT is of the opinion that here we should revert to the previous text:

*The notification of the Member State shall include the type and level of solidarity measures as referred to in Article 44a **or components referred to in Article 6a** needed to address the situation and a substantiated reasoning in support, ~~including that the use of the Toolbox is insufficient.~~*

Article 44d

- Paragraphs 1 & 2(b)

MT cannot support the changes that have been made with regard to the toolbox which seem to suggest that the solidarity pool is a second level of support to be used when the toolbox is not enough, instead of an element to be used together with the toolbox depending on the needs of the Member State concerned. Hence, MT is of the opinion that here we should revert to the previous text:

*A Member State that is not identified in the Report referred to in Article 7a as being under migratory pressure, but considers itself as so being, may notify the Commission and the Council of its intention to make use of the Solidarity Pool **or the Toolbox or both.***

The notification shall include:

*(b) the type and level of solidarity measures as referred to in Article 44a **or components as referred to in Article 6a** needed to address the situation and a substantiated reasoning in support, ~~including that the use of the Toolbox is not sufficient;~~*

- Paragraph 4

MT is of the opinion that an objection to the Commission's positive assessment by the Council should be based on a substantiated assessment. Furthermore, we suggest re-wording the text to make it clear that the objection comes from the Council, in line with the table provided in WK 2749/23 and not from the majority of the Member States within the framework of the Technical EU Level Migration Forum.

- Paragraph 5

MT is of the opinion that the same possibility to submit a new notification to the Commission should also apply in case the Council does not agree to the Commission's positive assessment.

Article 44e

- Paragraph 3

MT has a scrutiny reservation on this paragraph due to our concerns on its practical implications. While MT is in favour of the notion that benefitting Member States or Member States who have been granted a full reduction should not be obliged to implement their pledged solidarity contributions, we are concerned that this might lead to a significant shortfall in the original solidarity envisaged to alleviate the burden on member states under migratory pressure. In our view, and linked to our position that the identified needs of the Member States are to be met, any derogation from the pledged solidarity contributions needs to be offset by an increase in pledges from the remaining Member States.

- Paragraph 5

While MT can accept the notion that Member States may express reasonable preferences in terms of the profiles for relocation candidates, MT would once again like to reiterate its position that in order for this system to work in practice and effectively alleviate the burden on frontline Member States, it is essential that the needs identified are fully met.

Article 44f

MT has a scrutiny reservation on this article due to our concerns on its practical implications. While MT is in favour of the notion that Member States under migratory pressure, or that consider themselves to be under migratory pressure, can be granted a full or partial reduction of their pledged solidarity contributions, we are concerned that this might lead to a significant shortfall in the original solidarity envisaged to alleviate the burden on member states under migratory pressure. In our view, and linked to our position that the identified needs of the Member States are to be met, any derogation from the pledged solidarity contributions needs to be offset by an increase in pledges from the remaining Member States.

Article 44fa

MT has a scrutiny reservation on this article due to our concerns on its practical implications. While MT is not opposed to the notion that Member States facing a significant migratory situation, or that consider themselves to be facing a significant migratory situation, can be granted a full or partial reduction of their pledged solidarity contributions, we are concerned that this might lead to a significant shortfall in the original solidarity envisaged to alleviate the burden on member states under migratory pressure. In our view, and linked to our position that the identified needs of the Member States are to be met, any derogation from the pledged solidarity contributions needs to be offset by an increase in pledges from the remaining Member States.

Article 44g

MT is of the opinion that a benefitting Member State should also have the possibility to request additional support contributions or measures if the ones requested under Articles 44c or 44d prove insufficient to effectively alleviate the migratory pressure faced by that Member State, including following the application of derogations envisaged in Articles 44e, 44f and 44fa.

POLAND

Horizontal position:

1. PL maintains the comments made after the AWP meetings that took place on 18-19 January 2023 and 10 February 2023. We still believe that the current legislative proposal does not reflect the concept paper proposed by PRES CZ, which we agreed to in December 2022. The architecture of the solidarity system continues to be based on an alternative: relocations or financial contributions with some deviations that we note and welcome, but in our opinion they are still not sufficient.

the Annual Migration Management Cycle (Articles 7a-7d and 69)

7a(3)(a) — PL opts for adding “in all Member States” — as in 7a(1)

7a(3)(b) — PL supports HU’s proposal to change “projected disembarkations” to “irregular border crossings”

7a(3)(f) second indent — (...) to support the Member State or Member States concerned (...) — in favour of simplification: Member States concerned.

7a (5) — PL welcomes removing “where appropriate” and “likely”

7(a)(6) — we share the doubts of those MSs that had reservations about publication after a certain period of time. We agree with the type of clause, but the publication of this information after the adoption of the decision by the Council of the EU, in our view, will be a pull factor for illegal migration. We support the reference to the CLS assessment.

7b(b) — PL welcomes this provision.

7b (3) — the content of subsection de facto repeats the definition of “significant migratory situation” of 2(wa). PL requests for modification, if possible.

7c (2) — PL raises substantive reservation to this provision. We support those delegations that raised reservations to point the number of persons to be relocated in the legislative text and the amount of direct financial contributions to be made. We understand the need for data, but such an indication in the legislative text will be a pull factor for irregular migration. As a result, it will lead to further catastrophes at sea and loss of lives. Moreover, the provision concerning the European Commission report and the Commission’s recommendations covered by the classification clauses is inconsistent with the assumption that these figures are to be made public in the legislative text.

7c (5) — incomplete sentence: “The Recommendation shall be...”.

69 — in view of PL’s reservation to the inclusion in the legislative text of minimum numbers to be included in 7c(2) — substantive reservation.

Solidarity and EU Migration Support Toolbox (Articles 6a, 44a-44k, 58a and 2 (w) and (wa))

2(w) pressure migrators

2(wa) significant migratory situation

Currently, the distinction between definitions is not legible. It seems to differ only the need to take immediate action in the case of “migratory pressure”, which is not in the definition of “significant migratory situation”. Like the vast majority of delegations, we believe that clearly defined definitions are fundamental for the entire legislative text and require precision.

(w) migratory pressure — as we pointed out earlier, PL opposes referring to a hypothetical situation, i.e. the risk of occurrence of significant numerical arrivals in MSs of third-country nationals and stateless persons and considering this risk as identified migratory pressure (regardless of the source of its origin: SAR, secondary migration movements between MSs etc.). We support MT’s request to indicate how the “disproportionate burden” will be calculated.

We propose the following modifications to these definitions:

(W) “migratory pressure” means a situation [...] which is generated by arrivals of third country nationals or stateless persons migratory movements and that places a disproportionate burden on Member States taking into account compared to the overall situation in the Union, even on well-prepared asylum and reception systems and requires immediate action. ~~It covers situations where there is a large number of arrivals of third country nationals or stateless persons, or a risk of such arrivals, including where this stems from recurring disembarkations [...] following search and rescue operations, or from Unauthorised movements of third country nationals between the Member States;~~ →deletion of the last sentence.

(wa) “significant migratory situation” means ~~different from migratory pressure where~~ the cumulative effect of current and previous annual arrivals of third country nationals or stateless persons leads a well prepared asylum, reception and migration system to reach the limits of its capacity →deletion of the indication of differentiation from the situation of migratory pressure.

Furthermore, **in Articles 6a and 7a(3)(f), the first indent, 7a(4)**, we see a different division from the above definitions. It is clear from the above articles that a MS can be in four situations:

- 1) under migratory pressure,
- 2) at the risk of migratory pressure,
- 3) in a significant migratory situation,
- 4) in a crisis situation (as defined in the Crisis Regulation)

—we therefore ask for simplification, in particular by removing from the definition of migratory pressure the risk of migratory pressure. The risk of migratory pressure (and therefore a hypothetical situation) should not have consequences such as its occurrence. This is therefore a different situation.

In addition, please clarify the links regarding the definition of pressure with AMMR with the provisions of the APR1, in which, in the context of the extension of deadlines, the following are referred to:

- 1) in Articles 27(3), 28(3) - a disproportionate number of third-country nationals or stateless persons that make an application within the same period of time;
- 2) in Article 34(1b)(a) - a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it difficult in practice to conclude the admissibility procedure or the accelerated examination procedure within the set time-limits;
- 3) in Article 34(3)(a) - a disproportionate number of third-country nationals or stateless persons make an application [...] for international protection within the same period of time, making it difficult in practice to conclude the procedure within the six-month time limit.

44a (3) in conjunction with 44b(3) — the current text is considered more favorable compared to the previous one. In our view, however, the equivalence of the three solidarity measures is apparent. Alternative solidarity measures from 44a(3)(c) can only be used at the explicit request of the benefitting MS. In practice, this can mean a situation that will never happen. They are all even the less likely to be used since MSs are primarily obliged to fulfil their obligations under the Regulations about Agencies (EUAA, FRONTEX) — as in 44j(2). On the other hand, if contributing MSs were asked to support benefitting MSs with such measures, it remains unclear how the value of alternative solidarity measures is converted into monetary values. However, we note the possibility of using a combination of solidarity measures, as set out in 44b(3).

44a(3)(ii) — Pl welcomes clear indication that the relocation of beneficiaries of international protection and illegally staying third-country nationals and stateless persons can only take place if two countries agree: 1) benefitting MS and 2) contributing MS. We remain of the opinion that the relocation of irregular migrants is a pull factor for irregular migration, but we are pleased to not treat this group of migrants equally to applicants for international protection when it comes to relocation.

¹ Doc. 15504/22 of 2.12.2022

44a(3) — we accept PRES SE’s explanations on counteracting secondary migration movements and hence treating solidarity offsets secondary to the other three types of solidarity measures. Nevertheless, we believe that MS should be free to choose: relocations or offsets. In PL’s assessment, the final balance sheet is important.

As regards the relocation itself (**44a(3)(a)**), we support the FR’s comment on the practical problem of expressing objections by the person qualified for the relocation programme to go to the indicated MS. The legislative text should provide solutions to the problems encountered by the MS. The use of a term in the current text about the inability of that person to refuse to transfer to indicated MS is in theory correct, but in practice it does not respond to the problem.

44b (2) — PL raises substantial reservation due to the fact that we cannot accept the mandatory fair share set out in Article 44k. In addition, we oppose to the term “fully”. Such a structure assumes that the Council of the EU (at the High-Level Migration Forum format) should not change the values indicated in the EC Recommendations regarding the numbers for relocation and direct financial contributions (despite the fact that *per se* we are talking about recommendations).

44d (5) — we support the wording of the paragraph. At the same time, we share MT’s comment: when the MS’s proposal is rejected by the Council, it should be reassessed by the EC. In such a situation, MS should also be able to submit a further notification.

44e (1) — the term “in a balanced manner” is, in our opinion, not sufficiently precise. PL requests for a modification.

44e (3) — scrutiny reservation on the term “in proportion to their overall pledge to the Solidarity Pool”.

44f and **44fa** — 1. We support these two articles. However, we see the need for a clearer expression of the individual steps. 2. We request for specifying the title in 44f in order to maintain the symmetrical situation of 44fa: the title of Article 44f does not refer to the situation in which the MS is considered to be under migratory pressure. 3. We requests for treating the applications submitted by the MS symmetrically. In Article 44f MS is considered to be under migratory pressure and Article 44fa MS considers itself to deal with a significant migration situation. In the first case, the MS submits a request to the EC, and - for information purposes - to the Council of the EU, and in the second case, the MS submits a request to the EC and the Council of the EU.

44fa — missing (4) and (5) — numbering error

44j — the term “in a realistic manner” is considered insufficient. The key is how alternative solidarity measures are converted into monetary values.

44h — PL is in the group of MSs expressing the view that offsets should compensate for relocations, but not as a measure to be applied in the second place and not assuming a 75 % relocation threshold, which would only trigger the possibility of benefiting from that measure. Furthermore, we support those MSs which point to the possibility of using this measure at the request of the contributing MS.

44k — substantial reservation. PL maintains the comments made so far regarding the opposition to such a construction of the distribution key. In our view, we should also include the contribution to border surveillance, e.g. by taking into account the financial contributions of MS to the protection of the borders. We support HU’s remark on this point.

Comprehensive Approach (Articles 3, 4, 5, 6, 7)

We raise reservations on this part of AMMR in the context of the CLS opinion of 19 February 2021 on the variable geometry of the Pact, on which the Council has not taken a position and the legislative texts have not been adapted to it.

3(a) — PL opts for deleting the reference to SAR

3(h) — PL is in favour of deleting the phrase “the principle of solidarity and fair sharing of responsibility” — it does not bring added value here.

3(ha), 5(1)(e), 7a(3) 2nd subpara and other places where it occurs — PL requests for changing the “unauthorised movements” to “irregular migration”

3(m), 6(6), 7a(7) — technical note: European Border and Coast Guard Agency (FRONTEX), European Union Agency for Asylum (EUAA), eu-LISA, European Union Agency for Law Enforcement Cooperation (EUROPOL), European External Action Service (EEAS).

4 — We support the transfer of the article to the recital as proposed by PRES SI. (2) The new obligations and consequences for MSs must fully respect their national competences and provide sufficient flexibility with regard to national migration policies in accordance with the Treaties. (3) — please specify that the Agency’s support should only be triggered at the request of the MS.

5(-1) — PL welcomes deleting this paragraph. We support moving it to the recital. However, we still believe that the reference of the principle of solidarity and fair sharing of responsibility to CEAS only seems to be too narrow. Article 80 TFEU on the principle of solidarity and fair sharing of responsibility between MSs refers to policies on border control, asylum and immigration. We believe that the content of the recital in the preamble to which the article will be moved should take into account a broad understanding of the principle of solidarity and fair sharing of responsibility in accordance with that provision.

Article 5 (a) (d) - we believe it is not necessary to strengthen the proposed text of regulation by adding such adjectives as ‘effective’ or ‘efficient’. The management of migration flows should always be efficient, and provided support — effective. So the proposed changes in wording do not bring any added-value.

6(3) last sentence — Council Regulation No 1053/2013 is no longer in force (validity until: 31.01.2023).

7 first sentence - (...) Union institutions, bodies, offices and agencies (...) — in favour of simplification: Union institutions and agencies.

SLOVAK REPUBLIC

Regulation on Asylum and Migration Management

We would like to raise scrutiny reservation to the whole changes made in the proposal.

Art. 2(w) and (wa) – scrutiny reservations.

Art. 3 – as we have already said also during the SI PRES within the discussions to the Art. 3 of AMMR, we fully support the implementation of comprehensive approach to asylum and migration management. As some of the delegations, and notably CLS, mentioned during the last AWP, the responsibilities of Member States are too vague and can lead (through the CJEU’s interpretation of EU law) to unforeseen obligations. Taking into account that we are talking about general principles that should be guiding our work in the area of asylum and migration, we are of the opinion that it would be better to place this text in the Preamble. Alternatively, we can support option A mentioned in SI PRES discussion paper (WK13019/21).

Art. 4 – we support the transfer of Art. 4 to the recitals.

Art. 5(-1) – we welcome the deletion of paragraph -1 from Art. 5.

Art. 5(1)(e) - we prefer previous wording (“*take all reasonable and proportionate measures to prevent and correct unauthorised movements between Member States*”).

Art. 6 - due to similar concerns as were presented by several Member States during the previous discussions to this Article and also by CLS related to the legal nature of the EU migration strategy and the fact that the role of the Council in adoption of the EU migration strategy is not sufficient, we agree with the opinion of CLS that deletion of the paragraphs 1 and 2 will be the best and the easiest way how these concerns can be addressed.

Art. 7a and 7b – it is not clear to us how these articles focused on gathering and assessing relevant information will be linked to situational pictures and national situational pictures under the Art. 24 and 25 of the Regulation on the European Border and Coast Guard.

Art. 7a(7) and Art. 7b – we support the idea of stating in the recitals or in normative text that every effort will be made to prevent duplication, especially when information and data are already available to the agency through different channels.

Art. 7b(1) – we understand that the information mentioned here is already available to FRONTEX in the framework of the FRONTEX Risk Analysis Network = FRAN and will be used directly without any duplicate request from the Member State.

Art. 7b(1)(f) – we would like to replace “*notifications*” for “*requests*” (**the number of incoming and outgoing take charge requests and take back ~~notifications~~ requests in accordance with Articles 29 and 31**) due to our substantial reservation to the take back notification under Art. 31. We are opposed to the automatic process of submitting a take back notification. We would like to maintain the current system of take back request.

Art. 7b(2)(k) - within FRONTEX, a "Capability Development Network" has been created for capacity building. For this reason, we consider the reference to using of relevant parts of the vulnerability assessment report of the European Border and Coast Guard Agency under point k) to be limiting. On the one hand, we are trying to get here all possible information, but on the other hand, we are limiting ourselves by listing specific reports (vulnerability assessment report).

Art. 7c(2) – we maintain our previous written comments. We do not consider it appropriate to incorporate the specific mandatory size of concrete (minimum) threshold into the legislative act. Since the information will be made public, we are of the opinion that it will present a pull factor even in the case of low numbers for annual relocations. Our aim should not be to create incentives that can be used by smugglers as a magnet to attract migrants which may lead to another loss of their lives.

Art. 44a(1) – we understand and fully support the approach that the MS must explain why the toolbox is insufficient before seeking assistance from the solidarity pool. Still, we would like to suggest a small change in the wording as follows:

“The Solidarity Pool shall serve as ~~the main one of the~~ solidarity response tools on the basis of the Recommendation referred to in Article 7c.”

Art. 44a(3) – we would like to thank SE PRES that our comments have been taken into account. We welcome merging paragraph 3 and 4 together, what is now in line with the CZ PRES concept paper.

We also prefer to have Dublin offsets as a part of solidarity Pool (as one of the solidarity measures, which the Member State can use in order to help the Member State under migratory pressure) and not as a second mandatory level of solidarity in case there will be not enough pledges to relocations. It will extend the widest possible list of solidarity measures from which the Member State can choose.

Art. 44b(2) – we maintain our reservation regarding the reference to mandatory fair share. We still prefer guiding principle as a basis for fair share.

Art. 44b(3) – Our concern, however, is that the notion "where applicable" does not allow the contributing Member State to decide "in full discretion" how to contribute to solidarity.

We fully understand that the benefiting Member State may not always need specific alternative solidarity measure (e.g. police officers). However, there is wide list of alternative solidarity measures focusing on capacity building, staff support (experts, police officers), facilities, services, technical equipment etc., that the contributing Member State can offer. We believe that there will always be a need to use also some type of alternative forms of solidarity measure alongside the need of relocations, otherwise it could hardly be said that the Member State is in the situation of migratory pressure. Therefore we would like to delete “where applicable” from the text.

In implementing paragraph 2, contributing Member States shall have full discretion in choosing between the types of solidarity measures listed in Article 44a(3), points (a), and (b) and, ~~where applicable~~, point (c) paragraph 4, or a combination of them.

Čl. 44c(2) a 44d(2)(b) – we welcome the inclusion of the reference to toolbox into these provisions. We would like to suggest a slight modification of the text as it seems to us that the word “why” would be more appropriate here, as follows: „...**needed to address the situation and a substantiated reasoning in support, including ~~that~~ why the use of the Toolbox is insufficient**“.

Art. 44d(4) – scrutiny reservation regarding the time-limit within the Council may object the Commission’s positive assessment.

Art. 44e(5) – we would like to support those Member States which prefer to change the word “*shall*” to “*may*” in a last sentence.

Art. 44h – as it was mentioned many times from our side, we consider Dublin offsets as an interesting tool which could be useful and a suitable alternative option for Member States that do not see relocations as the only/preferred element of solidarity. We would like to remind that we have been in a favour of voluntary use of these compensations during the discussions so far. Thus, we would prefer to have Dublin offsets as one of the type of solidarity measures, which are a part of Solidarity Pool as mentioned in Art. 44a(3) rather than a second level of relocation.

Art. 44h(1) – we maintain on our written comment that the decision about the fact, that said tool will be used, should be also on contributing Member State not only on benefitting Member State. It is important, and should primarily be taken into account, that the contributing MS should have decided what procedures/measures it would like to have counted.

Art. 44h(2) – as explained by SE PRES during the last AWP, by contributing Member States in paragraph 2, it is meant all “*the contributing Member States*” regardless of their solidarity contributions (relocation, direct financial contribution or alternative forms of solidarity). We have doubts whether the Dublin offsets should be mandatory (we still prefer the voluntary nature of this measure). We believe that this approach is departing from the idea of the CZ PRES concept which stated that Member States should have the option of choosing what form of solidarity measures they wish to contribute with. In said case of compulsory takeover of responsibility, the contributing Member State (in particular that which contributes through other forms of solidarity than relocation) loses the possibility to choose freely the form of solidarity contribution. We are of the opinion that said mandatory character should apply only/primary on those contributing Member States that choose relocation as a form of solidarity measure, alternatively we would like to propose to change the word “shall” to “may” (...*the contributing Member States shall may take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the number referred to in Article 7c(2)(a)*).

Art. 44j – scrutiny reservation.

Art. 44k - We understand the aim to have “a simple” distribution key, but we do not consider the proposed distribution key as suitable. Solidarity contributions of Member States should be based on their real possibilities therefore the key should take into account also their **capacities**. The fact the capacities are taken into account within the assessment of migratory pressure, as was mentioned by COM, is not relevant in relation to the mandatory fair share calculated according to the distribution key and should be already taken into consideration within distribution key.

Art. 58a(1) – same comment as we have to Art. 44h(1).

Art. 58a(2) – we can support the proposed time-limit of 30 days. Alternatively, we are also flexible even if there would be proposals for its extension.

Art. 69 third subparagraph – due to our comment in Art. 7c(2) where we are not in favour of setting minimum or maximum thresholds for relocation or direct financial contributions, we consider this addition to be redundant and suggest deleting it.

SPAIN

General remarks

In relation to the debate on specific Articles of the above-mentioned proposal held on 28th February and 1st March, the Spanish delegation stresses its constructive approach and flexibility with regard to the negotiation of this file. Spain remains committed to facilitate the progress on the discussions of this legal instrument as an essential piece of the Pact on Migration and Asylum in order to conclude the negotiations of all the files thereof before the end of the legislative term as agreed with the European Parliament in the joint Roadmap. Progress on all the files should be based on the principle of solidarity and fair-sharing of responsibility.

The Spanish AWP Delegation would like to thank the Swedish Presidency for their invaluable and practical work and efforts for achieving concrete progress and for including several proposals from our Delegations in the new compromise text, notwithstanding the need to always bear in mind the interdependency of this Regulation with the other legislative proposals of the Pact under negotiation, particularly the APR and the Crisis and Force Majeure Regulation.

The following specific remarks refer to the Articles examined during the said Asylum Working Party meeting, without prejudice to previous comments made on Articles that were not examined during this meeting. In case no further negotiation takes place on this file in this forum, Spain reserves its position and the possibility to send written comments on Part II, especially the Articles on the criteria for determining the Member State responsible.

Specific remarks

Definitions:

- **Article 2(w) and (wa).** Definitions of *migratory pressure* and *significant migratory situation*. Spain still raises concerns on the relation established in (w) between the burden on a Member State and *the overall situation in the Union*. This would require further clarification.

The comprehensive approach: Articles 3, 4, 5, 7 y 6a

- **Article 3.** Regarding the definition or the comprehensive approach to asylum and migration management, we support option A as the new wording for this Article.

- **Article 4.** Regarding the deletion of Article 4 and its transfer to the recitals, we support keeping this Article as it stands now, because the integrated policy-making can be better guaranteed with a stronger obligation stated in the set of Articles rather than in the recitals. Nevertheless, we could be flexible accepting its inclusion in the recitals. In any case, the support by Union Agencies should only take place under the request of Member States.

- **Article 5(-1).** We would rather prefer to maintain this Article in the operational part of the text, as this is the first time it is settled that migration should be managed based on the principle of sharing responsibility. This provision is in line with the conclusions of the special European Council of 9th February 2023, which state that *the migration situation [...] is a European challenge that requires a European response*. Notwithstanding the above, we can be flexible supporting the inclusion of the principle in the recitals.

However, in order to align it with Article 80 TFEU, we would suggest the following alternative wording:

The principle of solidarity and fair sharing of responsibility shall govern the Union policies in the area of asylum and migration, including its financial implications.

This principle be based on the premise that the EU as a whole and its Member States share the responsibility to manage migration and asylum, governed by the set of common rules included in the Common European Asylum System and other relevant Union legal instruments on migration and asylum.

- **Article 6.** Spain states its preference for option A (removing paragraphs 1 and 2 from the text) avoiding duplication with the European Migration Management Report in Article 7.a., following the criteria of the Council Legal Service. In case paragraphs 1 and 2 were not removed, we would like to eliminate the reference to guidelines developed by the Commission foreseen in paragraph 7, and their reference in paragraph 3 (*taking into account the guidelines developed pursuant to paragraph 7*).

- **Article 7.** Cooperation with third countries to facilitate return and readmission. Provisions of Article 7.1 are redundant and coincident with those established in Article 25.a of the Community Code on visas, so we consider this paragraph unnecessary. In case the wording in paragraph 1 is kept, we propose adding reference to Member States at the end of paragraph 1. The overall relations of both the Union and the individual Member States should be taken into consideration when identifying the relevant measures. Wording should be then as follows:

*1. Where the Commission, on the basis of the analysis carried out in accordance with Article 25(a)(2) or (4) of Regulation (EU) No 810/2009 of the European Parliament and of the Council and of any other information available from Member States, as well as from Union institutions, bodies, offices and agencies, considers that a third country is not cooperating sufficiently on the readmission of illegally staying third-country nationals, and without prejudice to Article 25(a)(5) of that Regulation, it shall submit a report to the Council including, where appropriate, the identification of any measures which could be taken to improve the cooperation of that third country as regards readmission, taking into account the Union and **Member States'** overall relations with the third country*

- **Article 6a.** We have no objections to the new wording of paragraph 1.

Annual Migration Management Cycle. Article 7a-7d and art. 69

Spain supports the main elements established in Articles 7a-7d. Nevertheless, the following specific remarks should be taken into consideration:

- **Article 7a.1.** Spain supports to maintain the issuance of the European Migration Management Report on a yearly basis. Shorter periods would imply additional workload for national Administrations, the Commission and other institutions. In addition, the several steps foreseen until the finalization of the report allow for adjustments thereto. At the same time, according to Article 7.d, the High-Level and the Technical-Level migration forum may be convened on an extraordinary basis where the situation so requires.

Spain also agrees to the new wording of this paragraph.

- **Article 7a.2.** Spain welcomes the inclusion of our proposal on the Member States' decision-making on the solidarity pledges. The Commission Report and the Recommendation thus remain only as an information tool which complements the national tools and sources of information.

- **Article 7a.5.** Spain supports the deletion of *where appropriate*. Consultations to Member States shall take place in any case in order to follow a needs-based approach.

- **Article 7b (Title).** In order to assess individually each of the possible migratory situations a Member State may face, the word "*and*" should be replaced by "*or*", *as it is already done in Article 7b.1.*

*Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure **or** a significant migratory situation.*

- **Article 7b.** we present the following remarks:

- (ba) Spain supports the addition of this new paragraph as it reflects the pressure of beneficiaries of temporary protection in the migratory situation of the UE.

- (f). In accordance with our position regarding the take back procedures, Spain suggests that the reference to *notifications* should be replaced by a reference to "*requests*" as follows:

*(f) the number of incoming and outgoing take charge and take back **requests** in accordance with Articles 29 and 31;*

- (j) In order to reflect the specific migratory pressure of persons disembarked, both spontaneously and following a search and rescue operation, and in order to avoid double counting of applications for international protection, our delegation suggests to eliminate the last sentence of paragraph (j) as follows:

*(j) the number and nationality of third-country nationals disembarked, **including those** following search and rescue operations [...];*

- Spain also deems relevant to take into account within this Article 7b.1 the number of statelessness applications, as it could be a significant number for some Member States as it is the case of Spain. Thus, a new letter (na) could be added as follows:

(na) the number of applications for statelessness recognition.

- **Article 7b.1.m.** The reference to *final decisions* concerns a category of data with difficulties to be measured and collected, in need of internal coordination between different administrative units and the judiciary and with a high risk of data duplication. Spain proposes to remove this component from the list.

- **Article 7c.1.** In Spain's view, migratory situation should be addressed in an *effective*, rather than a *balanced* manner. Furthermore, the needs-based approach should guide the mechanism. Therefore, Spain still suggests the following wording:

1. Each year, based on the Report referred to in Article 7a, the Commission shall adopt a Recommendation regarding the establishment of the Solidarity Pool and identifying the measures from the Permanent EU Toolbox necessary to address the migratory situation in the upcoming year in an effective manner, aiming at satisfying the needs of the concerned Member States.

- **Article 7c.2.** The identification of the annual numbers for relocations and for direct financial contributions should reflect the migratory situation, pressures and needs of a given year. Therefore, taking into consideration the information which the Commission will have at its disposal, the annual number could be defined by using a formula, even if deemed as indicative, which would take into account the number of arrivals, average recognition rates and the return rates. Applying that formula would render, for the sake of flexibility, the minimum threshold unnecessary. In addition, paragraph 3 foresees that a lower number than the minimum threshold could, in exceptional situations, be established, voiding the threshold of its minimum character. In addition, the Union's shared responsibility constitutes a principle enshrined in the Treaties which should be respected and guaranteed. Therefore, focus should be put on identifying the measures and the level of solidarity required to ensure the application of the fair-share principle.

In this regard, the following wording is suggested:

The Recommendation shall identify the annual numbers for relocations and for direct financial contributions. The annual numbers for relocations shall be calculated on the basis of a formula which shall take into account the overall number of arrivals, the average recognition rates as well as the average return rates.

*When identifying the **level of solidarity balancing the Union** shared responsibility, the Commission shall take into account relevant qualitative and quantitative criteria.*

In this sense, consequential amendments should be made on Article 69.

In any case, Spain could be flexible in this Article, as far as equivalent rules apply to the border procedure and responsibility offsets procedure.

Solidarity Pool and EU Migration Support (44a –44k, 58a, 2(w) and (wa))

- **Article 44a.3a.** Spain supports the new version of Article 44a 3, as it clarifies solidarity measures of the Solidarity Pool. However, beneficiaries of international protection should not be included in the scope of relocations provided that there are eligible candidates from the other categories. Notwithstanding the foregoing, Spain could be flexible in this point if the possibility of relocate beneficiaries of international protection remains only in agreements between Member States.

Regarding paragraph (ii), we cannot support the possible limitation of the category *illegally staying third-country nationals or stateless persons* to those under a purpose of return, so we propose to delete the wording *for the purpose of return*:

Therefore, Spain suggests the following amendments:

3. *The Solidarity Pool shall consist of the following types of solidarity measures, which shall be considered of equal value and address the needs of benefitting Member States:*

(a) *relocation in accordance with Articles 57 and 58:*

(i) [...]

(ii) *where agreed by the contributing and benefitting Member States, of beneficiaries of international protection who have been granted international protection less than three years prior to the adoption of the Council decision establishing the Solidarity Pool, or for the purpose of return of illegally staying third-country nationals or stateless persons.*

- **Article 44b.2.** Spain supports the compulsory nature of the fair-share principle.

- **Article 44c.2.** Spain does not support the new wording in this Article, as it is implying the idea that the Toolbox and the Solidarity Pool are sequential and subordinated resources. Furthermore, it projects a negative focus on the need to use the Solidarity Pool. Therefore, the Spanish delegation proposes to maintain previous version of the wording.

- **Article 44.d.2.b.** Following what has been said for Article 44.c.2, Spain proposes to maintain previous version of the wording.

- **Article 44.d.4.** Spain thanks the partial inclusion of our proposal for this Article but still considers that, for the sake of transparency, the submission of the report by the Commission to the Council should take place in all cases, not only when it results in a positive assessment, but also when it is a negative one. Thus, we still suggest the following wording:

The Commission shall submit its assessment to the Council (and the European Parliament) without delay after the Commission received the notification and convene the Technical-Level Migration Forum after five days of the submission of its assessment to the Council. The Commission shall not convene the Technical-Level EU Migration Forum where the Council has objected to the assessment within five days of the submission by the Commission.

- **Art 44.e.** As already mentioned in Article 7.c.1, effectiveness and needs-based approach, rather than balance, should be the driving principles regarding the operationalization of the solidarity measures. That is why the Spanish delegation proposes to use the expression of *effective manner* instead of *balanced manner*, resulting in the following text for paragraph 1:

*1. In the Technical-Level EU Migration Forum, all Member States shall cooperate among themselves and with the Commission to ensure an effective operationalisation of the Solidarity Pool in an **effective** manner in the light of the needs identified and assessed and the solidarity contributions available.*

Spain also expresses its gratitude for including the reference to contributing and benefitting Member States in paragraph 5. Although it should be underlined that the new proposal includes the word *available* in reference to relocation candidates (*available relocation candidates*), the Spanish delegation would like to express our doubts regarding this adjective. In our understanding, it could lead to a reduction of relocations. The reference to relocation candidates is already clear enough and therefore the term *available* adds no value. Thus, the Spanish delegation would like to eliminate this word from the text resulting in the following wording: [...] *Member States contributing with and benefitting from relocations may express reasonable preferences in light of the needs identified for the profiles of relocation candidates and a potential planning for the implementation of their solidarity contributions.* [...]

- **Art 44 fa.** Spain considers appropriate the distinction between the two procedures stated in Articles 44f and 44fa in order to having a clearer picture in practical terms. Our main concern in case of full or partial reduction of responsibility refers to the risk that the use of these procedures could pose to the core of the principle of solidarity and the quantitative contributions from the Member States. Specific guarantees should be implemented to face this risk.

- **Art. 44.h** Spain welcomes the new title for Article 44h. We think that the expression *responsibility offsets* is more appropriate than *Dublin offsets*, in line with previous comments. The Spanish delegation considers *responsibility offsets* as a second-level mechanism to be used in the cases foreseen in this Article, including its compulsory procedure.

- Responsibility offsets should be triggered in cases where the solidarity contributions have not reached the objective set in the Recommendation. This offsetting should take place regardless of the type of contribution and therefore should also apply to cases where the financial contributions have not fulfilled the annual objective. Offsetting should be activated when the individual Member States have not contributed according to their fair-share.

- The word *contributing* could be added in paragraph 1 to recognize possibility of those Member States to request the responsibility offsetting. Also the 75% percentage could be reduced if an agreement between Member States is reached.

Additionally, the *responsibility offsets* should apply in relation to the annual target set out in the Recommendation foreseen in Article 7.c, instead of being set out in data of Article 7.c.2. Two reasons justify this amendment: firstly, to ensure the coherence with our contributions to that Article which suggest deleting the minimum thresholds; secondly, even if those thresholds remained in the text, the offsets, as a mechanism to close existing fair-sharing of responsibility gaps, should be established in accordance with the migratory pressures and the needs identified for the given year and not to an arbitrary number. They should be a mirror of the relocation needs and fill the gap which was not satisfied with the pledging exercise.

Finally, Article 44.h.3.e) seems unnecessary as the obligations under the Eurodac Regulation are anyhow compulsory and all Member States are obliged to fulfill them. Potential non-compliance with these obligations should be dealt with the already existing EU procedures. Therefore, we propose to delete this reference.

In light of the above, the following amendments could be proposed:

Article 44h *Responsibility* offsets

1. Where the contributions to the Solidarity Pool have reached 75% of the Recommendation referred to in Article 7c, a benefitting *or contributing* Member State may request the other Member States to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a.

2. Where, following the meeting referred to in Article 44g, the contributions to the Solidarity Pool are below the number referred to in the Recommendation mentioned in *Article 7c*, the contributing Member States shall take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the number referred to in Article 7c.

[...]

3. This Article shall only apply where:

- a) the applicant is not an unaccompanied minor;
- b) the benefitting Member State was determined as responsible for examining the application for international protection on the basis of the criteria set out in Articles 19-23;
- c) the transfer time limit set out in Article 29(1) has not yet expired;
- d) the applicant has not absconded from the contributing Member State;
- *e) where applicable, the benefitting Member State has fulfilled its obligations pursuant to Regulation (EU) XXX/XXX [the Eurodac Regulation];*
- f) the person is not a beneficiary of international protection;
- g) the person is not a resettled or admitted person.

- **Article 44i.** We agree to the new wording on paragraphs 1, 3 and 4.

- **Art 58a.2.2.** In line with the comments on Article 44h, Spain suggests indicating that the number of *responsibility offsets* should be related to the unfulfilled number of relocations as established in the Recommendation. In addition, Spain proposes to delete or reduce the possibility to lower the amount requested by the benefiting Member States, since the whole responsibility offsetting could otherwise be rendered void of purpose. The time limits in this Article should not be longer than 15 days. Failure to reply within this timeframe should tantamount to accepting the request.

Having regard to the above, amendments are proposed as follows:

Article 58a Procedure for responsibility Offsets under Article 44h(1)

*1. Where a benefiting Member State may request another Member State to take responsibility for examining a number of applications for international protection pursuant to Article 44h(1), it shall transmit its request to the contributing Member State and include the number of applications for international protection to be taken responsibility for instead of relocations **up to the number referred to in the Recommendation mentioned in Article 7c.***

*2. The contributing Member State shall give a decision on the request within **15** days of receipt of the request. **Failure to reply within the established timeframe shall tantamount to accepting the request.***

OR

*2. The contributing Member State shall give a decision on the request within **15** days of receipt of the request **accepting to take responsibility for examining, at least, 75% of applications for international protection requested by the benefiting Member State. Failure to reply within the established timeframe shall tantamount to accepting the request.***

The Member State which has accepted a request pursuant to paragraph 2 shall identify the individual applications for international protection for which it takes responsibility for and shall indicate its responsibility pursuant to Article XX of Regulation (EU) XXX/XXX [Eurodac Regulation].

NETHERLANDS

NL refers first of all to what it raised orally in relation to the articles discussed during the AWP of 28 February/1 March 2023. In these written comments, NL would like to make a concrete text proposal (typed in bold and italics) for Article 7b.

Article 7b : Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure and a significant migratory situation

1. (...)

(l) the number of third-country nationals or stateless persons who have been granted international protection, in accordance with Regulation XXX/XX Qualification Regulation;

(la) The number of applications for family reunification with a person granted international protection;

(...)

Explanation

NL suggests adding another element to the enumeration of Article 7b, which deals with measuring migration pressure in the EU and per Member State: The number of applications for family reunification with a person granted international protection. Assessing these applications requires capacity of the competent authorities and involves the provision of facilities in case of a positive decision.

PORTUGAL

PT maintains a scrutiny reservation on the whole AMMR proposal and thus also for all the new amendments made in the current text. While maintaining the overall comments sent on the 27th of January, please find below some additional remarks.

Article 6a

Regarding 2(d), we have concerns regarding the concept of “adaptable responsibility”, which we consider to be vague. On the other hand, the wording seems to imply that there is the possibility of other derogations in addition to those provided for in the Instrumentalization Regulation and Crises and Force Majeure Regulation. In this sense, we prefer the elimination of the term "including".

On paragraph (f) we propose to replace “enhanced return actions” by “enhanced return activities”.

Article 44h

In general terms, we consider responsibility offsets as an interesting instrument that could provide an additional effective solidarity response to the MS under migratory pressure. In paragraph 1, PT supports that contributing MS should also have (at least) the possibility to activate this mechanism.

ROMANIA

We reiterate that we maintain the **scrutiny reservation** on the Proposal, showing flexibility during the negotiations.

- **Article 7a paragraph (6) and (7)** – We agree with the changes to the text, but we still consider that the deadlines set out in paragraphs 6 and 7 should be as close as possible to the end of the year for which the assessment is made. We indicate the need to uniformize the article by using the *text each year* in paragraphs 6 and 7.
- **Article 7b paragraph (1)** – We agree with the amendments made to the text with the mention that in **letter f** we propose the use of *take back request* to the detriment of *take back notifications*, and in **letter k and n** we consider that the previous text form should be maintained.
- **Article 7d** – Given the important role of the two migration Forums, we indicate the opportunity to draw up separate provisions detailing their organization, composition and functioning. What will be the level of representation in these Forums, namely what is meant by the wording: *at a level sufficiently senior to carry out the tasks conferred on the Forum?*
- **Article 44a** – We further support that this pool of solidarity should be applied only in the context where the permanent toolbox does not ensure the need to reduce the migratory pressure on some Member States.

At the same time, we continue to support that the transfer under the solidarity pool should only takes into account applicants for international protection. We can show flexibility in terms of also relocating beneficiaries of international protection.

- **Article 44f** – We agree with the amendments made to the text with the mention that in *paragraph 6* we support the reduction of the term to 2 weeks.
- **Article 44g** – We support the previous form of the text.

- **Article 44h paragraphs (1), (2) an (3) letter b** – We further support that, in order to ensure that the contributing Member State can reach its own threshold set out in the Solidarity Pool, it could also take responsibility for analyzing the asylum application for which the beneficiary Member State could be determined as responsible. As a result, we indicate that it is appropriate to amend the text as follows: *the benefitting MS could have been or has been determined as the responsible MS*. We ask for this supplement in case there would be cases for which the transfer MS could submit requests to the beneficiary MS – application of the current Article 17.2 of the Dublin III Regulation.

Article 4 – Taking into account the previous observations on the WK 13019/2021, we consider that the provisions of this article should be mentioned in the recitals
