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**NOTE**

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From: Presidency  
To: JHA Counsellors (Asylum)

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

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In view of the JHA Counsellors meeting on 18 April, delegations will find in Annex a new version of the Asylum and Migration Management Regulation.

Modifications as compared to the Commission proposal are indicated as follows:

- new text is in **bold**;
- deleted text is in [...];
- new Presidency text since the last version ST 7618/23 is in **bold underlined**;
- new deleted Presidency text since the last version ST 7618/23 is in ~~strikethrough~~;
- recitals are compared to the Commission proposal - new text is marked in **bold underlined** and deleted text is in ~~strikethrough~~.

2020/0279 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on asylum and migration management and amending [...] Regulation (EU) 2021/1147 [...]**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(e) and Article 79(2)(a)(b) and (c) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

Whereas:

- (1) The Union, in constituting an area of freedom, security and justice, should ensure the absence of internal border controls for persons and frame a common policy on asylum, immigration and management of the external borders of the Union, based on solidarity between Member States, which is fair towards third-country nationals.
  - (2) To this end, a comprehensive approach is required with the objective of reinforcing mutual trust between Member States which should bring together policy in the areas of asylum and migration management and towards relations with relevant third countries, recognising that the effectiveness of such an approach depends on all components being **jointly** addressed **jointly** and in an integrated manner.
  - (3) This Regulation should contribute to that comprehensive approach by setting out a common framework for the actions of the Union and of the Member States in the field of asylum and migration management policies, by elaborating on the principle of solidarity and fair sharing of responsibility, **including its financial implications, between the Member States, which governs the policies in area of asylum and migration** in accordance with Article 80 of the Treaty on the Functioning of the European Union (TFEU). **The principle of solidarity and fair sharing of responsibility should be based on the premise that the EU as a whole shares the responsibility to manage migration, in particular in the area governed by the set of common rules included in the Common European Asylum System.**
- (3a)** Member States should therefore take all necessary measures, *inter alia*, to provide access to international protection and adequate reception conditions to those in need, to enable the effective application of the rules on determining the Member State responsible for examining an application for international protection, to return illegally staying third-country nationals, to prevent irregular migration and unauthorised movements between them, and to provide support to other Member States in the form of solidarity contributions, as their contribution to the comprehensive approach.

- (4) The common framework should bring together the management of the Common European Asylum System and that of migration policy. The objective of migration policy should be to ensure the efficient management of migration flows, the fair treatment of third-country nationals **and stateless persons** residing legally in Member States and the prevention of, and enhanced measures to combat, illegal migration and migrant smuggling.
- (5) The common framework is needed in order to effectively address the increasing phenomenon of mixed arrivals of persons in need of international protection and those who are not and in recognition that the challenge of irregular arrivals of migrants in the Union should not have to be assumed by individual Member States alone, but by the Union as a whole. To ensure that Member States have the necessary tools to effectively manage this challenge in addition to applicants for international protection, irregular migrants should also fall within the scope of this Regulation. The scope of this Regulation should also include beneficiaries of international protection, resettled or admitted persons as well as [persons granted immediate protection].
- (6) In order to reflect the whole of government approach and ensure coherence and effectiveness of the actions and measures taken by the Union and its Member States acting within their respective competencies, there is a need for integrated policy-making in the field of asylum and migration management, including both its internal and external components, which is part of the comprehensive approach. **The Union and Member States should ensure, each within their respective competencies, and whilst respecting the applicable law and international obligations, the coherence of asylum and migration management policies, including both the internal and external components of those policies. The Union and Member States, acting within their respective competencies, are responsible for the implementation of asylum and migration management policies.**

- (7) Member States should have sufficient human and financial resources and infrastructure to effectively implement asylum and migration management policies and should ensure appropriate coordination between the relevant national authorities as well as with the national authorities of the other Member States **to ensure their asylum, reception and migration system is well prepared and that each component has adequate capacity.**
- (8) ~~Taking a strategic approach, the Commission should adopt a European Asylum and Migration Management Strategy on the implementation of asylum and migration management policies. The Strategy should be based on relevant reports and analyses produced by Union agencies and on the national strategies of the Member States.~~
- (9) **Taking a strategic approach, Member States should have national strategies, which National strategies of the Member States** should include information on contingency planning, **including as provided for under the Directive (EU) No XXX/XXX/EU [Reception Conditions Directive]** and on the implementation of the principles of integrated policy-making and of solidarity and fair sharing of responsibility of this Regulation and legal obligations stemming therefrom at national level. **To ensure that the national strategies contain each Member State's strategy on specific core elements, a common template should be established.**
- (10) In order to ensure that an effective monitoring system is in place to ensure the application of the asylum acquis, the results of the monitoring undertaken by the European Union Asylum Agency and Frontex, of the evaluation carried out in accordance with Council Regulation No **2022/922 1053/2013** as well as those carried out in line with Article 7 of Regulation (EU) XXX/XXX [*Screening Regulation*] should also be taken into account in these strategies.

(11) Bearing in mind the importance of ensuring that the Union is prepared and able to adjust to the developing and evolving realities of asylum and migration management, the Commission should annually adopt a **European Migration Management Report assessing the situation along all migratory routes and in all Member States, serving as an early warning and awareness tool for the Union in the area of migration and asylum, and that provides a strategic situational picture and forward-looking projections for the coming year setting out the likely evolution of the migratory situation and the preparedness of the Union and the Member States to respond and adapt to it.**

**(11a) The Report should be prepared in consultation with Member States and relevant Union agencies. The Report should also include information about the level of preparedness in the Union and in the Member States and the possible impact of the forecasted situations. For the purpose of the Report, the Commission should use existing reporting mechanisms, primarily the Integrated Situational Awareness and Analysis (ISAA), provided that the Integrated Political Crisis Response is activated, and Migration and Crisis Blueprint reports<sup>3</sup>. Information provided by other relevant sources, including the European Migration Network (EMN), the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM)<sup>4</sup> should also be taken into consideration. The Commission should only request additional information to Member States when not available through those reporting mechanisms, in order to avoid a duplication of efforts. The Report should also include the results of the reporting on monitoring foreseen in the national strategies and should propose improvements where weaknesses are apparent.**

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<sup>3</sup> Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration (Migration Preparedness and Crisis Blueprint)

<sup>4</sup> UNHCR - United Nations High Commissioner for Refugees, IOM - International Organization for Migration

(12) In order to ensure that the necessary tools are in place to assist Member States in dealing with challenges that may arise due to the presence on their territory of third-country nationals or stateless persons that are vulnerable applicants for international protection, regardless of how they crossed the external borders, the Report should be accompanied by a Decision indicating also indicate whether the said Member States are under migratory pressure, at risk of migratory pressure during the upcoming year or facing a significant migratory situation faced with such challenges. Those Member States under migratory pressure should ~~also~~ be able to rely on the use of the solidarity measures included in the Solidarity Pool 'solidarity pool' for the relocation of vulnerable persons.

(12a) In order to provide predictability to Member States under migratory pressure and contributing Member States, the Report and the Decision should be accompanied by a Recommendation identifying concrete annual solidarity measures and their numerical scale likely to be needed for the upcoming year at Union level, and measures needed under the Permanent EU Toolbox necessary to address the migratory situation. These annual numbers for relocations and for direct financial contributions, should at minimum correspond to annual minimum thresholds for relocation and direct financial contributions, which should be set out in this Regulation to ensure the predictable planning by contributing Member States and to provide minimum guarantees in terms of relocations and financial support for the benefitting Member States. For practical reasons, alternative solidarity measures should not be included in these minimum thresholds. However, their financial value should be assessed and applied, recognising that the various types of solidarity are of equal value. Where it deems necessary, the Commission identifies higher annual numbers for relocation or direct financial contributions, as well as other forms of solidarity needed to address challenges faced by the specific Member State. In the same vein, in exceptional situations, where there would be no projected need for solidarity for the coming year or a possibility to implement it, the Commission should take this into account when identifying the annual numbers.

**(12b) Contributing Member States should be able to also provide alternative solidarity measures, which should focus primarily on capacity building, services, skilled personnel, facilities and technical equipment in fields such as registration, reception, border management, screening, detention and return. Alternative measures should have practical and operational value. Such measures should be identified by the Commission in consultation with the concerned Member States. Member States would then be able to pledge such measures at the High Level Migration Forum.**

**12(c) The Recommendation of the Commission regarding the establishment of the Solidarity Pool should not be made public until the adoption of the Council implementing act establishing the Solidarity Pool. Such classification will facilitate the decision-making process and avoid incentives for irregular migration into the Union, unauthorized movements of third country national and stateless persons between Member States and to support the smooth functioning of the rules for determining responsibility for examining applications for international protection.**

- (13) For the effective implementation of the common framework and to identify gaps, address challenges and prevent the building up of migratory pressure, the Commission should monitor and regularly report on the migratory situation.
- (14) An effective return policy is an essential element of a well-functioning system of Union asylum and migration management, whereby those who do not have the right to stay on Union territory should return. Given that a significant share of applications for international protection may be considered unfounded, it is necessary to reinforce the effectiveness of the return policy. By increasing the efficiency of returns and reducing the gaps between asylum and return procedures, the pressure on the asylum system would decrease, facilitating the application of the rules on determining the Member State responsible for examining those applications as well as contributing to effective access to international protection for those in need.



- (15) To strengthen cooperation with third countries in the area of return and readmission of illegally staying third-country nationals, it is necessary to develop a new **process mechanism**, including all relevant EU policies and tools, to improve the coordination of the different actions in various policy areas other than migration that the Union and the Member States may take for that purpose. That **process mechanism** should build on the analysis carried out in accordance with Regulation (EU) 810/2019 of the European Parliament and of the Council<sup>5</sup> or of any other information available, and take into account the Union's overall relations with the third country. ~~That mechanism should also serve to support the implementation of return sponsorship.~~
- (16) In order to ensure a fair sharing of responsibility and a balance of effort between Member States, a solidarity mechanism should be established which is effective and ensures that applicants have swift access to the procedures for granting international protection. Such a mechanism should provide for different types of solidarity measures and should be flexible and able to adapt to the evolving nature of the migratory challenges facing a Member State.
- (17) Given the need to ensure the **effective implementation smooth functioning** of the solidarity mechanism established in this Regulation, **representatives of the Member States at the ministerial or other senior political level should be convened in a High-Level EU Migration Forum, which should consider the Report, Decision and Recommendation and take stock of the overall situation and come to a conclusion on the solidarity measures needed for establishment of the Solidarity Pool and where needed other migratory response measures** ~~a Solidarity Forum comprising the representatives of all Member States should be established and convened by the Commission. In order to ensure the smooth functioning and operationalisation of the Solidarity Pool, a Technical Level EU Migration Forum comprising sufficiently senior level representatives, such as high level officials of the relevant authorities of the Member States, should be convened.~~

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<sup>5</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009, p. 1.

- ~~(18) Given the specific characteristics of disembarkations arising in the context of search and rescue operations conducted by Member States or private organisations whether under instruction from Member States or autonomously in the context of migration, this Regulation should provide for a specific process applicable to people disembarked following those operations irrespective of whether there is a situation of migratory pressure.~~
- ~~(19) Given the recurring nature of disembarkations from search and rescue operations on the different migratory routes, the annual Migration Management Report should set out the short term projections of disembarkations anticipated for such operations and the solidarity response that would be required to contribute to the needs of the Member States of disembarkation. The Commission should adopt an implementing act establishing a pool of solidarity measures ('the solidarity pool') with the aim of assisting the Member State of disembarkation to address the challenges of such disembarkations. Such measures should comprise applicants for international protection that are not in the border procedure or measures in the field of strengthening of capacity in the field of asylum, reception and return, or operational support, or measures in the external dimension.~~
- ~~(20) In order to provide a timely response to the specific situation following disembarkations from search and rescue operations, the Commission, with the assistance of Union Agencies, should facilitate the swift relocation of eligible applicants for international protection who are not in the border procedure. Under the coordination of the Commission, the European Union Asylum Agency and the European Border and Coast Guard Agency should draw up the list of eligible persons to be relocated indicating the distribution of those persons among the contributing Member States.~~

- ~~(21) — Persons disembarked should be distributed in a proportionate manner among the Member States.~~
- ~~(22) — The overall contribution of each Member State to the solidarity pool should be determined through indications by Member States of the measures by which they wish to contribute. Where Member States contributions are insufficient to provide for a sustainable solidarity response the Commission should be empowered to adopt an implementing act setting out the total number of third country nationals to be covered by relocation and the share of this number for each Member State calculated according to a distribution key based on the population and the GDP of each Member State. Where the indications from Member States to take measures in the field of capacity or the external dimension would lead to a shortfall of greater than 30% of the total number of relocations identified in the Migration Management Report, the Commission should be able to adjust the contributions of these Member States which should then contribute half of their share identified according to the distribution key either by way or relocation, or when so indicated, through return sponsorship.~~
- ~~(23) — In order to ensure that support measures are available at all times to address the specific situation of disembarkations from search and rescue operations, where the number of disembarkations following search and rescue operation have reached 80% of the solidarity pools for one or more of the benefitting Member States, the Commission should adopt amended implementing acts increasing the total number of contributions by 50%.~~

- ~~(24) The solidarity mechanism should also address situations of migratory pressure in particular for those Member States which due to their geographical location are exposed to or likely to be exposed to migratory pressure. For this purpose, the Commission should adopt a report identifying whether a Member State is under migratory pressure and setting out the measures that could support that Member State in addressing the situation of migratory pressure.~~
- (25) When assessing whether a Member State is under migratory pressure, **at risk of migratory pressure or facing a significant migratory situation**, the Commission, based on a broad **quantitative and** qualitative assessment, should take account of a broad range of factors, including the number of **applications for international protection asylum applicants**, irregular border crossings, return decisions issued and enforced, and relations with relevant third countries. The solidarity response should be designed on a case-by-case basis in order to be tailor-made to the needs of the Member State in question.
- ~~(26) Only persons who are more likely to have a right to stay in the Union should be relocated. Therefore, the scope of relocation of applicants for international protection should be limited to those who are not subject to the border procedure set out in Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*].~~

~~(27) The solidarity mechanism should include measures to promote a fair sharing of responsibility and a balance of effort between Member States also in the area of return. Through return sponsorship, a Member State should commit to support a Member State under migratory pressure in carrying out the necessary activities to return illegally staying third country nationals, bearing in mind that the benefitting Member State remains responsible for carrying out the return while the individuals are present on its territory. Where such activities have been unsuccessful after a period of 8 months, the sponsoring Member States should transfer these persons in line with the procedures set out in this Regulation and apply Directive 2008/115/EC; if relevant, Member States may recognise the return decision issued by the benefitting Member State in application of Council Directive 2001/40<sup>6</sup>. Return sponsorship should form part of the common EU system of returns, including operational support provided through the European Border and Coast Guard Agency and the application of the coordination mechanism to promote effective cooperation with third countries in the area of return and readmission.~~

~~(28) A mechanism should be set out for the Member States identified in the Decision as being under migratory pressure or those that consider themselves as so being, to make use of the Solidarity Pool. Those Member States that have been identified in the Decision as being under pressure should be able to do it in a simple manner by merely informing the Commission of its intention to use the Solidarity Pool, while the Member State that consider themselves as being under migratory pressure should provide a duly substantiated reasoning of the existence and extent of the migratory pressure and other relevant information in the form of notification. Member States should notify the type of solidarity contributions that they will take through the completion of a solidarity response plan.~~

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<sup>6</sup> ~~Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149, 2.6.2001, p. 34.~~

**(28a)** Where Member States are themselves benefitting Member States they should not be obliged to **implement their pledged contributions to the Solidarity Pool** ~~make solidarity contributions to other Member States~~. At the same time, where a Member State **is facing or considers itself as facing migratory pressure or a significant migratory situation, which might hinder its possibility to implement its pledged contribution due to challenges this Member State needs to address, it should be possible for that Member State to request a full or partial reduction of its pledged contribution** ~~has incurred a heavy migratory burden in previous years, due to a high number of applications for international protection it should be possible for a Member State to request a reduction of its share of the solidarity contribution to Member States under migratory pressure where such contribution consists of relocation or return sponsorship. That reduction should be shared proportionately among the other Member States taking such measures.~~

~~(29) — Where the Migration Management Report identifies needs in a Member State under migratory pressure in the field of capacity measures in asylum, reception and return or in the external dimension, contributing Member States should be able to make contributions to these needs instead of relocation or return sponsorship. In order to ensure that such contributions are in proportion to the share of the contributing Member State the Commission should be able to increase or decrease of such contributions in the implementing act. Where the indications from Member States to take measures in the field of capacity or the external dimension would lead to a shortfall greater than 30% of the required number of persons to be relocated or subject to return sponsorship, the Commission should be able to adjust the contributions of these Member States in order to ensure that they contribute half of their share to relocation or return sponsorship.~~

~~(30) In order to ensure a comprehensive and effective solidarity response and in order to give clarity to Member States receiving support, the Commission should adopt an implementing act specifying the contributions to be made by each Member State. Such contributions should always be based on the type of contributions indicated by the Member State concerned in the solidarity response plan, except where that Member State failed to submit one. In such cases, the measures set out in the implementing act for the Member State concerned should be determined by the Commission.~~

(31) A distribution key based on the size of the population and of the economy of the Member States should be applied **in accordance with the mandatory fair share principle as a point of reference** for the operation of the solidarity mechanism enabling the determination of the overall contribution of each Member State. **In the operationalisation of the Solidarity Pool, contributing Member States should implement their pledges in proportion to their overall pledge, meaning that each time solidarity is drawn from the pool these Member States contribute according to their fair share.**

**(31a) In addition to the Solidarity Pool, Member States, in particular when under migratory pressure, facing a significant migratory situation or a crisis, as well as the Union, have at their disposal the Permanent EU Migration Support Toolbox. This Toolbox comprises measures that can assist in responding to the needs and alleviating pressure and which are foreseen in the Union acquis or policy tools. In order to ensure that all relevant tools are used effectively to respond to specific migratory challenges, the Commission should have the possibility to identify the necessary measures from the Toolbox, without prejudice to the relevant Union legislation where applicable. Components of the Toolbox can be used in conjunction with the Solidarity Pool.**

- (31b) One of the components of this Toolbox relates to derogations foreseen in the other legal instruments of the asylum acquis and specific to migratory challenges such as situations of crisis and instrumentalisation. These enable the Union to adapt to such challenges.**
- (31c) Responsibility offsets should be introduced as a secondary level solidarity measure. It shifts the responsibility for an application to the contributing Member State and depending whether the relocation pledges reach sufficient thresholds as set in this Regulation, functions on a voluntary as well as mandatory basis. A system of guarantees should be established, to avoid to the extent possible, incentives for irregular migration into the Union , unauthorized movements of third country national and stateless persons between Member States and to support the smooth functioning of the rules for determining responsibility for examining applications for international protection.**
- (31d) While relocations should primarily apply to applicants for international protection, where priority might be given for those most vulnerable, its application should be kept flexible. Given its voluntary nature, contributing and benefitting Member States should have the possibility to express their preferences in terms of persons to be considered. Such preferences should be reasonable in light of the needs identified and the profiles available in the benefitting Member State in order to ensure that the pledged relocations can be effectively implemented.**



~~(32) A Member State should be able to take, at its own initiative or at the request of another Member State, other solidarity measures on a voluntary basis to assist that Member State in addressing the migratory situation or to prevent migratory pressure. Those contributions should include measures aimed at strengthening the capacity of the Member State under pressure or at responding to migratory trends through cooperation with third countries. In addition, such solidarity measures should include relocation of third country nationals that are in the border procedure as well as illegally staying third country nationals. In order to incentivise voluntary solidarity, where Member States make voluntary contributions in the form of relocation or return sponsorship, those contributions should be taken into account in the implementing act provided for in respect of situations of migratory pressure.~~

(33) The Common European Asylum System (CEAS) has been built progressively as a common area of protection based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus ensuring that no person is sent back to persecution, in compliance with the principle of *non-refoulement*. In this respect, and without the responsibility criteria laid down in this Regulation being affected, Member States, all respecting the principle of *non-refoulement*, are considered as safe countries for third-country nationals.

- (34) It is appropriate that a clear and workable method for determining the Member State responsible for the examination of an application for international protection should be included in the Common European Asylum System<sup>7</sup>. That method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.
- (35) This Regulation should be based on the principles underlying Regulation (EU) No 604/2013 of the European Parliament and of the Council<sup>8</sup> while developing the principle of solidarity and fair sharing of responsibility as part of the common framework. To that end, a new solidarity mechanism should enable a strengthened preparedness of Member States to manage migration, to address situations where Member States are faced with migratory pressure and to facilitate regular solidarity support among Member States.
- (36) This Regulation should apply to applicants for subsidiary protection and persons eligible for subsidiary protection in order to ensure equal treatment for all applicants and beneficiaries of international protection, and consistency with the current Union asylum acquis, in particular with Regulation (EU) XXX/XXX [*Qualification Regulation*].

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<sup>7</sup> As set out by the European Council at its special meeting in Tampere on 15 and 16 October 1999.

<sup>8</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31.

- (37) Persons granted [immediate protection] pursuant to Regulation (EU) XXX/XXX [*Regulation addressing situations of crisis and force majeure in the field of asylum and migration*] should continue to be considered as applicants for international protection, in view of their pending (suspended) application for international protection within the meaning of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]. As such, they should fall under the scope of this Regulation and be considered as applicants for the purpose of applying the criteria and mechanisms for determining the Member State responsible for examining their applications for international protection or the procedure for relocation as set out in this Regulation.
- (38) In order to limit unauthorised movements and to ensure that the Member States have the necessary tools to ensure transfers of beneficiaries of international protection who entered the territory of another Member State than the Member State responsible without fulfilling the conditions of stay in that other Member State to the Member State responsible, and to ensure effective solidarity between Member States, this Regulation should also apply to beneficiaries of international protection. Likewise, this Regulation should apply to persons resettled or admitted by a Member State in accordance with Regulation (EU) XXX/XXX [*Union Resettlement Framework Regulation*] or who are granted international protection or humanitarian status under a national resettlement scheme.

~~(39) At the same time, and given the importance of facilitating the full integration of beneficiaries of international protection in the Member State of residence, the prospect of obtaining long term resident status in a shorter period of time should be provided for. Beneficiaries of international protection should be able to obtain long term resident status in the Member State which granted them international protection after three years of legal and continuous residence in that Member State. As regards other conditions to obtain the status, beneficiaries of international protection should be required to fulfil the same conditions as other third country nationals. Council Directive 2003/109/EC<sup>9</sup> should therefore be amended accordingly.~~

(40) For reasons of efficiency and legal certainty, it is essential that the Regulation is based on the principle that responsibility is determined only once, unless the person concerned has left the territory of the Member States in compliance with a return decision or removal order.<sup>10</sup>

(41) Directive XXX/XXX/EU [*Reception Conditions Directive*] of the European Parliament and of the Council<sup>11</sup> should apply to the procedure for the determination of the Member State responsible as regulated under this Regulation, subject to the limitations in the application of that Directive.

(42) Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] of the European Parliament and of the Council<sup>12</sup> should apply in addition and without prejudice to the provisions concerning the procedural safeguards regulated under this Regulation, subject to the limitations in the application of that Regulation.

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<sup>9</sup> ~~Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long term residents, OJ L 016, 23.1.2004, p. 44.~~

<sup>10</sup> ~~Recital to be aligned later with Article 27(1a))~~

<sup>11</sup> Directive XXX/XXX/EU (full text)

<sup>12</sup> Directive XXX/XXX/EU (full text)

- (43) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.
- (44) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Charter of Fundamental Rights of the European Union, respect for family life should be a primary consideration of Member States when applying this Regulation.
- (45) In order to prevent that persons who represent a security risk are transferred among the Member States, it is necessary to ensure that the Member State where an application is first registered does not apply the responsibility criteria or the benefitting Member State does not apply the relocation procedure where there are reasonable grounds to consider **that** the person **poses a security risk** ~~concerned a danger to national security or public order~~.
- (46) The processing together of the applications for international protection of the members of one family by a single Member State should make it possible to ensure that the applications are examined thoroughly, the decisions taken in respect of them are consistent and the members of one family are not separated.

- (47) [The definition of a family member in this Regulation should include the sibling or siblings of the applicant. Reuniting siblings is of particular importance for improving the chances of integration of applicants and hence reducing unauthorised movements. The scope of the definition of family member should also reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The definition should therefore include families formed outside the country of origin, but before their arrival on the territory of the Member State. This limited and targeted enlargement of the scope of the definition is expected to reduce the incentive for some unauthorised movements of asylum seekers within the EU.]
- (48) In order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent on account of the applicant's pregnancy or maternity, state of health or old age, should be a binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a family member or relative on the territory of another Member State who can take care of him or her should also become a binding responsibility criterion. In order to discourage unauthorised movements of unaccompanied minors, which are not in their best interests, in the absence of a family member or a relative, the Member State responsible should be that where the unaccompanied minor's application for international protection was first registered, unless it is demonstrated that this would not be in the best interests of the child. [Before transferring an unaccompanied minor to another Member State, the transferring Member State should make sure that that Member State will take all necessary and appropriate measures to ensure the adequate protection of the child, and in particular the prompt appointment of a representative or representatives tasked with safeguarding respect for all the rights to which they are entitled.]<sup>13</sup> Any decision to transfer an unaccompanied minor should be preceded by an assessment of his or her best interests by staff with the necessary qualifications and expertise.

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<sup>13</sup> **To be aligned with Article 13(5)**

- (49) The rules on evidence should allow for a swifter family reunification than until now. It is therefore necessary to clarify that formal proof, such as original documentary evidence and DNA testing, should not be necessary in cases where the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility for examining an application for international protection.
- (50) Where persons are in possession of a diploma or other qualification, the Member State where the diploma was issued should be responsible for examining their application. This would ensure a swift examination of the application in the Member State with which the applicant has meaningful links based on such a diploma.
- (51) Considering that a Member State should remain responsible for a person who has irregularly entered its territory, it is also necessary to include the situation when the person enters the territory following a search and rescue operation. A derogation from this responsibility criterion should be laid down for the situation where a Member State has relocated persons having crossed the external border of another Member State irregularly or following a search and rescue operation. In such a situation, the Member State of relocation should be responsible if the person applies for international protection.
- (52) Any Member State should be able to derogate from the responsibility criteria in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection registered with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation.

- (53) In order to ensure that the procedures set out in this Regulation are respected and to prevent obstacles to the efficient application of this Regulation, in particular in order to avoid absconding and unauthorised movements between Member States, it is necessary to establish clear obligations to be complied with by the applicant in the context of the procedure, of which he or she should be duly informed in a timely manner. Violation of those legal obligations should lead to appropriate and proportionate procedural consequences for the applicant and to appropriate and proportionate consequences in terms of his or her reception conditions. In line with the Charter of Fundamental Rights of the European Union, the Member State where such an applicant is present should in any case ensure that the immediate material needs of that person are covered.
- (54) [In order to limit the possibility for applicants' behaviour to lead to the cessation or shift of responsibility to another Member State, rules allowing for cessation or shift of responsibility where the person leaves the territory of the Member States for at least three months during examination of the application or absconds to evade a transfer to the Member State responsible for more than 18 months should be deleted. The shift of responsibility when the time limit for sending a take back notification has not been respected by the notifying Member State should also be removed in order to discourage circumventing the rules and obstruction of procedure. In situations where a person has entered a Member State irregularly without applying for asylum, the period after which the responsibility of that Member State ceases and another Member State where that person subsequently applies becomes responsible should be extended, to further incentivise persons to comply with the rules and apply in the first Member State of entry and hence limit unauthorised movements and increase the overall efficiency of the CEAS.]<sup>14</sup>

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<sup>14</sup> **To be aligned later with Article 27(1a) and Article 35**



- (55) A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection unless the applicant has absconded, has not attended the interview without justified reasons or the information provided by the applicant is sufficient for determining the Member State responsible. As soon as the application for international protection is registered, the applicant should be informed in particular of the application of this Regulation, the fact that the Member State responsible for examining his or her application for international protection is based on objective criteria, of his or her rights as well as of the obligations under this Regulation and of the consequences of not complying with them.
- (56) [In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred. The scope of the effective remedy should be limited to an assessment of whether applicants' fundamental rights to respect of family life, the rights of the child, or the prohibition of inhuman and degrading treatment risk to be infringed upon.]<sup>15</sup>

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<sup>15</sup> **To be aligned later with Article 33**

- (57) In order to facilitate the smooth application of this Regulation, Member States should in all cases indicate the Member State responsible in Eurodac after having concluded the procedures for determining the Member State responsible, including in cases where the responsibility results from the failure to respect the time limits for sending or replying to take charge requests, carrying a transfer, as well as in cases where the Member State of first application becomes responsible or it is impossible to carry out the transfer to the Member State primarily responsible due to systemic deficiencies resulting in a risk of inhuman or degrading treatment and subsequently another Member State is determined as responsible.
- (58) In order to ensure the speedy determination of responsibility, the deadlines for making and replying to requests to take charge, for making take back notifications, as well as for making and deciding on appeals, should be streamlined and shortened.
- (59) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality thereby only being allowed as a measure of last resort. In particular, the detention of applicants must be in accordance with Article 31 of the Geneva Convention. The procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. As regards the general guarantees governing detention, as well as detention conditions, where appropriate, Member States should apply the provisions of Directive XXX/XXX/EU [*Reception Conditions Directive*] also to persons detained on the basis of this Regulation.

- (60) Deficiencies in, or the collapse of, asylum systems, often aggravated or contributed to by particular pressures on them, can jeopardise the smooth functioning of the system put in place under this Regulation, which could lead to a risk of a violation of the rights of applicants as set out in the Union asylum *acquis* and the Charter of Fundamental Rights of the European Union, other international human rights and refugee rights.
- (61) In accordance with Commission Regulation (EC) No 1560/2003<sup>16</sup>, transfers to the Member State responsible for examining an application for international protection may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers by providing adequate information to the person concerned and should ensure that supervised or escorted transfers are undertaken in a humane manner, in full compliance with fundamental rights and respect for human dignity, as well as the best interests of the child and taking utmost account of developments in the relevant case law, in particular as regards transfers on humanitarian grounds.
- (62) In order to ensure a clear and efficient relocation procedure, specific rules for a benefitting and a contributing Member State should be set out. The rules and safeguards relating to transfers set out in this Regulation should apply to transfers for the purpose of relocation except where they are not relevant for such a procedure.

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<sup>16</sup> Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 222, 5.9.2003, p. 3.

- (63) To support Member States who undertake relocation as a solidarity measure, financial support from the Union budget should be provided. In order to incentivise Member States to give priority to the relocation of unaccompanied minors a higher incentive contribution should be provided.
- (64) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communication between competent departments, reducing time limits for procedures or simplifying the processing of take charge requests or take back notifications, or establishing procedures for the performance of transfers.
- (65) Continuity between the system for determining the Member State responsible established by Regulation (EU) No 604/2013 and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Regulation (EU) XXX/XXX [*Eurodac Regulation*].
- (66) A network of competent Member State authorities should be set up and facilitated by the European Union Agency for Asylum to enhance practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance.
- (67) The operation of the Eurodac system, as established by Regulation (EU) XXX/XXX [*Eurodac Regulation*], should facilitate the application of this Regulation.

- (68) The operation of the Visa Information System, as established by Regulation (EC) No 767/2008 of the European Parliament and of the Council<sup>17</sup>, and in particular the implementation of Articles 21 and 22 thereof, should facilitate the application of this Regulation.
- (69) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the European Court of Human Rights.
- (70) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>18</sup> applies to the processing of personal data by the Member States under this Regulation. Member States should implement appropriate technical and organisational measures to ensure and be able to demonstrate that processing is performed in accordance with that Regulation and the provisions specifying its requirements in this Regulation. In particular those measures should ensure the security of personal data processed under this Regulation and in particular to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed. The competent supervisory authority or authorities of each Member State should monitor the lawfulness of the processing of personal data by the authorities concerned, including of the transmission to the authorities competent for carrying out security checks.

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<sup>17</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas, OJ L 218, 13.8.2008, p. 60.

<sup>18</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1.

- (71) In order to ensure uniform conditions for the implementation of this Regulation, **certain** implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>19</sup>, **with the exception of of decisions determining whether a Member State is under migratory pressure, at risk of migratory pressure, or facing a significant migratory situation.**
- (72) ~~The examination procedure should be used for the adoption of a standard form for the exchange of relevant information on unaccompanied minors; of uniform conditions for the consultation and exchange of information on minors and dependent persons; of uniform conditions on the preparation and submission of take charge requests and take back notifications; of two lists of relevant elements of proof and circumstantial evidence, and the periodical revision thereof; of a *laissez passer*; of uniform conditions for the consultation and exchange of information regarding transfers; of a standard form for the exchange of data before a transfer; of a common health certificate; of uniform conditions and practical arrangements for the exchange of information on a person's health data before a transfer, and of secure electronic transmission channels for the transmission of requests.~~

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<sup>19</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13.

**(72a) However, as regards decisions relating to the establishment and functioning of the Solidarity Pool, implementing powers should be conferred on the Council in view of the particular features of the system of solidarity provided for by this Regulation, which is based on pledges made by each Member State, exercising full discretion as to the type of solidarity, in the High Level Forum .**

**~~(73) The Commission should adopt immediately applicable implementing acts in duly justified imperative grounds of urgency due to the situation of migratory pressure present in a Member States.~~**

(74) In order to provide for supplementary rules, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of the identification of family members or relatives of an unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State; the elements for assessing a dependency link; the criteria for assessing the capacity of a person to take care of a dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time, **whilst fully respecting.** ~~In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of~~ the best interests of the child as provided for in this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (75) A number of substantive changes are to be made to Regulation (EU) No 604/2013. In the interests of clarity, that Regulation should be repealed.
- (76) The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.
- (77) This Regulation respects the fundamental rights and observes the principles which are acknowledged, in particular, in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the Charter as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. This Regulation should therefore be applied accordingly.
- (78) Since the objective of this Regulation, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, and the establishment of a solidarity mechanism to support Member States in addressing a situation of migratory pressure, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.



- (79) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that Parts III, V and VII of this Regulation constitute amendments within the meaning of Article 3 of the Agreement concluded between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention<sup>20</sup>, Denmark has to notify the Commission of its decision whether or not to implement the content of such amendments at the time of the adoption of the amendments or within 30 days hereafter.
- (80) ~~[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified their wish to take part in the adoption and application of this Regulation]~~

**OR**

- (81) ~~[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]~~

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<sup>20</sup> OJ L 66, 8.3.2006, p. 38

- (82) [As regards Iceland and Norway, Parts III, V and VII of this Regulation constitute new legislation in a field which is covered by the subject matter of the Annex to the Agreement concluded by the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway<sup>21</sup>.
- (83) As regards Switzerland, Parts III, V and VII of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland<sup>22</sup>.
- (84) As regards Liechtenstein, Parts III, V and VII of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland to which Article 3 of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland<sup>23</sup> refers].<sup>24</sup>

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<sup>21</sup> OJ L 93, 3.4.2001 p. 40.

<sup>22</sup> OJ L 53, 27.2.2008, p. 5.

<sup>23</sup> OJ L 160, 18.6.2011, p. 37.

<sup>24</sup> **The inclusion of recitals 82, 83 and 84 is without prejudice to the position the Council will take in the light of the opinion of the Council Legal Service concerning Schengen relevance and variable geometry (doc. 6357/21)**

# PART I

## SCOPE AND DEFINITIONS

### *Article 1*

#### *Aim and subject matter*

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

- (a) sets out a common framework for the management of asylum and migration in the Union;
- (b) establishes a mechanisms for solidarity;
- (c) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.

### *Article 2*

#### *Definitions*

For the purposes of this Regulation:

- (a) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty and who is not a person enjoying the right to free movement under Union law as defined in Article 2, point (5) of Regulation (EU) 2016/399 of the European Parliament and of the Council<sup>25</sup>;
- (aa) ‘illegally staying third-country national’ means a third-country national who does not fulfil or no longer fulfils the conditions of entry as set out in Article 6 of Regulation (EU) 2016/399 or other conditions for entry, stay or residence in a Member State;

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<sup>25</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p. 1.

- (ab) ‘vulnerable persons’ means the persons referred to in the second subparagraph of Article 20 of Directive XXX/XXX/EU [*Reception Conditions Directive*], who were assessed to have special reception needs according to Article 21 of Directive XXX/XXX/EU [*Reception Conditions Directive*];
- [(b) ‘application for international protection’ or ‘application’ means a request **made by a third-country national or a stateless person** for protection **from** [...] a Member State [...], who can be understood to seek [...] refugee status or subsidiary protection status;]<sup>26</sup>
- [(c) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a decision has not been taken, or has been taken and is either subject to or can still be subject to a remedy in the Member State concerned, irrespective of whether **that person** [...] has a right to remain or is allowed to remain in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], including a person who has been granted immediate protection pursuant to Regulation (EU) XXX/XXX [*Regulation addressing situations of crisis and force majeure in the field of asylum and migration*];]<sup>27</sup>
- (d) ‘examination of an application for international protection’ means examination of the admissibility or the merits of an application for international protection in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] and Regulation (EU) XXX/XXX [*Qualification Regulation*], excluding procedures for determining the Member State responsible in accordance with this Regulation;

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<sup>26</sup> The Presidency is reflecting on the possible need to align with other asylum instruments.

<sup>27</sup> The Presidency is reflecting on the possible need to align with other asylum instruments (reference to the Crisis Situations Regulation to be kept).

- (e) ‘withdrawal of an application for international protection’ means either explicit or implicit withdrawal of an application for international protection in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*];
- [(f) ‘beneficiary of international protection’ means a third-country national or a stateless person who has been granted international protection as defined in Article 2(2) of Regulation (EU) XXX/XXX [*Qualification Regulation*];]<sup>28</sup>
- (g) ‘family members’ means, insofar as the family already existed before the applicant or the family member arrived on the territory of the Member States, the following members of the applicant’s family who are present on the territory of the Member States:
- (i) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,
  - (ii) the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,
  - (iii) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,

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<sup>28</sup> The Presidency is reflecting on the possible need to align with other asylum instruments.

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

[(v) sibling or siblings of the applicant;]

~~Where the marriage of a minor would not be in accordance with the relevant national law had it been contracted in the Member State or Member States concerned, the minor shall only be considered as married for the purpose of applying the procedures set out in this Regulation.~~

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

[(i) ‘minor’ means a third-country national or a stateless person below the age of 18 years;]<sup>29</sup>

[(j) ‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;]<sup>30</sup>

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<sup>29</sup> The Presidency is reflecting on the possible need to align with other asylum instruments.

<sup>30</sup> The Presidency is reflecting on the possible need to align with other asylum instruments.

- (k) ‘representative’ means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary;
- (l) ‘residence document’ means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;
- (m) ‘visa’ means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States, including:
- (i) an authorisation or decision issued in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than 90 days,
  - (ii) an authorisation or decision issued in accordance with its national law or Union law required for entry for a transit through or an intended stay in that Member State not exceeding 90 days in any 180-day period,
  - (iii) an authorisation or decision valid for transit through the international transit areas of one or more airports of the Member States;

- (n) ‘diploma or qualification’ means a diploma or qualification which is obtained **and attested in a Member State** after at least a [...] period of **one year of study on the territory of that Member State** in a recognised, state or regional programme of education or vocational training at least equivalent to level 2 of the International Standard Classification of Education, operated by an education establishment **pursuant to legislative, regulatory or administrative provisions of that Member State** [...];
- (o) ‘education establishment’ means a [...] public or private education or vocational training establishment established in **and recognised by a Member State** [...] in accordance with national law or **administrative practice on the basis of transparent criteria** [...];
- (p) ‘absconding’ means the action by which **a person concerned** [...] does not remain available to the competent administrative or judicial authorities **for reasons which are not beyond the person’s control**; such as **by leaving the territory of the Member State without authorisation from the competent authorities or failure to notify absence from a particular accommodation centre, or assigned area or residence, where so required by a Member State** [...];
- [(q) ‘risk of absconding’ means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria defined by national law to believe that **a person concerned** [...] who is subject to **procedures set out in this Regulation** [...] may abscond;]<sup>31</sup>

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<sup>31</sup> The Presidency is reflecting on the possible need to align with other asylum instruments.



- (r) ‘benefitting Member State’ means the Member State benefitting from the solidarity measures in situations of migratory pressure [...] as set out in Chapters I-III of Part IV of this Regulation.
- (s) ‘contributing Member State’ means a Member State that contributes or is obliged to contribute to the solidarity measures to a benefitting Member State set out in Chapters I-III of Part IV of this Regulation;
- (t) [...]
- (u) ‘relocation’ means the transfer of a third-country national or a stateless person from the territory of a benefitting Member State to the territory of a contributing Member State;
- (v) ‘search and rescue operations’ means operations of search and rescue as referred to in the 1979 International Convention on Maritime Search and Rescue adopted in Hamburg, Germany on 27 April 1979;
- (w) ‘migratory pressure’ means a situation **which is generated by** [...] arrivals of third country nationals or stateless persons **that are of such a scale that they** [...] place 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 or stateless persons 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 capacity;**
- (x) ‘resettled or admitted person’ means a person who has been accepted by a Member State for admission pursuant to Regulation (EU) XXX/XXX [*Union Resettlement Framework Regulation*] or under a national resettlement scheme outside the framework of that Regulation;
- (y) ‘Asylum Agency’ means the European Union Agency for Asylum as established by Regulation (EU) **2021/2303**<sup>32</sup> [...];
- (z) ‘return decision’ means an administrative or judicial decision or act stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return that respects Directive 2008/115/EC of the European Parliament and of the Council<sup>33</sup>;

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<sup>32</sup> **Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, OJ L 468, 30.12.2021, p. 1.**

<sup>33</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

## **PART II**

### ***COMMON FRAMEWORK FOR ASYLUM AND MIGRATION MANAGEMENT***

#### **CHAPTER I**

##### **THE COMPREHENSIVE APPROACH**

###### *Article 3*

###### *Comprehensive approach to asylum and migration management*

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

- (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 [...] irregular migration and **combatting** migrant smuggling **and trafficking in human beings**, and enhancing cooperation on readmission;

- (b) close cooperation and mutual partnership among Union institutions and bodies, Member States and international organisations;
- (c) full implementation of the common visa policy;
- (d) effective [...] prevention of irregular migration **and combatting of migrant smuggling and trafficking in human beings, while ensuring the right to apply for international protection;**
- (e) effective management of the Union's external borders, based on the European integrated border management;
- (f) full respect of the obligations laid down in international and European law concerning persons rescued at sea;
- (g) **effective** access to procedures for granting and withdrawing international protection [...] and recognition of third-country nationals or stateless persons as refugees or beneficiaries of subsidiary protection, **in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] and Regulation (EU) XXX/XXX [*Qualification Regulation*];**
- (h) determination of the Member State responsible for the examination of an application for international protection, based on **the principle of solidarity and fair sharing of [...]** responsibility [...];
- (ha) **effective ~~management and~~ prevention of unauthorised movements of third country nationals and stateless persons between Member States;**

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

*Article 4*

[...] <sup>34</sup>

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<sup>34</sup> **Alternative text replacing Article 4 has been placed in recital 6.**

*Article 5*

*Principle of solidarity and fair sharing of responsibility*

1. In implementing their obligations, the **Union, the Member States and the relevant Union Agencies** shall observe the principle of solidarity and fair sharing of responsibility and shall take into account the shared interest in the effective functioning of the Union's asylum and migration management policies. Member States shall:
- (a) establish and maintain national asylum and migration management systems that provide **effective** access to international protection procedures, grant such protection to those who are in need, [...] ensure **efficient management of migration flows and** the return of those who are illegally staying;
  - (b) take all measures necessary and proportionate to **prevent and** reduce [...] irregular migration to the territories of the Member States, in close cooperation and partnership with relevant third countries, including as regards the prevention and fight against migrant smuggling;
  - (c) apply correctly and expeditiously the rules on the determination of the Member State responsible for examining an application for international protection and, where necessary, carry out the transfer to the Member State responsible pursuant to Chapters I-VI of Part III;
  - (d) provide **effective** support to other Member States in the form of solidarity contributions on the basis of needs set out in Chapters I-III of Part IV;
  - (e) take all **measures necessary** [...] and proportionate [...] to prevent and correct unauthorised movements **of third country nationals and stateless persons** between **the** Member States.

2. [...]

*Article 6*

*Strategic governance and monitoring of the migratory situation*

1. [...]

2. [...]

3. Member States shall have national strategies **setting out the strategic approach to managing asylum and migration at national level and [...]** to ensure sufficient capacity for the implementation of an effective asylum and migration management system in accordance with the principles set out in this Part. Those strategies shall include contingency planning at national level, taking into account the contingency planning pursuant to Regulation (EU) **2021/2303** [...], Regulation (EU) 2019/1896 [...] and Directive XXX/XXX/EU [*Reception Conditions Directive*] and the reports of the Commission issued within the framework of the Migration Preparedness and Crisis Blueprint. Such national strategies shall include information on how the Member State is implementing the principles set out in this Part [...]. They shall take into account other relevant strategies and existing support measures notably under Regulation (EU) **2021/1147** [...] and Regulation (EU) **2021/2303** [...] and be coherent with and complementary to the national strategies for integrated border management established in accordance with Article 8(6) of Regulation (EU) 2019/1896.

The results of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, of the evaluation carried out in accordance with Council Regulation No 1053/2013 as well as those carried out in line with Article 7 of Regulation (EU) XXX/XXX [*Screening Regulation*], **shall** also be taken into account in these strategies.

4. [...]
5. The Member States shall establish the national strategies by **[18 months [...]** after the entry into force of this Regulation] at the latest. [...]
6. The Commission shall monitor and provide information on the migratory situation through regular situational reports based on good quality data and information provided by [...] the External Action Service, the Asylum Agency, the European Border and Coast Guard Agency, Europol and the Fundamental Rights Agency and notably the information gathered within the framework of the Migration Preparedness and Crisis Blueprint and its Network **and information provided by Member States where necessary.**
7. **The Commission shall, by means of implementing acts, establish ~~uniform conditions in the form of a template~~ to be used by Member States for the purpose of their national strategies. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).**

#### *Article 6a*

#### *The Permanent EU Migration Support Toolbox*

1. **The permanent EU Migration Support Toolbox comprises at least the following:**
  - (a) **operational and technical assistance by the relevant Union agencies in accordance with their mandates, in particular the Asylum Agency in accordance with Regulation (EU)2021/2303, the European Border and Coast Guard Agency in accordance with Regulation (EU) 2019/1896 and the European Union Agency for Law Enforcement Cooperation in accordance with Regulation (EU) 2016/794.**



- (b) support provided by the Union funds for the implementation of the common framework set out in this Part in accordance with Regulation (EU) 2021/1147<sup>35</sup>, Regulation (EU) 2021/1148<sup>36</sup>;
- (c) derogations foreseen in the Union acquis providing Member States with the necessary tools to react to specific migratory challenges as referred to in Regulation XXX/XXX [*Crisis and Force Majeure Regulation*], [Regulation XXX/XXX [*Instrumentalisation Regulation*]] and Regulation XXX/XXX [*Asylum Procedure Regulation*];
- (d) activation of the Union Civil Protection Mechanism in accordance with Regulation 2021/836;
- (e) return actions;
- (f) strengthened actions and cross-sectoral activities in the external dimension of migration;
- (g) enhanced diplomatic and political outreach;
- (h) coordinated communication strategies;
- (i) cooperation with third countries to facilitate return and readmission pursuant to Article 7.

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<sup>35</sup> Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund, OJ L 251, 15.7.2021, p. 1.

<sup>36</sup> Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy, OJ L 251, 15.7.2021, p. 48.

## 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 Council<sup>37</sup> 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 **and Member States'** 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.
4. The Commission shall keep the European Parliament regularly informed of the implementation of this Article.

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<sup>37</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council, of 13 July 2009, establishing a Community Code on Visas, OJ L 243, 15.9.2009, p. 1.

## **CHAPTER II**

### **THE ANNUAL MIGRATION MANAGEMENT CYCLE**

#### *Article 7a*

##### *European Migration Management Report and Commission Decision*

- 1. Each year, the Commission, taking into account any possible developments in terms of migratory flows towards the Union, including their rapid evolution, shall adopt a Migration Management Report that assesses the situation along all migratory routes and in all Member States, serving as an early warning and awareness tool for the Union in the area of migration and asylum, and that provides a strategic situational picture.**
- 2. The Report, together with the Recommendation referred to in Article 7c, shall 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 may also support Member States when assessing migratory challenges at the national level.**
- 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, 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 undertaken by the Asylum Agency and the European Border and Coast Guard Agency as referred to in Article 6(3);
  - (f) an assessment of whether solidarity measures and measures under the permanent EU Toolbox are needed to support the Member State or Member States concerned.
4. Together with the Report, the Commission shall adopt a Decision determining whether a particular Member State is under migratory pressure or at risk of migratory pressure during the upcoming year or is facing a significant migratory situation.
- 4a. For the purpose of paragraph 3(f) and 4, the Commission shall consult the Member States concerned. The Commission may set a time limit for such consultations.

5. When assessing the overall migratory situation including the migratory pressure, the risk of migratory pressure, and the significant migratory situation, the Commission shall use ~~base itself on~~ the information gathered pursuant to Article 7b, taking fully into account all elements of the report, all migratory routes, including the specificities of the structural phenomenon of disembarkations after search and rescue operations and unauthorised movements of third country nationals and stateless persons between the Member States, as well as the previous pressure and considering the current situation.
6. The Commission shall adopt the Report and the Commission Decision as well as the the Recommendation referred to in Article 7c before the [15 October of each year] and transmit them to the Council. Until the adoption by the Council of a decision pursuant to Article 44b, the Recommendation referred to in Article 7c shall not be made public, shall be classified “RESTREINT UE/RESTRICTED EU”, and shall be handled as such in accordance with Council Decision 2013/488 on the security rules for protecting classified information<sup>38</sup>.

The first Report shall be issued by [one year after the entry into force of this Regulation] at the latest.

7. For the purpose of the Report and the Commission Decision, the Member States and the Asylum Agency, the European Border and Coast Guard Agency and Europol shall provide the information referred to in Article 7b by [1 June of each year.]

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<sup>38</sup> Council decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU)

The Commission shall convene a restricted meeting of the Migration Preparedness and Crisis Blueprint Network<sup>39</sup> [during the first half of July] of each year to present the initial assessment of the situation and exchange information with members of the Network.

The Member States and the relevant Union agencies shall provide the Commission with updated information by [1 September of each year].

The Commission shall convene a restricted meeting of the Migration Preparedness and Crisis Blueprint Network by [30 September of each year] of the year to present the consolidated assessment of the situation.

*Article 7b<sup>40</sup>*

*Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure or ~~and~~ significant migratory situation*

1. When the Commission assesses the overall migratory situation, or whether a Member State is under migratory pressure, risk of migratory pressure or confronted with a significant migratory situation, it shall use the following information:
  - (a) the number of applications for international protection by third-country nationals and the nationality of the applicants;

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<sup>39</sup> Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration (Migration Preparedness and Crisis Blueprint)

<sup>40</sup> Article 7b is based on former Article 50

- (b) the number of third-country nationals who have been detected by Member State authorities while not fulfilling, or no longer fulfilling, the conditions for entry, stay or residence in the Member State including overstayers within the meaning of Article 3(1)(19) of Regulation (EU) 2017/2226 of the European Parliament and of the Council<sup>41</sup>;
- (ba) the number of third country nationals or stateless persons enjoying temporary protection in accordance with Directive 2001/55/EC.**<sup>42</sup>
- (c) the number of return decisions that respect Directive 2008/115/EC;
- (d) the number of third-country nationals who left the territory of the Member States following a return decision that respects Directive 2008/115/EC;
- (e) the number of third-country nationals admitted by the Member States through Union and national resettlement [or humanitarian admission] schemes;
- (f) the number of incoming and outgoing take charge requests and take back notifications in accordance with Articles **29** and **31**;

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<sup>41</sup> Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, p. 20.

<sup>42</sup> **Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.**

- (g) the number of transfers carried out in accordance with Article 35;
- (h) the number of persons apprehended in connection with an irregular crossing of the external land, sea or air border;
- (i) the number of persons refused entry in accordance with Article 14 of Regulation EU (No) 2016/399;
- (j) the number and nationality of third-country nationals disembarked following search and rescue operations, including the number of applications for international protection;
- (k) the number of **identified** unaccompanied minors;-
- (l) **the number of third-country nationals or stateless persons who have been granted international protection, in accordance with Regulation XXX/XX [Qualification Regulation];**
- (m) **the number of first instance and final asylum decisions.**

2. **The Commission** shall also take into account the following:

- (a) the information presented by the Member State, **including the estimation of needs, capacity and preparedness measures and any additional relevant information provided in the national strategy referred to in Article 6(3) [...];**
- (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*];



- (c) the geopolitical situation in relevant third countries **as well as root causes of migration and possible situations of instrumentalisation of migrants and possible developments in the area of irregular arrivals through Union external borders** that may affect migratory movements;
- (d) the relevant Recommendations provided for in Article 15 of Council Regulation (EU) No 1053/2013<sup>43</sup>, Article 13, 14 and 22 of Regulation (EU) **2021/2303**<sup>44</sup> [...] and Article 32(7) of Regulation (EU) 2019/1896<sup>45</sup>;
- (e) information gathered pursuant to Commission Recommendation of **2020/1366** on an EU mechanism for Preparedness and Management of Crisis related to Migration (Migration Preparedness and Crisis Blueprint)
- (f) the Migration Management Report **and the Commission Decision** referred to in Article **7a where available**[...];

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<sup>43</sup> Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.

<sup>44</sup> **Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010**

<sup>45</sup> **Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624**

- (g) the Integrated Situational Awareness and Analysis (ISAA) reports under Council Implementing Decision (EU) 2018/1993 on the EU Integrated Political Crisis Response Arrangements, provided that the Integrated Political Crisis Response is activated or the Migration Situational Awareness and Analysis (MISAA) report issued under the first stage of the Migration Preparedness and Crisis Blueprint, when the Integrated Political Crisis Response is not activated;
- (h) information from the visa liberalisation reporting process and dialogues with third countries;
- (i) quarterly bulletins on migration, and other reports, of the European Union Agency for Fundamental Rights.
- (j) the support provided by Union Agencies to the ~~benefitting~~ Member States;
- (k) relevant parts of the vulnerability assessment report as referred to in Article 32 of the Regulation 2019/1896 European Border and Coast Guard Agency.**
- (l) 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.**

**3. In addition, for assessing whether a Member State is facing a significant migratory situation, the Commission shall also take into account the cumulative effect of current and previous annual arrivals of third country nationals or stateless persons.**

*Article 7c*

*Commission Recommendation regarding the Solidarity Pool and other appropriate measures*

1. Each year, based on the Report referred to in Article 7a, the Commission shall adopt a Recommendation regarding the Solidarity Pool and identifying the measures from the Permanent EU Toolbox necessary to address the migratory situation in the upcoming year in a balanced and effective manner that reflects the needs of the Member States under migratory pressure.
2. The Recommendation shall identify the annual numbers for relocations and for direct financial contributions at Union level, which shall at least be:
  - (a) [Xxx] for relocations
  - (b) [Xxx] for direct financial contributions
3. When identifying the level of the Union-wide responsibility that should be shared by all Member States 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. **Notwithstanding paragraph 2 of this Article, in exceptional situations, where the information provided by the Member States and the Union agencies pursuant to Article 7a(3) or the consultation carried out by the Commission pursuant to Article 7a(4a) 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*

*The High-Level EU Migration Forum and Technical-Level EU Migration Forum*

1. **In order to ensure the effective implementation of Part IV of this Regulation, representatives of the Member States shall be convened in a High-Level EU Migration Forum.**

**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.**

2. **The High-Level Migration Forum shall consider the Report referred to in Article 7a and Recommendation referred to in Article 7c and take stock of the overall situation. It shall also come to a conclusion on the solidarity measures pursuant to the procedure set out in Article 44b and, where deemed necessary, on other migratory response measures in the areas of responsibility, preparedness and contingency, as well as on the external dimension of migration.**

3. The Council shall convene the High-Level Migration Forum [within xx days<sup>46</sup>] following the adoption of the Report referred to in Article 7a and the Recommendation referred to in Article 7c, and where necessary, reconvene it to request Member States for additional solidarity contributions in accordance with Article 44g.
4. In order to ensure the smooth functioning of Part IV of this Regulation, a Technical-Level EU Migration Forum shall be ~~convened with~~ established. It shall comprise representatives of the relevant ~~competent~~ authorities of the Member States at a level sufficiently senior to carry out the tasks conferred on the Forum. Following the meeting referred to in first subparagraph of paragraph 3 of this Article, the Commission shall convene ~~and preside~~ a first meeting of the Technical-Level EU Migration Forum. Following that first meeting the Technical Level EU Migration Forum shall meet on a regular basis. The Technical-Level EU Migration Forum shall be convened and chaired by the Commission.

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<sup>46</sup> In any event before the end of the calendar year

## PART III

### *CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE*

#### CHAPTER I

##### *GENERAL PRINCIPLES AND SAFEGUARDS*

###### *Article 8*

###### *Access to the procedure for examining an application for international protection*

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter II **or the clauses set out in Chapter III** of Part III indicate is responsible.
2. **Without prejudice to the rules set out in part IV of this Regulation**, where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was registered shall be responsible for examining it.

3. Where it is impossible for a Member State to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter II **or the clauses set out in Chapter III** of Part III in order to establish whether another Member State can be designated as responsible.

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

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

If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] has been carried out, but the first Member State in which the application for international protection was registered has justified reasons to examine whether there are reasonable grounds to consider **that** the applicant **poses a security risk to the** [...]

Member States, that Member State shall carry out the examination as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III.

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

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

#### *Article 9*

##### *Obligations of the applicant*

1. Where a third-country national or stateless person intends to make an application for international protection, the application shall be made and registered in the Member State of first entry.
2. By derogation from paragraph 1, where a third-country national or stateless person is in possession of a valid residence permit or a valid visa, the application shall be made and registered in the Member State that issued the residence permit or visa.



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

3. The applicant shall fully cooperate with the competent authorities of the Member States in matters covered by this Regulation, in particular by submitting as soon as possible and at the latest during the interview referred to in Article 12, all the elements and information available to him or her relevant for determining the Member State responsible. **The applicant shall submit his or her identity documents if the applicant is in possession of such documents and cooperate with the competent authorities in collecting the biometric data in accordance with Regulation EU XXX/XXX [Eurodac Regulation].** Where the applicant is not in a position at the time of the interview to submit evidence to substantiate the elements and information provided, the competent authority may set a time limit within the period referred to in Article 29(1) for submitting such evidence.
4. The applicant shall be required to be present in:
  - (a) the Member State referred to in paragraphs 1 and 2 pending the determination of the Member State responsible and, where applicable, the implementation of the transfer procedure;
  - (b) the Member State responsible;
  - (c) the Member State of relocation following a transfer pursuant to Article 57(9).
5. Where a transfer decision is notified to the applicant in accordance with Article 32(2) and Article 57(8), the applicant shall **cooperate with the authorities and** comply with that decision.

*Article 10*  
*Consequences of non-compliance*

1. The applicant shall not be entitled to the reception conditions set out in Articles 15 to 17 of Directive XXX/XXX/EU [*Reception Conditions Directive*] **in accordance with [...]** Article 17a of that Directive in any Member State other than the one in which he or she is required to be present pursuant to Article 9(4) of this Regulation **from the moment he or she has been notified of a decision to transfer him or her to the Member State responsible**, provided that the applicant has been informed of that consequence pursuant to Article 8(2), point (b) of Regulation (EU) XXX/XXX [*Screening Regulation*]. This shall be without prejudice to the need to ensure a standard of living in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations.
2. Elements and information relevant for determining the Member State responsible submitted after expiry of the time limit referred to in Article 9(3) **do not have to** be taken into account by the competent authorities.

*Article 11*  
*Right to information*

1. As soon as possible and at the latest when an application for international protection is registered in a Member State, its competent authorities shall inform the applicant of the application of this Regulation and of the obligations set out in Article 9 as well as the consequences of non-compliance set out in Article 10, and in particular:
  - (a) that the right to apply for international protection does not encompass a choice by the applicant in relation to either the Member State responsible for examining the application for international protection or the Member State of relocation;

- (b) of the objectives of **part III** of this Regulation and the consequences of making another application in a different Member State as well as the consequences of leaving the Member State where he or she is required to be present pursuant to Article 9(4), in particular that the applicant shall only be entitled to the reception conditions as set out in Article 10(1);
- (c) of the criteria and the procedures for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration;
- (d) of the aim of the personal interview pursuant to Article 12 and the obligation to submit and substantiate orally or through the provision of documents information as soon as possible in the procedure any relevant information that could help to establish the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information, as well as any assistance that the Member State can offer with regard to the tracing of family members or relatives;
- (e) of the obligation for the applicant to disclose, as soon as possible in the procedure any relevant information that could help to establish any prior residence permits, visas or educational diplomas;
- (ea) of the obligation for the applicant to submit his or her identity documents where the applicant is in possession of such documents and to cooperate with the competent authorities in collecting the biometric data in accordance with the Regulation (EU) XXX/XXX [Eurodac Regulation];**

- (f) of the possibility to challenge a transfer decision within the time limit set out in Article 33(2) and of the fact that the scope of that challenge is limited as laid down in Article 33(1);
- (g) of the right to be granted, on request, legal assistance free of charge where the person concerned cannot afford the costs involved;
- (ga) of the fact that absconding will lead to an extension of the time limit in accordance with Article 35;**
- (h) that the competent authorities of Member States and the Asylum Agency will process personal data of the applicant including for the exchange of data on him or her for the sole purpose of implementing their obligations arising under this Regulation;
- (i) of the categories of personal data concerned;
- (j) of the right of access to data relating to him or her and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article 41 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data, and of the contact details of the data protection officer;
- (k) in the case of an unaccompanied minor, of the role and responsibilities of the representative and of the procedure to file complaints against a representative in confidence and safety and in full respect of the child's right to be heard in this respect.

[...]

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

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

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

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

*Article 12*  
*Personal interview*

1. In order to facilitate the process of determining the Member State responsible, the determining Member State **referred to in Article 28(1)** shall conduct a personal interview with the applicant **for the purpose of application of Article 29**. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article 11.
2. The personal interview may be omitted where:
  - (a) the applicant has absconded;
  - (b) the applicant has not attended the personal interview and has not provided justified reasons for his or her absence;
  - (c) after having received the information referred to in Article 11, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible within the period referred to in Article 29(1).
3. The personal interview shall take place in a timely manner and, in any event, before any take charge request is made pursuant to Article 29.

4. The personal interview shall be conducted in a language that the applicant understands or **may [...] reasonably be expected [...]** to understand and in which he or she is able to communicate. Interviews of **unaccompanied, and where applicable, accompanied** minors shall be conducted in a child-friendly manner, by staff who are appropriately trained [...] under national law, **taking into account in particular the age and maturity of the minor**, in the presence of the representative and, where applicable, the minor's legal advisor. Where necessary, Member States shall have recourse to an interpreter [...]. The applicant may on his or her request ~~to~~ be interviewed and assisted by staff of the same sex. **Member States shall endeavour to satisfy such requests, where reasonably practicable.**
5. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law. Applicants who are identified as being in need of special procedural guarantees pursuant to Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], shall be provided with adequate support in order to create the conditions necessary for effectively presenting all elements allowing for the determination of the Member State responsible.
6. The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. The summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.

*Article 13*  
*Guarantees for minors*

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

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

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

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



4. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:
- (a) family reunification possibilities;
  - (b) the minor's well-being and social development, taking into particular consideration the minor's background;
  - (c) safety and security considerations, in particular where there is a risk of the minor being a victim of any form of violence and exploitation, including trafficking in human beings;
  - (d) the views of the minor, in accordance with his or her age and maturity;
  - (e) where the applicant is an unaccompanied minor, the information provided by the representative in the Member State where the unaccompanied minor is present.
5. Before transferring an unaccompanied minor [...], the transferring Member State shall **notify** [...] the Member State responsible or the Member State of relocation, **which shall confirm that all appropriate** [...] measures referred to in Articles 14 and 23 of Directive XXX/XXX/EU [*Reception Conditions Directive*] and Article 22 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] **will be taken** without delay<sup>47</sup>. Any decision to transfer an unaccompanied minor shall be preceded by an assessment of his/her best interests. The assessment shall be based on the **relevant** factors listed in paragraph 4 and the conclusions of the assessment on these factors shall be clearly stated in the transfer decision. The assessment shall be done **without delay** [...] by **appropriately trained** staff [...] to ensure that the best interests of the minor are taken into consideration.

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<sup>47</sup> Recital 48 to be aligned accordingly

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

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

The staff of the competent authorities referred to in Article 41 who deal with requests concerning unaccompanied minors shall **receive** [...] appropriate training concerning the specific needs of minors **relevant for the application of this Regulation**.

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

## CHAPTER II

### *CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE*

#### *Article 14*

##### *Hierarchy of criteria*

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.
2. The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation obtaining when the application for international protection was first registered with a Member State.

#### *Article 15*

##### *Unaccompanied minors*

1. Where the applicant is an unaccompanied minor, only the criteria set out in this Article shall apply, in the order in which they are set out in paragraphs 2 to 5.
2. The Member State responsible shall be that where a family member of the unaccompanied minor is legally present, unless it is demonstrated that it is not in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present, **unless it is demonstrated that it is not in the best interests of the minor.**

3. Where the applicant has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, unless it is demonstrated that it is not in the best interests of the minor.
4. Where family members or relatives as referred to in paragraphs 2 and 3, are staying in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.
5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be that where the unaccompanied minor's application for international protection was first registered, unless it is demonstrated that this is not in the best interests of the minor.
6. The Commission is empowered to adopt delegated acts in accordance with Article 68 concerning:
  - (a) the identification of family members or relatives of unaccompanied minors;
  - (b) the criteria for establishing the existence of proven family links;
  - (c) the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor are staying in more than one Member State.

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

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

*Article 16*

*Family members who are beneficiaries of international protection*

Where the applicant has a family member who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

*Article 17*

*Family members who are applicants for international protection*

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

*Article 18*  
*Family procedure*

1. Where [...] applications for international protection **by several family members were registered** in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined as follows:
  - (a) responsibility for examining the applications for international protection of all the family members shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;
  - (b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.
  
2. **Where the applicant has family members as referred to in Articles 16 and 17 in more than one Member State, the Member State responsible shall be determined as follows:**
  - (a) **responsibility shall lie with the Member State responsible for the family member referred to in Article 2(g), points (i) to (iv);**
  - (b) **failing this, responsibility shall lie with the Member State which is responsible for the sibling to which the applicant states that he/she has the strongest ties.**

*Article 19*

*Issue of residence documents or visas*

1. Where the applicant is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.
2. Where the applicant is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009. In such a case, the represented Member State shall be responsible for examining the application for international protection.
3. Where the applicant is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:
  - (a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;
  - (b) where the various visas are of the same type the Member State which issued the visa having the latest expiry date;
  - (c) where the visas are of different types, the Member State which issued the visa having the longest period of validity or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.

4. Where the applicant is in possession of one or more residence documents **which have expired, were annulled, revoked or withdrawn less than three years** or one or more visas **whose validity has expired, which were annulled, revoked or withdrawn** [...] less than **18 months** [...] before the application was registered, paragraphs 1, 2 and 3 shall apply.
5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the Member State issuing the residence document or visa shall not be responsible if it can establish that fraud was committed after the document or visa was issued.

*Article 20*

*Diplomas or other qualifications*

1. Where the applicant is in possession of a diploma or qualification issued by an education establishment established in a Member State [...], the Member State in which that education establishment is established shall be responsible for examining the application for international protection, **provided that the application is registered less than five years after the diploma or qualification was issued.**
2. Where the applicant is in possession of more than one diploma or qualification issued by education establishments in different Member States, the responsibility for examining the application for international protection shall be assumed by the Member State which issued the diploma or qualification following the longest period of study or, where the periods of study are identical, by the Member State in which the most recent diploma or qualification was obtained.



## Article 21

### Entry

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [*Eurodac Regulation*], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the first Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than **[18 months / 3 years]** after the date on which that border crossing took place.
2. The rule set out in paragraph 1 shall also apply where the applicant was disembarked on the territory following a search and rescue operation.
3. Paragraphs 1 and 2 shall not apply if it can be established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [*Eurodac Regulation*], that the applicant was relocated pursuant to Article 57 of this Regulation to another Member State after having crossed the border. In that case, that other Member State shall be responsible for examining the application for international protection.

## Article 22

### Visa waived entry

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

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

*Article 23*

*Application in an international transit area of an airport*

Where the application for international protection is made in the international transit area of an airport of a Member State by a third-country national or a stateless person, that Member State shall be responsible for examining the application.

## CHAPTER III

### *DEPENDENT PERSONS AND DISCRETIONARY CLAUSES*

#### *Article 24*

#### *Dependent persons*

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

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

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

3. The Commission is empowered to adopt delegated acts in accordance with Article 68 concerning:
  - (a) the elements to be taken into account in order to assess the dependency link;
  - (b) the criteria for establishing the existence of proven family links;
  - (c) the criteria for assessing the capacity of the person concerned to take care of the dependent person;
  - (d) the elements to be taken into account in order to assess the inability to travel for a significant period of time.
4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

*Article 25*

*Discretionary clauses*

1. By way of derogation from Article 8(1), each Member State may decide to examine an application for international protection by a third-country national or a stateless person registered with it, even if such examination is not its responsibility under the criteria laid down in this Regulation.

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

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

The requested Member State shall carry out any necessary checks to examine the humanitarian grounds cited, and shall reply to the requesting Member State within two months of receipt of the request using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. A reply refusing the request shall state the reasons on which the refusal is based.

## CHAPTER IV

### ***OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE***

#### *Article 26*

#### *Obligations of the Member State responsible*

1. The Member State responsible under this Regulation shall be obliged to:
  - (a) take charge, under the conditions laid down in Articles 29, 30 and 35, of an applicant whose application was registered in a different Member State;
  - (b) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, an applicant, **including the situations referred to in Article 28(4) and (5)**, or a third-country national or a stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*];
  - (c) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a beneficiary of international protection in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*];
  - (d) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a resettled or admitted person who has made an application for international protection or who is irregularly staying in a Member State other than the Member State which accepted to admit him or her in accordance with Regulation (EU) XXX/XXX [*Union Resettlement Framework Regulation*] or which granted international protection or humanitarian status under a national resettlement scheme.

2. For the purposes of this Regulation, the situation of a minor who is accompanying the applicant **or the beneficiary of international protection** and meets the definition of family member shall be indissociable from that of his or her family member and the minor shall be taken charge of or taken back by the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, unless it is demonstrated that this is not in the best interests of the child. The same principle shall be applied to children born after the applicant arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.
3. In the situations referred to in paragraph 1, points (a) and (b), **and paragraph 2** [...] Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] **shall apply**.

#### *Article 27*

#### *Cessation of responsibilities*

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

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

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

- 1a. **The obligation laid down in Article 26(1) of this Regulation shall cease where the Member State responsible can establish, on the basis of data recorded and stored in accordance with Regulation (EU) 2017/2226<sup>48</sup> or other evidence, that the person concerned has left the territory of the Member States for at least three months, unless the person concerned has been granted international protection or is in possession of a valid residence document issued by the Member State responsible.**

**An application registered after the period of absence referred to in the first subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.**

~~**The Member State the responsibility of which has ceased pursuant to the first subparagraph shall indicate this fact in Eurodac pursuant to Article 11(2)(e) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].**~~

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<sup>48</sup> **Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, p. 20.**



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

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

## CHAPTER V

### *PROCEDURES*

#### *SECTION I*

##### *START OF THE PROCEDURE*

###### *Article 28*

###### *Start of the procedure*

1. The Member State where an application for international protection is first registered pursuant to Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] or, where applicable, the Member State of relocation shall start the process of determining the Member State responsible without delay.
2. The Member State where an application is first registered or, where applicable, the Member State of relocation shall continue the process of determining the Member State responsible if the applicant **absconds** [...].
3. The Member State which has conducted the process of determining the Member State responsible or which has become responsible pursuant to Article 8(4) of this Regulation shall indicate in Eurodac without delay pursuant to Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*):
  - (a) its responsibility pursuant to Article 8(2);
  - (aa) its responsibility pursuant to Article 8(3);**
  - (b) its responsibility pursuant to Article 8(4);

- (c) its responsibility due to its failure to comply with the time limits laid down in Article 29;
- (d) the responsibility of the Member State which has accepted a request to take charge of the applicant pursuant to Article 30.

Until this indication has been added, the procedures in paragraph 4 shall apply.

4. An applicant who is present in another Member State without a residence document or who there makes an application for international protection during the process of determining the Member State responsible, shall be taken back, under the conditions laid down in Articles 31 and 35, by the **determining** Member State [...].

That obligation shall cease where the Member State determining the Member State responsible can establish that the applicant has obtained a residence document from another Member State.

5. An applicant who is present in a Member State without a residence document or who there makes an application for international protection after another Member State has confirmed to relocate the person concerned pursuant to Article 57(7), and before the transfer has been carried out to that Member State pursuant to Article 57(9), shall be taken back, under the conditions laid down in Articles 31 and 35, by the Member State of relocation. **That obligation shall cease where the Member State of relocation can establish that the applicant has obtained a residence document from another Member State.**

## **SECTION II**

### **PROCEDURES FOR TAKE CHARGE REQUESTS**

#### *Article 29*

##### *Submitting a take charge request*

1. If a Member State where an application for international protection has been registered considers that another Member State is responsible for examining the application, it shall, without delay and **at the latest** [...] within two months of the date on which the application was registered, request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Articles 13 and 14a of Regulation (EU) XXX/XXX [*Eurodac Regulation*] or of a VIS hit with data recorded pursuant to Article 21 of Regulation (EC) No 767/2008, the request to take charge shall be sent within one month of receiving that hit.

**Where the applicant has lodged an appeal or review pursuant to paragraphs 1a or 1b of Article 33, and the final decision by the court or tribunal is in favour of the applicant, the time periods laid down in the first subparagraph of this paragraph shall start from the date of that decision.**

Where the request to take charge of an applicant is not made within the periods laid down in the first **to third and second** subparagraphs, responsibility for examining the application for international protection shall lie with the Member State where the application was registered.

Where the applicant is an unaccompanied minor, the determining Member State may, **at any time before a first decision regarding the substance is taken**, where it considers that it is in the best interest of the minor, continue the procedure for determining the Member State responsible and request another Member State to take charge of the applicant despite the expiry of the time limits laid down in the first and second subparagraphs.

2. The requesting Member State may request an urgent reply in cases where the application for international protection was registered after a decision to refuse entry or a return decision was issued.

The request shall state the reasons warranting an urgent reply and the period within which a reply is requested. That period shall be at least one week.

3. In the cases referred to in paragraphs 1 and 2, the take charge request by another Member State shall **include full and detailed reasons, based on all the circumstances of the case, relating to the relevant criteria [of the hierarchy] set out in Chapter II. It shall** be made using a standard form and including proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the applicant's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, adopt uniform conditions on the preparation and submission of take charge requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

*Article 30*

*Replying to a take charge request*

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within one month of receipt of the request.
2. Notwithstanding the first paragraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 and 14a of Regulation (EU) XXX/XXX [*Eurodac Regulation*] or of a VIS hit with data recorded pursuant to Article 21(2) of Regulation (EC) No 767/2008, the requested Member State shall give a decision on the request within two weeks of receipt of the request.
3. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.
4. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).
  - (a) Proof:
    - (i) this refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary;
    - (ii) the Member States shall provide the Committee provided for in Article 67 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs;

(b) Circumstantial evidence:

- (i) this refers to indicative elements which while being refutable may be sufficient according to the evidentiary value attributed to them;
- (ii) their evidentiary value, in relation to the responsibility for examining the application for international protection shall be assessed on a case-by-case basis.

5. The requirement of proof shall not exceed what is necessary for the proper application of this Regulation.
6. The requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.
7. Where the requesting Member State has asked for an urgent reply pursuant to Article 29(2), the requested Member State shall reply within the period requested or, failing that, within two weeks of receipt of the request.
8. Where the requested Member State does not object to the request within the one-month period set out in paragraph 1 [...], or where applicable within the two-week period set out in paragraphs 2 and 7, **by a reply which gives substantiated reasons based on all the circumstances of the case relating to the relevant criteria [of the hierarchy] set out in Chapter II**, this shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival. **The Commission shall, by means of implementing acts, draw up a standard form for the reasoning of the replies required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).**

### **SECTION III**

#### **PROCEDURES FOR TAKE BACK NOTIFICATIONS**

##### *Article 31*

##### *Submitting a take back notification*

1. In a situation referred to in Article 26(1), point (b), (c) or (d) the Member State where the person is present shall make a take back notification ~~without delay and in any event~~ within two weeks after receiving the Eurodac hit. **Failure to make the take back notification within the time limit shall be without prejudice to the obligation of the Member State responsible to take back the person concerned.**
2. A take back notification shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the statements of the person concerned.
3. The notified Member State shall confirm receipt of the notification to the Member State which made the notification within **two weeks** [...], unless the notified Member State can demonstrate within that time limit that its responsibility has ceased pursuant to Article 27, **or that the take back notification is based on an incorrect indication of the Member State responsible pursuant to Regulation (EU) XXX/XXX [*Eurodac Regulation*].**
4. Failure to act within the **two** [...] -week period set out in paragraph 3 shall be tantamount to confirming the receipt of the notification.
5. The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back notifications. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).



## ***SECTION IV***

### ***PROCEDURAL SAFEGUARDS***

#### ***Article 32***

##### ***Notification of a transfer decision***

1. The determining Member State whose take charge request as regards the applicant referred to in Article 26(1), point (a) was accepted or who made a take back notification as regards persons referred to in Article 26(1), point (b), (c) and (d) shall take a transfer decision at the latest within **two weeks** [...] of the acceptance or **confirmation** [...].
2. Where the requested Member State accepts to take charge of an applicant or to take back a person referred to in Article 26(1), point (b), (c) or (d), the **transferring** [...] Member State shall notify the person concerned in writing without delay of the decision to transfer him or her to the Member State responsible and, where applicable, of the fact that it will not examine his or her application for international protection.
3. If a legal advisor or other counsellor is representing the person concerned, Member States may choose to notify the decision to such legal advisor or counsellor instead of to the person concerned and, where applicable, communicate the decision to the person concerned.
4. The decision referred to in paragraph 1 shall contain information on the legal remedies available, including on the right to apply for suspensive effect, and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned is required to appear, if that person is travelling to the Member State responsible by his or her own means.

Member States shall ensure that information on persons or entities that may provide legal assistance to the person concerned is communicated to the person concerned together with the decision referred to in paragraph 1, when that information has not been already communicated.

5. Where the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall inform him or her of the main elements of the decision, which shall always include information on the legal remedies available and the time limits applicable for seeking such remedies, in a language that the person concerned understands or is reasonably supposed to understand.

*Article 33*  
*Remedies<sup>49</sup>*

1. The applicant or another person as referred to in Article 26(1), point (b), (c) and (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

The scope of the remedy shall be limited to an assessment of:

- (a) whether the transfer would result in a real risk of inhuman or degrading treatment for the person concerned within the meaning of Article 4 of the Charter of Fundamental Rights;
- (b) whether Articles 15 to 18 and Article 24 have been infringed, in the case of the persons taken charge of pursuant to Article 26(1), point (a).

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<sup>49</sup> **Article 33 has not been modified and will not be discussed at the meeting on 18 April**

- 1a. Where the requested Member State refuses to take charge of an applicant pursuant to the criteria laid down in Articles 15 to 18 and Article 24, the applicant shall have the right to an effective remedy before a court or tribunal in the requested Member State. The determining Member State shall notify the applicant in writing without delay of the refusal and on the legal remedies available.**
- 1b. Member States shall provide for an effective remedy before a court or tribunal where the applicant has claimed to have a family member or, in the case of unaccompanied minors, a relative, or, in the the case of dependent persons, a child or a parent, who is legally present in a Member State other than the determining Member State, and no request to take charge has been sent to the other Member State within the time limit laid down in the first subparagraph of Article 29(1).**
2. Member States shall provide for a period of **at least one week but no more than three** [...] weeks after the notification of a transfer decision, **the notification of the refusal to take charge or after the date on which the applicant could envoke an effective remedy as referred to in paragraph 1b,** within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraphs 1, **1a or 1b.**
3. The person concerned shall have the right to request, within a reasonable period of time from the notification of the transfer decision **but in any event no longer than the period provided for by Member States pursuant to paragraph 2,** a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. **Member States may provide in national law that the request to suspend the implementation of the transfer decision must be lodged together with the appeal pursuant to paragraph 1.** Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within one month of the date when that request reached the competent court or tribunal.

Where the person concerned has not exercised his or her right to request suspensive effect, the appeal against, or review of, the transfer decision shall not suspend the implementation of a transfer decision.

A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.

If suspensive effect is granted, the court or tribunal shall endeavour to decide on the substance of the appeal or review within one month of the decision to grant suspensive effect.

4. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.
5. Member States shall ensure that legal assistance is granted on request free of charge where the person concerned cannot afford the costs involved. Member States may provide that, as regards fees and other costs, the treatment of persons subject to this Regulation shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

Without arbitrarily restricting access to legal assistance, Member States may provide that free legal assistance and representation is not to be granted where the appeal or review is considered by the competent authority or a court or tribunal to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to the second subparagraph is taken by an authority other than a court or tribunal, Member States shall provide the right to an effective remedy before a court or tribunal to challenge that decision. Where the decision is challenged, that remedy shall be an integral part of the remedy referred to in paragraph 1.

In complying with the requirements set out in this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that effective access to justice for the person concerned is not hindered.

Legal assistance shall include at least the preparation of the required procedural documents and representation before a court or tribunal and may be restricted to legal advisors or counsellors specifically designated by national law to provide assistance and representation.

Procedures for access to legal assistance shall be laid down in national law.

## **SECTION V**

### **DETENTION FOR THE PURPOSES OF TRANSFER**

#### *Article 34*

#### *Detention*

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.
2. Where there is a risk of absconding **or when protection of national security or public order so requires**, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment **of the person's circumstances**, and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively [...].
3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where an applicant or another person referred to in Article 26(1), point (b), (c) or (d) is detained pursuant to this Article, the period for submitting a take charge request or a take back notification shall not exceed two weeks from the registration of the application, **or two weeks after receiving the Eurodac hit when no new application has been registered in the notifying Member State**. Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge request or a take back notification shall not exceed one week from the date on which the person was placed in detention. The **determining** Member State [...] shall ask for an urgent reply on a take charge request. Such reply shall be given within one week of receipt of the take charge request. Failure to reply within the one-week period shall be tantamount to accepting the take charge request and shall entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the **transferring** [...] Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within **five** [...] weeks of:

- (a) the date on which the request was accepted or the take back notification was confirmed, or
- (b) the date when the appeal or review no longer has suspensive effect in accordance with Article 33(3).

Where the **transferring** [...] Member State fails to comply with the time limits for submitting a take charge request or take back notification or to take a transfer decision within the time limit laid down in Article 32(1) or where the transfer does not take place within the period of **five** [...] weeks referred to in the third subparagraph of this paragraph, the person shall no longer be detained. Articles 29, 31 and 35 shall continue to apply accordingly.

- 4. Where a person is detained pursuant to this Article, the detention shall be ordered in writing by **administrative or** judicial authorities. The detention order shall state the reasons in fact and in law on which it is based. **Where detention is ordered by an administrative authority, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted ex-officio or at the request of the applicant, or both.**
- 5. As regards the detention conditions and the guarantees applicable to applicants detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive XXX/XXX/EU [*Reception Conditions Directive*] shall apply.

## **SECTION VI**

### **TRANSFERS**

#### *Article 35*

##### *Detailed rules and time limits*

1. The transfer of an applicant or of another person as referred to in Article 26(1), point (b), (c) and (d) from the **transferring** [...] Member State to the Member State responsible shall be carried out in accordance with the national law of the **transferring** [...] Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3). [...]

Where the transfer is carried out for the purpose of relocation, the transfer shall take place within the time limit set out in Article 57(9).

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

If necessary, the **person concerned** [...] shall be supplied by the **transferring** [...] Member State with a *laissez passer*. The Commission shall, by means of implementing acts, establish the design of the *laissez passer*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

The Member State responsible shall inform the **transferring** [...] Member State, as appropriate, of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.



2. Where the transfer does not take place within the time limits set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the **transferring [...] Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of [five years] if the person concerned absconds. Where the application of the person concerned who absconded has previously been rejected by the Member State responsible following an examination of the application in a border procedure referred to in Article 41<sup>50</sup> of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], the time limit may only be extended up to a maximum of [18 months].**

**If the person concerned becomes available to the authorities again and the time remaining from the period referred to in paragraph 1 is less than three months, the transferring Member State shall have a period of three months in order to carry out the transfer. [...]**

3. If a person has been transferred erroneously or a decision to transfer is overturned on appeal or review after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.
4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

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<sup>50</sup> The reference will be amended to reflect the outcome of the negotiations on the border procedures in APR

## Article 36

### *Costs of transfer*

1. In accordance with Article ~~20~~ **17** of Regulation (EU) ~~2021/1147 XXX/XXX~~ **[Asylum and Migration Fund]**, a contribution shall be paid to the Member State carrying out the transfer for the transfer of an applicant or another person as referred to in Article 26(1), point (b), (c) or (d) pursuant to Article 35.
2. Where the person concerned has to be transferred back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal or review after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.
3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.

## Article 37

### *Exchange of relevant information before a transfer is carried out*

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 26(1), point (b), (c) or (d), shall communicate to the Member State responsible such personal data concerning the person to be transferred as is adequate, relevant and limited to what is necessary for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, to ensure continuity in the protection and rights afforded by this Regulation and by other applicable asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in under national law have sufficient time to take the necessary measures.

2. The transferring Member State shall transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:
- (a) any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care that may be required;
  - (b) contact details of family members, relatives or any other family relations in the receiving Member State, where applicable;
  - (c) in the case of minors, information on their education;
  - (d) **where applicable**, an assessment of the age of an applicant;
  - (e) **the screening form pursuant to [...] Article 13 of Regulation (EU) XXX/XXX [Screening Regulation], including any evidence referred to on the form.**
3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 41 of this Regulation using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. The information exchanged shall only be used for the purposes set out in paragraph 1 of this Article and shall not be further processed.
4. With a view to facilitating the exchange of information between Member States, the Commission shall, by means of implementing acts, draw up a standard form for the transfer of the data required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).
5. The rules laid down in Article 40(8) and (9) shall apply to the exchange of information pursuant to this Article.

Article 38

*Exchange of security-relevant information before a transfer is carried out*

**For the purpose of application of Article 31, where the Member State carrying out a transfer is in possession of information that indicates that there are reasonable grounds to consider that the applicant or another person as referred to in Article 26(1), point (b), (c) or (d), poses a security risk to a danger to national security or public order in a Member State, the competent authorities of that Member State shall **indicate the existence of** [...] such information to the Member State responsible. **The information shall be shared between the law enforcement authorities or other competent authorities of the Member States through the appropriate channels for such information exchange.****

Article 39

*Exchange of health data before a transfer is carried out*

1. For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, in so far as it is available to the competent authority in accordance with national law, transmit to the Member State responsible information on any special needs of the person to be transferred, which in specific cases may include information on that person's physical or mental health. That information shall be transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

The Commission shall, by means of implementing acts, draw up the common health certificate. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

2. The transferring Member State shall only transmit the information referred to in paragraph 1 to the Member State responsible after having obtained the explicit consent of the applicant and/or of his or her representative or when such transmission is necessary to protect public health and public security, or, where the person concerned is physically or legally incapable of giving his or her consent, to protect the vital interests of the person concerned or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.
3. The processing of personal health data referred to in paragraph 1 shall only be carried out by a health professional who is subject, under national law or rules established by national competent bodies, to the obligation of professional secrecy or by another person subject to an equivalent obligation of professional secrecy.
4. The exchange of information under this Article shall only take place between the health professionals or other persons referred to in paragraph 3. The information exchanged shall only be used for the purposes set out in paragraph 1 and shall not be further processed.
5. The Commission shall, by means of implementing acts, adopt uniform conditions and practical arrangements for exchanging the information referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).
6. The rules laid down in Article 40(8) and (9) shall apply to the exchange of information pursuant to this Article.

## CHAPTER VI

### *ADMINISTRATIVE COOPERATION*

#### *Article 40*

#### *Information sharing*

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the person covered by the scope of this Regulation as is adequate, relevant and limited to what is necessary for:
  - (a) determining the Member State responsible;
  - (b) examining the application for international protection;
  - (c) implementing any obligation arising under this Regulation.
  
2. The information referred to in paragraph 1 shall only cover:
  - (a) personal details of the person concerned, and, where appropriate, his or her family members, relatives or any other family relations (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);
  - (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);
  - (c) other information necessary for establishing the identity of the person concerned, including biometric data taken of the applicant by the Member State, in particular for the purposes of Article 57(6) of this Regulation, in accordance with Regulation (EU) XXX/XXX [*Eurodac Regulation*];

- (d) places of residence and routes travelled;
  - (e) residence documents or visas issued by a Member State;
  - (f) the place where the application was lodged;
  - (g) the date on which any previous application for international protection was lodged, the date on which the current application was registered, the stage reached in the proceedings and the decision taken, if any.
3. Provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests or the protection of the liberties and fundamental rights of the person concerned or of others. [...]
4. Any request for information shall only be sent in the context of an individual application for international protection or transfer for the purpose of relocation. It shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. Such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to an individual applicant.

5. The requested Member State shall be obliged to reply within three weeks. Any delays in the reply shall be duly justified. Non-compliance with the three week time limit shall not relieve the requested Member State of the obligation to reply. If the research carried out by the requested Member State which did not respect the maximum time limit withholds information which shows that it is responsible, that Member State may not invoke the expiry of the time limits provided for in Article 29 as a reason for refusing to comply with a request to take charge. In that case, the time limits provided for in Article 29 for submitting a request to take charge shall be extended by a period of time equivalent to the delay in the reply by the requested Member State.
6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission in accordance with Article 41(1).
7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:
  - (a) determining the Member State responsible;
  - (b) examining the application for international protection;
  - (c) implementing any obligation arising under this Regulation.
8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that it has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.



9. In each Member State concerned, a record shall be kept, in the individual file for the person concerned or in a register, of the transmission and receipt of information exchanged.

#### *Article 41*

##### *Competent authorities and resources*

1. Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. The Member States shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge, take back notifications and, if applicable, complying with their obligations under Chapters I-III of Part IV.
2. The Commission shall publish a consolidated list of the authorities referred to in paragraph 1 in the *Official Journal of the European Union*. Where there are changes to that list, the Commission shall publish an updated consolidated list once a year.
3. Member States shall ensure that the authorities referred to in paragraph 1 shall receive the necessary training with respect to the application of this Regulation.
4. The Commission shall, by means of implementing acts, establish secure electronic transmission channels between the authorities referred to in paragraph 1 and between those authorities and the Asylum Agency for transmitting information, biometric data taken in accordance with Regulation (EU) XXX/XXX [*Eurodac Regulation*], requests, notifications, replies and all written correspondence and for ensuring that senders automatically receive an electronic proof of delivery. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

*Article 42*

*Administrative arrangements*

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details for the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:
  - (a) exchanges of liaison officers;
  - (b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back applicants;
  - (c) solidarity contributions made pursuant to Chapters I-III of Part IV.
2. Member States may also maintain the administrative arrangements concluded under Regulation (EC) No 343/2003 and Regulation (EU) No 604/2013. To the extent that such arrangements are not compatible with this Regulation, the Member States concerned shall amend the arrangements in such a way as to eliminate any incompatibilities.
3. Before concluding or amending any arrangement as referred to in paragraph 1, point (b), the Member States concerned shall consult the Commission as to the compatibility of the arrangement with this Regulation.
4. If the Commission considers the arrangements referred to in paragraph 1, point (b), to be incompatible with this Regulation, it shall, within a reasonable period, notify the Member States concerned. The Member States shall take all appropriate steps to amend the arrangement concerned within a reasonable time in such a way as to eliminate any incompatibilities observed.

5. Member States shall notify the Commission of all arrangements referred to in paragraph 1, and of any denunciation thereof, or amendment thereto.

*Article 43*

*Network of responsible units*

The Asylum Agency shall set up and facilitate the activities of a network of the competent authorities referred to in Article 41(1), with a view to enhancing practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance.

## CHAPTER VII

### *CONCILIATION*

#### *Article 44*

#### *Conciliation*

1. In order to facilitate the proper functioning of the mechanisms set up under this Regulation and resolve difficulties in the application thereof, where two or more Member States encounter difficulties in their cooperation under this Regulation or in its application between them, the Member States concerned shall, upon request by one or more of them, hold consultations without delay with a view to finding appropriate solutions within a reasonable time, in accordance with the principle of sincere cooperation.

As appropriate, information about the difficulties encountered and the solution found may be shared with the Commission and with the other Member States within the Committee referred to in Article 67.

2. Where no solution is found under paragraph 1 or the difficulties persist, one or more of the Member States concerned may request the Commission to hold consultations with the Member States concerned with a view to finding appropriate solutions. The Commission shall hold such consultations without delay. The Member States concerned shall actively participate in the consultations and, as well as the Commission, take all appropriate measures to promptly resolve the matter. The Commission may adopt recommendations addressed to the Member States concerned indicating the measures to be taken and the appropriate deadlines.

As appropriate, information about the difficulties encountered, the recommendations made and the solution found may be shared with the other Member States within the Committee referred to in Article 67.

3. This Article shall be without prejudice to the powers of the Commission to oversee the application of Union law under Articles 258 and 260 of the Treaty. It shall be without prejudice to the possibility for the Member States concerned to submit their dispute to the Court of Justice in accordance with Article 273 of the Treaty or to bring the matter to it in accordance with Article 259 of the Treaty.

## **PART IV**

### ***SOLIDARITY***

#### **CHAPTER I**

##### ***SOLIDARITY MECHANISMS***

###### ***Article 44a***

###### ***Solidarity Pool***

- 1. The Solidarity Pool, which includes the contributions contained in the Council Implementing ~~Decision~~ act referred to in Article 44b as pledged by the Member States during the meeting of the High Level EU Migration Forum, 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 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 bilaterally agreed by the contributing and benefitting Member States concerned, of beneficiaries of international protection who have been granted international protection less than three years prior to the adoption of the Council implementing act ~~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.**

*Article 44b*

*Establishment of the Solidarity Pool*

1. **The Council shall adopt, on an annual basis, before the end of each calendar year, an implementing act to establish the Solidarity Pool in accordance with the result of the pledging exercise carried out at the High Level Migration Forum.**
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.**
3. **In implementing paragraph 2, contributing Member States shall have full discretion in choosing between the types of solidarity measures listed in Article 44a(2), points (a), (b) and, where applicable, point (c), or a combination of them.**

4. Following the adoption of the Council implementing act ~~Decision~~ referred to in paragraph 1, the Commission shall convene the Technical-Level EU Migration Forum as needed.

*Article 44c*

*Information regarding the intention to use the Solidarity Pool by a Member State identified in the Commission Decision as under migratory pressure*

1. A Member State that is identified in the Decision referred to in Article 7a as being under migratory pressure may, after the adoption of the Council implementing decision act referred to in Article 44b, inform the Commission and the Council of its intention to make use of the Solidarity Pool.
2. The Member State concerned shall include in the information the type and level of solidarity measures as referred to in Article 44a needed to address the situation and a substantiated reasoning in support thereof, including where relevant any use made of the components of the Toolbox.
3. The Commission shall convene the Technical Level Migration Forum within ten days of receiving the information.

*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 Decision 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 need to be considered under migratory pressure and to make use of the Solidarity Pool.



2. The notification shall include:
  - (a) a duly substantiated reasoning on the existence and extent of the migratory pressure in the notifying Member State;
  - (b) the type and level of solidarity measures as referred to in Article 44a needed to address the situation and a substantiated reasoning in support thereof, including where relevant any use made of the components of the Toolbox;
  - (c) a description of how the proposed Solidarity Pool could stabilise the situation;
  - (d) how that Member State intends to address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience.
3. The Commission shall expeditiously assess the notification, taking into account the information set out in Articles 7a and 7b, the overall situation in the Union and the needs expressed by the notifying Member State, and adopt a Decision on the ~~request~~ notification to consider the Member State as being under migratory pressure. Where the Commission decides that that Member State is under migratory pressure, it shall become a benefitting Member State, unless it is denied access to the Solidarity Pool in accordance with paragraph 5.
4. The Commission shall transmit its decision to the Council without delay. It shall also forward the decision to the European Parliament for information purposes.

5. Where the Commission Decision establishes that the ~~requesting~~ notifying Member State is under migratory pressure, the Commission ~~It~~ shall convene the Technical-Level Migration Forum within [~~15~~ five days] of the transmission of its decision to the Council. The Commission shall convene the Technical EU Level Migration Forum unless the Council, by way of an Implementing Act, has decided within [15] days of the transmission of the Commission's decision to the Council that there is insufficient capacity in the Solidarity Pool for the Member State concerned to get access to the Solidarity Pool or other objective reasons for not allowing that Member State to get access to the Pool.
6. Where the Council decides that there is insufficient capacity in the Solidarity Pool, ~~it shall consider convening a meeting of the High Level Migration Forum in accordance with Article 44g~~ shall apply.

In case of a Commission Decision rejecting a request by a Member State to be considered as being under migratory pressure, the notifying Member State may submit a new notification to the Commission and the Council with additional information where relevant.

#### *Article 44e*

##### *Operationalisation of solidarity measures*

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

2. **The Commission, monitoring developments in the migratory situation, shall coordinate the operationalisation of the solidarity measures by matching the needs and contributions to ensure a balanced distribution of the solidarity contributions available among the benefitting Member States.**
3. **In operationalising the solidarity measures identified, 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. Member States which have been granted a full reduction in accordance with Article 44f or 44fa or are themselves benefitting Member States as referred to in Article 44c(1) and 44d(3) are not obliged to implement their pledged solidarity contributions referred to in Article 44a for the given year.**
4. **In the course of the first meeting of the Technical-Level EU Migration Forum in the annual cycle, Member States contributing with or ~~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 may ~~shall~~ prioritise the relocation of identified unaccompanied minors and other vulnerable persons.**

**Article 44f**

***Full or partial reduction of the solidarity contribution by a Member State under migratory pressure or that considers itself under migratory pressure and that has not notified the need to use the Solidarity Pool***

- 1. A Member State that is identified in the Decision referred to in Article 7a as being under migratory pressure or that considers itself as so being and which has not made use of the Solidarity Pool in accordance with Article 44c or notified the need requests to use the Solidarity Pool in accordance with Article 44d, may, at any time, request a partial or full reduction of its pledged contributions set out in the Council Decision implementing act referred to in Article 44b(1).**

**The Member State concerned shall submit its request to the Commission. For information purposes, the Member State concerned shall submit its request to the Council.**

- 2. The requesting Member State shall include in its request:**
  - (a) a description of how the full or partial reduction could help stabilising the situation;**
  - (b) whether the pledged contribution could be replaced with a different type of solidarity contribution;**
  - (c) how that Member State will address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience.**

3. Where the requesting Member State referred to in paragraph 1 is a Member State that is not identified in the Decision referred to in Article 7a as being under migratory pressure, but considers itself as so being, the request shall, in addition to the information referred to in paragraph 2, include also a duly substantiated reasoning on the ~~significance~~ existence and extent of the migratory pressure in the requesting Member State. When assessing such a request, the Commission shall also take into account the information set out in Article 7b.
4. The Commission shall inform the Council of its assessment of the the request within four weeks.
5. Following the receipt of the Commission's assessment, the Council shall adopt an implementing act to determine whether or not to authorise the Member State to derogate from the Council implementing ~~Decision~~ act establishing 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*

1. A Member State that is identified in the Decision referred to in Article 7a as facing a significant migratory situation or considers itself as so being, may at any time request a partial or full reduction of its pledged contributions set out in the Council implementing act ~~Decision~~ referred to in Article 44b(1).

The Member State concerned shall submit its request to the Commission. For information purposes, the Member State concerned shall submit its request to the Council.

2. **Where the requesting Member State is a Member State identified in the Decision referred to in Article 7a as facing a significant migratory situation, the request shall include:**
  - (a) **a description of how the full or partial reduction could help stabilising the situation;**
  - (b) **whether the pledged contribution could be replaced with a different type of solidarity contribution;**
  - (c) **how that Member State will address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience;**
  - (d) **a duly substantiated reasoning pertaining to the area of the asylum, reception and migration system in which the capacity has been reached, and how reaching the limits of its capacity in the specific area affects its capacity to fulfil its pledge.**
3. **Where the requesting Member State is not identified in the Decision referred to in Article 7a as being confronted with a significant migratory situation, but considers itself as so being, the request shall in addition to the information referred to in paragraph 2 include also a duly substantiated reasoning on the significance of the migratory situation in the requesting Member State. When assessing such a request, the Commission shall also take into account the information set out in Article 7b.**
4. **The Commission shall inform the Council of its assessment of the request within [four weeks].**
5. **Following the receipt of the Commission's assessment, the Council shall adopt an implementing act to determine whether or not to authorise the Member State to derogate from the Council implementing act ~~Decision~~ establishing the Solidarity Pool.**

*Article 44g*

*Reconvening the High-Level EU Migration Forum*

1. Where the Council, at the initiative of a Member State ~~own initiative~~ or upon invitation from the Commission, considers that the solidarity contributions to the Solidarity Pool are insufficient, including where significant reductions have been granted according to Articles 44f and 44fa or the overall situation requires additional solidarity support, it shall by simple majority convene the High-Level EU Migration Forum to request Member States for additional solidarity contributions.
2. Any pledging exercise shall follow the procedure set out in Article 44b.

*Article 44h*

*Responsibility offsets*

1. Where the relocation pledges to the Solidarity Pool have reached [~~60~~ 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.

A contributing Member State may indicate to benefitting Member States its willingness to take such responsibility in accordance with the first subparagraph.

2. Where, following the meeting of the High Level Migration Forum convened in accordance with Article 44g, the relocation pledges to the Solidarity Pool contained in the Council Implementing ~~Decision~~ act referred to in Article 44b are below 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) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].**

**Member States 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.**

**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) the person is not a beneficiary of international protection;**
- (f) the person is not a resettled or admitted person.**

**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 Regulation XXX/XXX [*Asylum Procedure Regulation*] shall apply.**



*Article 44i*

*Direct financial contributions*

- 1. Direct financial contributions shall consist of direct financial transfers of amounts from the contributing to the benefitting Member States.**
- 2. Member States that contribute to the Solidarity Pool through a direct financial contribution shall contact the benefitting Member State to agree on the modalities for transferring amounts bilaterally.**
- 3. Benefitting Member States shall identify projects for direct financial contributions and submit these to the Commission which shall maintain an inventory of such projects. The Commission shall liaise closely with benefitting Member States to ensure that those projects correspond to the objective as set out in Article 44a(2)(b). The Commission shall maintain the inventory and make it available to facilitate the matching of direct financial contributions with projects. The contributing Member States shall inform the Commission on the projects planned to be funded and the direct financial contributions made. Amounts shall be provided in EUR.**
- 4. Member States shall ensure, in consultation with the Commission, that direct financial contributions shall not finance any project already funded under the Union budget in the same country. Member States shall ensure that direct financial contributions are additional and complementary to financial support provided under other Union instruments.**
- 5. The benefitting and the contributing Member States shall continue the process of direct financial contributions even after the timeframe for the implementation or the validity of implementing acts has expired.**

*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, jointly by 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.**
3. **The benefitting and the contributing Member States shall continue the process of alternative solidarity measures even after the timeframe for the implementation or the validity of implementing acts has expired.**

*Article 44k*

*Distribution key<sup>51</sup>*

The share of solidarity contributions **to be provided by each Member State** referred to in **Article 44b(2)** shall be calculated in accordance with the formula set out in Annex and shall be based on the following criteria for each Member State, according to the latest available Eurostat data:

- (a) the size of the population (50% weighting);
- (b) the total GDP (50% weighting).

*Articles 45 to 56 deleted*

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<sup>51</sup> Article 44k is based on former Article 54

## CHAPTER II

### PROCEDURAL REQUIREMENTS

#### Article 57

##### *Procedure before relocation*

1. The procedure set out in this Article shall apply to persons referred to in Article **44a(23) point (a)** [...].
2. Before applying the procedure set out in this Article, the benefitting Member State shall ensure that there are no reasonable grounds to consider **that** the person concerned **poses a security risk to a danger to national security or public order of the [...]** Member States. If there are reasonable grounds to consider **that** the person **poses a security risk a danger to national security or public order** before or during the procedure set out in this Article, including where a security risk has been determined in accordance with Article 11 of Regulation (EU) XXX/XXX [Screening Regulation], the benefitting Member State shall not apply or **immediately terminate** the procedure set out in this Article. **The benefitting Member State shall exclude the person concerned from any future relocation or transfer to any Member State [...]. Where the person concerned is an applicant for international protection, the benefitting Member State shall be the Member State responsible in accordance with Article 8(4).**
- 2a. Where relocation is to be applied, the benefitting Member State shall inform the persons referred to in paragraph 1 of the procedure set out in this Article and Article 58, as well as, where applicable, of the obligations set out in Article 9(3), (4) and (5) and the consequences of non-compliance set out in Article 10.

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

[...]

The first subparagraph shall not apply to applicants for whom the benefitting Member State can be determined as the Member State responsible pursuant to the criteria set out in Articles 15 to 20 and 24, with the exception of Article 15(5). Those applicants shall not be eligible for relocation.

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

4. [...]

5. **In the cases referred to in paragraphs 2 and 3 [...], the benefitting Member State shall transmit to the Member State of relocation as quickly as possible all relevant information and documents on the person referred to by using a standard form, enabling the authorities of the Member State of relocation to check whether there are grounds to consider the person concerned a danger to the national security or public order of the Member States. [...]**

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

Where the checks confirm that there are reasonable grounds to consider the person concerned a danger to **the [...]** national security or public order **of the Member States**, the Member State of relocation shall inform **the benefitting Member State**, within one week **of receipt of the relevant information from that Member State [...]** of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place [...].

In exceptional cases, where it can be demonstrated that the examination of the information is particularly complex or that a large number of cases need checking at that time, the Member State of relocation may give its reply after the one-week time limit mentioned in the first and second subparagraphs, but in any event within two weeks. In such situations, the Member State of relocation shall communicate its decision to postpone a reply to the benefitting Member State within the original one-week time limit.

Failure to act within the one-week period mentioned in the first and second subparagraphs and the two-week period mentioned in the third subparagraph of this paragraph shall be tantamount to confirming the receipt of the information, and entail the obligation to relocate the person, including the obligation to provide for proper arrangements for arrival.

8. The benefitting Member State shall take a transfer decision at the latest within one week of the confirmation by the Member State of relocation. It shall notify the person concerned in writing without delay of the decision to transfer him or her to that Member State **and, where applicable, of the fact that it will not examine his or her application for international protection.**
9. The transfer of the person concerned from the benefitting Member State to the Member State of relocation shall be carried out in accordance with the national law of the benefitting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within 4 weeks of the confirmation by the Member State of relocation or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3).
- 9a. **The benefitting and the contributing Member States shall continue the process of relocation even after the timeframe for the implementation has expired.**
10. Articles 32(3), (4) and (5), Articles 33 and 34, Article 35(1) and (3), Article 36(2) and (3), and Articles 37 and 39 shall apply *mutatis mutandis* to the **procedure** [...] of relocation.

**The benefitting Member State carrying out the transfer of a beneficiary of international protection shall transmit to the Member State of relocation all the information referred to in Article 40(2), information on which grounds the beneficiary based his or her application, and the grounds for any decisions taken concerning the beneficiary.**

11. The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of information and documents for the purpose of relocation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

*Article 58*

*Procedure after relocation*

1. The Member State of relocation shall inform the benefitting Member State of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.
2. Where the Member State of relocation has relocated an applicant for whom the Member State responsible has not yet been determined, that Member State shall apply the procedures set out in Part III, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5), and Article 21(1) and (2).

Where no Member State responsible can be designated under the first subparagraph, the Member State of relocation shall be responsible for examining the application for international protection.

The Member State of relocation shall indicate its responsibility in Eurodac pursuant to Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].

3. Where the Member State of relocation has relocated an applicant for whom the benefitting Member State had previously been determined as responsible on other grounds than the criteria referred to in Article 57(3) **second** [...] subparagraph, the responsibility for examining the application for international protection shall be transferred to the Member State of relocation.

**Responsibility for examining any further representations or a subsequent application of the person concerned in accordance with Articles 42 and 43 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] shall also be transferred to the Member State of relocation.**

The Member State of relocation shall indicate its responsibility in Eurodac pursuant to Article 11(3) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].

4. Where the Member State of relocation has relocated a beneficiary for international protection, the Member State of relocation shall automatically grant international protection status respecting the respective status granted by the benefitting Member State.
5. Where the Member State of relocation has relocated a third-country national who is illegally staying on its territory, Directive 2008/115/EC shall apply.
6. **Where the third-country national makes an application for international protection for the first time following the a transfer to the Member State of relocation, the Member State in which the application was registered shall apply the procedures set out in Part III, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5), and Article 21(1) and (2).**

**Where no Member State responsible can be designated under the second subparagraph, the Member State of relocation shall be responsible for examining the application for international protection.**

**The Member State which has conducted the process of determining the Member State responsible shall indicate the Member State responsible in Eurodac pursuant to Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].**



*Article 58a*

*Procedure for 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 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.**
- 2. The contributing Member State shall give a decision on the request within 30 days of receipt of the request.**

**The contributing Member State may decide to accept to take responsibility for examining a lower number of applications for international protection than requested by the benefitting Member State.**

- 3. 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 11(3) of Regulation (EU) XXX/XXX [*Eurodac Regulation*].**

*Article 59*

*Other obligations*

The benefitting and contributing Member States shall keep the Commission informed on the implementation of solidarity measures [...] including measures of cooperation with a third country.

*Article 60*

[...]

### CHAPTER III

#### *FINANCIAL SUPPORT PROVIDED BY THE UNION*

##### *Article 61*

##### *Financial support*

Funding support following relocation pursuant to Chapters I and II of Part IV shall be implemented in accordance with Article 20 [...] of Regulation (EU) 2021/1147 [...].<sup>52</sup>

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<sup>52</sup> When there is agreement on the new AMMR, amendments to AMIF could be envisaged to reflect the corresponding funding needs.

## PART V

### GENERAL PROVISIONS

#### Article 62

##### *Data security and data protection*

- 1. **This Regulation is without prejudice to Union law on the protection of personal data, in particular Regulation (EU) 2016/679, Regulation (EU) 2018/1725 [and Directive (EU) 2016/680].**
1. Member States shall implement appropriate technical and organisational measures to ensure the security of personal data processed under this Regulation and in particular to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed.
  2. The competent supervisory authority or authorities of each Member State shall monitor **independently, in accordance with its respective national law**, the lawfulness of the processing of personal data by the authorities referred to in Article 41 of the Member State in question.
  3. The processing of personal data by the Asylum Agency shall be subject to Regulation (EU) **2021/2303** [...], in particular as regards the monitoring **by** [...] the European Data Protection Supervisor.

#### Article 63

##### *Confidentiality*

Member States shall ensure that the authorities referred to in Article 41 are bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

*Article 64*  
*Penalties*

Member States shall lay down the rules on penalties, including administrative or criminal penalties in accordance with national law, applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

*Article 65*  
*Calculation of time limits*

Any period of time provided for in this Regulation shall be calculated as follows:

- (a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;
- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
- (c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

*Article 66*  
*Territorial scope*

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

*Article 67*  
*Committee*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

- ~~3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.~~

*Article 68*  
*Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 15(6) and 24(3) shall be conferred on the Commission for a period of 5 years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 15(6) and 24(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 15(6) and 24(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **four** [...] months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 69*  
*Monitoring and evaluation*

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), points (a) and (b) against the overall migratory situation.**

No sooner than [five] years after the date of application of this Regulation, and every five years thereafter, the Commission shall carry out an evaluation of this Regulation. The Commission shall present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. Member States shall provide the Commission all information necessary for the preparation of that report, at the latest six months before the [five] years time limit expires.

*Article 70*  
*Statistics*

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council<sup>53</sup>, Member States shall communicate to the Commission (Eurostat), statistics concerning the application of this Regulation and of Regulation (EC) No 1560/2003.

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<sup>53</sup> Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection, OJ L 199, 31.7.2007, p. 23.

## PART VI

### AMENDMENTS TO OTHER UNION ACTS

#### Article 71<sup>54</sup>

[...]

#### Article 72<sup>55</sup>

[Amendments to Regulation (EU) XXX/XXX [Asylum and Migration Fund]

Regulation (EU) XXX/XXX [Asylum and Migration Fund] is amended as follows:

1. Article 16 is replaced by the following:
  - "1. Member States shall receive, in addition to their allocation calculated in accordance with point (a) of Article 11(1), an amount of EUR 10 000 for each person admitted through resettlement or humanitarian admission.
  2. Where appropriate, Member States may also be eligible for an additional amount of EUR 10 000 for family members of persons referred to in paragraph 1, if the persons are admitted to ensure family unity.
  3. The amount referred to in paragraph 1 shall take the form of financing not linked to costs in accordance with Article [125] of the Financial Regulation.

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<sup>54</sup> To be dealt with under the recast of the Long Term Residence Directive.

<sup>55</sup> When there is agreement on the new AMMR, amendments to AMIF could be envisaged to reflect the corresponding funding needs.



4. The additional amount referred to in paragraph 1 shall be allocated to the Member State programme. The funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme. The amount referred to in paragraph 1 may be included in the payment applications to the Commission, provided that the person in respect of whom the amount is allocated was resettled or admitted.
5. Member States shall keep the information necessary to allow the proper identification of the persons resettled or admitted and of the date of their resettlement or admission, while applicable provisions concerning data retention periods shall prevail.
6. To take account of current inflation rates and relevant developments in the field of resettlement, and within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 of this Regulation to adjust, if deemed appropriate, the amount referred to in paragraph 1 of this Article, to take into account the current rates of inflation, relevant developments in the field of resettlement, as well as factors which can optimise the use of the financial incentive brought by those amounts.”

2. Article 17 is replaced by the following:

- “1. A Member State shall receive a contribution of:
- (a) EUR [10 000] per applicant for whom that Member State becomes responsible as a result of relocation in accordance with Articles 48, 53 and Article 56 Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*];
  - (b) EUR [10 000] per beneficiary of international protection relocated in accordance with Articles 53 and 56 of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*];
  - (c) EUR [10 000] per illegally staying third-country national relocated in accordance with Article 53, when the period referred to in Article 55(2) has expired, and Article 56 of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*].
  - (d) The contribution in points (a), (b) and (c) is increased to EUR [12 000] for each unaccompanied minor relocated in accordance with Article 48, Article 53 and Article 56 of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*].
2. A Member State carrying out the transfer shall receive a contribution of EUR 500 to cover the transfer of persons pursuant to paragraph 1 for each person, applicant or beneficiary subject to relocation.
3. A Member State shall receive a contribution of EUR 500 to cover the transfer of a person referred to in Article 26(1)(a), (b), (c) or (d) pursuant to Article 35 of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*].

4. A Member State will receive amounts referred to in paragraphs 1 to 3 for each person provided that the person in respect of whom the contribution is allocated was relocated.
5. The amounts referred to in this Article shall take the form of financing not linked to costs in accordance with Article [125] of the Financial Regulation.
6. Member States shall keep the information necessary to allow the proper identification of the persons transferred and of the date of their transfer, while applicable provisions concerning data retention periods shall prevail.
7. Within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to adjust, if deemed appropriate, the amounts referred to in paragraphs 1, 2 and 3 of this Article to take into account the current rates of inflation, relevant developments in the field of transfer of applicants for international protection and of beneficiaries of international protection from one Member State to another, as well as factors which can optimise the use of the financial incentive brought by those amounts.”]

## PART VII

### TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

#### *Article 73*

##### *Repeal*

Regulation (EU) No 604/2013 is repealed **with effect from** [*the the date referred to in the second paragraph of Article 75*].

References to the repealed Regulation shall be construed as references to this Regulation.

**Regulation 1560/2003 shall remain in force unless and until amended by implementing acts adopted pursuant to this Regulation.**

#### *Article 74*

##### *Transitional measures*

- 1.** Where an application has been registered after [*the date referred to in the second paragraph of Article 75*] [...], the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date.
- 2.** **The Member State responsible for the examination of an application for international protection registered before the date specified in paragraph 1 shall be determined in accordance with the criteria set out in Regulation 604/2013.**

*Article 75*

*Entry into force and applicability*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply to applications for international protection registered as from [the first day of the **twentyfifth** ~~thirteenth~~ month following its entry into force]. [...] <sup>56</sup>

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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<sup>56</sup> It is to be considered at a later stage whether solidarity and responsibility aspects of the Regulation are to be applied from the same date or different.

**Formula for the distribution key pursuant to Article 44k of the Regulation:**

$$\text{Population effect}_{\text{MS}} = \frac{\text{Population}_{\text{MS}}}{\text{Population}_{\text{EU25}}}^{57}$$

$$\text{GDP effect}_{\text{MS}} = \frac{\text{GDP}_{\text{MS}}}{\text{GDP}_{\text{EU25}}}^{58}$$

$$\text{Share}_{\text{MS}} = 50\% \text{ Population effect}_{\text{MS}} + 50\% \text{ GDP effect}_{\text{MS}}$$

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<sup>57</sup> For two Member States, participation depends on the exercise of rights as set out in the relevant Protocols and other instruments.

<sup>58</sup> For two Member States, participation depends on the exercise of rights as set out in the relevant Protocols and other instruments.