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From:	General Secretariat of the Council
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] - compilation of replies by Member States

Following the request for written contribution on the above-mentioned proposal (CM 2550/23) after the JHA Counsellors meeting on 18 April 2023, delegations will find in Annex a compilation of the replies as received by the General Secretariat.

ANNEX

Written replies submitted by the Member States

AUSTRIA

Austria wants to share the following general remarks:

1. Strong Council position necessary in view of EU-Parliament positions

In light of the parliament's recent proposals, we deem it necessary to emphasize the importance of not losing sight of the substantive progress made at council level on key elements for establishing a functioning common asylum system such as mandatory border procedures or addressing the issue of secondary migration. Therefore, the focus should be placed on achieving a strong Council position in order to have negotiating leverage, especially since the negotiations regarding AMR are seemingly coming to an end.

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

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

3. Solidarity only for Member States under particularly pressure

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

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

The European Commission must make decisions regarding access to the solidarity pool based on objective facts and carry out a reasonable and transparent weighting of the included factors. Arbitrariness must be avoided.

5. MS should not be obliged to provide "solidarity" for MS with a lower per capita pressure

It must be ensured that previous burdens of Member States are taken into consideration. At no point should a Member State who had a bigger per capita burden over the past 5 years, be required to provide solidarity for Member States with a lower migration pressure per capita.

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

Contributions and long-term migration pressure in a Member State has to be acknowledged throughout the solidarity mechanism, in particular by full or partial reduction of solidarity contributions, the assessment of a migratory pressure as well as in the distribution key.

7. Necessity of various equal solidarity contributions

As determined in the CZ proposal it is essential that there are at least three equal solidarity contributions, namely (voluntary) Relocation (or Dublin Offsets), financial contributions as well as alternative solidarity measures.

8. Responsibility Offsets as a real alternative to Relocation

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

9. The extension of the definition of family members is not supported.

The extension of the definition of family members to include all siblings is a "red line" for AT.

Specific remarks in the text

Article 7b

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:

…..

Article 18

Family procedure

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 35

Detailed rules and time limits

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**

Commented [LG(VA5a1]: As we understand the wording of the Article, "risk of migratory pressure" is to be understood as a separate status, as it is cited alongside migratory pressure and significant migratory situation. Yet, "risk of migratory pressure" is not mentioned in the solidarity chapter (and therefore does not imply any specific consequences or privileges). How is this to be understood systemically and what are the consequences for a MS to be found in "risk of migratory pressure"..

Commented [LG(VA5a2]: When it comes to the declaration of a MS found to be under pressure it is of utmost importance to have clear and objective criteria, which is why we are of the opinion that this article needs further consideration.
It is necessary that the European Commission makes decisions regarding access to the solidarity pool based on objective facts. In this regard arbitrariness must be avoided.

According to the current proposal the EC has to use 14 different statistics, including sub-statistics and information in order to determine which MS is declared as a MS under migratory pressure. There is no information in the text whatsoever how this will be applied in practice (particularly with regard to the weighting of the factors) and how the EC will come to the conclusions that a MS is under pressure.

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

Search and Rescue cases must be subject to the same criteria as other irregular arrivals.

Commented [LG(VA5a3]: Austria refuses the extending the family definition to include siblings.

Commented [LG(VA5a4]: The 6 months transfer deadline is one of the main obstacles for an effective functioning of the current Dublin system Therefore, we support any extension of the deadline

The proposed 5 years transfer deadline can be supported, if this will be applied for all cases

We once again stress the importance of not losing sight of the objectives pursued by the reform, which were to improve the system and tackle apparent problems (such as secondary migration leading to an overload of the system in specific target states)

Also, we have a strong reservation on a shortened deadline for border procedure cases, as there is no logic behind such an approach for the functioning of the future system A shorted deadline for border procedure cases:

- would incentivize secondary migration and therefore contradict efforts to avoid secondary migration, which is a main criteria for a functioning asylum system
- would lead to a preferential treatment of cases with a low recognition rate and cases that pose a threat to national security or those who have mislead the authorities
- would send the wrong signals to nationalities who are not in need of protection

Furthermore, a lot of questions also remain open regarding the practical implications of such an approach

application in a border procedure referred to in Article 4150 of Regulation (EU) XXX/XXX

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;

...

Commented [LG(VA5a5]: Relocation must remain voluntary and be equally weighted to the other solidarity options.

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.

…

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.

….

Commented [LG(VA5a6]: AT welcomes this Article. In our opinion MS that have received a disproportionate number of asylum applications per capita should always be excluded from the obligation to provide solidarity without a formal Council decision.

Commented [LG(VA5a7]: The contributing Member States should always be able to choose between relocation and responsibility offsets. Therefore, we are in favor of completely deleting the threshold. However, AT welcomes the Reduction of the threshold to 60 % as a step in the right direction.

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.

…

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.

…

Article 44k Distribution key

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).

Commented [LG(VA5a8]: We support a link between financial contributions and projects to be funded This is necessary for the value and effectiveness of these contributions
However, we believe that the Commission should have a stronger role, namely by controlling the payment flows to ensure appropriateness and traceability

Commented [LG(VA5a9]: Alternative Solidarity measures should be equally weighted to relocation and financial contributions. Contributing Member States should be able to decide that alternative solidarity measures will be implemented.

Commented [LG(VA5a10]: Contributions and long-term migration pressure in a Member States has to be acknowledged throughout the solidarity mechanism of the AMR, in particular by the full or partial deduction of solidarity obligations, the assessment of a pressure situation as well as in the distribution key

BULGARIA

Recital 3

We reaffirm our position that the text should be reworded, specifically the addition in the last sentence. We understand the general idea, but the sentence is not well structured especially in the part about the relation between „principle of solidarity and fair sharing" and the Common European Asylum System.

Recital 5

We maintain our reservation against the inclusion of the „beneficiaries of international protection" and „resettled persons" in AMMR.

Recital 6

We insert a scrutiny reservation on the amendment.

Recital 7

We maintain our comments on document st**7618/23** on the formulation „*Member States should have sufficient human and financial resources and infrastructure"*. We insert a scrutiny reservation on the phrase „**to ensure their asylum, reception and migration system is well prepared and that each component has adequate capacity",** specifically in relation to adequate capacity, a concept that is currently under discussion in relation to border procedures.

Recital 9

We insert a scrutiny reservation regarding „**common template".** It should be ensured that the common template takes into account the specificities of Member States and the characteristics of national asylum systems, as well as the level of responsibility they assume in managing migration and asylum processes within the Common European Asylum System.

Recital 11

We insert a positive scrutiny reservation.

Recital 11a

We maintain our comments on document st7618/23 on „level of preparedness“. Concerning the last sentence[1], we consider that it should be amended. The information provided by the Member States should be taken into account while drafting the report.

Recital 12

We maintain our comments on document st7618/23 on the „risk of migratory pressure“.

Recital 12a

We have concerns about the formulations „**minimum thresholds“ and „to provide minimum guarantees in terms of relocations and financial support“.**

Recital 12b

We insert a scrutiny reservation.

Recital 12c, 17

We insert a scrutiny reservation.

Recital 18-24

We cannot support the deletion of texts that reflect the specific situation and responsibility of frontline Member States, considering their geographical situation.

Recital 25

We maintain our comments on document st7618/23 on the category „risk of migratory pressure“.

Recital 28

We insert a positive scrutiny reservation.

1 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.

Recital 28a

We still have uncertainties about the consequences for a given MS that faces a risk of migratory pressure.

Recital 31

We can accept the addition in the last sentence.

Recital 31b

We insert a scrutiny reservation regarding reference to other legal instruments still under discussion.

Recital 31c, (d)

We insert a scrutiny reservation.

Recital 36

We maintain our reservation against the inclusion of the „beneficiaries of international protection" and „resettled persons" in AMMR.

Recital 72a

We insert scrutiny reservation on the phrase **„exercising full discretion".**

Article 5

In Paragraph 1, letter (e), we maintain our comments on document st7618/23, the wording in letter to (b) to be used, namely „prevent and reduce".

Article 7a

We maintain our comments on document st7618/23.

Article 7b

In paragraph 1 letter (h) we maintain our position that the elements for assessing the overall migration situation should include the prevention of illegal border crossings. The prevented cases are part of the overall migratory situation. It is an indicator for burden and for risk of migration pressure. As a quantitative indicator, the number of persons who have attempted to cross the borders of a Member State illegally over a certain reference period, could be introduced.

On letter (f), we maintain our reservation because of the reference to the notification regime for take back inquiries.

In item (j), we can agree with the deletion of benefitting.

Article 7c

We maintain our position on paragraph 3, clarity is needed on „quantitative and qualitative criteria". It is not clear as well which elements the concept of Union-wide responsibility will include. In particular, what is the real dimension of this responsibility at Union level. What are the elements and obligations behind this concept that are shared by all Member States.

Article 44a

Regarding paragraph (c), we maintain our observation that alternative measures should be applied upon request of the affected MS.

Article 44d

In paragraph 3, we consider that the word should remain „request" not „notification", which diminishes the importance of the request. The same applies to paragraph 5.

Article 44e

We can support the changes in paragraph 4.

Article 44f

Regarding the changes in paragraph 1, see the comment under Art. 44d.

Paragraph 3, we prefer the current formulation „**significance“** instead of **„existence and extent“.**

Article 44g

We accept the addition.

Article 44h

We insert a scrutiny reservation. We also maintain our general comment on Articles 44d-fa stated in the comments on document st**7618/23.** If we consider that the risk of migratory pressure has no implications for benefitting from solidarity measures but is just an alarm that the Member State should be prepared, it would be appropriate that the Member State concerned would be able to notify its needs and to request a reduction of its pledged solidarity contributions. A Member State that should be prepared for a migratory pressure could not be objectively expected to implement solidarity measures in its full extent.

CROATIA

Recital 11a - we support HU and their comment to supplement this provision with the following wording: “verified information provided by other relevant sources”.

Recital 12(b) - we do not understand why, when talking about provision of alternative solidarity measures, it is stated that they will be identified by the Commission in consultation with the concerned MS. We do not find this recital coherent with Article 44j which reads as follows: *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*

Recital 25 and Article 7b: we would like the reference to the pressure on the external border to also be included in the provision regarding the assessment of migratory pressure. Likewise, we propose that when assessing migratory pressure, the number of applicants is taken into account rather than the number of applications since an application of a parent might include several children who also have the status of international protection applicants. In accordance with Article 20 of RCD (Applicants with special reception needs), children, as a vulnerable group of applicants with special needs also require special reception guarantees and provision of conditions referred to in paragraph 3 of Article 22 (Minors) of RCD, which should also be taken into account. In that regard, we would like to remind of Article 31, paragraph 2 of APR (Applications on behalf of an […] accompanied minor) which reads as follows:

2. In the case of an accompanied minor, who does not have legal capacity according to the national law of the Member State concerned and who is present at the moment of making or lodging of the application for international protection by the parent on the territory of the same Member State in relation to the application for international protection, in particular if such minor does not have any other legal means of staying, the making and lodging of an application by a parent or another adult responsible for him or her shall be considered to be the making and lodging of an application for international protection on behalf of the minor. Member States may decide to apply this paragraph also in case of an accompanied minor who is born or who is present during the administrative procedure.

Article 2 Definitions (g) family members (v): as regards the proposal to expand the definition of family members to include siblings, HR has always clearly articulated its position, namely that it is against this proposal. We justified our position with the fact that international protection applicants do not have documents to prove family and kinship relations. This has resulted in different practices in MS and their interpretation of this criteria. The issue arises when one MS accepts the applicant's statement as valid proof while another MS does not. Some MS have shown to be more conservative when it comes to proving family relations and they are less likely to recognise them. We have been pointing out that the procedure for proving kinship is a challenge for all MS and it often takes a long time to determine family links (mainly due to a lack of material evidence and documents). Proving kinship for a wider scope of people would also likely lead to more lengthy procedures for determining responsibility. This is why HR wants this issue to be regulated through clearer criteria. The list of evidence for proving kinship has already been prescribed. However, we would like to point out that in practice very often only statements from applicants are taken into account, and some MS do not accept them as relevant evidence.

Article 5 (Principle of solidarity and fair sharing of responsibility): the word "correct" should be more explicit. We propose that the word "discourage" be used instead of it.

Article 6 Strategic governance and monitoring of the migratory situation and recital 9

In paragraph 5, we propose that the deadline of 18 months for establishing the national strategies be extended since not all MS are in the same position and under the same migratory pressure. We therefore propose a deadline of at least 24 months.

We do not agree with amendments in paragraph 7 according to which the Commission would establish a uniform template "for the purpose of their national strategies" since we still believe that this means that the Commission interferes with the national issues and competencies of MS. We could find acceptable a proposal according to which the Commission would establish a template which would serve for collecting information from national strategies of MS, pursuant to Article 7b, paragraph 2(a), but this would not be a template according to which MS would have to establish their national strategies.

Article 21 (Entry): we believe that this criteria is closely related to the provision on the cessation of responsibility referred to in **Article 27 (Cessation of responsibilities)** which is a red line for us since it does not address situations of MS which border with third countries. This is the case of HR where applicants who illegally entered the first MS of entry then illegally enter into a third country which borders with another MS after which they illegally enter into that MS. Paragraph 1a according to which the responsibility of an MS ceases if it can prove on the basis of evidence from the Entry/Exit System (EES) or other records that the person concerned left its territory for more than 3 months does not address our concerns. We understand that if the first MS cannot prove that the person left the territory since this is not recorded in EES, it remains responsible. However, we are still concerned about the expression "other evidence" that this MS could use in case the person concerned is not recorded in EES and what it actually means.

Such a provision has so far proved to be inefficient in practice in the context of migration management and it directly encourages further movements and abuse of the Dublin system and rules.

In order to prevent inefficient practice so far, as well as different interpretation resulting from the ambiguity of the expression "other evidence", we would like to point out that this provision would only make sense in cases of legal border crossings, which is something that the first and responsible MS would have to prove. Unfortunately, the practice so far has shown that most applicants choose irregular pathways so that their identity is not established.

We can therefore be flexible with regard to shorter deadlines in Article 21 (Entry) only if Article 27 (*Cessation of responsibilities*) prescribes more clearly the procedures that need to be taken in case a person **leaves** the territory of an MS **illegally**. Otherwise, we see this provision as a direct incentive for secondary migration, and given our experience so far, we cannot support this.

We propose that paragraph 1a reads as follows:

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 ~~or other evidence~~ , that the person concerned has legally 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.

Article 33 Remedies - we believe that the procedure referred to in paragraph 1a has been made more complex since it allows for an effective remedy against the refusal of a take charge request before a court of an MS to which a take charge request has been sent. The procedure for establishing an MS responsible is carried out between MS according to clear criteria, and this provision introduces a third party, which will only additionally prolong the entire procedure.

It makes us wonder how this procedure can be carried out within the framework of the border procedure and what interest an applicant would have in contesting the decision on the refusal to take charge of the MS which he/she left illegally.

THE CZECH REPUBLIC

Recital 4

Recital 4 has no added value in our opinion. Therefore, we propose to delete the whole recital. Nevertheless, we see as necessary to delete the reference to legal migration. This is important point for the Czech Republic. This proposal covers all references to legal migration throughout the text. In our view legal migration should not be included in proposal of Asylum and Migration Management Regulation.

Recital 6

Scrutiny reservation. The newly added part of the recital seems to us as similar as the first part of the recital. Therefore, we suggest to delete the first part (i.e., first sentence) of the recital, in order to have the text which will be more readable and clearer.

Recital 12

A decision as a legally binding act should not indicate something. Therefore, we suggest to replace "indicating" by "stating".

*"…..the Report should be accompanied by a Decision ~~indicating~~ **stating**…."*

Recital 12c

We mentioned several times that recommendation on Solidarity Pool should not be made public. Therefore, we agree with PL delegation that publication of the recommendation may be a pull factor. We keep our opinion that the exact numbers should not be made public at any time as it was originally suggested in CZ PRES concept.

Moreover, we suggest to replace the word "avoid" by "reduce or mitigate" in the formulation *"…avoid incentives for irregular migration into the Union…"*

Recital 16

The reference to the swift access to the procedures for granting international protection should be deleted. This is very important point for us.

Recital 17

We suggest the following addition in order to better reflect the proposed system.

"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 ***and their levels*** *needed for establishment of the Solidarity Pool and where needed other migratory response measures…."*

Recital 28

In our view, it is necessary to add that the Solidarity Pool should be used by Member States concerned in reasonable and proportionate manner, while taking into account that also the other Member States may intend to use the Solidarity Pool.

Recital 31

Scrutiny reservation related to the last sentence. We would appreciate the clarification of the last sentence (newly added). Moreover, we would like to know, what part of the main text corresponds with this recital.

Recital 31b

We propose not to include the recital to this Regulation. We prefer to include the similar recital into "Crisis Regulation".

Recital 31c

Despite the explanations given by PRES during the last JHA Counsellors meeting, we find this part of the recital confusing and propose to delete it- *„functions on a voluntary as well as mandatory basis"*

Moreover, the recital speaks about the system of guarantees. We would like to ask you for clarification what is meant by this system of guarantees. The exceptions from offsets? Or something else?

Recital 37

In our view, the whole recital not only the term “immediate protection” should remain in square brackets. It has not been decided yet, whether “Crisis Regulation” will contain any new protection status. We find this point quite important.

Recital 60 and recital 69

We propose to delete these recitals. Both do not correspond to any part of the main text. We also do not see any value added of those recitals.

Article 7 par. 1

We do not agree with the adding of Member States relations. This new adding will cause the efficiency of this paragraph will be significantly shortened.

Article 44d par. 5

We cannot support the wording of this paragraph as regard the last part of this paragraph. The “objective reasons” we find unclear.

DENMARK

Firstly, DK would like to refer to our previous comments from March 31th, regarding (1) the time limit for a shift of responsibility in case of absconding (2) broadening the concept of family, (3) adding accountability for issued diplomas:

1. ***The time limit for a shift of responsibility in case of absconding***

DK remain flexible in relation to the time limits and can accept the proposal from the presidency, and as an alternative a time limit of 3 years for both groups.

3. ***Further deliberations regarding responsibility***

In order to explore both the option of broadening the concept of family and adding accountability for issued diplomas it is essential to establish that the requesting country has the burden of proof. Furthermore its essential to get more clarity in regards to how the Commission envisage this process.

For now there are too many unknown factors to make a decision that could potentially shift the balance in a way that would lead to transfers of large amounts of persons each year.

We invite the Commission to draft a paper explaining this process, what kind of evidence would be considered sufficient, how the family link would be established and to present concrete data on how many people a year are requesting transfers to family members and an estimate of how many extra request the extension of the link would result in.

We do see the reasoning behind wanting to connect family members, but we fear the provision will be largely abused and create a big burden shift".

Article 18, 2 (b)

It seems that the article fails to take into account that article 16 and 17 is only applicable, if the person concerned has expressed desire to be unified with a specific family member. What will the procedure be if the concerned person has a sibling and a spouse in two different countries, but only wants to be unified with the sibling? According to article 16 and 17 it is a requirement that the applicant has expressed desire to be unified with a specific family member, and thus it seems that the concerned person de facto will have the possibility to choose.

Regarding point b it appears undesirable that the responsibility is only decided based on the applicant's statement if it is clear, that the applicant must be deemed to have a stronger connection to another sibling. The issue also relates to the answer to the question mentioned above.

Article 27 and 30

Denmark has no objections to articles 27 and 30 as such, and the articles are reminiscent of current practice, but all deadlines for requesting and responding to requests have become significantly shorter in AMMR than in Dublin III. It would be difficult in practice to comply with the deadlines in the simplified TB procedure if, for example, Article 27 is invoked, and this may help erode the simplified procedure. It is worth considering whether it actually makes sense to have the simplified procedure if it is not possible to meet the deadlines in practice, which would not change the responsibility anyway.

Article 27 (1a)

DK does not support this para and believe that the proposal to cease responsibility when the applicant leaves the territory of the EU during the examination of the asylum application will only encourage more people to make the dangerous journeys back and forth across the EU's external borders, creating a business model for human smugglers. DK also agrees with the Commission's assessment that this liability criterion has proved to be complicated to apply in practice due to difficulties in providing the necessary evidence.

Article 33

DK does not support the amendments to this article which are based on an interpretation of c-19/21. Alternatively, the amendment should only cover the specific group of persons concerned in case C-19/21 (unaccompanied minors). However, we would like to stress, that we think there is uncertainty about the conclusions of the judgement, why we do not think it is desirable to try to codify it in AMMR.

Article 34.3

There is a lot of planning and administrative tasks to conduct before carrying out a transfer from one Member Sate to another. DK always seeks to carry out transfers as soon as practically possible, and this is often done within lees than 6 weeks. But in some cases, 6 weeks are needed. When planning a transfer, the transferring Member State must take several aspects into account, e.g. availability of flights, coordination between relevant authorities in both the transferring and the responsible Member State, capacity and reception facilities within the receiving Member State and so on.

As such, DK would prefer the time limit on detention to remain at the current 6 weeks.

Article 35

DK can accept the 6-month time limit and support an absolute deadline of 5 years.

Furthermore, DK support the suggestion from NL to add a new para 2a stated below:

"*The responsibility shall not be transferred to the transferring Member State when the transfer cannot take place due to an absconding from that Member State and a new application for international protection is registered in another Member State or when a new take back notification is made by another Member State, in case no new application has been registered in that Member State*".

ESTONIA

General comments

- Previous comments to the Proposal for the Asylum and Migration Management Regulation remain valid.
- As the new version of the solidarity mechanism is somewhat complex, we would welcome a visual scheme with actual numbers foreseen to be enacted, would be of great help to correct and full comprehension.

Wording proposals

1. Article 2 definitions

Point (g) sub point (v) and respective recital 47

As we have indicated and substantiated many times before we do not support widening of the scope as there is no legal requirement to guarantee or foreseen practical outcome to provide family unity with the legally competent adult siblings. We would appreciate if the recital would state clearly, that the extension only applies to the responsibility determination and has no other wider consequences, in particular, that it does not concern family reunification.

We propose to amend the recital 47 in following lines.

"The definition of a family member in this Regulation should include the sibling or siblings of the applicant **only in the framework of responsibility determination procedure**. 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.]"

3. Article 7a and 7d and respective recitals 12a and 12b

As we have communicated before, the flexibility in measures to provide solidarity is necessary and solidarity contributions should be considered as equal. Also the transparency of the calculations has to be foreseen. For the mechanism to be practical, it is essential that the details of the alternative measures are known to the Member States before the High Level Solidarity Forum is convened.

Therefore, we suggest to clarify in the operational and explanatory text that the need for the alternative measures, its amount and type, should be identified in the Commission's report.

FINLAND

Comments on substance

We would like to reiterate our previous comments on articles 33 and 35.

Article 33

Paras. 1 and 3

We are still of the opinion that the scope of the remedy should not be limited as suggested in para. 1 a) and b). In addition, the court should not be given any deadlines, even indicative ones, to examine the appeal.

New paras. 1a and 1b

We are not in favor for adding the new paragraphs on the right to appeal in certain cases.

We do not contest the Court's opinion that certain rights have their basis in the treaties, but do not agree with the presidency that the judgement would require adding these new rules. Instead, we should change the wording of article 33 and possibly other article and recitals so that it cannot be interpreted as giving the applicant a right to appeal against the reply given by the requested MS or against a decision not to send a request for taking charge.

If these provisions are added, we will need additional rules on what to do if the court accepts the appeal. We also have many questions, some of those below, about the impact of those paragraphs, which support the conclusion that they should be deleted:

1a): Under art. 30(8) a negative reply needs to be justified, but the requesting MS has no means to require a positive reply, it can only ask for reconsideration. So even if it considers that the other MS is responsible, it cannot made a transfer decision in case of a negative reply. However, we would now give the applicant an explicit possibility to contest this negative reply in a court and thus give more rights to the applicant than MS's have. This seems to turn the logic of the regulation upside down. What could then be the outcome of the appeal – could the Court "overrule" a negative reply given by another MS? If yes, what will/should happen– should we make a transfer decision or send out a new request? How can the Court actually examine the case, as the negative reply was given by another MS?

1b): Under Article 25(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. This new paragraph seems to mean that a MS is obliged to send a request in all cases (if it wants to avoid the possible appeal under 1b)). The applicant could then contest a negative reply by filing an appeal in accordance with 1a). But if the reply is positive, could the MS then use the discretion under art. 25 and decide to examine the application itself..? This illustrates well how the new paragraph would not be in line with the logic of article 25(1) and would render it practically meaningless. We are not convinced that this was the intended consequence of the judgement. On the other hand, if no request was sent because the requesting MS either considered itself responsible or took the responsibility under 25(1), how would the appeal under 1 b) affect the time limit to examine the application for international protection under APR? What should we do if the request under those articles was not sent because there were not enough proof (cf. art. 29(3)), but instead another MS (A) accepted the request made under a different article – does the applicant have a right to appeal under 1b) and how will that affect the possibility to make a transfer decision and to time limit for transfer to MS A?

Article 35

We have considered it important that the responsibility does not end or shift due to the applicant's own actions, but have been ready, in the spirit of compromise, to accept that this is the case in certain situations. However, in order to avoid secondary movements, it is important that the time limit for transfer is long enough. We prefer 5 years.

We do not support the new proposal (time limit is 18 months if the application is examined in border procedure), it would give applicants and Member States a wrong signal about the purpose of the responsibility determination as well as about the purpose of the border procedure. In addition, the rules regarding determination, cessation and shift of responsibility should be clear an unambiguous. In practice, it would be impossible to know in which procedure the application has been examined. This information cannot be found from Eurodac.

It is also crucial to find a solution to the awkward practical situation created by the Court's judgment in Case C-323/21 on the so called "chain rule". We need to achieve a clear system for our administrative services as well as to prevent the possibility that an asylum seeker may choose the state that examines the application.

As it is very common that an applicant has multiple applications in many MS, we should either write the rules regarding time limit for transfer so that the interpretation made by the Court in case 323/21 would no longer be possible or make sure that the time limit is sufficiently long so that this shift would not actualize in practice. For this reason also, we support the time limit of 5 years.

This court ruling will lead to even more complicated situation in case the appeal has suspensive effect. This can be illustrated by the following example: the MS A is determined as the responsible state by MS B, the applicant absconds and lodges a new application in MS C, where the appeal against transfer decision to A has suspensive effect. The clock would stop ticking for MS C, but not for B. This means that the responsibility may shift to the MS B because of the suspensive effect granted by State C. If this happens or the responsibility shifts for some other reason, do we need to make a new transfer decision to MS that has become responsible? Does the applicant then have a right to start the appeal procedure from the beginning

Technical comments

Article 9(1) in conjunction with article 22(2)

Paragraph 1 of article 9 requires that the application is made in the Member State of first entry. Before the amendment, Article 22 would have directed the responsibility to the state where the applicant has arrived visa free and the application of the rule to those cases in art. 9(1) would have been logical. As this is no longer the case, the art. 9(1) rule and its logic should no longer apply. Therefore, we need to add a similar derogation for those cases as now in 9(2) for residence permits/visas.

Article 11

The applicant should be informed only on the issues that are relevant to his or her case and this should be reflected in the text.

This right to information now seems to encompass all cases where an application is registered, meaning that this would apply both in cases of the first application and in cases where take back procedure is applied. However, as was noted during the negotiations, not all information listed in para 1 is relevant to both categories of persons. For example information referred to letters c), d) and e) are not relevant in the take back procedure. This article is also relevant in the screening, as in practice this information is given during the screening. It is therefore important to ensure that art. 8.2 b) of the screening regulation is in line with this article 11.

Article 26

Para 1

As we noted in the AWP meeting, under letter b), the obligation to take back is now based solely on the indication in Eurodac. However, it will not be possible to enter such indications before the new Eurodac Regulation is applicable. This means that before, and long after, we have the new Eurodac regulation, we will have cases where the responsibility is already determined and the take back procedure should apply, but there is no indication on responsibility in Eurodac. We will thus need interim provision covering these cases, as acknowledged by the COM in the meeting. There may be also other cases where tb procedure should apply but there is no indication of responsible MS in Eurodac or the indication is incorrect.

In addition, given the judgement by the Court about the "chain rule" in case C-323/21, it is possible that the responsibility shifts before transfer takes place. In this case it is unlikely that the responsibility shift is indicated in Eurodac but that MS that became responsible should have an obligation to take back the applicant.

Para 2

The "or the beneficiary of international protection" should be added in three places: where it is now; …"even if the minor is not individually an applicant **or a beneficiary of international protection";** and …"after the applicant **or the beneficiary of international protection** arrives on the territory…". This way we would ensure that the child will always follow his/her family member.

FRANCE

L'essentiel du règlement étant soumis à discussion, les commentaires sont répartis comme de la façon suivante :

1) Les considérants ;
2) L'approche globale des migrations (articles 3 à 6 et article 7) ;
3) Le cycle annuel de gestion des migrations (articles 7a à 7d et 69) ;
4) La solidarité et la boîte à outils (articles 6a, 44a à 44k, 57 à 59) ;
5) La responsabilité (articles 26 à 44) ;
6) Dispositions générales (articles 1 et 61 à 75).

1. Les considérants :

Considérant 3a :

Par cohérence avec les modifications effectuées à l'article 3, la France demande que soient ajoutés les termes suivants s'agissant des mouvements non autorisés : « *unauthorised movements of third country nationals and stateless persons between them* ».

Proposition rédactionnelle :

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 **of third country nationals and stateless persons** between them, and to provide support to other Member States in the form of solidarity contributions, as their contribution to the comprehensive approach.

Considérant 7 :

La Présidence ayant indiqué que les termes « *adequate capacity* » cités dans ce considérant n'ont pas la même définition que la notion de capacité adéquate prévue dans APR, il convient de les remplacer par d'autres termes afin de ne pas créer de confusion avec la notion d'APR. La France soutient le sens de la phrase : il est crucial pour le fonctionnement du régime d'asile européen commun (RAEC) que les systèmes d'asile, d'accueil et de migration des États membres soient dotés des moyens humains et financiers suffisants pour la réalisation de leur mission.

Proposition rédactionnelle :

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~~ sufficient capacity**.

Considérant 11a :

La France soulignera que le rapport étant préparé après consultation des agences européennes, il est important que la Commission ne puisse demander des informations supplémentaires aux agences européennes que si ces informations ne sont pas disponibles par le biais des mécanismes déjà existants. La dernière phrase prévoyant ce principe pour les États membres devrait donc être modifiée pour inclure également les agences.

Proposition rédactionnelle :

11a. The Commission should only request additional information to Member States and Union agencies when not available through those reporting mechanisms, in order to avoid a duplication of efforts.

Considérant 28 :

La France souligne que les États membres doivent informer ou notifier le Conseil, en plus de la Commission, de leur intention d'utiliser la réserve de solidarité en application des articles 44c et 44d. Le considérant devrait être modifié en ce sens.

Proposition rédactionnelle :

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 and the Council 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.

Considérant 31c :

La France pose une réserve sur ce considérant en cohérence avec sa position sur les compensations de responsabilité (article 44h) : celles-ci ne doivent pas être considérées comme « *un second niveau de mesures de solidarité* » (« **Responsibility offsets should be introduced as a secondary level solidarity measure »),** mais comme une mesure de solidarité à part entière.

Considérant 31d :

La France pose une réserve sur ce considérant en cohérence avec l'opérationnalisation des relocalisations (article 44e).

La France demande en particulier la suppression du terme « *reasonable* », compte tenu de son caractère vague, pour qualifier les préférences des États contributeurs, ainsi que la suppression de la possibilité de relocaliser des personnes qui ne sont pas des demandeurs ou des bénéficiaires de la protection internationale.

Proposition rédactionnelle :

31d. ~~While r~~Relocations should ~~primarily~~ apply only to applicants for international protection and beneficiaries of international protection, where priority might be given for those most vulnerable, and 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.~~

Considérants 51 et 57 :

La France rappelle sa position sur les articles 57 et 58, selon laquelle toute relocalisation doit conduire l'État membre à se désigner comme responsable sur Eurodac avant le transfert. De plus, la France s'oppose à la relocalisation de ressortissants de pays tiers en situation irrégulière. La dernière partie de ce considérant n'est donc pas nécessaire.

Proposition rédactionnelle :

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 responsibile if the person applies for international protection.~~

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 accepted to relocate the applicant or beneficiary of international protection or** 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 reponsible.

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

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

Dans un souci de cohérence avec la nouvelle rédaction du point e) de l'article 5, portant également sur les mouvements non autorisés, la France demande que soit ajouté le terme « *the* » devant « *Member States* ».

Proposition rédactionnelle :

(ha) effective management and prevention of unauthorised movements of third country nationals and stateless persons between the Member States;

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

La France remercie la Présidence pour sa disponibilité en vue d'organiser une bilatérale, mais regrette toujours le manque d'intelligibilité de cet article et estime que la rédaction proposée par la Commission mélange la reprise partielle de dispositions législatives existantes avec des déclarations d'intention sans fondement juridique à ce stade.

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

A défaut d'obtenir satisfaction sur les clarifications demandées, la France demandera la suppression de cette disposition.

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

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

Paragraphe 2 :

La France insiste pour qu'il soit fait référence dans ce cadre à l'évaluation prévue au paragraphe 2 de l'article 25bis du Code communautaire des visas afin que la Commission puisse étayer son évaluation de la coopération avec les pays tiers dans le champ des migrations, dans la mesure où l'article 7 du présent règlement n'a pas été précisé.

- Proposition rédactionnelle :

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

La France souhaite qu'au point (l) permettant la prise en compte des mouvements secondaires dans l'évaluation par la Commission, les États membre puissent également transmettre toutes informations pertinentes à ce sujet.

- Proposition rédactionnelle :

- 2. [...] **(l) scale and trends of unauthorised movements of third country nationals or stateless persons between Member States building on the available information from Member States, the relevant Union agencies and data analysis from relevant information systems.**

4. Sur la solidarité et la boîte à outils (articles 6a, 44a à 44k, 57 à 58a) :

Article 44a : réserve de solidarité :

La France rappellera ses positions :

- La relocalisation de ressortissants de pays tiers en situation irrégulière ne doit pas être envisagée. La France demande que la mention au paragraphe 2, point (a), sous (ii), de « *or for the purpose of return of illegally staying third-country nationals or stateless* » soit supprimée ;

- Les compensations de responsabilité (« *Responsability offsets* », c'est-à-dire les requalifications) doivent être mentionnées dans cet article, dès lorsqu'elles font partie des mesures qui pourront être convenues entre les États membres. La France rappellera également que les États contributeurs devraient pouvoir proposer plus facilement des compensations de responsabilité.

Proposition rédactionnelle :

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 establishing the Solidarity Pool, ~~or for the purpose of return of illegally staying third-country nationals or stateless persons~~;

(aa) responsibility offsets, in accordance with Article 44h;

(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 44e : opérationnalisation des mesures de solidarité :

La France rappelle sa forte opposition au terme « *reasonable* » dépourvu de signification juridique. Les États membres doivent pouvoir exprimer leurs préférences concernant les profils des candidats à la relocalisation, fondées sur leurs capacités d'accueil et leurs procédures nationales.

En outre, le terme « *available* » au paragraphe 1 doit être remplacé par « *eligible* » s'agissant des candidats à la relocalisation en raison de l'aspect contraignant du dispositif.

Enfin, la France rappelle son soutien et ses remerciements à la Présidence pour avoir ajouté le terme « *identified* » devant « *unaccompanied minors* », qui correspond à une des leçons tirées du Retex du 9 février 2023 sur l'opération de relocalisation depuis la Grèce de 1 332 mineurs non accompagnés (MNA).

Proposition rédactionnelle :

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~~ eligible 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 : réduction partielle ou totale de la contribution de solidarité de l'EM sous pression migratoire, ou qui considère l'être, qui n'a pas notifié le besoin d'utiliser la réserve de solidarité :

La France indique que la rédaction de cet article peut être simplifiée : tout État doit être considéré en situation de pression migratoire pour pouvoir bénéficier de la réserve de solidarité.

Propositions rédactionnelles :

A Member State that is identified in the Decision referred to in Article 7a and Article 44d, paragraph 3, 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).

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

La France soutient la modification de la Présidence, mais rappelle sa position sur cet article : si le nombre d'États ayant demandé des réductions de leurs contributions est trop important, les autres États contributeurs ne devront pas être amenés à accroitre substantiellement leurs contributions au risque de voir leurs propres capacités saturées.

<u>Article 44h : compensation de responsabilité (« *Responsabilité offsets* »)</u> :

La France remercie la Présidence pour l'abaissement du pourcentage permettant de faciliter le recours aux compensations de responsabilité.

Toutefois, la France rappelle ne pas être satisfaite du système des compensations de responsabilité qui n'est possible que subsidiairement aux relocalisations et à la demande du seul État bénéficiaire. Elle souhaite donc, *a minima*, que le seuil soit davantage abaissé.

Elle rappellera souhaiter que l'État membre contributeur puisse également proposer à l'État membre bénéficiaire ces compensations, ce qui permettrait d'introduire de la souplesse dans le mécanisme, grâce au partage de l'initiative de sa mise en œuvre. Cette possibilité d'activation du mécanisme est en outre de nature à consolider l'efficacité administrative de la mise en œuvre du règlement.

La France demandera à nouveau que les demandeurs d'asile déboutés ne puissent pas être pris en compte dans des compensations de responsabilité et que le paragraphe 4 soit supprimé. En effet, ce paragraphe offre, en pratique, une seconde possibilité d'examen d'une demande d'asile par un autre État membre, après un premier rejet. Cela va à l'encontre des principes généraux du règlement de la détermination d'un unique État membre responsable et d'une responsabilité étatique qui se prolonge jusqu'à l'éloignement des demandeurs déboutés sur le territoire des États membres.

Propositions rédactionnelles :

1. ~~Where the relocation pledges to the Solidarity Pool have reached [60%] of the Recommendation referred to in Article 7c, a~~ 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.~~

In accordance with Article 44b, paragraph 2, a contributing Member State may propose to take responsibility for examining applications for international protection for which a benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a.

2. Where, following the meeting of the High Level Migration Forum convened in accordance with Article 44g, the relocation and responsibility offsets pledges to the Solidarity Pool contained in the Council Implementing 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 57 : procédure précédant la relocalisation :

Paragraphe 2 :

La France rappelle que la notion de « *security risk* » doit nécessairement être définie à l'article 2 d'AMMR afin d'éviter des acceptions différentes entre le règlement Filtrage et AMMR.

La France rappelle également son interrogation : la notion de « *security risk* » est-elle utilisée par cohérence avec le règlement Filtrage et le règlement ETIAS ? N'est-il pas problématique d'introduire une notion qui ne provient pas du domaine de l'asile, alors que les notions de « *national security* » et de « *public order* » sont déjà utilisées dans d'autres dispositions du règlement AMMR et dans d'autres instruments du RAEC ?

Paragraphe 3 :

La France rappellera avoir tenu une position ferme depuis le début des négociations sur la nécessité de déterminer l'État membre responsable d'un demandeur d'asile avant d'inclure celui-ci dans le programme de relocalisation. Comprenant la charge administrative que peut représenter, pour les États membres bénéficiaires, la procédure de détermination de l'État membre responsable en vertu des critères Dublin, la France souhaite faire preuve de flexibilité. Elle accepte ainsi que la détermination de l'État de relocalisation soit effectuée en prenant en compte les liens familiaux (et non selon les critères de la procédure Dublin). Il s'agit d'éviter qu'en raison de liens familiaux dans un État membre autre que celui de relocalisation, des personnes relocalisées le quittent rapidement pour rejoindre leur famille et créent ainsi un mouvement secondaire. En revanche, la France n'accepte pas le recours à la notion de « lien culturel », qui risquerait de conduire à des applications divergentes en raison de son caractère vague et subjectif.

La France demande en conséquence que l'État de relocalisation se déclare responsable de la demande dans Eurodac dès qu'il a confirmé la relocalisation à l'Etat bénéficiaire. En effet, cette mesure est cohérente avec les pratiques actuelles et permettra d'éviter des transferts successifs (relocalisation, puis transfert Dublin le cas échéant) de demandeurs entre les États membres, qui représenteraient des charges administratives excessives sans apporter de plus-value.

Paragraphe 7 :

La France rappelle son attachement à ce que les opérations de solidarité soient menées efficacement dans les délais les plus courts possible. Cependant, l'expérience acquise montre que les délais prescrits ici sont trop courts (une ou deux semaines selon les cas). Ces délais devraient être de deux et quatre semaines, afin d'être moins contraignants pour l'État membre contributeur, sans que cela empêche de tendre en pratique vers une réduction de ces délais dans l'intérêt de tous. Les délais prévus sont en particulier inadaptés lorsque le cas soumis à la relocalisation soulève des questions d'ordre sécuritaire.

Propositions rédactionnelles :

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.

[…]

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~~ **two** week**s** **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~~ **two** week**s** **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~~ **two-week** time limit mentioned in the first and second subparagraphs, but in any event within ~~two~~ **four** 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~~ **two-week** time limit.

Failure to act within the ~~one-week~~ **two-weeks** period mentioned in the first and second subparagraphs and the ~~two-week~~ **four-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.

7a. Where the Member State of relocation has accepted to relocate an applicant for whom the Member State responsible had not yet been determined, this Member State shall indicate its responsibility in Eurodac pursuant to Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*] after taking into account the family consideration pursuant to paragraph 3.

7b. Where the Member State of relocation has accepted to relocate an applicant for whom the benefitting Member State had previously been determined as responsible on other grounds than the criteria referred to in paragraph 3 second […] subparagraph, the responsibility for examining the application for international protection shall be transferred to the Member State of relocation.

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

Article 58 : procédure suivant la relocalisation :

La France demande, par cohérence avec ses remarques à l'article 57, la suppression des paragraphes 2 et 3 (l'État responsable doit être l'État de relocalisation et la procédure Dublin ne doit pas être appliquée pour déterminer si un autre État est responsable).

La France demande la suppression des paragraphes 5 et 6 : la relocalisation ne doit pas concerner les ressortissants de pays tiers en situation irrégulière.

Propositions rédactionnelles :

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*]

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*].

5. La responsabilité :

Article 28 : début de la procédure :

La France demande que, lorsque deux autres États membres procèdent en même temps à la détermination de l'État responsable de la demande, le demandeur soit transféré directement dans l'État membre responsable de sa demande et ne fasse pas l'objet de deux transferts successifs, et que la première procédure devienne caduque. En effet, lorsque deux États membres procèdent en même temps à la détermination de l'État responsable, il semble plus pertinent que la procédure Dublin incombe à l'État membre dans lequel se trouve le demandeur d'asile (c'est-à-dire le dernier État membre à avoir engagé une procédure Dublin) afin que le demandeur d'asile soit transféré directement vers l'Etat membre responsable de sa demande. Cette proposition évite de ré-initier la procédure Dublin dans le dernier État membre et répond aux objectifs de « célérité » et de « méthode claire et opérationnelle » (considérant 34). Elle s'inscrit également dans un souci d'efficacité opérationnelle et financière. [Cette demande fait suite à l'arrêt de la CJUE dans les renvois joints C-323/21, C-324/21 & C-325/21]

Article 32 : notification d'une décision de transfert :

La France demande la suppression du délai de deux semaines pour prendre la décision de transfert à compter de l'acceptation ou de la confirmation. Ce délai doit être fixé par la législation des États membres comme c'est le cas actuellement. Ce délai pour prendre une décision de transfert est en tout état de cause trop court.

La France pourrait renoncer à ses demandes d'allongement des durées pour les requêtes et notifications prévues aux articles 29 à 31, qu'elle juge également trop courts, si le délai pour prendre la décision de transfert est supprimé.

Article 33 : voies de recours

La France s'oppose aux modifications proposées qui ne sont pas acceptables. Une réflexion sur l'arrêt C-19/21 doit être menée, mais elle ne doit pas conduire à introduire des recours supplémentaires dans les procédures Dublin comme le propose la Présidence. Ces modifications conduiront à surcharger les tribunaux des EM, présentent par ailleurs un risque important de dérives qui ne doit pas être négligé, encourageront en outre les recours dilatoires, et rigidifieront enfin la procédure Dublin entre EM, ce qui est contraire à l'objectif recherché

En tout état de cause, la France rappellera que la décision de la Cour ne concerne que les MNA. Ajouter d'autres cas irait au-delà de ce que la CJUE a jugé. Par suite, la France demande à la Commission et au service juridique du Conseil d'élaborer une solution juridique qui n'élargit pas les voies de recours à des catégories autres que les MNA. Les modifications proposées alourdiront les procédures et iront à l'encontre du bon fonctionnement du système Dublin.

Selon Eurostat, les deux tiers des requêtes pour motifs familiaux (articles 8 à 11 et 24 du règlement Dublin III) ont fait l'objet de réponses négatives en 2021, soit autant de contentieux potentiels en raison de ces modifications.

Article 35 : modalités et délais

La France demande la réintroduction des termes « *refuses to comply* » permettant, outre la notion de fuite, de proroger le délai de transfert. La France est particulièrement attachée à ces termes qui lui permettent d'accepter la définition de la fuite proposée, car ils correspondent à ses pratiques nationales, confirmées par la jurisprudence du Conseil d'Etat. Si les termes « *refuses to comply* » ne sont pas réintroduits, la France s'opposera de nouveau fermement à la définition proposée de la fuite. La réintroduction des termes « refuses to comply » est une priorité pour la France. Enfin, la France rappelle qu'en tout état de cause, sa position prioritaire est la suppression de la définition de la fuite dans AMMR pour s'en tenir aux définitions nationales, position portée également par d'autres États en réunion des conseillers JAI.

La proposition de modification de la définition ne permet pas de tenir compte de la situation dans laquelle un demandeur faisant l'objet d'un accord de prise ou de reprise en charge refuse de se conformer de manière systématique et intentionnelle à la mise en œuvre de la procédure de transfert par un État membre. Une telle situation va à l'encontre du principe de célérité de l'instruction de la demande d'asile, qui est un élément central du règlement Dublin.

En outre, une définition restreinte de la fuite pourrait inciter les États membres à instaurer des mesures de contraintes plus fortes sur les individus afin d'éviter un transfert de responsabilité dû à l'impossibilité de réaliser le transfert en raison du comportement non-coopératif d'un demandeur et de l'impossibilité de proroger le délai de transfert pour motif de fuite.

Par ailleurs, une définition plus large de la fuite peut avoir un effet dissuasif sur les demandeurs, qui seraient contraints à la clandestinité pendant plusieurs années avant de pouvoir espérer échapper à une procédure Dublin et voir leur demande examinée. L'intérêt du mouvement secondaire serait fortement réduit, ce qui permettrait de mieux lutter contre ce phénomène dont l'ampleur est croissante.

Enfin, la plus-value opérationnelle de l'augmentation du délai de transfert en cas de fuite serait réduite si la possibilité de placer des demandeurs sous cette procédure est limitée par une définition en retrait par rapport aux pratiques actuelles.

Pour rappel, d'un point de vue opérationnel dans le cadre de la procédure Dublin, le demandeur est pleinement informé de ses droits et obligations. Cela inclut la lecture de la définition de la fuite. En conséquence, outre la définition de la fuite, mentionner de façon claire la prise en compte du comportement non coopératif du demandeur permet à ce dernier de saisir l'intérêt de prendre une part active au processus de responsabilité et les conséquences en cas de soustraction à l'application du règlement. Cela rejoint les travaux actuels menés dans le cadre de la Feuille de route Dublin visant à informer pleinement le demandeur de protection internationale et à l'associer de la manière la plus éclairée possible à la procédure.

Pour rappel, les positions précédentes de la France sur la fuite :

La France rappelle que la définition de la fuite doit être modifiée (article 2, sous p)) : définir la fuite par le fait que le demandeur d'asile n'est pas resté « à la disposition des autorités administratives ou judiciaires» offre en effet peu de souplesse aux États membres. Par conséquent, la France propose une nouvelle définition de la fuite destinée à éviter des bascules rapides de responsabilité d'un État membre à un autre, en cohérence avec l'objectif du règlement visant à dissuader les mouvements secondaires.

Propositions rédactionnelles :

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 or refuses to comply.**

Where the application of the person concerned who absconded or refuses to comply has previously been rejected by the Member State responsible following an examination of the application in a border procedure referred to in Article 41 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. […]

6. Sur les dispositions générales

Article 75 : entrée en force et applicabilité

La France pose une réserve d'examen sur ce report de la date d'entrée en vigueur.

Courtesy translation into English

As the main part of the regulation is subject to discussion, the comments are distributed as follows:

1) Recitals;
2) Comprehensive approach to migration (Articles 3 to 6 and Article 7);
3) The Annual Migration Management Cycle (Articles 7a to 7d and 69);
4) Solidarity and EU Migration Support Toolbox (articles 6a, 44a to 44k, 57 to 59);
5) Responsability (articles 26 to 44);
6) General provisions (Articles 1 and 61 to 75).

1. Recitals:

Recital 3a:

To be consistent with the changes made to Article 3, France requests that the following words be added with regard to unauthorized movements: *"unauthorised movements of third country nationals and stateless persons between them"*.

Drafting proposal:

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 **of third country nationals and stateless persons** between them, and to provide support to other Member States in the form of solidarity contributions, as their contribution to the comprehensive approach.

Recital 7:

As the Presidency has indicated that the term "*adequate capacity*" in this recital does not have the same definition as the concept of adequate capacity from the APR, it should be replaced by other terms not to create confusion with the concept from APR. France supports the meaning of the sentence: it is crucial for the functioning of the Common European Asylum System (CEAS) that the asylum, reception and migration systems of the Member States be provided with sufficient human and financial resources to carry out their mission.

Drafting proposal:

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~~ sufficient capacity**.

Recital 11a:

France stresses that, since the report will be prepared after consultation of the European agencies, it is important that the Commission can only request additional information from the European agencies if this information is not available through pre-existing mechanisms. The last sentence providing for this principle for the Member States should therefore be amended to also include the agencies.

Drafting proposal:

11a. The Commission should only request additional information to Member States and Union agencies when not available through those reporting mechanisms, in order to avoid a duplication of efforts.

Recital 28:

France stresses that Member States must inform or notify the Council, in addition to the Commission, of their intention to use the solidarity pool under Articles 44c and 44d. The recital should be amended accordingly.

Drafting proposal :

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 and the Council 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.

Recital 31c:

France enters a reserve on this recital in line with its position on responsibility offsets (Article 44h): responsibility offsets should not be considered as *"a second level of solidarity measures"* (*"**Responsibility offsets should be introduced as a secondary level solidarity measure**")* but as a whole solidarity measure.

Recital 31d:

France enters a reserve on this recital in line with the operationalisation of relocations (Article 44e).

In particular, given its vague nature, France asks for the deletion of the term *"reasonable"*, to qualify the preferences of contributing States, as well as the deletion of the possibility to relocate persons who are not applicants for nor beneficiaries of international protection.

Drafting proposal:

31d**. ~~While r~~Relocations should ~~primarily~~ apply only to applicants for international protection and beneficiaries of international protection, where priority might be given for those most vulnerable, and 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 States in order to ensure that the pledged relocations can be effectively implemented.~~**

Recitals 51 and 57:

France restates its position on Articles 57 and 58, according to which any relocation must lead to the Member State designating itself as responsible on Eurodac before the transfer. Moreover, France is opposed to the relocation illegally staying third-country nationals. The last part of this recital is therefore unnecessary.

Drafting proposal :

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 responsibile if the person applies for international protection.~~

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 accepted to relocate the applicant or beneficiary of international protection or** 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 reponsible.

2. Comprehensive approach to Migration (Articles 3 to 6 and Article 7) :

Article 3: Comprehensive approach to asylum and migration management:

In order to be consistent with the new wording of Article 5, point e), which also deals with unauthorised movements, France asks that the word "*the*" is added before "*Member States*".

Drafting proposal:

(ha) effective ~~management and~~ prevention of unauthorised movements of third country nationals and stateless persons between the Member States;

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

France thanks the Presidency for its willingness to organise a bilateral meeting, but still regrets the lack of intelligibility of this article and considers that the wording proposed by the Commission mixes the partial adoption of existing legislative provisions with declarations of intent without any legal basis at this stage.

France would like to have additional information on possible measures in the framework of other EU policies, the legal conditions for such a procedure, and the possible link with other readmission levers. These elements seem necessary to make this provision operational and to continue the discussions on its content.

If the requested clarifications are not forthcoming, France will request the deletion of this provision.

3. The Annual Migration Management Cycle (Articles 7a to 7d and 69) :

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

Paragraph 2:

France insists that reference be made in this framework to the assessment provided for in Article 25bis paragraph 2 of the Visa Code so that the Commission can support its assessment of cooperation with third countries in the field of migration, insofar as Article 7 of this Regulation has not been specified.

Drafting proposal :

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

France would like the Member States to also be able to transmit all relevant information under point (l), which allows secondary movements to be taken into account in the Commission's assessment.

Drafting proposal :

2. […] **(l) scale and trends of unauthorised movements of third country nationals or stateless persons between Member States building on the available information from Member States, the relevant Union agencies and data analysis from relevant information systems.**

4. On solidarity mechanisms and the toolbox (Articles 6a, 44a to 44k, 57 to 58a) :

Article 44a: solidarity pool :

France will recall its positions:

- The relocation illegally staying third-country nationals should not be envisaged. France requests that the reference in paragraph 2, point (a), under (ii), of "*or for the purpose of return of illegally staying third-country nationals or stateless persons*" be deleted;
- Responsibility offsets should be mentioned in this article, as long as they are part of the measures that can be agreed between Member States. France will also point out that the contributing States should be able to offer responsibility offsets more easily.

Drafting proposal:

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 <u>implementing act</u> ~~decision~~ establishing the Solidarity Pool, ~~or for the purpose of return of illegally staying third-country nationals or stateless persons~~;

<u>(aa) responsibility offsets, in accordance with Article 44h;</u>

(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.

<u>Article 44e: Operationalisation of solidarity measures:</u>

France restates its strong opposition to the term "*reasonable*" which has no legal meaning. Member States must be able to express their preferences regarding the profiles of applicants for relocation, based on their reception capacities and their national procedures.

Furthermore, the term "*available*" in paragraph 1 should be replaced by "*eligible*" with regard to applicants for relocation because of the restrictive aspect of the mechanism.

Finally, France reiterates its support and thanks to the Presidency for adding the word "*identified*" before "*unaccompanied minors*", which reflects one of the lessons learned from the feedback of the operation relocating 1,332 unaccompanied minors (UAM) from Greece of 9 February 2023.

Drafting proposal :

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~~ eligible 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:

France indicates that the wording of this article can be simplified: States must be considered to be under migratory pressure in order to benefit from the solidarity pool.

Drafting proposals :

A Member State that is identified in the Decision referred to in Article 7a and Article 44d, paragraph 3, 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).

Article 44g: re-convening the High-Level EU Migration Forum:

France supports the Presidency's modification, but reinterates its position on this article: if the number of States that have requested reductions of their contributions is too large, the other contributing States should not substantially increase their contributions at the risk of seeing their own capacities saturated.

Article 44h: Responsibility offsets:

France thanks the Presidency for lowering the percentage which facilitates the use of responsibility offsets.

However, France reiterates its unsatisfaction with the system of responsibility offsets, which is only possible as a subsidiary to relocations and at the request of the beneficiary State alone. The threshold should, at the least, me lowered further.

France would like the contributing Member State to be able to propose responsibility offsets to the beneficiary Member State as well, which would introduce flexibility into the mechanism by sharing the initiative for its implementation. This would also allow for the strengthening of the administrative efficiency of the implementation of the Regulation.

France asks that rejected asylum seekers cannot be taken into account in responsibility offsets and that paragraph 4 be deleted. This paragraph offers, in practice, a second possibility to examine an asylum application by another Member State, after a first rejection which goes against the general principles of this Regulation determining a single Member State responsible until the return of rejected applicants from the territory of the Member States.

Drafting proposals :

1. ~~Where the relocation pledges to the Solidarity Pool have reached [60%] of the Recommendation referred to in Article 7c, a~~ 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.~~

In accordance with Article 44b, paragraph 2, a contributing Member State may propose to take responsibility for examining applications for international protection for which a benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a.

2. Where, following the meeting of the High Level Migration Forum convened in accordance with Article 44g, the relocation and responsibility offsets 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 57: Procedure before relocation:

Paragraph 2:

France states that the notion of "*security risk*" must necessarily be defined in Article 2 of the AMMR in order to avoid different meanings between the Screening Regulation and AMMR.

France also asks again if the notion of "*security risk*" is used for consistency with the Screening Regulation and the ETIAS Regulation and if it is not problematic to introduce a notion that does not come from the field of asylum, while the notions of "*national security*" and "*public order*" are already used in other provisions of the AMMR Regulation, as well as in other CEAS instruments.

Paragraph 3:

France has held a firm position since the beginning of the negotiations on the need to determine the Member State responsible for an asylum seeker before including him/her in the relocation programme. France understands the administrative burden that the procedure for determining the Member State responsible under the Dublin criteria can represent for the beneficiary Member States and wishes to show flexibility by accepting that the determination of the State of relocation be carried out by taking into account family ties (and not according to the criteria of the Dublin procedure). This is to avoid that, due to family ties in a Member State other than the one of relocation, relocated persons leave quickly after their transfer to join their family and create a secondary movement. On the other hand, France does not accept the use of the notion of "*cultural link*", which could lead to divergent applications due to its vague and subjective character.

France therefore requests that the relocating State declares itself responsible for the application in Eurodac as soon as it has confirmed the relocation to the beneficiary State. Indeed, this measure is consistent with current practices and will avoid successive transfers (relocation, then Dublin transfer if necessary) of applicants between Member States, which would represent excessive administrative burdens without bringing any added value.

Paragraph 7:

France reiterates its commitment to ensuring that solidarity operations are carried out effectively within the shortest timeframe possible. However, experience shows that the time limits prescribed here are too short (one or two weeks depending on the case). These deadlines should be of two and four weeks, in order to be less burdensome for the contributing Member State, although this should not prevent from working towards the reduction of these deadlines in practice in the interest of all. The time limits provided for are particularly inappropriate when the case submitted for relocation raises security issues.

Drafting proposals:

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.

[…]

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~~ **two** week**s** **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~~ **two** week**s** **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~~ **two-week** time limit mentioned in the first and second subparagraphs, but in any event within ~~two~~ **four** 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~~ **two-week** time limit.

Failure to act within the ~~one-week~~ **two-weeks** period mentioned in the first and second subparagraphs and the ~~two-week~~ **four-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.

7a. Where the Member State of relocation has accepted to relocate an applicant for whom the Member State responsible had not yet been determined, this Member State shall indicate its responsibility in Eurodac pursuant to Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*] after taking into account the family consideration pursuant to paragraph 3.

7b. Where the Member State of relocation has accepted to relocate an applicant for whom the benefitting Member State had previously been determined as responsible on other grounds than the criteria referred to in paragraph 3 second […] subparagraph, the responsibility for examining the application for international protection shall be transferred to the Member State of relocation.

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

Article 58: Procedure after relocation:

France asks for the deletion of paragraphs 2 and 3 in coherence with its remarks on Article 57 (the State responsible should be the State of relocation and the Dublin procedure should not be applied to determine whether another State is responsible).

France asks for the deletion of paragraphs 5 and 6: relocation should not concern illegally staying third country nationals.

Drafting proposals :

~~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]*.

~~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 Art**~~

~~**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].**~~

5. Responsibility:

Article 28: Start of the procedure:

France asks that when two other Member States proceed at the same time to the determination of the State responsible for the application, the applicant should be transferred directly to the Member State responsible for his application and not be subjected to two successive transfers, and that the first procedure should lapse. Indeed, when two Member States are simultaneously determining the State responsible, it seems more appropriate that the Dublin procedure is the responsibility of the Member State where the asylum seeker is located (i.e. the last Member State to have initiated a Dublin procedure) so that the asylum seeker is transferred directly to the Member State responsible for his/her application. This proposal avoids re-initiating the Dublin procedure in the last Member State and meets the objectives of "*rapidi*" and "*clear and workable method*" (recital 34). It is also in line with the concern for operational and financial efficiency. [This request follows the judgment of the CJEU in joint references C-323/21, C-324/21 & C-325/21].

Article 32: Notification of a transfer decision:

France asks for the deletion of the two-week time limit to take the transfer decision from the acceptance or confirmation. This time limit should be set by Member States' legislation as it is currently the case. This timeframe to take a transfer decision is in any case too short.

France could waive its requests for longer periods for requests and notifications under Articles 29 to 31, which are also considered too short, if the time limit to take the transfer decision is deleted.

Article 33: Remedies

France is opposed to the proposed amendments, which are not acceptable. A reflection on the C-19/21 ruling must be carried out, but must not lead to the introduction of additional appeals in the Dublin procedures as proposed by the Presidency. These modifications will lead to an overloading of the Member States' courts, present a significant risk of abuse which must not be overlooked, will encourage dilatory appeals, and will make the Dublin procedure between Member States more rigid, which is the opposite of the intended purpose.

In any case, France points out that the Court's decision only concerns UAMs and adding other cases would go beyond what the CJEU ruled. Consequently, France asks the Commission and the Council's Legal Service to develop a legal solution that does not extend the remedies to other categories than UAMs. The proposed changes will make the procedures more burdensome and undermine the proper functioning of the Dublin system.

According to Eurostat, two thirds of family-related applications (Articles 8 to 11 and 24 of the Dublin III Regulation) were rejected in 2021, representing as many potential litigations as a result of these amendments.

Article 35: detailed rules and time limits

France asks for the reintroduction of the terms "*refuses to comply*" allowing, in addition to the notion of absconding, to extend the transfer deadline. France is particularly attached to these terms, which enable to accept the proposed definition of absconding, as they correspond to French practices, confirmed by the case law of the *Conseil d'Etat*. If the terms "*refuses to comply*" are not reintroduced, France will strongly object to the proposed definition of absconding. The reintroduction of the terms "*refuses to comply*" is a priority for France. Finally, France recalls that in any case, its priority position is the deletion of the definition of absconding in AMMR to stick to national definitions, a position that was also supported by other States in the JHA Counsellors' meeting.

The proposed amendment to the definition does not allow for the situation where an applicant who is the subject of a take-over or take-back agreement refuses to comply systematically and intentionally with the implementation of the transfer procedure by a Member State. Such a situation runs counter to the principle of speedy examination of the asylum application, which is a central element of the Dublin Regulation.

Furthermore, a narrow definition of absconding could lead Member States to introduce stronger restraints on individuals in order to avoid a shift of responsibility due to the impossibility to carry out the transfer because of an applicant's non-cooperative behaviour and the impossibility to extend the transfer deadline on the grounds of absconding.

On the other hand, a broader definition of absconding may have a deterrent effect on applicants, who would be forced into clandestinity for several years before they could hope to avoid a Dublin procedure and have their application examined. The appeal of secondary movement would be greatly reduced, which would make it possible to better combat this phenomenon whose scale is growing.

Finally, the operational added value of increasing the transfer time for absconding would be reduced if the possibility of placing applicants under this procedure was limited by a lower definition than in the present practice.

As a reminder, from an operational point of view in the Dublin procedure, the applicant is fully informed of his/her rights and obligations. This includes reading the definition of absconding. Therefore, in addition to the definition of absconding, clearly mentioning the consideration of the applicant's non-cooperative behaviour allows the applicant to understand the value of taking an active part in the responsibility process and the consequences of evading the application of the Regulation. This is in line with the current work carried out in the framework of the Dublin Roadmap aiming at fully informing the applicant for international protection and involving him/her in the procedure in the most informed way possible.

Reminder of France's previous positions on absconding:

France reinterates that the definition of absconding must be modified (Article 2, under p)): defining absconding by the fact that the asylum seeker has not remained "at the disposal of the administrative or judicial authorities" indeed offers little flexibility to Member States. Consequently, France proposes a new definition of absconding designed to avoid rapid shifts of responsibility from one Member State to another, in line with the Regulation's objective of deterring secondary movements.

Drafting proposals:

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 or refuses to comply**.

Where the application of the person concerned who absconded or refuses to comply has previously been rejected by the Member State responsible following an examination of the application in a border procedure referred to in Article 41 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. [...]

6. On the general provisions

Article 75: Entry into force and applicability

France enters a reserve on this postponement of the date of entry into force.

GERMANY

Introductory note

We thank the Presidency for the new revision of the text, as well as for the efforts to achieve a compromise. Germany still thinks that **progress with the CEAS legislative acts** is **urgently needed.** We therefore support rapidly moving forward in the negotiations.

Our comments focus mainly on the major amendments made. We also refer to our previous comments and maintain our scrutiny reservation.

For Germany, the following aspects in the AMMR are central to the overall balance:

(1) **reform of responsibility rules** and **measures to reduce irregular secondary migration** (notification procedure with clear time limits, extension of time limits for transfers, stable responsibilities)

(2) **permanent, reliable solidarity mechanism** in which **participation is compulsory** (no obligation beyond the "fair share"; irregular secondary migration as part of definition of migratory pressure, responsibility offsets only as a last resort).

Recitals:

Recitals 2, 3, 4, 6 and 7 (as well as all other recitals that include the wording)

As we have already mentioned with regard to Article 5 (-1) and Article 6 (3), we believe that the wording "migration management" is open to misinterpretation as it suggests that (managing) regular migration also falls within the scope of the Regulation.
We therefore ask to clarify that this is not the case at an appropriate place in the text, or to use another wording throughout the entire text (e.g. "management of irregular migration" instead of "migration management").

(3)

The wording “the EU as a whole shares the responsibility to manage migration, in particular ...” in the last sentence (copied from deleted Article (5) (-1)) continues to be misleading. The Member States have sole responsibility in certain areas of migration (Article 79 (5) TFEU).
Please use the wording from recital 6 in recital 3: “the Union and Member States, acting within their respective competencies, share the responsibility to manage migration, in particular ...”.

(5)

We welcome the inclusion of beneficiaries of international in the framework of the AMMR in order to prevent irregular secondary movement.

(12c)

Here, reference is made to the classification mentioned in Article 7a (6). However, without stating the number of that article, the recital is unclear. We therefore suggest referring to the classification mentioned in Article 7a (6).

(18)

We enter a scrutiny reservation on the amendments to the solidarity mechanism regarding SAR arrivals. This also applies to Rec. 19, 20, 21 and 23.

(26)

We thought it appropriate to have this recital, because relocations require considerable efforts and should be reserved primarily for people particularly in need of protection. We are in favour of keeping this recital. Please explain why it has been deleted.

(28)

Is it not necessary for the final half-sentence to mention that the Commission will examine the notification and must confirm the Member state's assessment?

(31c)

We support the clarification that responsibility offsets are secondary level solidarity measures. As for the rest, we refer to our comments below.

(31d)

No general objections; however, the criteria of the contributing Member State should be taken into account (on top of the preferences). In sentence 1, “might” should be replaced by “should”.

(45)

We welcome the amended wording from “a danger to national security or public order" to “poses a security risk” for maintaining consistency with the language used in the Screening Regulation. Cf. modification of Articles 8, 38 and 57.

(47)

We can take a closer look at the COM's proposal to include so-called "transit families" in the definition of "family members". Further changes to the definition of "family members" are linked to the condition that effective measures to efficiently reduce irregular secondary migration are decided on (including notification procedures, longer transfer periods and the longest possible responsibilities) and the overall balance is otherwise right. Under such a condition, we could in principle support the inclusion of adult siblings.

(48)

In the light of the ECJ Judgment of 6 June 2013, MA and Others, C-648/11, EU:C:2013:367, we have a scrutiny reservation regarding the responsibility of the Member State where the unaccompanied minor`s application was first registered.

Article 2

- **Letter (g) (v):**

  We are critical of the proposed deletion, as we would support a regulation of the question. We suggest the following wording:

  „On the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage would not be in accordance with the relevant national law had it been contracted in the Member State or Member States concerned, in particular having regard to the legal age of marriage, unless the consideration as unmarried is not in the best interest of the minor."

Article 3

We have no objections to the amendments in Article 3 (ha).

However, we ask once again that the term "irregular" be consistently used throughout the text (instead of "illegal" or "unauthorised").

We also ask once again that the words "with full respect for human rights aspects" be added after "migration management" in the first sentence: "building their capacities in search and rescue, border, asylum and migration **management** ***with full respect for human rights aspects***, preventing ...".

Article 6 (7)

We agree to the deletion of "uniform conditions in the form of".

However, we will withdraw our reservation regarding the template to be created by the Commission by means of implementing acts only if it is clarified which areas the national strategies are to cover and that they do NOT have to cover regular migration. In addition, we continue to be concerned that such requirements would create a great deal of bureaucracy for the Member States. We also continue to doubt whether the Commission is permitted to intervene in the Member States' competences to this extent. With a template, the Commission would indirectly determine how the national strategies setting out the Member States' strategic approaches for managing asylum and irregular migration at national level should look like. Such requirements appear excessive in terms of subsidiarity as well. We would appreciate the opinion of the Council's Legal Service.

Article 26

- **Paragraphs 2 and 3**: We welcome the addition.

  Moreover we suggest wording the text as follows for the purpose of clarity: *„(…) by the Member State responsible for examining the application for international protection of that family member or* ***the Member State responsible for the beneficiary of international protection****, (…)."*

Article 27

- **Paragraph 1a:**

  We reject the supplementary proposal and the addition of the whole of paragraph 1a, because cessation of responsibility after the applicant has been absent from the EU for a period of at least three months would mean starting the procedure over if the applicant re-enters the EU. In Germany's view, the procedure for determining responsibility should only be carried out once.

Article 29

- **Paragraph 1:**

  Following an initial examination, the proposed wording to implement the judgment of the Court of Justice (Judgment of 1 August 2022, C-19/21) in the regulation text is a step in the right direction. It has not yet been possible to complete the examination. However, we still have questions regarding concrete implementation (particularly regarding Article 33 (1a)).

- **Paragraph 3:** We reject an obligation to provide substantiated reasons for the rejection of a take charge request relating to the relevant criteria of the hierarchy, as this will lead to an increased administrative burden and will not speed up the procedure.

Article 30

- **Paragraph 8:**

  We continue to welcome the fact that the objection to a take charge request must be substantiated. However, we reject an obligation to provide substantiated reasons for rejection relating to the relevant criteria of the hierarchy, as this will lead to an increased administrative burden and will not speed up the procedure. We therefore welcome the deletion.

Article 31

- No objections to the deletion.

Article 34

- **Paragraph 3 subparagraphs 3 and 4**:

  At least the current status (**6 weeks**) should be maintained.

Article 35

- **Paragraph 1:**

  The **standard transfer period** should be **12 months**.

- **Paragraph 2:**

  - We expressly welcome the inclusion of a maximum time limit of **five years** for transfers in cases where the person **absconds** and is accountable for doing so.

  - The inclusion of an extension of the time limit in cases **of refusal to comply is material for us** and we therefore reject the deletion. The maximum time limit for transfers should also be **five years** in these cases. The inclusion of an extension of the time limit in cases of refusal is essential for improving transfer procedures in cases where the applicant remains available to the competent authorities, but prevents a transfer for reasons which are not reasonably justified (e.g. resistance to law enforcement officers; refusal of a COVID-test, behavior that leads to airlines not transporting a person; inability to travel caused by one's own responsibility, such as alcohol consumption or the influence of drugs).

  - In our view, it is also important that the transfer does not have to be carried out within the remaining time ("at least three months") and that instead, the time limit for transfers **starts over** when the obstacle to transfer (absconding, refusal to comply) no longer exists. Because the obstacles to transfer are not beyond the applicant's control, the time limit for the Member State to carry out the transfer should be long enough.

  - In this context, we consider the definition of "absconding" in Article 2 letter (p) to be important. We assume that, with the prior addition of "for reasons which are not beyond the person's control", the intention is to implement the Judgment of the Court of Justice C-163/17 of 19 March 2019. In this case, we propose the following clarifying addition with regards to "absconding" in Article 2 (p) and to "refusal to comply" in Article 35 para. 2: "for reasons which are not reasonably justified".

  - In cases where the applicant was not responsible for the obstacle (e.g. lack of transfer capacities) a new six month time limit should start only once after removing the obstacle.

- Differentiation of the "**border procedure**": In our view, there is inconsistency in the proposal of a shortened time limit for transfers (18 months) in the case of a prior rejection of an application by another Member State in the border procedure. Persons whose application is rejected in the border procedure and who additionally later abscond would benefit from this. Germany therefore rejects the proposal.

Article 44e

- Apart from the preferences, the criteria of the contributing Member State should also be taken into account. Given the definition in Article 2 (j) of the AMM Regulation, the addition of the supplementary term "identified" in para. 4 is not necessary. Moreover, we are in favour of maintaining the previous wording with "shall".

Article 44h

- We can only imagine responsibility offsets as a **voluntary solidarity measure as a last resort**.
- We still need to examine para. 2, in particular. However, we support the fact that the obligation only refers to the minimum number of relocations.
- We are afraid that responsibility offsets will in the end benefit those who do not abide by the rules. We therefore suggest to include an effective date in the past for those who would fall under the offsets (e.g. arrival in second MS at least xx months prior to application of the responsibility offsets).

Article 57

- We thank the Presidency for the adjustments in para. 2. However, these would also have to be implemented in paras. 5, 6 and 7. Or is there a reason why the amendments have not been applied in these paragraphs?

- We also refer to our previous comments. Regarding **paras. 6 and 7**, **it is very important that the time limits be extended** (in general at least two weeks and **in case of a personal interview to a minimum of three weeks**, with a possibility to prolong this to four weeks)**.** Moreover, the **final sentence in para. 7** should be **deleted**.

Article 58

- We still have a scrutiny reservation concerning the procedure for determining the member state responsible and regarding the question whether this procedure can also be applied prior to a transfer with a view to avoiding multiple transfers. Given the fact that a relocation transfer involves considerable effort (as evidenced by our experience with the VSM) this option should be examined. We are willing to consider the Commission's proposal.

Article 67 (3)

- Why has the text been deleted?

Article 75

Regarding the date for the applicability, consistency with the other relevant legal acts is required.

GREECE

The delegation of Greece would like to submit the following written comments to the revised text of the draft AMMR Regulation (Ref no 8203/23) on the topics discussed during the JHA Counsellors Meeting on 18/04/2023

EL reiterates its general scrutiny reservation on the whole text, taking into account the interdependence of this Regulation with the other legislative proposals of the Pact under negotiation, particularly the APR proposal and the Crisis and Force Majeure Regulation. EL upholds its reservations as expressed in the Counsellors and AWG meetings on this file and reiterates comments already submitted on AMMR.

The following points summarise our main concerns associated with this Regulation.

EL has always advocated for a regulatory framework that would address the actual size of the migration challenge that the EU faces. We continue to stress that the scope of the new system must be based on objective criteria that reflect the situation on the ground and the actual needs of the MS on the front line. We therefore do not support an arbitrary number as a minimum threshold and we call for a calculation using a formula based on objective criteria (number of arrivals- recognition rates- implemented returns).

In order to reach the balance between solidarity and responsibility, flexible solidarity will require a **proportional reduction of responsibility** in the Dublin criteria. This can be achieved by reducing the periods for cessation of responsibility in certain cases (i.e. Responsibility for TCNs who underwent (mandatory or not) border procedures should cease after 12 months).

Similarly, the **decision making process must be mirrored between** AMMR and APR. At the moment the process is imbalanced given that AMMR foresees a Council decision for the solidarity mechanism, while APR foresees a Commission decision (by means of implementing act) for the border procedures. Our preference is to make the system operational in both cases.
As a matter of principle **we cannot agree** with expanding the Dublin scope to include beneficiaries of international protection. The subject matter of the Dublin rules aim at determining the MS responsible to examine the claim. Once this examination is concluded the beneficiaries should no longer fall within the scope of AMMR. As we have supported repeatedly, in the case of beneficiaries we should facilitate their mobility through the LTR Directive (long-term residence) advocating for a common European protection space.

On Dublin Criteria we would like to reiterate our strong support in including the **siblings** in the scope of family definition and the provision on remedies (art. 33). On procedures we cannot agree with the automaticity of the **Take Back Notification**, unless complemented with a provision for shift of responsibility in the case of submission after a set deadline, similarly with the provisions for a Take Charge Request. On timelines we call for keeping the current provision (12 months) for the **first entry criterion** (art. 21). On **absconding** we have strong concerns on the proposed 5 years period, which is deemed unjustifiably long. We could support a differentiated approach for rejected cases under the border procedure (mandatory or not) by limiting the period of responsibility after absconding to 6 months, while keeping the current provisions for all other cases to 18 months. We could also envision limiting responsibility for all persons whose application for asylum has been rejected in any type of asylum procedure, to 12 months.

Please find below EL observations and written comments on the AMMR ref. 8203/23

RECITALS

(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].

Comments

EL retains its substantive reservation that beneficiaries of international protection should fall outside the scope of AMMR

(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.

Comments

EL retains its substantive reservation that the level of shared responsibility on an annual basis should be established on objective criteria (number of arrivals, recognition rates, return rates)

(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, only where they are suitable to address their actual needs . Member States would then be able to pledge such measures at the High Level Migration Forum.

Comment

Alternative measures are relevant only if there is a specific need identified by the MS and the Commission to support the MS in need. Therefore we propose the above addition in the wording.

(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. 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.

Comment

EL supports a solidarity mechanism that can provide for tailor made and needs based solutions. We propose the addition of the last sentence which comes from rec 25 and its respective deletion from rec 25.

(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, **both prevented or detected**, 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.~~

Comment

EL is of the position that the assessment of the overall migratory pressure of a MS should also take into

account the efforts of a MS to prevent and detect illegal border crossings. We therefore propose the above addition, as discussed also in the framework of SBC

(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.

Comment

EL - same comments as in point (5) beneficiaries of international protection should fall outside the scope of AMMR

(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.]

Comment

EL welcomes the inclusion in Art 33 of the provision for remedies against a decision related to the application of family criteria of the AMMR regulation, also taking into account recent CJEU C19/21

(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 establishment and functioning of the Solidarity Pool, in view of the particular features of the system of solidarity provided for by this Regulation, based on pledges made by each Member State, exercising full discretion as to the type of solidarity, in the High Level Forum;** 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.

Comment

*We propose this addition in order to address the possibility that the establishment of the solidarity pool that has been concluded by the Council, even after the convening of a second High level EU Migration Forum has been reconvened, has not been reached. It should therefore be foreseen that the **Commission** will have the power to adopt the relevant acts.*

PART I : SCOPE and DEFINITIONS

Article 2

(g) Definition of *family members*. EL supports the inclusion of the concept *family en route* to be taken into account when defining family members.

(g)(v) Definition of *family member*s. EL strongly supports including ***sibling or siblings*** *of the applicant* in the definition of family members of this Regulation as an element for an effective and fair system for responsibility determination. This would lead in the provisions of more effective responsibility rules, avoiding secondary movements and establishing a meaningful link between the person concerned and the Member State responsible.

However, EL does not support a possible trade-off proposal between the inclusion of siblings and the differentiated approach to the length of responsibility in case of irregular entry from 12 months to 18 months or three years, since it adds burden and locks the responsibility in the first entry MS for reasons connected to the geographical position of a MS.

(w). Definition of *migratory pressure* EL still raises concerns on the absence of a reference to the geographical particularities in connection with the migratory pressure. We propose the following redrafting of the said definition :

(w) 'migratory pressure' means a situation which is generated by […] arrivals of third country nationals or stateless persons, notably due to the geographical position of a Member State and the particularities of the sea and land external borders, 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 require~~s~~ 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;

PART II : COMPREHENSIVE APPROACH

Article 3

(ha) effective management and prevention of unauthorized movements of third country nationals and stateless persons between Member States

Comment

We propose the reinstatement of the word "management", since responsibility offsets relate rather to management than to prevention

Article 5

(-1) EL does not support the deletion of this provision and removal to the recitals. We retain our previous written position and support the redrafting proposed by Italy.

1(e) take all **measures necessary** […] and proportionate […] to prevent and ~~correct~~ manage (or reduce) unauthorised movements between Member States.

Comment

*The expression "**correct** unauthorised movements" should be replaced by the verb "manage" or "reduce"*

Article 7b

1(b) the number of third-country nationals who have been prevented or 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;

Comment

We propose the alignment with wording agreed in the SBC . Same applies in our proposal for recital 25

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

2 (b) the level of cooperation on migration as well as in the area of return with third countries of origin and transit, first countries of asylum, and safe third countries as defined in Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] **on the basis of existing EU readmission agreements and arrangements**

Comment

We retain our position that the assessment of the return and readmission should be based on the existing relevant agreements and arrangements at the period of the assessment.

Article 7c.

par. 2. EL maintains the position that the identification of the numbers for relocations and for direct financial contributions on an annual basis should reflect the migratory situation and needs of the member state of a given year. Therefore, the annual number should be defined by using a formula, which would take into account the number of arrivals, average recognition rates and the return rates. Applying that formula would render unecessary the minimum threshold. Relevant amendments should be made on Article 69.

Criteria and mechanisms for determining the Member State responsible

General Principles and safeguards (Articles 8 to 13)

EL is flexible with these Articles. Nevertheless, a reservation is upheld on ***Article 11.1 (ga) Right to information,*** *due to the cross-reference to* ***Article 35*** *on the transfer procedure and the extension of the time limit therein.*

Chapter II . Criteria for determining the Member State responsible (Articles 14-23)

Article 15. Unaccompanied minors.

Par. 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~~ is present unless it is demonstrated that this is not in the best interests of the minor.

Comment

According to the CJEU, the best interest of the minor must be the basis of all decisions the Member States take when interpreting the Regulation. The CJEU has ruled that unaccompanied minors form a category of particularly vulnerable persons and it is important to ensure that they have prompt access to the procedures for determining international protection status and therefore not to prolong more than is strictly necessary the procedure for determining the Member State responsible. This means that, as a rule, unaccompanied minors should not be transferred to another Member State, but on the contrary the Member State, in which that minor is present after having lodged an asylum application , is to be designated the 'Member State responsible.' (C-648/11, paras. 55-61).

Article 19. Issue of residence document and visas. *EL would favour maintaining the deadline foreseen in the current Dublin Regulation*

Article 20. Diplomas or other qualifications. *EL supports the criteria based on diplomas and other education qualifications as suggested in the compromise proposal (ref. 8203/23)*

Article 21. Entry criteria. *EL is of the position that increasing the period of responsibility related to the irregular entry criterion from the current status of 12 months to 18 months or 3 years cannot be accepted, since it adds burden for reasons only depending on the geographical position of a MS.*

Article 22. Visa waived entry. *We can accept the suggested wording, including the new paragraph 2.*

Chapter III . Dependent persons and discretionary clause (Articles 24 and 25)

Article 24 . Dependent Persons . *EL supports including in the scope of this clause the siblings or spouse of the dependent person*

Article 25 . Discretionary clause . *EL supports the current formulation of this article*

Chapter IV . Obligations of the Member State responsible (Articles 26 and 27)

Article 26 . *We reiterate our substantive reservation in including the beneficiaries of international protection in the scope of this Regulation, since its aim is to determine the MS responsible for the examination of an application. Therefore, point (c) of para. 1 should be deleted, as well as the addition in para. 2.*

Article 27. Cessation of responsibilities

We support the reinstatement of the cessation clause for shift of responsibility on the evidence that the person has left the territory of the MS for at least three months. In line with the contribution on Article 26, the ***second subparagraph of paragraph 1*** *should be deleted, since "persons who have already been granted international protection" should fall outside of the responsibility determination rules. Furthermore the reference to "take back notification" should be replaced with "take back request" .*

CAPTER V Procedures

Article 29. Submitting a take charge request

We support the addition in par 1 of a freeze clause of deadlines in case of an appeal or review as foreseen in art 33 par 1a and 1b.

We furthermore support the proposal of using a standard form when submitting a TCR along with the relevant proof and circumstantial evidence, for adequately justifying the used criterion and that all the other hierarchically superior criteria are not met.

Article 31. Submitting a take back notification.

We maintain our position that the take back procedure must remain as a request procedure, not a mere notification procedure and stress that every rule which has not been complied leads to consequences. Therefore we propose that failure to request within the time limit should be tantamount to accepting the responsibility. The following wording is proposed:

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 request within two weeks after receiving the Eurodac hit. Failure to make the take back request within the time limit shall tantamount to accepting the responsibility.

Article 33. Remedies.

EL welcomes the inclusion in Art 33 par 1a and 1b of the provision for remedies, also taking into account the recent CJEU C19/21

Article 35. Detailed rules and time limits.

A link between the responsibility rules in AMMR and border procedure in APR could be acceptable for EL without prejudice to the need for a safeguard clause related to national security concerns. Furthermore, a differentiated approach for the case of absconding of those previously rejected in the border procedure could be accepted, if a significantly lower time limit of 6 months is foreseen. In parallel EL could envisage limiting the time of responsibility for all persons, whose application for asylum has been rejected in any kind of asylum procedure, to 12 months. In addition EL is of the opinion that the general rule as provided in article 35 ie extension of the time limit for transferring the person concerned in case of absconding to 5 years is too long and thus the limits of the current acquit (18 months) should be maintained.

PART IV Solidarity Mechanisms

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

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

Article 44 b par 3 *In order for the new system to work effectively, it is essential that the provision includes safeguards that the needs identified by the MS will be fully met.*

Therefore we propose the following addition in par.3

> 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), and (b) and, where applicable, point (c), or a combination of them. The Commission shall ensure that the needs identified in Article 7c are met through the contributions of Member States**.**

For the same purpose we propose I.e that the potential reduction in the solidarity contributions will be covert in the benefit of the benefiting MS the following addition in art 44 f par. 5 and 44fa par 5 are suggested

Art 44 f 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 par 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. Where the derogation is authorised, the act shall establish, upon request of the benefitting Member States, that the pledged contributions, partially or fully reduced, are replaced by applying Article 44h.

Art 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.

Par 5 Following the receipt of he 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. Where the derogation is authorised, the Decision shall establish, upon request of the benefitting Member States, that the pledged contributions, partially or fully reduced, are replaced by applying Article 44h.

Art. 44 h. Responsibility offsets

EL considers responsibility offsets as a second-level mechanism to be used in the cases foreseen in this Article, including its compulsory procedure. We welcome the lowering of percentage to 60% for the trigger of the offsets, in cases where the solidarity contributions have not reached the objective set in the Recommendation. Hence, offsetting should be activated when the individual Member States have not contributed according to their fair-share. Additionally, we recall our position to delete the minimum thresholds and therefore, the responsibility offsets should apply in relation to the annual target set out in the Recommendation foreseen in Article 7.c 3, instead of being set out against the minimum threshold (Article 7.c.2a). Should the thresholds remain in the text, the offsets, as a mechanism to close existing fair-sharing of responsibility gaps, should be established in accordance with the migratory pressures and the needs identified for the given year and not to a minimum reference number. Furthermore, in the event the solidarity contributions lag behind the needs identified by the Commission recommendation and in the event that, ***even after reconvening the High Level Forum no Council Implementing act is adopted, Commission should by means of a delegated act provide for a decision for the establishment of the pool.***

The following drafting suggestions are proposed:

Article 44h par 2

Where, following the meeting of the High Level Migration Forum convened in accordance with Article 44g, the pledges to the Solidarity Pool contained in the Council Implementing ~~Decision~~ act referred to in Article 44b are below the numbers referred to in Article 7c 3 ~~(2)(a)~~ [or calculated in accordance with Article 7c(2)] or in case a Council Implementing act is not adopted before the end of the relevant year, the contributing Member States, on the basis of a Commission Decision adopted by means of a delegated act, shall take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the numbers referred to in Article 7c3 ~~(2)(a)~~ [or calculated in accordance with Article 7c(2)].

Articles 44i and 44j.

EL points out the need to foresee the triggering of responsibility offsets where the financial contributions and other alternative measures do not meet the annual solidarity contributions set by the Commission recommendation.

Procedural requirements (Articles 57-60)

Article 57. Procedure before relocation

9 a. The benefitting and the contributing Member States shall continue the process of relocation even after

the timeframe for the implementation or the validity of implementing acts has expired.

Comment

The reference to the implementing acts should also be added in this paragraph as in art.44i and 44j

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

1. **par 2** The contributing Member State shall give a decision on the request within ~~30 days~~ 15 days of receipt of the request. Where the contributing Member State does not object to the request within that period, this shall be tantamount to accepting the request, and entail the obligation to take responsibility.

~~2. 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.~~

Comment

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

PART V General Provisions

Article 68 Exercise of the delegation

3. The power to adopt delegated acts referred to in Articles 15(6), ~~and~~ 24(3) and **44h(2)** 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.

Comment

Consequential amendment according to our suggestion in Art 44 par 2

HUNGARY

General comment

Hungary maintains all of its previous comments with regard to the text of the Presidency compromise proposal and only provides additional written contribution concerning the recitals.

Recitals

Our general position is that the finalization of the recitals should only take place after an agreement on the main text.

Recital (3)

We have serious concerns with regard to the last sentence of the recital. In our view, the sentence intends to interpret Article 80 of the TFEU, as CJEU has the exclusive competence to interpret the Treaties. In this regard we would like to ask the deletion of the last sentence of this paragraph, which in its content goes beyond the scope of article 80.

Recital (5)

We do not agree that the scope of the regulation shall include beneficiaries of international protection.

Recital (7)

As ensuring effective resources and infrastructure is of utmost importance, we would like to ask the following adjustment of the recital, in line with the text of the general approach on the Schengen Borders Code.

"Member States should have sufficient human and financial resources and ***all types of*** *infrastructure…"*

Recital (9)

We would like to highlight that the national strategies set out in the Regulation cannot cover the area of legal migration, which principle has to be made clear through the text.

Recital (11a)

As the data to be taken into account must be reliable and verified, we ask the following modification in the text:

"Verified i~~I~~*nformation provided by other relevant sources, including the…"*

Recital (12)

We consider it necessary to modify the phrase *„challenges that may arise due to the presence on their territory…"* in such a way that it also refers to challenges arising in the direct proximity of border areas.

Recital (12a)

With regard to solidarity forms, we continue to reject the concept of minimum thresholds and the measuring of alternative forms of solidarity by their "financial value".

Recital (12b)

We would like to ask for the alignment of this recital with the text of Article 44j.

Recital (16)

We think that the following text highlights only the role of relocations and does not take into account other solidarity contributions (which have to be treated equally): *„and ensures that applicants have swift access to the procedures for granting international protection"*. In this regard we would like to ask for the deletion of this sentence and an additional clarification that solidarity forms have an equal value.

Recital (25)

As we have already emphasized, in order to realistically determine migration pressure, we consider it essential to include the number of prevented illegal border crossings among the indicators.

Recital (31)

In our view, the distribution key has to take into account the financial means spent from the national budget to the protection of the external borders. Furthermore we think that the principle of fair share shall not be mandatory.

IRELAND

Recitals

General Comment: We consider that the order of some of the recitals should be changed to reflect changes made to the operative part of the text e.g. Recitals 13,14 and 15 could come before Recital 11, Recital 15 before recital 12 and Recital 25 after recital 12.

Recital 7: We do not think that the new text in this recital is particularly necessary as it is already covered by the existing text. We welcome the Pres explanation that the reference to adequate capacity here does not have the same meaning as adequate capacity in the APR. To avoid any confusion we would suggest using a different term in the AMMR.

Recital 12: We have a minor wording suggestion in this recital. We suggest replacing 'indicating whether the said Member States are under migratory pressure…' with 'indicating which Member States are under migratory pressure…'

Recital 12a: The second last sentence reads "Where it deems necessary, the Commissions identifies higher annual numbers….." we suggest replacing this with "where it deems necessary, the Commission can identify higher annual numbers…."

Recital 12b: The text here suggests that Member States always have the option of providing alternative solidarity measures which is not consistent with the operative text.

Recital 17: We can agree to the text in the recital however, the corresponding Article 7d(2) may need to be amended to also refer to the Decision. This currently only refers to the Report and the Recommendation.

Annual Migration Management Cycle

Article 7d

Please see comments on Recital 17 above.

Solidarity

Article 44e Para 4: We welcome that contributing or benefitting Member States may express reasonable preferences in relation to persons to be relocated. Para 4 states that this may be done during the course of the first meeting of the Technical Forum. We consider that it should be possible to change those preferences during the course of the year to take into account evolving situations in the Member States e.g. reception capacity for certain profiles of applicants. Therefore we would prefer for the reference to the first meeting to be deleted.

Article 44h: We can agree to the threshold being reduced from 75% to 60%.

Transfers

Article 37 Para 2(e). We suggest adding the words 'where available' at the end of this point. We understand that not all applicants will be subject to the Screening Regulation. In the case of Ireland, no applicant will be subject to this Regulation.

Amendments to other Union Acts

Article 72: Amending the AMIF Regulation by way of the Asylum and Migration Management Regulation my present variable geometry issues for Ireland. Since the publication of the AMMR, Ireland has opted-in to the AMIF Regulation but has not opted in to the AMMR,

ITALY

The Italian delegation is grateful for all the work and efforts made by the Swedish Presidency to find an acceptable compromise. Unfortunately, a number of elements are still not satisfactory in terms of balance.

Given the high flexibility in the solidarity component (and the disappointing outcomes of the ongoing relocation programme), Italy deems that MS delegations should focus more on the sustainability of the responsibility provisions.

Actually, we are all aware that the balancing exercise is more meaningful if it involves the key elements of responsibility. These should be compared from a burden-balancing perspective.

It is self-evident that the provisions on border procedure will mostly concern the member States at the external land and sea borders. Frontline MS cannot be called upon to bear the brunt of the whole EU system. Indeed, burden balancing is not only a matter of fairness but also of workability and sustainability of the CEAS.

Therefore, we need to come to turn to responsibility rules to strike a fair and sound compromise.

Nonetheless, Italy remains committed to a constructive approach, as indisputably shown throughout the negotiations.

The following Italian contribution touches upon Presidency new amendments, as discussed in the latest JHA Counsellor's meeting on April 5. In principle, the contribution already submitted on April 3 is still valid.

On a general note, Italy reiterates its general scrutiny reservation due to the linkages of this Regulation with the other legislative proposals of the Pact under negotiations, particularly the APR proposal and the Crisis and Force Majeure Regulation.

RECITALS

Recital 3

The last sentence should be rewarded the other way round, considering that the principle of solidarity and fair sharing of responsibility is the premise on which the "EU as a whole shares the responsibility to manage migration".

Therefore, it should read as follows:

The principle of solidarity and fair sharing of responsibility should be ~~based on~~ the premise on which basis ~~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.

Recital 4

The last part should be rewarded as follows:

and the prevention of illegal migration, and enhanced measures to combat, ~~illegal migration and~~ migrant smuggling.

Recital 5

AMMR scope should not include the beneficiaries of international protection, since the aim of the responsibility rules is to determine the MS responsible the examination of an application and not the treatment of persons granted a status. The following sentence should be deleted accordingly:

~~The scope of this Regulation should also include beneficiaries of international protection, resettled or admitted persons as well as [persons granted immediate protection].~~

Recital 7

In order not to cause confusion with the concept of adequate capacity connected to border procedure, the last part of the recital should be reworded as follows:

to ensure that each component of their asylum, reception and migration system is suitably ~~well~~ prepared ~~and that each component has adequate capacity~~.

Recital 9

The template should be considered as a tool to facilitate the drafting of MS' strategy, not an imposition. Therefore the following sentence should be rewarded as follows:

To ~~ensure that~~ facilitate ~~the national strategies contain~~ the drafting of each Member State's strategy ~~on specific core elements~~, a common template should be established inlcuding specific core elements.

Recital 12a

This recital is connected to Article 7c.2. In this regard, as previously argued, the best option would be identifying the annual numbers for relocation on the basis of objective criteria, which are actually mentioned in para. 3 of the same Article. Nevertheless, in the spirit of compromise, a set threshold could be accepted.

The reference to *"(n)or a possibility to implement it"* in the last sentence may be misleading since the concept of impossibility may be discretionarily assessed. Therefore, it should be amended as follows:

In the same vein, in exceptional situations, where there ~~would~~ (linguistic issue) **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.**

Recital 12b

If this recital is connected to Article 7c.3, second subparagraph, then the "may clause" in that provision requires "might" in the corresponding recital. The recital should also reflect the needs-led identification of alternative measures. Hence:

Such measures ~~should~~ might be identified by the Commission in consultation with the concerned Member States, according to their needs. Member States would then be able to pledge such measures at the High Level Migration Forum.

Recital 21

SAR-related disembarkations are mentioned in a number of provisions throughout AMMR, therefore a recital, replacing the deleted 21, should be devoted to this arrival modality in order to reflect the operative part.

~~(21) Persons disembarked should be distributed in a proportionate manner among the Member States.~~

(21) The phenomenon of SAR-related disembarkations should be fully taken into account due to the obligations laid down in international and European law concerning persons rescued at sea. Given the recurring nature of disembarkations along a number of migratory routes, whether they follow SAR operations or be autonomous, the annual Migration management Report should set out short-term projections and the solidarity response towards the affected Member States.

Recital 25

Since recital 24 has been deleted, dropping the reference to the exposure of some Member States to migratory pressure owing to their geographical location, the following recital should be reworded as follows:

"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 specificities stemming from its geographical location, 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."

Recital 28a

A reservation is raised on this recital with reference to the need to provide for a suitable way to face the gaps engendered by the full or partial reduction of pledged contributions (see below the Italian amendment proposals on Articles 44f and 44fa).

Recital 31

The last part ("*each time solidarity is drawn*") should be clarified. The following changes may be suggested:

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**~~ **and according to their fair share.**

Recital 31c

Consistently with the Italian proposal to change the functioning of the responsibility offsets (see amendments proposed to Article 44h), the second sentence should be reworded as follows:

It shifts the responsibility for an application to the contributing Member State on a mandatory basis ~~and~~ depending whether the relocation pledges reach a sufficient threshold s as set in this Regulation~~, functions on a voluntary as well as mandatory basis~~.

Recital 35

The current Regulation Dublin III is bound to be repealed by AMMR, pursuant to Article 73. The reference to it is inappropriate and, more importantly, the reference to the principles underlying it appears not in line with the spirit of the reform under discussion.

Therefore, the first sentence of this recital should be reworded as follows:

"This Regulation should be based on the principles ~~underlying Regulation (EU) No 604/2013 of the European Parliament and of the Council while developing the principle~~ of solidarity and fair sharing of responsibility as part of the common framework."

Recital 37

This recital should be put between square brackets since the repeal of the Temporary Protection Directive is under discussion in the framework of Regulation on crisis and force majeure.

Recital 38

This recital should be deleted (see above, comment to Recital 5).

Recital 47

This recital should be taken out of square brackets, since siblings should be included in the family definition in Article 2.g(v), consistently with the right to family unity. The inclusion would also enable a better application of the responsibility criteria and the reduction of secondary movements from one MS to another,

Recital 48

Consistently with the Italian amendment proposal regarding Article 15.5, the responsibility should be placed on the Member State where a UAM is present, since his/her transfer to another Member State may result in postponing the taking charge by the competent authorities and his/her swift access to the asylum procedure.

This should be reflected in the third sentence of this recital, as follows:

"In order to avoid moving ~~discourage unauthorised movements of~~ unaccompanied minors from one Member State to another, which ~~are~~ is 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~~ is residing, unless it is demonstrated that this would not be in the best interests of the child."

Recital 51

The reference to the responsibility connected to the cirterion of first entry should also encorporate a time limit. Therefore, the following wording is suggested:

"Considering that a Member State should remain responsible over a certain period of time 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…".

Recital 52

When derogating from the responsibility criteria, as is in the discretional choice of any Member State, various grounds may occur, as suggested by the words "in particular" in this recital. Nonetheless, since in the corresponding Article 25.2 the list is wider, the following wording is suggested:

"Any Member State should be able to derogate from the responsibility criteria in particular on humanitarian, family, social, cultural and compassionate grounds…"

Recital 54

This recital is very important since it refers to a number of Articles which should be amended for a fair balance of responsibility rules. Please, see the Italian amendment proposals below.

Recital 65

As previously argued (see above, comment on recital 35), the reference to Dublin III should be deleted, unless the reference is made to reflect the provision on transitional period.

PART I

Article 2 - Definitions

f) albeit Italy considers that beneficiary of international protection should not be in the scope of AMMR regulation, this definition, possibly aligned with other asylum instruments, is necessary as is connected with point g) on 'family members',

g) (v) sibling or siblings of the applicant should be included. The argument against this inclusion - i.e. the uneasy proof of family relationship - is misleading. In the first place, difficulty doesn't mean impossibility, secondly there are scientific methods which may help where administrative evidence is lacking. Furthermore, the asylum system should be lying on the respect for human rights. Ruling out siblings from the notion of family members would infringe the right to family unity which is inherent in the respect for family life (Article 7 of the Charter). Ultimately, the denial of family reunification of siblings might be a driver for unauthorised movements.

(w) the geographical position of a MS is a relevant factor. Therefore, this provision should be amended as follows:

'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 ~~and that~~ […] place~~s~~ 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, as a result of the geographical location of a Member State, or from unauthorised movements of third country nationals or stateless persons between the Member States;

PART II

Article 5 – Principle of solidarity and fair sharing of responsibility

The para. -1, even more so as Article 4 would be moved to a recital, should stay in the operative part and be reworded as follows:

-1. The principle of solidarity and fair sharing of responsibility shall be the basis ~~based on the premise~~ of a system where ~~that~~ the EU as a whole shares the responsibility to manage migration, governed by the set of common rules included in the Common European Asylum System.

*1(e) take all **measures necessary** […] and proportionate […] to prevent and ~~correct~~ manage unauthorised movements between Member States.*

Article 6 - Strategic governance and monitoring of the migratory situation

Italy can support the removal of paragraphs 1 and 2 even though Member States might take advantage from a European and comprehensive strategy.

As for para. 7, in the spirit of compromise, Italy can accept the new text with the following change:

"~~uniform conditions in the form of~~ a common template to be used by Member States for the purpose of their national strategies.".

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

Italy can support this provision but two changes should be introduced in para. 1 and 3. When reference is made to "Union's overall relations", the text should read "*The Union and Member States' overall relations*".

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

In the heading of this Article, a disjunction should be introduced, consistently with para. 1.

(f) In coherence with its position regarding the take back procedures, Italy suggests to replace the reference to "notifications" by a reference to "requests" as follows:

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

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

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

(m) The number of final asylum decisions is extremely difficult to be calculated since asylum authorities obtain no systematic feedback from judiciary. Therefore, Italy proposes to remove this reference from this point.

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

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

(a) [Xxx] for relocations

(b) [Xxx] for direct financial contributions

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

In the spirit of compromise, a set threshold can be accepted, where it is put in relation and balanced with other relevant elements of the whole system, i.e. the adequate capacity concept in the border procedure and the responsibility offsets.

Either way, a concrete figure is part and parcel of the negotiations and should be urgently identified and submitted to Member States.

There is a typo in para. 3, second subpara.: the reference to Article 44a(3)(c) should be Article 44a(2)(c).

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

The Forum should be convened without delay. 15 days would be ideal, considering the urgent need for a solidarity response, where needed. Therefore:

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

PART III

Article 11 - Right to information

Para. 1(ga): a scrutiny reservation is raised on this point, with reference to the time limits of transfers (Article 35).

Article 12 - Personal interview

In para. 4, a reference to "cultural mediators" in alternative to "interpreters" is needed, in order to extend the chances of ensuring appropriate communication. According to the Italian experience the professional profile of cultural mediator has been an important asset to overcome cultural barriers. Furthermore, cultural mediators are specifically foreseen in the special domestic legislation on minors.

Therefore, the third sentence before the last in para. 4 should read as follows:

"Where necessary, Member States shall have recourse to an interpreter or a cultural mediator".

Chapter II - Criteria for determining the Member State responsible (Articles 14-23)

- **Article 14.** ***Hierarchy of criteria***.

The hierarchy of criteria should be better complied with than in the current practice. Therefore, substantiated reasons should be provided in case of negative reply, in order to ensure a more proper examination of any individual case.

This should be reflected in this Article, by the following suggested wording:

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter. *Failure to apply the said order shall be justified on the basis of all circumstances of the case relating to all criteria set out in this Chapter.*"

This new wording is connected to Articles 29.3 and 30.8, which should be accordingly amended by deleting the word "relevant".

- ***Article 15 - Unaccompanied minors***. Italy supports the reference to the best interests of the unaccompanied minor. Consistently with BIC, in para. 5, Italy insists in placing the responsibility on the Member State where a UAM is present, since his/her transfer to another Member State may result in postponing the taking charge by the competent authorities and the access to the asylum procedure.

- ***Article 19 - Issue of residence document and visas.*** Italy supports the current time limits. Where uniform time spans are preferred, one year is a reasonable alternative as a component of the overall balance.

- ***Article 20 - Diplomas or other qualifications.*** Italy supports this criterion connected to cultural link as meaningful.

- ***Article 21 - Entry criteria.*** Italy does not support the extension of time limit, advocating for the current one (12 months). The cessation of responsibility in para. 1 is to be considered in conjunction with the obligations set forth in Screening regulation proposal. On the basis of the new screening procedure, absconding to evade registration becomes quite unlikely. Therefore, there is no reason to extend the time span from 1 to 3 years. In addition, given that search and rescue operations are linked to the fulfilment of international obligations, a lower time limit (6 months) should be foreseen for persons disembarked in relation to SAR operations,

- ***Article 22 - Visa waived entry***. Italy can accept the deletion of the second part of para. 1 and the new paragraph 2.

Dependent persons and discretionary clauses (Articles 24-25)

- ***Article 24 - Dependent persons***

Italy reiterates the proposal to introduce an additional subparagraph at the end of para. 1. Its rationale is connected to the experience over time of unjustified refusals by requested MS to, by contrast, well documented requests.

The new subparagraph should read as follows:

In order to apply this paragraph, a Member State in which an application was registered shall provide the requested Member State with documentary evidence referred to in paragraph 3. The reply of the requested MS refusing the request shall state the reasons thereof.

- ***Article 25 - Discretionary clauses.*** Italy supports the widening of the scope through a reference to *social and cultural* considerations.

Furthermore, for the sake of flexibility and efficiency under the overall fair share principle, a presumption should be also added in the last subparagraph of para. 2, which should read as follows:

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. Where no reply is provided within the set time limit, acceptance is presumed. A reply refusing the request shall state the reasons on which the refusal is based.

Article 26 - Obligations of the Member State responsible

As already mentioned, Italy deems that beneficiaries should be outside the scope of this Regulation, since its aim is to determine the MS responsible for the examination of an application. Therefore, point c) of para. 1 should be deleted, as well as the addition in para. 2.

Article 27 - Cessation of responsibilities

In para. 1 the reference to “take back notification”, consistently with the Italian position, should be replaced by “take back request”. As for “beneficiaries”, see above the comment on Article 26.

Article 29 - Submitting a take charge request

The changes to para. 1 can be supported.

The last subparagraph of para. 1, with reference to a UAM, should be a “shall clause”. Actually, in the interest of minors, a uniform application of this provision throughout EU should be foreseen.

Article 31 - Submitting a take back notification

As already mentioned Italy advocates the take back request procedure. Consequently the heading and the relevant provisions should be changed similarly to the current acquis.

Nonetheless, the notification procedure, if suitably counterbalanced with other favourable provisions might be taken into consideration.

In this case, Article 31 should read as follows:

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 within ~~two weeks~~ one month after receiving the Eurodac hit. Failure to make the take back notification within the time limit shall be tantamount to accepting the responsibility.

3. The notified Member State shall confirm receipt of the notification to the Member State which made the notification within ~~two weeks~~ one month, …etc.

4. Failure to act within the ~~two week~~ one month period…etc.

Article 33 - Remedies

Italy can support the added paragraphs 1a and 1b (in conjunction with the new subparagraph in Article 29.1.

In coherence with the concept of strengthened hierarchy, point b) in para. 1 should read as follows:

b) whether ~~Articles 15 to 18 and Article 24~~ Articles 14 to 24 have been infringed, in the case of the persons taken charge of pursuant to Article 26(1), point (a).

Italy can support the additional **para. 1a** and **1b**.

Article 35 - Detailed rules and time limits

A link between the responsibility rules in AMMR and border procedure in APR is acceptable for Italy. Nonetheless, since absconding will be less likely due to the pre-entry procedures (screening and BP), the envisaged 5 year period seems not only disproportionate but also counterproductive in terms of possible increase of litigation on integration ground.

Italy can support a differentiated approach for rejected cases under the border procedure (mandatory or not) by limiting the period of responsibility after absconding to 6 months, while keeping the current provisions for all other cases to 18 months.

We could also envisage limiting to 12 months responsibility for all persons whose application has been rejected in any type of asylum procedure.

PART IV - Solidarity mechanisms

Art. 44a - Solidarity Pool

A needs-based approach is key to ensure relevance to the solidarity mechanisms. Therefore, the chapeau of para. 2 should read as follows:

2. The Solidarity Pools shall consist of the following types of solidarity measures, depending on the needs of beneficiary Member States, which shall be considered of equal value:

In the same vein, point c) of para. 2 should read as follows:

c) where requested by the beneficiary Member State, alternative solidarity measures…etc.

In point (a)(ii) of para. 2, the reference to beneficiaries of international protection can be accepted only where the two Member States concerned agree on including them in the relocation pool.

Point b) should be improved by deleting the wording “may have a direct impact” which may entail an ex-ante assessment of the impact of projects, which is evidently impossible. Therefore, the following text is suggested:

(b) direct financial contributions provided by Member States primarily aiming at projects related to the area of migration, border management and asylum in the benefitting Member States or at projects in third countries related to the same areas, including assisted voluntary return and reintegration programmes and anti-trafficking or anti-smuggling programmes, in accordance with Article 44i;

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

The reference to the Toolbox should be deleted in point 2(b)

(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~~;***

Article 44e - Operationalisation of solidarity measures

According to the needs-based approach, para. 3 should be reworded as follows:

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 and in compliance with the needs identified by the Recommendation of the Commission referred to in Article 7c. …etc.*

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

Since the reduction of solidarity measures after pledges may dramatically affect benefitting Member States and alter the response to their solidarity needs, the Council implementing act provided for in para. 5 should indicate the modalities to close loopholes in terms of solidarity. Therefore, the para. 5 should read as follows:

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 establishing the Solidarity Pool. Where the derogation is authorised, the act shall establish, upon request of the benefitting Member States, that the pledged contributions, partially or fully reduced, are replaced by applying Article 44h.

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

To the same purpose as in Article 44f.5, a similar amendment should be introduced in para. 5:

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 establishing the Solidarity Pool. Where the derogation is authorised, the act shall establish, upon request of the benefitting Member States, that the pledged contributions, partially or fully reduced, are replaced by applying Article 44h.

Article 44h - Responsibility offsets

Italy considers responsibility offsets as a second-level mechanism meant to close loopholes in solidarity objectives set out in the Recommendation referred to in Article 7c.

In order to not discriminate among contributing Member States, the offsetting should apply regardless of the chosen type of contribution, including the financial ones. Since solidarity is mandatory on the basis of the fair share pursuant to Article 44k, offsetting should be triggered off where contributing Member States have not complied with their respective fair share.

We welcome the proposed (square-bracketed) reduction of the percentage in para.1 to 60%. Furthermore, Italy deems that the offsets should always kick in a mandatory fashion, given the need to provide a response to huge gaps which may cause serious consequences in terms of solidarity.

Consequently, Article 44h should be amended as follows:

2. *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.*~~

3. ~~*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 annual numbers referred to in Article 7c(2)*** ~~***(a)***~~***.***

Procedural requirements (Articles 57-60)

Article 57 - Procedure before relocation.

A scrutiny reservation is raised on article 57.1 with regard to the categories of people who may be relocated pursuant to Article 44a.2a, as already mentioned above. The same reservation applies to Article 57.3.

Furthermore, Italy suggests to align para. 3 with the wording in Article 25.2, i.e. “family, social or cultural considerations”.

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

Given the amendments the Italian delegations has proposed to Article 44h (see above), Article 58 should be modified accordingly.

The time limits in this Article should not be longer than 15 days. Failure to reply within this timeframe should be tantamount to accepting the request.

Finally, the request should be made in terms of applicants' number, rather than applications, since these might be multiple.

Therefore, this Article should be reworded as follows:

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

2. The contributing Member State shall give a decision on the request within ~~30~~ 15 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.~~ Failure to reply within the set timeframe shall be tantamount to accepting the request.

3. The Member State which has accepted a request pursuant to paragraph 2 shall identify the individual ~~applications~~ applicants for international protection for which it takes responsibility for and shall indicate its responsibility pursuant to Article 11(3) of Regulation (EU) XXX/XXX [Eurodac Regulation].

Provisions in **Part V, VI, VII** can be supported. Nevertheless, a scrutiny reservation is raised with regard to the entry into force (Article 75).

LITHUANIA

We maintain our previous comments (and scrutiny accordingly) with regards the *solidarity pool*, distribution key and formula, indicative / mandatory nature of contributions.

On recitals:

12 a –

suggest to delete the second sentence (*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*). We could accept only indicative, not binding numbers for relocation and financial contributions.

31 –

in line with our position on solidarity, the mandatory fair share principle is unfortunately not acceptable to us. We suggest to redraft the text: „A distribution key based on the size of the population and of the economy of the Member States **could be applied to determine a non-binding** ~~**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.**“

LUXEMBOURG

Recitals

(4) LU believes that the last part of this recital should be aligned with article 3 to read as follows:

"*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 irregular migration****, and enhanced measures to combat* ~~***, illegal migration and***~~ *migrant smuggling.*"

(12b) This recital should mention the complementarity of alternative measures as compared to ongoing projects/Union funding schemes or other activities:

"Such measures should be identified by the Commission in consultation with the concerned Member States ***and should not duplicate Union operations.****"*

(12c) LU recalls its reservation on this issue of the confidentiality of the Commission's Recommendation and requests the deletion of the following as its substance is speculative:

"~~*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*~~*"*

(15) This recital should be aligned with the corresponding article 7:

"That process should build on the analysis carried out in accordance with Regulation (EU) 810/2019 of the European Parliament and of the Council ~~***or***~~ ***and*** *of any other information available* ***from Member States, as well as from Union institutions, bodies, offices and agencies,*** *and take into account the Union's overall relations with the third country."*

(31) LU maintains its strong support to the distribution key as outlined in article 44k.

(31a) LU suggests to include a stronger link between the Toolbox and the Solidarity Pool:

"Components of the Toolbox ~~*can*~~ ***should, to the extent possible,*** *be used in conjunction with the Solidarity Pool"*

(45) While fully acknowledging the content of this recital, its current location is in the middle of recitals on minors, vulnerable persons, family. So we would suggest positioning it elsewhere.

(47) LU recalls its position on the inclusion of siblings in the definition of family members. For LU, this is a core question of balance to be decided at a later stage.

(59) LU wishes to insist on its position regarding detention. We cannot a generalised detention of vulnerable persons, notably minors.

(69) Strong support.

Articles

44d: We can support the changes made in this article.

44h: LU believes that lowering the threshold for responsibility offsets weakens the incentive to pledge relocations. We therefore want to stick to the initially proposed 75%. Furthermore, and in line with our long-standing position on relocation, responsibility offsets should remain a second line form of solidarity and should therefore not be included among the listing of first line solidarity measures.

58(4): LU insists on the possibility for Member States to review the status of a relocated beneficiary for international protection, if they deem appropriate.

MALTA

Recital 12a

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

Recital 28a

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

Article 2

- Points (n) and (o):

MT maintains its substantive reservation on these two points due to the serious concerns we have vis-à-vis the new criterion for establishing the Member State responsible based on the holding of diplomas or other qualifications.

- Point (w)

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

> *'migratory pressure' means a situation […] which is generated by arrivals of third country nationals or stateless persons and that 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;

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

Article 7b

- Paragraph 1

MT maintains its reservation on point (f) due to our opposition to the notion of take back notifications. In this regard, it should be recalled that in our view the current system of take back request should be maintained. Without prejudice to this, MT is of the opinion that in case a take back request/ notification is not sent within the stipulated time limit, or the Member State concerned does not reply within the stipulated deadline, there should be a shift of responsibility akin to the current acquis.

Article 7c

- Paragraph 2

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

- Paragraph 3

MT is of the opinion that if the annual numbers for relocations is calculated on a formula established on the basis of objective criteria, as per our comment on paragraph 2, the first sub-para of paragraph 3 becomes redundant and could therefore be deleted:

> ~~***When identifying the level of the Union-wide responsibility that should be shared by all Member States responsibility and the consequent level of solidarity, the Commission shall take into account relevant qualitative and quantitative criteria, including, for the relevant year, the overall number of arrivals, the average recognition rates as well as the average return rates.***~~
>
> *The Commission may identify a higher number for relocations or direct financial contributions than those provided for in paragraph 2 and may identify other forms of solidarity as set out in Article 44a(3)(c) depending on the needs arising from the specific challenges in the area of migration in the Member State concerned.*

Article 19

- Paragraph 4

MT does not support the extension of responsibility in cases of expired residence documents and visas, which according to the current Proposal is extended to 3 years and 18 months respectively from the date of expiry. MT is of the opinion that this should be maintained as in the current acquis (i.e. 2 years for an expired residence permit and 6 months for an expired visa).

Article 20

- General comment

MT maintains its reservation on the whole Article since we do not support the inclusion of diplomas/qualifications as a mandatory criterion to establish responsibility.

- Paragraph 1

MT would still like an answer to the following question that has been asked in a number of meetings and which to date remains unanswered: What happens in case an applicant was previously issued with a diploma or qualification from an education establishment which at the time was located in Member State X, but at the time of application is no longer located in that Member State, but has either closed completely or is now located in another Member State?

Without prejudice to our general comment, while we welcome the introduction of a timeframe within when this criterion would apply, MT is of the opinion that a 5-year period is too long and should therefore be considerably shortened.

Article 21

- Paragraph 1

MT maintains its substantive reservation on this paragraph in view of the extension of the timeframe for responsibility, which in our view should remain 1 year as per current acquis.

Article 27

- Paragraph 1

MT does not support the idea of a take back notification and is of the opinion that we should maintain the current system of a take back request. Without prejudice to this, MT is of the opinion that in case a take back request/ notification is not sent within the stipulated time limit, or the Member State concerned does not reply within the stipulated deadline, there should be a shift of responsibility akin to the current acquis.

Article 30

- Paragraph 8

While MT has no objections to the new addition made by the Presidency, we would like to recall our substantive reservation on the new time-limits for replying to a take charge request, which in our view are too short.

Article 31

- General comment

MT maintains its reservation on the whole Article since we are of the opinion that we should maintain the current system of a take back request.

Without prejudice to this, MT is of the opinion that in case a take back request/ notification is not sent within the stipulated time limit, or the Member State concerned does not reply within the stipulated deadline, there should be a shift of responsibility akin to the current acquis.

- Paragraph 1

Without prejudice to our general comment, MT maintains its reservation on the time limit that is being proposed to send a take back notification, which we deem as being too short, and should be extended to two months. Furthermore, MT is opposed to the added proviso in this paragraph since in our view failure to send a take back notification within the stipulated time limit should lead to a change in responsibility.

MT also maintains its reservation on this paragraph due to our reservation on the inclusion of beneficiaries of international protection in the scope of the AMMR.

Article 35

- Paragraph 2

MT is of the opinion that the extension of the time limit for transferring the person concerned in case of absconding to 5 years is too long and should be considerably shorter (e.g. maximum of two years; 6+18). Furthermore, in case the person who absconds was previously under a border procedure, the time limit should only be extended by a further 6 months (i.e. total of 1 year; (6+6).

Without prejudice to the above, MT is of the opinion that we should clarify that when referring to the person becoming available to the authorities again in the second sub-paragraph, we are referring to the competent authorities of the transferring Member State.

We also would like to receive an answer to a repeated request for clarification; does the proviso in the second sub-paragraph also apply in case there are multiple instances of abscondment, or is this is a one-off provision?

Article 44b

- Paragraph 3

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

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

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

Article 44e

- Paragraph 3

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

- Paragraph 4

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

Article 44f

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

Article 44fa

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

Article 44h and Recital 31c

MT calls for the reference in Article 44h and Recital 31c to be linked to overall solidarity measures referred to in the Commission Report.

Article 57

- Paragraph 3

MT has a scrutiny reservation on this paragraph due to our reservation with regards to Article 20.

Furthermore, MT is of the opinion that the text should clearly indicate that the consent of applicants for international protection is not required to proceed with relocation.

Article 58

- Paragraph 3

MT has a scrutiny reservation on this paragraph due to our reservation vis-à-vis Article 20 of the AMMR and subsequent applications in the APR.

- Paragraph 4

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

THE NETHERLANDS

General comments

As requested (CM 2550/23) this written contribution by the NL encompasses comments on the whole text of the AMMR (document 8203/23). We would like to refer to our previous contributions in recent JHA Counsellors meetings and earlier written comments (these are, amongst some new comments, listed below).

In short, the majority of our comments are with the aim to create a clear and unambiguous legal texts, in order to prevent triggers for secondary movements, and complex and inefficient procedures. See for instance our text proposals on articles 33 and 35. Moreover, we would like to stress again our objection to an extension of the definition of family members with siblings, which to our understanding also includes half siblings and step siblings. Extending the definition to siblings will create complex procedures, with many discussions between Member States.

Articles:

PART I

Article 2 (definitions)

Actions and choices of the third country national should not hinder the timely implementation of the transfer. Therefore, we propose (in addition to the situation of absconding) a definition of "refusing to comply with the conditions for the transfer" (and some additions to article 35 paragraph 1 under d and e and paragraph 2, see below).

(p) i) '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** […];

ii) 'refusing to comply with the conditions for the transfer' means actions by the third country national or his/her relative as a result of which the transfer of the person concerned to the responsible Member State cannot be carried out, such as physical resistance and refraining to comply with the medical conditions for the transfer.

(l): An addition/clarification is necessary in the definition of "residence document". In particular, NL points here to the Court ruling in case C-66/21. In that case, the Court noted that MS must grant the reflection period also to a Dublin claimant and that during this time the transfer is prohibited. It should be prevented that, by offering such a reflection period, the MS also immediately becomes responsible for the asylum application.

PART II

Article 7a (European Migration Management Report and Commission Decision)

3(e) During the Counsellors meeting the Commission explained that the results of this monitoring are taken into account in the Commission's report. The Commission also explained that, if monitoring shows that a MS has not sufficiently implemented the asylum acquis or has fallen short of being properly prepared, this will be taken on board in the assessment of the Commission on whether this MS is under migratory pressure. We thank the Commission for this explanation, however, we think we should make this more explicit in the text.

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

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

Article 7c (**Commission Recommendation regarding of the Solidarity Pool and other appropriate measures)**

4: NL could possibly agree to this article (in particular sub 2), provided it is always possible for the Commission to propose a lower number (so not only in exceptional circumstances as currently included). Solidarity should relate to what is actually needed.

PART III: CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Article 8 (Access to the procedure for examining an application for international protection)

4: It is important that MSs will have the same interpretation *of 'poses a security risk to Member States'*. We therefore request that a definition of this term be included in Article 2 of the AMMR.

Article 10 (Consequences of non-compliance)

1: The sentence *"provided that the applicant has been informed of that consequence pursuant to Article 8(2) Screening Regulation"* should be deleted. Given the principle of interstate trust, it can be assumed that such information has been provided. However, an even more important argument is that there will also be migrants who will deliberately avoid the Screening Procedure. Not being informed is in that case due to their own actions. It would be highly undesirable if precisely this group were to be rewarded, in the sense that they will be entiteled to reception conditions even after the notification of the transfer decision.

Article 12 (personal interview)

3: NL would like to refer to its earlier written comments. Our asylum authorities are under a high pressure, in particular as a consequense of a higher influx, also in NL. Flexiblity in this article is needed:

3. The personal interview shall take place in a timely manner and, in any event, before a transfer decision is taken ~~any take charge request is made pursuant to Article 29.~~

Article 13 (guarantees for minors)

Since this provision mainly deals with unaccompanied minors, we suggest to amend the title of the article to “guarantees for *unaccompanied* minors”.

5: We suggest to delete the sentences "*Any decision to transfer an unaccompanied minor shall be preceded .... minor are taken into consideration"*. Article 15 already includes such a condition and we prefer the wording of this article. Article 13 (5) says that the transfer must be in the best interests of the minor. This does make a transfer very difficult to motivate and thus the basic premise of this provision (namely that the unaccompanied minor can also be transferred to the MS where he has previously lodged an application for international protection) would become almost useless. The starting point should be “yes, unless” and not “no, provided”.

Article 21 (entry)

NL prefers the deadline of 3 years. This is because it prevents migrants from disappearing and staying “under the radar” after their irregular entry into the Union, thus avoiding the processing of their asylum application in the MS of entry and thus being able to choose in which country they submit their asylum application.

Article 25 (discretionary clauses)

2. NL would like to delete the words *'social or cultural considerations'*. These are unframed terms, so each MS will give its own interpretation. This will give rise to unnecessary discussions between MS and unnecessarily long procedures, accompanied by additional administrative burdens. There is also a risk that asylum seekers will be able to derive their own rights from this.

Article 29 (submitting a take charge request)

1. Following our objections to the amendments in Article 33, we consider the new text in this article not necessary (yet).

Article 30 (replying to a take charge request)

8. NL refers to its earlier written comments. We fear this text will lead to discussions in courts or between MS as to whether a claim refusal was sufficiently substantiated and/or whether there was or was not a fictitious agreement. Clearer distinction is necessary to our opinion.

~~**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 and relating to the relevant why the criteria set out in Chapter II do not apply, 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.**~~ **A reply refusing the request shall state the substantiated reasons on which the refusal is based, relating to the relevant criteria set out in Chapter II.**

Where the requested Member State does not reply 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, or if the refusal doesn't state the substantiated reasons, 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).

Article 33 (remedies)

1a and 1a: The introduction of paragraph 1a stipulates that when a request to take charge is rejected, the asylum seeker can lodge an appeal against and in the MS that rejected the request. This will lead to many court procedures, with practical obstacles. We have similar concerns with regard to the introduction of paragraph 1b (please also see above in the general comments).

We are familiar with the Court's judgment in case C-19/21 and we are not convinced that the adjustments made to Article 33 are compelled following from that judgment. Because in its judgment the the Court also attributes significance to:

- The current Dublin Regulation (Article 27) unclear whether such a remedy is available;

- The responsibility criteria of the current Dublin Regulation also grant rights to the asylum seeker;

- The case involves a minor who, given his position, is vulnerable and in need of extra protection.

These are elements that, in our view, the Union legislator can, if desired, adjust in the new legislation, in particular the first two. We also draw attention to the opinion of the Advocate General in this case, which also does not extend as far as is now done in these amendments.

Article 33

Remedies

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).

The applicant or another person as referred to in Article 26(1), point (b), (c) and (d) shall not have a right to a remedy against other criteria set out in this Regulation or against any other act of the Member States implementing this Regulation, other than the transfer decision.

2. (…)

Explanation of the drafting suggestions Article 33

Determining responsibility should primarily a competence of the Member States and between the Member States. Obviously, an asylum seeker must be able to seek an effective remedy if the transfer to the Member State designated as responsible would violate Article 3 of the ECHR/Article 4 of the Charter or whether Articles 15 to 18 and Article 24 would have been infringed, in the case of the persons taken charge of pursuant to Article 26(1), point (a). But it should be made clear that only for that purposes a remedy can be lodged. This in order to avoid that also other articles or acts could be subject to a remedy which would undermine the effectiveness of the system (including rapid access to an asylum procedure) and would open the possibility of theoretical judicial proceedings which are not feasible in practice (for example, in the situation where an asylum seeker is present in Member State X and lodges an appeal against Member State Y).

Article 34 (detention)

As already stated before; a main reason for the limited number of effected transfers is that the asylum seeker absconds shortly before the scheduled transfer. The most effective way to counter this is through detention. Therefore, MS should be allowed to lower thresholds for detention. NL refers to the previously submitted written comments and text proposal:

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. A person must not be detained solely because he or she has made a request for protection.

(…)

3. (c) in case the person concerned submits an application after a transfer decision was notified, the date when the decision on that application is taken, where no appeal or review has been lodged against such decision, or from the moment when the appeal or review no longer has a suspensive effect in accordance with Article 33(3).

Article 35 (detailed rules and time limits)

First of all, it is relevant to note that there is a distinction between the reasons for not being able to effectuate a Dublin transfer within the terms. On the one hand, this could be due to the authorities of the transferring (or responsible) Member State. The consequences hereof are yet included in the draft AMMR text. However, on the other hand, actions of the third-country national could also make the transfer impossible. In relation to this latter, some concrete issues we encounter in practice are:

- lodging new applications during the transfer term (see our proposal for article 35 (1)(d) and (e));
- failing to comply with the conditions for a transfer, e.g. refusing to test on Covid;
- physical resistance;
- absconding by one of the family members.

In our view, circumvention of the rules should not benefit the person concerned and should thus be discouraged. Therefore, we propose to extend the transfer period in these situations where the third-country national's actions and choices hinder the implementation of the transfer. Please see below our text proposals to add a definition of “refusing to comply with the conditions for the transfer” (to address the second, third, and fourth issue) and our proposals for article 35 paragraph 1 under d and e and paragraph 2 (to address the first issue).

Moreover, Article 35 paragraph 1 under c is inserted in order to enable MS that have a system of a second appeal to retain it. For those Member States, including the Netherlands, such a system is important, with a view to unity of national jurisprudence.

Furthermore, the proposed addition in article 35 paragraph 2a relates to the EU Court of Justice ruling in Case C-323/21) concerning the so called “chain rule”. In our view, this Court ruling made the current Dublin system more complicated. The case concerns an asylum seeker who has lodged applications for international protection in several Member States. The outcome of that judgement, in brief, is that Member State X can become the responsible Member State due to the expiry of the transfer period, despite the fact that there was a de facto impossibility for that Member State to carry out the transfer as the asylum seeker was (demonstrably) outside its territory. Our text proposals aim to make it clear that under the AMMR in such a situation, that Member State cannot become the responsible one. This will also remove an incentive for asylum shopping and hopping. (Note: If our text suggestions are adopted, the last sentence of paragraph 2 may become probably redundant and could be deleted.)

Unfortunately, our proposals were not adopted yet. We urgently request the Presidency to look at our proposals again and take these text suggestions on board:

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

(a) the acceptance of the take charge request or of the confirmation of the take back notification by **the ~~another~~** Member State **responsible**,

(b) the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3),

(c) the final decision on an appeal or review of a transfer decision in second instance, in case the national law provides for such an appeal or review, where there is a suspensive effect in accordance with national law, regardless of whether the appeal is submitted by the applicant or of another person as referred to in Article 26(1), point (b), (c) and (d) or the competent authorities of the transferring Member State,

(d) the final decision on an application, appeal or review for another type of residence document which, in accordance with national law, prevents that a transfer can be carried out, or

(e) the decision on a subsequent application for international protection in the same Member State which is registered after a transfer decision has been notified.

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 or refuses to comply with the conditions for transfer. Where the application of the person concerned who absconded or refused to comply with the conditions for transfer has previously been rejected by the Member State responsible following an examination of the application in a border procedure referred to in Article 41[2] of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], the time limit may only be extended up to a maximum of [18 months].**

[2] The reference will be amended to reflect the outcome of the negotiations on the border procedures in APR

If the person concerned becomes available to the authorities again or does not refuse to comply with the conditions for the transfer anymore 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. […]

2a. The responsibility shall not shift to the transferring Member State when the transfer cannot take place due to an absconding from that Member State and a new application for international protection is registered in another Member State or in case no new application has been registered in that Member State when a new take back notification is made by that Member State.

PART IV

The mechanism is complex and, as a result, it is almost impossible to estimate what the impact will be on the MS that have to provide solidarity. With that, it is difficult to oversee what MS will now commit to if this regulation is adopted. It is therefore important that the political decision yet to be taken on the minimum numbers (Article 7c(2)) be thoroughly prepared. So, not only the minimum numbers should be presented, but also what they are based on and how they relate to the spontaneous inflows in the MS that have to contribute solidarity. The same goes to what the expected range is with the numbers then proposed by the Commission in its recommendation (Article 7c(3)) and also the expected additional numbers if, after the Commission recommendation, more MS are identified as MS under migration pressure/facing a situation of significant migration situation, and what the implications will be if other MS are exempted from contributing.

Article 44h (Responsibility offsets)

The NL is (still) of the view that the contributing MS should have the possibility to fill in their pledges on relocations with cases for which the benefitting MS has been determined responsible, but a transfer cannot take place due to a situation as referred to in article 8(3)[3].

Moreover, we are of the opinion that reduction from 75 to 60 per cent is inconvenient. This further increases the trigger on secondary migration.

2. The last sub paragraph mentions that MS shall not be obliged to take responsibility in the form of offsets above their fair share calculated according to the distribution key set out in Article 44k. In our view it could be made clearer that as soon a MS has offered it's fair share [on relocation] it cannot be obliged to accept any (mandatory) offsets.

Article 58 (Procedure after relocation)

2. NL favours that the determination of responsibility takes place before relocation. This is to prevent tertiary movements as well as to prevent the MS of relocation from having to carry out only a responsibility determination procedure.

PART V

Article 57 (entry into force and applicability)

We have to look more in depth to this provision. E.g.: how do we deal with cases where responsibility has been determined under the current Dublin Regulation but a subsequent application is submitted under the AMMR?

[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."

POLAND

HORIZONTAL POSITION:

1. PL maintains the comments made so far. Below is a reference for detailed articles.

DETAILED POSITION:

Recitals:

(3) – Substantial reservation to the recital due to the principle of solidarity and fair sharing of responsibility, on which we have not reached a compromise, and PL does not agree to the current distribution key. PL would like to thank for explanations regarding "including its financial implications", but we still see the need to reword the text, which remains unclear in its current form.

(12a) – Substantial reservation to the recital in view of horizontal position referring to: 1) not including into the Regulation, minimum numbers of persons to be relocated and minimum number of direct financial contributions and 2) the insufficient position of alternative solidarity measures in the catalogue of solidarity measures.

(12b) – Recital remains inconsistent with Article 44b(3), to which PL raises substantial reservation.

(12c) – PL stands in the position that the publication of thresholds for relocation and direct financial contributions in a given year will be a pull factor, even under the current assumption (Commission recommendations remain secret and the Council's implementing act establishing Solidarity Pool is published).

(25) – PL opts for the addition of prevention of illegal border crossings – support of HU.

(28a) – Substantial reservation – PL maintains its remark that the possibility of not making a solidarity contribution should not be made conditional on having the status of 'benefitting MS' or de facto using solidarity support in a situation of migratory pressure/significant migration situation, etc.

(31) – red line – PL opposes the "mandatory fair share principle" in its current form; the above should be specified as "guiding principle" (ad. PRES CZ document).

(31b) – “one of the components of this Toolbox” – is it a specific one? If so, PL requests for rewording of the text.

(37) - In view of the abandonment of the replacement of temporary protection by immediate protection from the original version of the Crisis Regulation, as well as in view of the ongoing discussion about the possible integration of immediate protection into the Toolbox and its assignment in case of a special emergency situation, PL opts for the removal of the recital or its inclusion into square brackets.

(49) – PL supports this provision, but we would like to point out that not requiring original documents may lead to abuse. In exceptional cases, you can only rely on reasons, but PL practice shows that most family members plan their trip to Europe and family reunification. Therefore, they have documents (although sometimes false) or provide them easily. On the other hand, the birth certificate issued by the authorities of the relevant Member State, after the birth of the child in the territory of the Member State, would be important.

(50) – In the view of such criteria as ‘residence permit’ and ‘visa’ PL considers these criteria as redundant;

(53) – PL supports the establishment of clear obligations towards applicants and familiarizing them with these obligations in order to limit the phenomenon of secondary migration flows to other MSs;

(58) – PL understands the reason that stands behind shortening deadlines, but we should be careful and not lead to chaos and hasty decisions connected with the risk of expiry of deadlines; judicial deadlines can be a problem (courts sometimes process much slower and thus longer); “take back notification” instead of a regular procedure – PL does not support this solution, but by way of compromise we can agree to it. Ad. recital (64);

(64) – PL supports bilateral cooperation to facilitate/accelerate procedures.

(71) and (72a) – scrutiny reservation

Articles:

2 (w) – PL opts for deleting of the second sentence, where reference is made to: a hypothetical situation (risk of multiple entries) and a reference to SARs and secondary migratory movements, while there is no reference to the situation of instrumentalisation of migrants.

3 (h) – we maintain the comment previously reported: "based on the principle of solidarity and fair-sharing of responsibility" – there is no added value. This is the overarching principle on which the New Pact on Migration and Asylum is based. We don't see the point of putting it in this place.

5(1)(d) – substantial reservation due to the horizontal reservations to the mandatory "solidarity contributions on the basis of needs set out in Chapter I-III of Part IV".

7a (3)(b) – we maintain the remark previously reported: we support HU's proposal to change "projected disembarkations" to "irregular border crossings". References to planned disembarkations in the future and related plans are a pull factor for irregular migration.

7a (6) – we maintain the remark previously reported: we share the doubts of those MS that had reservations about the publication after some time. We agree with the type of clause, but making this information public after the adoption of the decision of the Council of the EU in our view will be a factor attracting illegal migration. We support the reference to the CLS assessment.

7b (1)(h) – instead of "the number of persons apprehended in connection with an irregular crossings of the external land, sea or air border" – we opt for "the number of prevented border crossings" – support of HU.

7b (2) – PL opts for adding an additional point referring to the need of taking into account the costs incurred by the MS for border surveillance.

7c (2) and (3) – substantial reservation to the form of compulsory solidarity in the form of relocation
and mandatory financial contributions. Substantial reservation to the inclusion of the numbers referring to both elements in the Regulation.

44a – support of AT's position: we do not see the resolution of a foreigner's refusal to relocate. Should it be enforced in such a situation or should the foreigner be removed from the relocation scheme?

44b (2) – substantial reservation to the "mandatory fair-share calculated according to the distribution key set out in Article 44k"

44f and **44fa** – we welcome both articles

44h – Support of HU's position: responsibility offsets should always be voluntary and, if mandatory, only for those MS that are involved in relocations.

44j – opposition to the apparent equivalent role of alternative solidarity measures to relocation and financial contributions. Support for CZ's position: the need for alternative measures should already be reported in the High Level Migration Forum, when MS should declare on the forms of solidarity they plan to provide.

44k – opposition to the current design of the distribution key – PL opts for taking into account efforts related to border protection.

ROMANIA

Recital (12a) *– By reiterating the positions previously held during the negotiations, we can support direct financial contributions as an instrument of solidarity support, as long as participation with financial solidarity measures is flexible, in the sense that there is a possibility for an MS not to opt for them. We can agree with the relocation of foreigners, as long as the quota of each MS is established by applying a correct formula, reflecting the processing capacity of each asylum system.*

Article 2g *– We agree with the removal of the provision regarding the recognition, for the purpose of applying AMMR provisions, of marriages concluded by minors.*

SLOVENIA

1. Recitals 12a and 12b

The Republic of Slovenia has a scrutiny reservation in connection with the relevant articles, especially Article 44a.

At the JHA Counsellors meeting, Slovenia asked for an explanation as to why alternative measures are not included, if they are supposed to be equivalent, and what it means that they are not included for practical reasons, to which we received a partial answer that we do not agree with. Article 44a determines that the Solidarity Pool shall consist of the three types of solidarity measures, which shall be considered of equal value, namely relocation, financial contributions and alternative solidarity measures. Article 44b further determines that contributing Member States shall have full discretion in choosing between the types of solidarity measures or a combination of them, which does not affect the fact that the measures are equivalent. Therefore, we still believe that alternative measures should also be included in these minimum thresholds in Recital 12a and mentioned as equal in Recital 12b.

2. Recital 31

The Republic of Slovenia has a scrutiny reservation in connection with Article 44k.

At the JHA Counsellors meeting, Slovenia asked for clarification regarding the last sentence, especially regarding the part "each time solidarity is drawn from the pool these Member States contribute according to their fair share" as it is not clear how the mentioned will actually work in practice. After the given clarification there are even more doubts as regards functionality and feasibility. Therefore, we kindly ask for practical graphic and pictorial presentations.

For the aforementioned reasons, we maintain a scrutiny reservation on the recital 31.

3. Recital 31c

The Republic of Slovenia has a scrutiny reservation in connection with Article 44h.

At several meetings, the Republic of Slovenia raised certain concerns and reservations regarding the proposal of the so-called responsibility offsets. We still believe that it should only be used as a voluntary decision of the Member States, and that it should be used rather as an exception, not as a rule.

Therefore, we agree with Member States who have concerns about the mandatory nature of the responsibility offsets.

SPAIN

General remarks

In relation to the debate on specific issues of the above-mentioned proposal held on 18 April, the Spanish delegation stresses its overall constructive approach and flexibility with regard to the negotiation of this file. Spain remains committed to facilitate progress on the discussions of this legal instrument, as an essential piece of the Pact on Migration and Asylum, in order to conclude the negotiations of all the files thereof before the end of the legislative term, as agreed with the European Parliament in the joint Roadmap. Progress on all the files should be based on the principle of solidarity and fair-sharing of responsibility.

In this spirit of compromise, the Spanish delegation has already made important concessions concerning the solidarity mechanism, as well as the Screening and Eurodac Regulations. An extremely flexible though mandatory solidarity should be mirrored by an adaptable responsibility reflected in the border procedure and in new responsibility determination and cessation rules. We would like to stress that the "mandatory border procedure", stated as a *fait accompli*, has not been agreed yet until everything is agreed on the overall negotiation of the Pact, encompassing all the pillars at stake. We agree with the Presidency that the overall balance must ensure the predictability, sustainability and fairness/equity of the system.

The Spanish delegation would like to reiterate our gratitude to the Swedish Presidency for their efforts in achieving concrete progress with the new compromise text, notwithstanding the need to always bearing in mind the interdependency of this Regulation with the other legislative proposals of the Pact under negotiation, particularly the APR and the Crisis and Force Majeure Regulation.

As requested by the Swedish Presidency, the following specific remarks refer to all the Recitals and Articles concerning the 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 (Asylum and Migration Fund) as reflected in the new document ST 8203/23.

Concerning the recitals, all comments made by the Spanish delegation are to be understood in connection with our proposals on the operative part and thus are conditional, as well, on the final outcome of the negotiations of the different instruments of the Pact on Migration and Asylum.

Specific remarks

Recitals (1-84)

- **Recital 3**

  The Spanish delegation would have preferred to maintain this in the operative part of the text, as this is the first time it is settled that migration should be managed based on the *principle of fair sharing of responsibility*.

  Notwithstanding the above, we can be flexible in supporting the inclusion of the principle in the recitals and we appreciate the efforts done by the Presidency in order to align the new drafting with Article 80 TFEU, in line with previous proposals presented by this delegation.

- **Recital 4**

  The Spanish delegation supports the reference to *stateless persons* in this recital. In addition, Spain considers that the last sentence could be reworded as follows:

  "prevention of irregular migration, and enhanced measures to combat ~~illegal migration and~~ migrant smuggling".

- **Recital 5**

  The Spanish delegation objects the inclusion of *beneficiaries of international protection* in this recital in accordance with our position which excludes these beneficiaries from the scope of this Regulation. Therefore, this reference should be placed in square brackets or deleted. Responsibility rules under this Regulation should be addressed to determine the Member State responsible for examining an application, but once it has been examined and a positive decision has been adopted, as it is the case of beneficiaries of international protection, there is no reason to apply this Regulation.

- **Recital 6**

  Regarding the deletion of Article 4 and its transfer to the recitals, Spain would have preferred keeping this Article in the operative part, because the integrated policy-making can be better guaranteed with a stronger obligation stated in the set of articles rather than in the recitals. Nevertheless, we could be flexible accepting its inclusion complementing Recital 6. In any case, the support by Union Agencies should only take place under the request of Member States.

- **Recital 7**

  In order to avoid similar terms referring to different realities under AMMR and APR, Spain suggests to avoid the term "adequate capacity" under AMMR. This term relates to a specific concept with legal implications on the border procedure in accordance with the APR proposal. The content of this recital, which makes reference to ensuring "sufficient human and financial resources and infrastructure to effectively implement asylum and migration management authorities" is already selfexplanatory. Therefore, this delegation suggest deleting the last sentence of this recital starting with *"(…) and that each component has adequate capacity"*. Otherwise another wording for this concept should be found.

- **Recital 12(c)**

  The Spanish delegation believes that part of the last sentence of this recital (starting by *"…avoid incentives for irregular migration…"*) should be deleted, due to the fact that the classification of documents should be justified according to the existing security and access to documents' rules. Hence it should not extend the reference to subjective issues to guarantee legal certainty and avoid misunderstandings and possible judicial proceedings. In addition, this reference might develop possible negative narratives to the public opinion. Therefore, it would be better to limit the reference to the rules of security and access to documents for the justification of a certain classification, particularly the one on interference in the decision-making process.

- **Recitals 18 to 23 (Search and Rescue Operations)**

  Spain considers that the complete deletion of any reference to search and rescue (SAR) operations in the recitals is excessive. This situation should be mentioned in the recitals, in order to be coherent with the operative part of the text, as they are relevant factors in migration management and form part of AMMR provisions.

  We believe that there should be specific responsibility rules concerning the SAR operations, given the specificities of such cases that arise in compliance with international law obligations.

  In this regard, the following wording is suggested:

  "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 phenomenon of disembarkations is characterised by specific features, both in the operational and legal fields, deriving in particular from the obligations laid down in international and European law concerning persons rescued at sea". Given the particular characteristics of disembarkations arising in the context of search and rescue operations or autonomously, specific rules should be established to facilitate effective solidarity measures as well as rules on responsiblity determination adapted to this particular situation"

- **Recital 24-25 (geographical particularities)**

  The Spanish delegation believes that the geographical particularities should also be mentioned in relation to the solidarity mechanism and the situation it addresses.

  Hence, the following wording is proposed:

*"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 specificities stemming from its geographical location, 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."*

- **Recital 31 (distribution key)**

Spain supports the reference to the mandatory fair share principle.

- **Recital 31 (c) (responsibility offsets)**

The Spanish delegation firmly supports the introduction of the responsibility offsets as a secondary level solidarity measure. If, on a voluntary basis, the needs identified by the Commission are not met by contributing Member States, there should be a back-stop clause to ensure that these unmet needs are covered by these responsibility offsets. Nevertheless, in order to have an effective system, responsibility offsets should apply in relation to the annual target set out in the Recommendation foreseen in Article 7.c, instead of being referenced to the minimum threshold of Article 7.c.2.

The Spanish delegation supports the reference to stateless persons in this recital.

- **Recital 34**

  The Spanish delegation is missing the reference to the hierarchy of criteria in this recital. The method for determining the Member State responsible for the examination of an application for international protection should not only be based on objective and fair criteria but those criteria should also be applied in the order stated in the operative part of the Regulation (Article 14).

- **Recital 35**

  The need to improve the current system has been repeatedly underlined by several delegations at different levels. Therefore, Spain believes that the reference to *the principles underlying in the actual Regulation (EU) No 604/2013* should not be the basis to this new Regulation. On the contrary, this delegation deems that the preamble should strive to justify the reasons why new principles and rules are needed instead of basing itself on principles which experience has proven inadequate.

- **Recitals 36 and 38 (beneficiaries of international protection)**

  As previously stated in relation to recital 5, the inclusion of beneficiaries of international protection under this Regulation has not been agreed upon yet, so this reference should be placed in square brackets or deleted.

- **Recital 47 (Definition of family members-sibling/siblings)**

  Spain supports the inclusion of siblings under this recital. This would contribute to provide more effective responsibility rules and a meaningful link between the person concerned and the Member State responsible, taking into account also the wider implications for the families concerned. Furthermore, it helps a better functioning of the Dublin system by establishing responsibility according to meaningful links and it assists in avoiding secondary movements.

- **Recital 51**

The Spanish delegation believes that the reference to the responsibility under the first entry criterion should be complemented by the fact that such responsibility should have a time limit. Thus, the following wording is suggested:

"(51) Considering that a Member State should remain responsible for a certain period of time for a person who has irregularly entered its territory (…)"

- **Recital 52**

The Spanish delegation suggests to explore the possibility to include cumulative responsibility criteria when derogating (i.e. humanitarian, cultural, social). Thus, the following wording is suggested:

"(52) (…) in particular on humanitarian, family, social, cultural and compassionate grounds (…)"

Part I Scope and Definitions

- **Article 2 *Definitions***

- **(g)** Definition of *family members*. Spain supports the inclusion of the concept *family en route* to be taken into account when defining family members.

- **(g)(v)** Definition of *family members*. Spain strongly supports keeping the mention to *sibling or siblings of the applicant* in the text. This would contribute to provide more effective responsibility rules and a meaningful link between the person concerned and the Member State responsible, taking into account also the wider implications for the families concerned. Furthermore it helps a better functioning of the Dublin system by establishing responsibility according to meaningful criteria and to avoid secondary movements.

  Furthermore, Spain shares the views of the Presidency and the Commission when dealing with the treatment given to married minors in letter (v) *in fine* of this Article.

- **(n) and (o).** Definitions of *diploma or qualification* and of *education establishment*. Our delegation supports the inclusion of these criteria and the definitions thereto. A temporal reference could complete the definition of education establishment in fine, as follows:

  "in accordance with national law or administrative practice on the basis of transparent criteria at the time of issue of the diploma or qualification".

- **(w) and (wa).** Definitions of *migratory pressure* and *significant migratory situatio*n. Spain still raises concerns on the relation established in (w) between the burden on a Member State and *the overall situation in the Union*. Spain would rather include a mention or a clarification to the situation in the Member States concerned. This delegation would prefer to mention the geographical particularities in connection with the migratory pressure. There is a need of clearly differentiate these definitions from that of a crisis situation under the Crisis Regulation.

Part II Common Framework for Asylum and Migration Management

Chapter I The comprehensive approach (Articles 3-7)

- **Article 3** ***Comprehensive approach to asylum and migration management***

  The Spanish delegation welcomes the reference to stateless persons in this Article.

- **Article 4.**

  As stated before, regarding the deletion of Article 4 and its transfer to the recitals, Spain would have preferred keeping this Article in the operative part. Nevertheless, we could be flexible accepting its inclusion complementing Recital 6. In any case, the support by Union Agencies should only take place under the request of Member States.

- **Article 5** ***Principle of solidarity and fair sharing of responsibility***

  1 (b) y (e) Spain believes there is an inconsistency concerning the *measures* to be taken between these two paragraphs where in letter (b) correctly states *"prevent and reduce"* in letter (e) erroneously refers to *"prevent and correct"*. Spain suggests that the wording "prevent and reduce" is used in both paragraphs.

  In another vein, Spain welcomes the addition *"of third country nationals and stateless persons"*

- **Article 6**. ***Strategic governance and monitoring of the migratory situation***

  Spain states its preference for removing paragraphs 1 and 2 from the text avoiding duplication with the European Migration Management Report in Article 7.a., following the views of the Council Legal Service.

  The Spanish delegation requests a clarification on the concept in paragraph 6 *"good quality data"* coming from different bodies. This delegation considers that the adjective should be removed so that it cannot be interpreted that these bodies own both good and poor quality data.

  We could accept the proposed text by the Presidency in paragraph 7 concerning the establishment of a *common template to be used by Member States for the purpose of their national strategies* agreeing with the deletion of the words "~~*uniform conditions in the form*~~".

- **Article 6a**. ***The Permanent EU Migration Support Toolbox***

  This delegations can accept the new wording.

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

  Although Spain believes that provisions of Article 7.1 are redundant and coincident with those established in Article 25a of the Community Code on visas, in the spirit of compromise, we could accept them and appreciate the reference to "*Member States"* added at the end of paragraph 1, when dealing with the cooperation relations with third countries.

Chapter II The Annual Migration Management Cycle (Articles 7a-7d)

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

- **Article 7a.1**. ***European Migration Management Report and Commission Decision***.

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

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

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

- **Article 7b (Title)**. In order to assess individually each of the possible migratory situations Member States may face, Spain supports the replacement of the word *"and"* by *"or"* in Article 7b.1.

- **Article 7b.** We present the following remarks to the paragraphs:

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

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

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

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

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

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

  (na) the number of applications for statelessness recognition.

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

- **Article 7c.1.** Spain thanks the inclusion in the new text of the word *"effective"* to address the migratory situation. Furthermore, this delegation welcomes the needs-based approach with the addition of the sentence *"that reflects the needs of the member States under migratory pressure"*.

Article *7c.2*. The identification of the annual numbers for relocations and for direct financial contributions should reflect the migratory situation, pressures and needs of a given year. Therefore, taking into consideration the information which the Commission will have at its disposal, the annual number could be defined by using a formula, even if deemed as indicative, which would take into account the number of arrivals, average recognition rates and the return rates. In any case, Spain could be flexible regarding the minimum threshold in this Article as far as equivalent rules apply to the border procedure and responsibility offsets procedure. In this respect, it should be granted that the number established under the solidarity mechanism corresponds to the one determined for the adequate capacity and thus the level of ambition on both pillars is equivalent.

In addition, paragraph 3 foresees that a lower number than the minimum threshold could, in exceptional situations, be established, voiding the threshold of its minimum character. In addition, the Union shared responsibility constitutes a principle enshrined in the Treaties which should be respected and guaranteed. Therefore, focus should be put on identifying the measures and the level of solidarity required to ensure the application of the fair-share principle.

Part III Criteria and mechanisms for determining the Member State responsible

Chapter I General Principles and safeguards (Articles 8 to 13)

Spain could be flexible and generally positive concerning these provisions.

- **Article 11.1 (ga)** ***Right to information.*** Nevertheless, in this paragraph, Spain has a reservation concerning the cross reference to the extension of the time limit in accordance with Article 35 on transfers.

Chapter II Criteria for determining the Member State responsible (Articles 14-23)

As a general statement concerning this chapter, the Spanish delegation deems that it has made significant concessions on the solidarity mechanism and on the border procedure in the spirit of compromise. In this context, Spain expects that adaptations and concessions by other delegations are made on the responsibility criteria in order to strike a balance. We therefore welcome a differentiated approach to responsibility rules in border procedure cases, not only in cases of absconding, but in all cases processed under such a procedure. An appropriate time limit for such shift of responsibility should be set out, since the Member State applying the border procedure has assumed an additional responsibility by processing the applications under this procedure, issued a return decision if the former has been rejected and put all the measures in place to effectively return that person. After a short period of time, the responsibility should no longer lie with that Member State, but become a European responsibility. Even more so when the compromise text does not exclude persons with low prospects of return from the border procedure.

It is also crucial for Spain that the responsibility criteria are broadened and applied according to the hierarchy set out in this Regulation. Currently, in over 90% of cases, responsibility is determined by the first entry criterion, which, contradictorily, is the last one in the hierarchical list. Therefore, extending the scope to siblings, as well as other alternative criteria, is essential. Furthermore, the cessation of responsibility for the first entry criteria should be maintained as foreseen in the current aquis (12 months) or, at most, extended by a few more months, depending on the overall balance. Finally, the text makes no mention of persons disembarked as a result of an SAR operation. We believe that there should be specific rules on responsibility, given the specificities of such cases, which occur in compliance with international law obligations.

- **Article 14.** ***Hierarchy of criteria***. Spain considers that the assessment of the criteria should be made, at least, upon lodging of the application and not upon registration. By the time of registration, the information available to determine if family criteria, diplomas, expired residence and the rest of criteria apply would be insufficient.

- **Article 15. *Unaccompanied minors*.** Spain supports the inclusions stating the best interests of the unaccompanied minor. In **paragraph 5**, this delegation insists in placing the moment to determine the Member State´s responsibility when the application for international protection is lodged and not registered.

- **Article 19. *Issue of residence document and visas*.** Spain would favour maintaining a similar deadline of three years for residence documents and visas.

- **Article 20. *Diplomas or other qualifications*.** This delegation supports these criteria based on diplomas and other education qualifications.

- **Article 21. Entry criteria.** Spain does not support the extension of deadlines, advocating for maintaining the current Dublin rules on the shifting of responsibility (12 months). In addition, persons disembarked following search and rescue operations should have a lower deadline, given their specificities linked to the fulfilment of obligations under international law.

- **Article 22. Visa waived entry**. We can accept the suggested wording, including the new paragraph 2.

Chapter III Dependent persons and discretionary clauses (Articles 24-25)

- **Article 25. Discretionary clauses.** Spain supports the widening of the scope of the discretionary clause with the inclusion of *social and cultural* considerations in terms of flexibility and efficiency under the overall fair share principle.

Chapter IV Obligations of the Member State responsible (Articles 26-27)

- **Article 26. *Obligations of the Member State responsible.*** Spain stresses that it has not been agreed that beneficiaries of international protection should be within the scope of this Regulation. Therefore, it should not be part of the responsibility determination rules, since their applications have already been processed by a given Member State and the procedures have been completed and thus the attached obligations have been complied with. Beneficiaries of international protection are to be considered a shared EU responsibility. Therefore, letter c) of Article 26.1 and the addition in 26.2 should be deleted and the consequential amendments should take place throughout the text.

- ***Article 27. Cessation of responsibilities.*** In line with the contribution on Article 26, the **second subparagraph of paragraph 1** should be deleted, since "persons who have already been granted international protection" should fall outside of the responsibility determination rules.

Chapter V Procedures (Articles 28-39)

- **Article 29.** ***Submitting a take charge request.***

  Concerning the **new subparagraph 3 in paragraph 1** the Spanish delegation could support this wording taking into consideration our comments on Article 33 stating that the scope of the remedies should include the potential incorrect use of the hierarchical responsibility determination criteria and thus cover articles 14 to 24.

  Regarding **paragraph 3** of this provision, we welcome the new wording aiming at adequately justifying the used criterion and that all the other hierarchically superior criteria are not met. In this vein, the applicant should be asked about the concurrence of those criteria, including through uniformed forms. However, we suggest the following wording:

  "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 all the ~~relevant~~ hierarchy 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, who shall be asked about the concurrence of the criteria set out in Chapter II. 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.*

- ***Article 31. Submitting a take back notification.***

  As a general rule, the take back procedure must remain as a request procedure, not a mere notification procedure. Otherwise, the exception foreseen in article 31(3) in fine could become the general rule if used as an answer to take back "notifications". We thus propose changing the word "notification" by "request" in the title itself and throughout the relevant provisions in the legal instrument. Additionally, the failure to request within the time limit should tantamount to accepting the responsibility. Hence, the following wording is proposed:

Article 31

Submitting a take back request

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 request within two weeks after receiving the Eurodac hit. Failure to make the take back request within the time limit shall tantamount to accepting the responsibility.

However, in the spirit of compromise, if new rules are foreseen expanding the definition of family members, adapting the timeframes for determination and cessation of responsibility, Spain could explore accepting the notification procedure. Spain could support making the final phase lighter and swifter, but only if it is ensured that the system is from the beginning more robust in the assessment of each and every relevant criterion.

Furthermore, if the notification is not made in time, shifting of responsibility should take place. Spain support clearer rules and swifter procedures and thus there should be consequences to every rule and timeframe which has not been complied with (e.g. time limit for sending the request/notification)

- ***Article 33. Remedies.***

Spain considers that the scope of the remedies should include the potential incorrect use of any of the responsibility criteria and the hierarchy thereof. Hence it should cover articles 14 to 24. Therefore, this delegation suggests the following wording on **Article 33.1.b)**:

b) whether Articles 14 to 24 have been infringed, in the case of the persons taken charge of pursuant to Article 26(1), point (a).

The Spanish delegation welcomes the inclusion of **Paragraph 1a and 1b**, but we insist that remedies should include all the elements of the take back decision, including all the responsibility criteria from Articles 14 to 24.

Detention for the purpose of transfer

- ***Article 35. Detailed rules and time limits.*** The Spanish delegation welcomes the link proposed by the Swedish Presidency between border procedure and specific responsibility rules as suggested by Spain in previous meetings.

  Nevertheless, absconding is only one element on the equation. Spain raises doubts whether this differentiated approach applied only to absconding may lead to treating better the persons absconding after a negative decision than the ones whose case is still pending a decision.

  We would favour that, any future application after the border procedure, is treated as a new application and maybe have a general timeframe for absconding

  In any case, 5 years considered an disproportionately long period. By then, people have most probably developed meaningful links with the country they have stayed for such a long period of time. The current *acquis* foresees And 18 months. If we finally go the way of having different time limits for cases under the border procedure, a much lower time frame should be envisaged: 6 months.

  Finally, the SAR category should have specific rules in terms of transfers given its specificities.

Part IV Solidarity

Chapter I Solidarity Mechanisms

Solidarity Pool and EU Migration Support (Articles 44a – 44k, 58a)

- **Article 44a.2a.** Spain supports the new version of Article 44a 2, as it clarifies solidarity measures of the Solidarity Pool. However, beneficiaries of international protection should not be included in the scope of relocations, provided that there are eligible candidates from the other categories, since beneficiaries of international protection would already be in the process of integration in the host Member State (for example, have learned the language, developed family and social links, etc.). Notwithstanding the foregoing, Spain could be flexible in this point if the possibility to relocate beneficiaries of international protection remains subject to subsequent bilateral agreements between Member States.

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

Therefore, Spain suggests the following amendments:

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

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

(…)

(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.*

- **Article 44b.2**. Spain supports the compulsory nature of the fair-share principle.
- **Article 44c.2**. Spain supports the de-linking of the use of the Permanent Toolbox and the access to the Solidarity Pool
- **Article 44.d.2.b.** As stated in relation with the previous article, Spain supports the de-linking of the use of the Permanent Toolbox and the access to the Solidarity Pool
- **Article 44.e.** As already mentioned in Article 7.c.1, effectiveness and needs-based approach, rather than only balance, should be the driving principles regarding the operationalization of the solidarity measures. The Spanish delegation thanks the Presidency for including the word "*effective"* in the text.

Spain also expresses its gratitude to the Presidency for keeping the reference to contributing and benefitting Member States in paragraph 4. Although it should be underlined that the proposal includes the word *available* in reference to relocation candidates (*available relocation candidates*), the Spanish delegation would like to express our doubts regarding this adjective. In our understanding, it could lead to a reduction of relocations. The reference to relocation candidates is already clear enough and therefore the term available adds no value. Thus, the Spanish delegation would like to eliminate this word from the text resulting in the following wording: *[…] Member States contributing with* *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. […]*

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

- **Art. 44 h.** The Spanish delegation considers *responsibility offsets* as a second-level mechanism to be used in the cases foreseen in this Article, including its compulsory procedure.

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

  Additionally, the Spanish delegation insists on the fact that the *responsibility offsets* should apply in relation to the annual target set out in the Recommendation foreseen in Article 7.c, instead of being set out in data of Article 7.c.2. The offsets, as a mechanism to close existing fair-sharing of responsibility gaps, should be established in accordance with the migratory pressures and the needs identified for the given year and not to the minimum threshold foreseen a reference number for the yearly target. They should be a mirror of the relocation needs and fill the gap which was not satisfied with the pledging exercise.

Therefore, paragraph 2 could read as follows:

Where, following the meeting of the High Level Migration Forum convened in accordance with Article 44g, the solidarity contributions ~~relocation pledges~~ to the Solidarity Pool contained in the Council Implementing Decision referred to in Article 44b are below the number referred to in Article 7c~~2)(a)~~ or where such a Council Implementing Decision is not adopted before the end of the relevant year, 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)~~.

Nevertheless, Spain could accept the reduction of the threshold related to the voluntary offsets from 60% instead of 75% concerning the relocation pledges to the Solidarity Pool.

Chapter II Procedural requirements (Articles 57-60)

- **Article 57. *Procedure before relocation.*** Spain upholds the scrutiny reservation on article 57.1 with regard to the scope of persons which may be relocated established in article 44a.3.a. This delegation reiterates that beneficiaries of international protection should fall beyond the scope since they should not be part of the responsibility determination rules. The same reservation applies to Article 57.3 when mentioning "beneficiaries of international protection".

  Furthermore, we suggest extending the scope of paragraph 3 to "social considerations", in line with the wording in Article 25.2.

  "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, social or cultural considerations, between the person concerned and the Member State of relocation".

  While we can accept the time limits set up in this article, further clarification is required as to the reference in paragraph 9a to "timeframe for the implementation".

- **Article 58. Procedure after relocation.**

  Paragraph 6 may be simplified taking into account that responsibility after relocation should always remain in the Member State of relocation.

- **Article 58a.2.** In line with the comments on Article 44h, Spain suggests indicating that the number of *responsibility offsets* should be related to the unfulfilled number of relocations as established in the Recommendation. In addition, Spain proposes to delete or reduce the possibility to lower the amount requested by the benefiting Member States, since the whole responsibility offsetting could otherwise be rendered void of purpose. The time limits in this Article should not be longer than 15 days. Failure to reply within this timeframe should tantamount to accepting the request.

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

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

1. Where a 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 up to the number referred to in the Recommendation mentioned in Article 7c for the applicable year.

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

OR

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

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

Part V General Provisions (Articles 62-70)

Spain supports the compromise text on these articles

Part VI Amendments to other Union acts (Articles 71-72)

Spain supports the compromise text on these articles

Part VII Transitional provisions and final provisions (Articles 73-75)

Spain supports the compromise text on these articles, except for the following remark on Article 75.

- **Article 75**

Nevertheless, Spain upholds a scrutiny reservation concerning the entry into force and applicability after the different explanations given by the Commission and the Council Legal Service with regard to deadlines.