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From: Presidency

To: Permanent Representatives Committee

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Subject: Balance between solidarity and responsibility under the Pact on Migration and Asylum
- Discussion paper

The Swedish Presidency compromise text for the AMMR was discussed at the meetings of the Asylum Working Party on 18-19 January, 10 February, and 28 February to 1 March, as well as at the meetings of the JHA Counsellors on 27-28 March, 18 April, 10 and 15 May 2023. Regarding the APR, the Presidency proposed key elements at the SCIFA meeting on 16 February 2023. The outcomes of that discussion were translated into a legislative text for the APR, which was discussed on 15 March at JHA Counsellors level. New compromise texts were discussed at the JHA Counsellors meetings on 5 and 27 April and 23 May 2023.

Following the policy debates in COREPER on 3 and 17 May on the essential building blocks of AMMR and APR, the Presidency is presenting some further revisions of the draft texts of AMMR and APR, set out in documents 9711/23 and 9710/23.

Following the COREPER debates on 3 and 17 May 2023, the Presidency has taken good note of the generally expressed need for a sustainable, predictable and practicable system of flexible responsibility and solidarity. Based on the reactions from delegations, the Presidency is confident that the refined texts that it is putting forward form a good basis for a balance between solidarity and responsibility and should pave the way towards reaching a general approach on both the AMMR and the APR at the 8-9 June JHA Council meeting. The Presidency is also mindful of the need to make quick progress on the Crisis and *force majeure* Regulation, which is also part of the overall equation.

On the clear understanding that nothing is agreed until everything is agreed, the Presidency has noted that following COREPER on 3 and 17 May, the following elements are stabilising as the basis for a broad compromise.

For the border procedure in the APR:

- The **adequate capacity at national level** will be calculated on the basis of the formula set out in the APR and will be stable for three years.
- The definition of adequate capacity to examine applications in the border procedure ‘at any given moment’ is combined with **an annual cap**.
- The extent of the obligation of the Member State to set up the adequate capacity should take appropriate account of Member States’ concerns regarding **national security and public order**.
- A Member State should always be able, within the border procedure, to **prioritise cases with a high probability of prompt return**.
- While the border procedure shall generally be carried out at the border, the Member States will have the possibility to **designate facilities** dedicated to the border procedure at **other locations the territory** (i.e. not at or in the proximity of the border) in a similar way as in the negotiation mandate on the Screening Regulation.

- A single **substantiated notification** to the Commission to allow a Member State to temporarily not apply the border procedure beyond the adequate capacity is provided, along with **an increased monitoring role of the Commission**
- Families with children of 12 years of age or younger **should not be automatically exempted from the border procedure**. Applications by unaccompanied minors shall be dealt with in the border procedure only when the minor is considered a danger to national security or public order. The Presidency reminds delegations that the reception conditions applicable to applicants, including to minors, are entirely governed by the Reception Conditions Directive (RCD) on which the interinstitutional negotiations were completed under the Czech Presidency. The **APR text is aligned with the RCD** text in this regard, including on the fact that minors, as a rule, should not be detained.

For the AMMR:

- **Take-back notifications** will replace the current take back requests in cases where responsibility has already been established, with a possibility for the notified Member States to object in a clearly defined and limited number of cases. There will be no shift of responsibility in the event that the notifying Member State does not comply with the time limit to send the take-back notification.
- There will be **no extension of the definition of family members to cover siblings**, and no new criterion on diplomas and other qualifications.
- Regarding **beneficiaries of international protection**, the current *acquis*, according to which beneficiaries of international protection are **excluded** from the take-back procedure, will be retained. **Resettled persons** will be **included**, as in the Commission proposal.
- The discussions on how long **beneficiaries** of international protection must be legally resident in order to be able to opt for **long-term residence** will take place in IMEX under the Long-Term Residence Directive recast negotiations.

- There will be a **flexible solidarity mechanism** in which the contributing Member State has full discretion about the type of solidarity contribution – relocation, financial or other measures where relevant – which are of equal value. No Member State will ever be obliged to carry out relocations or contribute more than its fair share.
- Member States can **pledge alternative solidarity measures** even if the Commission Recommendation does not provide for it, provided that the benefitting Member State accepts such measures (otherwise the pledge will become financial contributions).
- The time limit for the **shift of responsibility for all cases of absconding** will be set at three years.
- There will be a new rule on the cessation of **responsibility of the Member State that rejected the application in the border procedure**. Responsibility will cease **two years** after the final rejection. An application registered after that time would then be considered as a new application for the purpose of determining responsibility.
- Responsibility will cease when the applicant **leaves the territory of the EU for at least nine months** during the examination of the application.
- **Voluntary responsibility offsets** can be made only when relocation pledges reach 50% of the relocation figure set out in the Commission Recommendation.
- Safeguards will be in place as regards the **mandatory responsibility offsets**: on the one hand, they shall not be triggered to the benefit of a Member State with regard to which AMMR/Dublin transfers are effectively not possible. On the other hand, mandatory offsets shall be available to a benefitting Member State in case a contributing Member State is not implementing its relocation pledges.

At the same time, there is clearly still a need to further refine the balance between solidarity and responsibility. The particular geographical position of frontline Member States needs to be borne in mind. Also, taking due account of the increased responsibility resulting from the recast Eurodac Regulation, the new Screening Regulation and the recast of the Reception Conditions Directive, the Presidency submits the following **amended compromises** for some of the main outstanding issues. The Presidency wants to **limit the COREPER discussion to the issues set out below**.

For the APR:

- The **XXX number for the adequate capacity** in the border procedure at Union level should be ambitious enough to significantly enhance the efficient processing of asylum applications
- The **X number for the annual cap** must take due account of the duration of the border procedure of a maximum of six months and the fact that a Member State should always be able, within the border procedure, to prioritise cases with a high probability of prompt return. The cap should apply without prejudice to applications of applicants considered a danger to the national security or public order of the Member States, and to applications of applicants with a high probability of return where the application is made at a moment when the number of applicants subject to border procedures in the Member State concerned is below the adequate capacity of that Member State.
- The **connection criteria shall** be mandatory for Member States to apply in relation to the safe third country concept. This will ensure greater harmonisation and is in line with the recent EUCO's call on achieving a more coordinated approach on the use of the concepts of safe third countries. A connection between the applicant and the safe third country could also be considered established in case of a short stay or a transit.

For the AMMR:

- The **XXX minimum annual number for relocation** should be ambitious enough to relieve pressure on benefitting Member States but should also take into consideration the operational challenges linked to the implementation of relocations.
- The **XXX minimum annual amount for financial contributions** should be based on an objective and realistic assessment and reflect the approximate cost of relocation to be considered as an equivalent alternative solidarity measure.
- **Mandatory responsibility offsets** should be triggered when the relocation pledges do not reach 60% of the total relocation needs identified in the Council implementing act or in relation to the minimum threshold set out in the Regulation, whichever number is higher. In any case, mandatory offsets will remain as the ultimate backstop also where, during the year, due to full or partial reductions, the implementable pledges for relocation fall below the minimum threshold or below 60% of the total relocation needs. It is important to underscore that mandatory responsibility offsets can be triggered only in case a contributing Member State already has persons on its territory for whose application for international protection it would not be responsible.

The Presidency invites COREPER to discuss the above package of amended compromise proposals with a view to finding an agreement that can be the basis for a general approach on both the AMMR and the APR.