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From:	General Secretariat of the Council
To:	JHA Counsellors (Asylum)
No. prev. doc.:	CM 3754/23; 10463/2/23 REV 2
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL addressing situations of crisis and force majeure in the field of migration and asylum - compilation of replies by Member States

Following the request for written contribution on the above-mentioned proposal (CM 3754/23), delegations will find in Annex a compilation of the replies as received by the General Secretariat.

ANNEX

Written replies submitted by the Member States

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AUSTRIA

General remarks:

AT is critical of the direction of the regulation, which foresees detrimental derogations from the mandatory border procedures and responsibility rules, while at the same time providing for increased solidarity.

Such an approach might even have a negative impact when tackling crisis situations.

AT supports strengthening border procedures and responsibility rules in crisis situations. These must be upheld especially in times of crisis, so as to avoid accentuating/perpetuating crises.

Furthermore, the crisis regulation must also ensure a fair balance of responsibility and solidarity, in line with the political agreement reached on AMR and APR.

AT requests a step by step explanation on how the implementation would work in practice with clear examples: what happens when the EC issues a "Council implementing decision" activating Articles 3, 4(4), 4a, 6 and 7?

Article 3:

- AT calls for upholding mandatory border procedures in Article 3 (1)
- AT calls for a new provision in Article 3 derogating from the connection criteria in the APR Article 45 (2b) when applying the safe third country concept.
- AT calls for a new provision in Article 3 allowing the making of asylum applications only at designated border crossing points, as was the case in the former Instrumentalisation Regulation.

Article 4 (4):

- We oppose the general rule on the interruption of transfers in Article 4 (4) in times of crisis and force majeure. With regards to the transfer deadline, a possible shift of responsibility must be longer than one year i.e. at least two years, since a migration crisis can last for up to one year.
- In case of absconding, the 3 year transfer deadline determined in Art. 35 AMR should also be applicable.

Article 4a:

- AT strongly opposes the cessation of responsibility in Article 4a. If this highly problematic principle is retained, the threshold for activation must be better defined. Therefore, AT requests a Recital clarifying “a serious risk that it renders the Common European Asylum System non-functional” by using quantitative per capita data on asylum applications.

Article 7:

- In principle, AT can only support the system of mandatory responsibility offsets subject to one condition: If Member States are required to provide solidarity above their fair share, then this **must be deducted from the AMR solidarity requirements** (contributions to the solidarity pool). Otherwise, only already overburdened states will be saddled with this additional burden.
- In the absence of this link, the current proposal is insufficient and cannot be supported.

Remarks on the text:

CHAPTER I
GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation addresses situations of crisis, **including** instrumentalisation, and *force majeure* in the field of migration and asylum within the Union and provides for **solidarity and support measures Member States can benefit from and for** specific rules derogating from those set out in Regulations (EU) XXX/XXX [*Asylum and Migration Management*] and (EU) XXX/XXX [*Asylum Procedures Regulation*], and in Directives XXX [*recast Return Directive*] and XXX/XXX [*Reception Conditions Directive recast*].

Member States may only apply the measures provided for in Chapter II and in Chapter III upon request and to the extent provided for in the Council Implementing Decision referred to in Article 8(4).

This Regulation shall not affect the fundamental principles and guarantees, established by the acts from which derogations are allowed pursuant to this Regulation.

2. For the purposes of this Regulation, a situation of crisis is to be understood as:

(a) an exceptional situation of mass influx of third-country nationals or stateless persons arriving [...] in a Member State or disembarked on its territory following search and rescue operations, being of such a scale [...] and nature, that it renders the Member State's asylum, reception or return system non-functional [...] **such that there may be** serious consequences for the functioning of the Common European Asylum System or the Common Framework as set out in Regulation (EU) XXX/XXX [*Asylum and Migration Management*] [...], or

b) [...] a situation of instrumentalisation [...] where a third country or non-state actor encourages or facilitates the movement of third country nationals **and stateless persons** to the external borders or to a Member State, with the aim of destabilising the Union or a Member State where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security; [...]

Member States may apply **the** derogations provided for in a Council Implementing Decision referred to in Article 8(4) of this Regulation in [...] **the situation referred to in letter (b) only** in respect of third-country nationals or stateless persons who are subject to instrumentalisation and who are either apprehended or found in the proximity of the external border, meaning the Member State's land borders, including river and lake borders, sea borders and its airports, river ports, sea ports and lake ports, provided that they are not internal borders, in connection with an unauthorised crossing by land, sea or air, or who are disembarked following search and rescue operations or who have presented themselves at border crossing points.

Commented [BMI-V-A-51]: AT requests a definition of "force majeure" as point c) in article 1, so as to ensure clear application thereof.

Without such a definition, too much legal uncertainty would be created by the current version of the text, given the far-reaching derogations from the regular system.

Commented [BMI-V-A-52]: AT does not support the vague wording "such as there may be" since the fear of a crisis does not equal the existence of a crisis and therefore does not necessitate derogations or special solidarity measures.

Especially in view of the very much welcomed deletion of the "imminent risk" criterion in the previous Art 1 (2) b, this addition seems not to be necessary from a legal perspective.

Commented [LG3]: From Austrian perspective, all migrants subject to instrumentalisation should be encompassed in this regulation. The location of the apprehension should not be a criterion in this regard. Instrumentalisation remains instrumentalisation wherever the migrants are apprehended.

Recital:

(xx) Situations in which non state actors are involved in organised crime, in particular smuggling, should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State. Furthermore, humanitarian aid operations should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.

Commented [LG4]: AT does not support this recital. The definition of instrumentalization in Article 1 is sufficiently clear, so no further clarification is required.

CHAPTER II

DEROGATIONS APPLICABLE IN A SITUATION OF CRISIS, OR *FORCE MAJEURE*

Article 2

Registration of applications for international protection in a situation of crisis [...] or force majeure

1. In a situation of crisis or *force majeure*, by way of derogation from Article 27 of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], a Member State facing that situation may register applications made within the period during which this point is applied [...], no later than four weeks after they are made [...].
2. Where applying paragraph 1 [...] shall prioritise the registration of those applications of persons with special reception needs as defined in [*Reception Conditions Directive recast*] and family members of minors in situations referred to in Article 1(2)(b). In situations referred to in Article 1(2)(a) or *force majeure*, Member State may prioritise [...] such applications.
3. Where applying paragraph 1, Member States [...] may [...] prioritise the registration of applications which are likely to be well founded. [...]

Commented [LG5]: In general, Austria is critical of longer registration deadlines as this might increase secondary migration in practice.

We welcome article 10 (2) which excludes EURODAC deadlines from this derogation.

We believe new paragraph 3 is necessary which clarifies that registration of asylum applications can be limited to certain border crossing points in a crisis or instrumentalisation situation.

Article 3

Measures applicable to the asylum border procedure in a situation of crisis [...] or force majeure

1. In a situation of crisis referred to in Article 1(2)(a) or *force majeure*, by way of derogation from Article 41b(1) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], Member States may not be required to examine in a border procedure applications made by applicants referred to in Article 40(1)(i) of that Regulation.
2. In a situation of crisis referred to in Article 1(2)(a) [...], by way of derogation from Article 41a(b) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], Member States may in a border procedure take decisions on the merits of an application in cases where the applicant is of a nationality, or, in the case of stateless persons, a former habitual resident of a third country, for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 75% or lower, in addition to the cases referred to in Article 40(1) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*];

Commented [BMI-V-A-56]: AT is generally critical. The rules in the APR should be upheld

Commented [LG7]: AT is very critical of paragraph 1. Border procedures should remain mandatory, especially during migration or instrumentalization crises. In these cases, capacities must be strengthened.

In Article 7, solidarity is linked to the AMR provisions on solidarity. In this Regulation, Member States may be required to provide more solidarity than in the AMR. Since contributing Member States must provide more solidarity, benefitting Member States must also increase "adequate capacities". This is essential to ensure a balance between solidarity and responsibility.

Furthermore, AMR solidarity provisions are closely intertwined with APR "adequate capacities" provisions. This linkage between AMR and APR must be upheld in the Crisis Regulation.

AT has shared a text proposal on this issue.

Commented [LG8]: AT welcomes this provision.

3. In a situation of **crisis referred to in Article 1(2)(b)**, by way of derogation from Article 41a(a) and (b), [...] and Article 41e(2)(a) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], [...] Member States may decide at the locations at the external border, in the proximity to the external border or transit zones or [...] in other designated locations within its territory on the admissibility and on the merits of all applications made by any third country national or stateless person registered within the period during which this point is applied.

Commented [LG9]: AT welcomes this provision.

4. Where applying paragraphs 2 or 3, the Member State concerned shall prioritise the examination of those applications for international protection lodged by persons with special procedural or special reception needs as defined in [Reception Conditions Directive recast and in Asylum Procedure Regulation] and family members of minors. The Member State concerned may also prioritise the examination of applications for international protection which are likely to be well-founded or manifestly unfounded.

5. Where applying paragraphs 2 or 3, Article 41bb of Regulation (EU) XXX/XXX [Asylum Procedures Regulation] shall not apply.

Commented [BMI-V-A-510]: Austria is critical towards this. Persons who pose a security risk must always be subject to asylum border procedures in the interest of internal security.

6. In a situation of crisis [...] or *force majeure*, by way of derogation from Article 41c(2) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], the duration of the border procedure shall last no more than twenty weeks including appeal starting from the date of the registration of that application. Following this period, the applicant shall be authorised to enter the Member State's territory for the completion of the procedure for international protection

7. In a situation of [...] **crisis referred to in Article 1(2)(b)**, by way of derogation from Article 12(5) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] the personal interview may be omitted also in case where the determining authority is able to take a positive decision on the basis of the evidence available with regard to the subsidiary protection status.

8. AT proposal for derogation from the connection criteria of Art. 45 (2b) b.

Commented [BMI-V-A-511]: AT text proposal:

The concept of safe third country may only be applied for unaccompanied minors and families with children under 12 years of age provided that there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for that person to go to that country, including because the applicant has transited through that third country, or if there is no such connection, the applicant consents to go there;

Article 4

Extension of time limits set out for take charge requests, take back notifications and transfers in a situation of a situation of crisis referred to in Article 1(2)(a) or force majeure

1. In a situation of crisis **referred to in article 1(2)(a) or force majeure which renders it impossible for a Member State facing that situation to comply with the time limits set out in [...] Articles 29, 30, 31 and 35 of Regulation (EU) XXX/XXX [Asylum and Migration Management] or to receive persons it is responsible for pursuant to that Regulation, Member States may derogate from the time limits set out in Articles 29, 30, 31 and 35 of that Regulation.**

2. Where applying paragraph 1, by way of derogation from Articles 29, 30, 31 and 35 of that Regulation, the Member State facing that situation shall:

(a) submit a take charge request as referred to in Article 29 within four months of the date on which the application was registered;

(b) reply to a take charge request as referred to in Article 30 within two months of receipt of the request;

(c) submit a take back notification as referred to in Article 31 within one month of receiving the Eurodac hit or confirm the receipt within one month of such notification; **and**

(d) carry out a transfer as referred to in Article 35 within one year of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3) of that Regulation.

3. Where the Member State referred to in paragraph 1 does not comply with the time limits set out in paragraph 2, points (a), (b) and (d), the responsibility for examining the application for international protection pursuant to Regulation XXX/XXX [Asylum and Migration Management] shall lie with it or be transferred to it.

4. Where paragraph 1 is applied, transfers pursuant to Article 35 of Regulation (EU) XXX/XXX [Asylum and Migration Management] to the responsible Member State facing a situation of crisis referred to in Article 1(2)(a) or force majeure, shall not be carried out until that member State is no longer facing that situation. Where because of the persistence of the situation of crisis referred to in Article 1(2)(a) or force majeure or for any other reason, the transfer does not take place within one year of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3) of that Regulation, by way of derogation from Article 35 of Regulation (EU) XXX/XXX [Asylum and Migration Management], 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.

[...]

Article 4a

Derogations from the obligation to take back an applicant in a situation of crisis referred to in Article 1(2)(a)

1. In a situation of crisis referred to in Article 1(2)(a), where the mass influx is of such scale and intensity that there is a serious risk that it renders the Common European Asylum System non-functional, by way of derogation from Article 26(1)(b) and Article 28(4) of Regulation (EU) XXX/XXX [Asylum and Migration Management], a Member State facing that situation may be relieved of its obligation to take back an applicant or a third-country national or stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation] where that responsibility was determined pursuant to Article 8(2) of Regulation (EU) XXX/XXX [Asylum and Migration Management], or to take back an applicant pursuant to Article 28(4) of that Regulation.

This paragraph shall only apply where the application was registered in the Member State facing that situation up until six months before the adoption of the Council Implementing Decision referred to in Article 8(4).

Commented [LG12]: AT does not support the suspension of transfers for the duration of the crisis. Softening of responsibility rules would incentivise further illegal migration to and secondary migration within the EU therefore worsening the crisis which is why responsibility rules should be upheld especially in times of crisis.

Commented [LG13]: The deadlines in Article 35 (2) AMR – particularly the 3 year deadline following absconding – should remain upright. **Question to the Presidency:** Is this the case i.e. what is the relation between deadlines in AMR Article 35 and this provision?

Regarding the specific deadline, where responsibility shifts after one year because transfers cannot take place, AT requests that the deadline is longer than one year i.e. at least two years.

Argumentation: According to the Council implementing decision, a crisis situation can last up to one year. Furthermore, according to this provision, transfers are also suspended for one year. Therefore, if responsibility shifts after one year, the first country of entry is no longer responsible for any persons irregularly arriving during the crisis. This would be a huge pull-factor. AT supports that the responsibility shifts only after 2 years.

Commented [LG14]: AT fundamentally opposes this provision. The responsibility system must remain upright also in cases of crises. The complete suspension of responsibility rules would lead to a free choice model and would concentrate asylum applications on a small number of destination countries like AT. This would create incentives for potential migrants to irregularly enter the EU, thus perpetuating crisis situations.

Commented [LG15]: Question to the Presidency: What specifically defines "a serious risk that it renders the Common European Asylum System non-functional"?

In general, AT welcomes the high threshold for activating this provision. However, a thorough definition is crucial to guide implementation and safeguard the responsibility system. Therefore, AT proposes a recital clarifying the concept -> we suggest using quantitative per capita data on asylum applications.

Commented [DG16]: Question to the presidency: What does the „may“ in Par. 1 mean. Who decides on the application of the provision? Council decision in Art. 8?

Commented [DG17]: Question to the presidency: Does this mean that the provision cannot apply to applicants that have made an asylum application after the Council decision?

2. Where paragraph 1 is applied, and the Member State facing that situation was determined as responsible pursuant to Article 8(2) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*], it shall be relieved of its obligation to take back the person concerned and responsibility shall be transferred to the Member State where the second application was registered.

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

3. Where paragraph 1 is applied, and the Member State facing that situation is obliged to take back an applicant pursuant to Article 28(4) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*], by way of derogation from paragraphs 2 and 4 of Article 28 of that Regulation, the Member State where the second application is registered shall apply the procedures set out in Part III of that Regulation, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5) and Article 21(1) and (2), and the obligation to take back an applicant pursuant to Article 28(4) shall be transferred to that Member State.

Where no Member State responsible can be designated under the first subparagraph, the Member State where the second application was registered shall be responsible for examining the application for international protection.

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

Commented [DG(18): Question to the presidency: Please explain in more detail the relation between Par. 2 and 3. Does this mean that as a general rule the Member State where the second application was registered becomes the responsible MS. This second MS may assess the responsibility of another responsible MS according to Par. 3? Meaning that the responsibility may change multiple times in a short period of time.

Article 5

Material reception conditions in a situation of a situation of crisis [...] or force majeure

1. In a situation of crisis [...] or *force majeure*, by way of derogation from Articles 16 and 17(1), (2) point (c) and paragraphs (6) to (8) of Directive XXX/XXX [*Reception Conditions Directive recast*], the Member State may temporarily from the moment the application for international protection is made until registration and then for the maximum period as referred in Article 3(6) or from the moment the application for international protection is made until registration and then for the period as referred in Article 41c(2) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] in case derogation under Article 2(c) is not applied set other modalities for material reception conditions in relation to applicants apprehended or found as a result of **the crisis** [...] according to this Regulation or who have presented themselves at border crossing points. Member States shall cover the applicants' basic needs, in particular food, water, clothing, adequate medical care, and temporary shelter adapted to the seasonal weather conditions, and in full respect of human dignity. The derogation from Article 17(2)(c) of Directive XXX/XXX [*Reception Conditions Directive recast*] is without prejudice to the access of legal advisers in accordance with [Articles 8(4), 14(1) and 16(3) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] and the access of UNHCR in accordance with Article 18 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*].

Article 6

Measures applicable to the return border procedure in a situation of crisis [...]

1. In a situation of crisis [...], **Member States may, in relation to illegally staying third-country nationals or stateless persons whose applications were rejected in the context of the border procedure pursuant to Article 3(2) and (3) of this Regulation, and who have no right to remain or are not allowed to remain, derogate from Article 41g(2) and 41h(3) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] as follows:**

(a) By way of derogation from Article **41g(2)** of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], the maximum period during which third-country nationals or stateless persons shall be kept at the locations referred to in that Article may be prolonged by an additional period of maximum eight weeks;

(b) By way of derogation from Article **41h(3)** of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], the period of detention set in that Article shall not exceed the period referred to in point (a);

(c) In addition to the cases provided for by Article 6(2) of Directive XXX [recast Return Directive], Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when the criterion referred to in Article 6(1), point (f) of Directive XXX [recast Return Directive] is fulfilled or when the applicant, third-country national or stateless person concerned is manifestly and persistently not fulfilling the obligation to cooperate established by Article 7 of that Directive.

2. Paragraph 1 shall also apply to applicants, third-country nationals and stateless persons subject to the procedure referred to in Article 41 of Regulation (EU) XXX/XXX [Asylum Procedures Regulation] whose application has been rejected before the adoption [...] **of the Council implementing decision referred to in Article 8(4)** and who have no right to remain and are not allowed to remain after the adoption of that decision.

Commented [BMI-V-A-519]: AT generally welcomes all measure that allows for fast returns.

CHAPTER III

SOLIDARITY MEASURES APPLICABLE IN A SITUATION OF CRISIS [...]

Article 7

Solidarity and support measures in a situation of crisis [...]

1. Where a Member State is facing a situation of crisis [...], it may request support and solidarity measures from other Member States in order to manage that situation. The Member State facing that situation may request the following types of contributions:

a) relocations, to be conducted following the procedures set out in Articles 57 and 58 of Regulation (EU) XXX/XXX [Asylum and Migration Management],

(i) of applicants for international protection;

Commented [LG20]: AT welcomes the flexible solidarity system and the possibility for responsibility offsets.

(ii) where bilaterally agreed by the contributing and benefitting Member State 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;

b) responsibility offsets, as referred to in Article 44h of Regulation (EU) XXX/XXX [*Asylum and Migration Management*] and following the procedure set out in Article 58a thereof;

Commented [LG21]: AT support.

c) financial contributions aiming at projects that are relevant to address the situation of crisis [...] in the Member State concerned or in relevant third countries, in full respect of human rights, to be provided by other Member States following the rules set out in Article 44(i) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*];

d) alternative solidarity measures as referred to in Article 44a(2)(c) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*], specifically needed to address the crisis [...] situation and following the rules set out in Article 44j(2) and (3) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*]; such measures shall be counted as financial solidarity, and their concrete value shall be established based on objective criteria;

e) measures aimed at responding to the situation of crisis [...], including specific measures to support return, through cooperation with third countries or outreach to the relevant third countries;

[...]

2. The Member State facing a situation of crisis [...] shall send a reasoned request to the Commission specifying the type and level of solidarity measures needed.

The Member State facing that situation may submit this reasoned request together with the request referred to in Article 8(1).

3. Following the submission of the reasoned request referred to in the first subparagraph of paragraph 2, the Commission, in close cooperation with the requesting Member State concerned and relevant Union agencies, shall expeditiously assess the situation and the type and level of the solidarity measures needed and, in consultation with the requesting Member State, prepare, where appropriate, a Solidarity Response Plan indicating the type and level of the solidarity and support measures needed.

4. Where it is established in the Council implementing decision referred to in Article 8(4) that the requesting Member State is facing a situation of crisis [...], the following rules shall apply:

(i) Where the Solidarity Pool under Regulation (EU) XXX/XXX [*Asylum and Migration Management*] contains unallocated solidarity pledges or solidarity pledges that have not been implemented yet and are available, the Member State facing a situation of crisis [...] shall make use of the Solidarity Pool. [...]

(ii) Where the Solidarity Pool does not contain enough solidarity pledges to cover the needs identified in the Solidarity Response Plan referred to in paragraph 3, the Member States facing a situation of crisis or instrumentalisation shall **also** make use of contributions contained in the Council implementing decision as referred to in Article 7(4).

(iii) Where the relocation pledges or responsibility offsets in the Council implementing decision referred to in Article 8(4) or the pledges available in the Solidarity Pool are below the relocation needs established in the Solidarity Response Plan included in the Council Implementing Decision, the contributing Member States shall take responsibility for applications for international protection for which the Member State facing a situation of crisis or instrumentalisation has been determined as responsible up to the relocation needs identified in the Solidarity Response Plan established in the Council Implementing Decision, including above their fair share where necessary by way of derogation from Article 44h(5) third indent. Except for Article 44h(5) third indent, Article 44h(5) to (7) of Regulation (EU) XXX/XXX [Asylum and Migration Management] shall apply mutatis mutandis. If a Member State according to this provision has taken responsibility for applications above their fair share that Member State shall be entitled to deduct from their fair share in future relocation pledges or responsibility offsets in Council implementing decisions referred to in Article 8(4), with the corresponding amount of applications for which that Member State went above its fair share. Such deduction can only be claimed within three years from when the responsibility shifted for applications beyond that Member State's fair share.

5. Where [...] the solidarity needs of other Member States that are benefitting Member States pursuant to Articles 44c or 44d of the Regulation (EU) XXX/XXX [Asylum and Migration Management] cannot be addressed as a result of the use made by the Member State facing a situation of crisis of the pledges available in the Solidarity Pool pursuant to paragraph 4, the High level Migration Forum shall be reconvened as matter of urgency, following the procedure set out in Article 44g of the Regulation (EU) XXX/XXX [Asylum and Migration Management].

6. Where, as a result of the measures required to support the Member State facing a situation of crisis, the asylum or reception systems of another Member State reaches the limits of its capacity, the High Level Migration Forum shall, as a matter of urgency, examine the situation, and the Council may take appropriate action, including authorising full or partial reductions of solidarity contributions or provide for solidarity and support measures for the Member State affected in accordance with the procedures set out in the Asylum Migration Management Regulation or this Regulation as appropriate.

Commented [BMI-V-A-522]: The current proposal is insufficient and cannot be supported. In principle, AT welcomes the system of mandatory responsibility offsets, which however can only be supported subject to one condition: if Member States are required to provide solidarity above their fair share, then this must be deducted from the AMR solidarity requirements (contributions to the solidarity pool) for the time period of three years.

Argumentation: Member States should not be required to provide solidarity above their fair share as a rule. In combination with Article 4(4) and Article 4a, mandatory responsibility offsets will lead to very high levels of secondary migration, which will be concentrated on a small number of destination Member States. This means that certain Member States will have to provide much more solidarity through responsibility offsets than others. This is not an acceptable system for AT. This heavy burdened must be balanced out by reductions to the solidarity commitments under the AMR. AT is critical of the proposal to deduct responsibilities from possible future migration crises.

Commented [BMI-V-A-523]: Question: AT requests clarification: what is appropriate action (Council decision?), on capacity (number?).

CHAPTER IV
PROCEDURAL RULES [...]

[...]

Article 8

Authorisation procedure and adoption of implementing acts

1. A Member State facing a situation of crisis or *force majeure* [...], may, given those exceptional circumstances, request the authorisation to apply the relevant derogations provided for in Articles 2 to 6.
2. Where the requesting Member State submits to the Commission conclusive evidence demonstrating the existence of the conditions referred to in Article 1(2)(a) or Article 1(2)(b) or of a situation of *force majeure*, the Commission shall, on the basis of that evidence, without delay, make a proposal for an appropriate Council Implementing Decision referred to in paragraph 4 [...].

The Commission may also make such a proposal where it considers it appropriate on the basis of information provided by the requesting Member State and any other information available to it¹.

4. As a matter of urgency, the Council shall assess the proposal and depending on the outcome of such assessment adopt **expeditiously** an Implementing Decision authorising the Member State concerned to apply the specific derogations provided for in Articles 2 to 6 and allowing the Member State to benefit from the specific solidarity measures provided for in Article 7.

The Council Implementing Decision shall:

- (a) establish the existence of a situation of crisis, instrumentalisation or *force majeure* as appropriate;
- (b) identify the Member State or Member States affected by the situation referred to in point (a) of this paragraph and benefitting from the measures set out in the Decision;
- (c) where relevant, **identify** the specific derogations provided for in Articles 2 to 6 that the Member State concerned is authorised to apply;

¹ RECITAL

(xx) In case of crisis or *force majeure*, a Member State can request the application of the relevant derogations set out in this Regulation on the basis of conclusive evidence demonstrating the existence of a situation of crisis or *force majeure*. The Commission should bring forward a proposal authorising a Member State to apply the derogatory rules provided for in this Regulation. The Commission should also be able to make a proposal where it considers it appropriate on the basis of information provided by the requesting Member State. Moreover to ensure a high level of political scrutiny and support and expression of the Union's solidarity, it is necessary in both cases to take into account whether the European Council has acknowledged that the Union or one or more of its Member States are facing a situation of instrumentalisation of migrants. The instrumentalisation of migrants is liable to put at risk the essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security. Therefore, implementing powers should be conferred upon the Council to adopt an Implementing Decision authorising a Member State to apply the derogations provided for by this Regulation. The Council should also be empowered to repeal, or prolong by up to 6 months, the derogations provided for in this Regulation on the basis of the Commission proposal depending on whether the circumstances justifying the introduction of the derogations persist or have come to an end. Prolongation decision may include amendment of the derogations applied. In exercising their powers and carrying out their responsibilities, the Commission and the Council should ensure at all times that the principle of proportionality is respected.

(d) where relevant, **establish** a Solidarity Response Plan, including the specific solidarity measures provided for in Article 7 required to address the situation and their levels, as well as the specific contributions² by each Member State not subject to the specific situation referred to in point (b) of this subparagraph pledged in accordance with the mandatory fair share set out in Article 44k of the Regulation (EU) XXX/XXX [*Asylum and Migration Management*].

When setting the specific contributions referred to in letter d as part of the Solidarity Response Plan, [...] the contributing Member States shall have full discretion in choosing between the types of solidarity measures or a combination of them. However, only those listed in Article 7) 1 a) b) c) d) shall count towards the mandatory fair share. Member States pledging alternative solidarity measures shall indicate their financial value based on objective criteria.

5. The Council Implementing Decision referred to in paragraph 4 shall state the grounds on which it is based, and shall set the date from which the rules laid down in Articles 2 to 7 may be applied, as well as the time period for their application, which shall not exceed an initial period of six months.

In case of a situation of **crisis referred to in Article 1(2)(b)**, the Decision shall specify the third-country nationals or stateless persons subject to **that situation**.

6. The Commission and the Council shall keep the situation of *crisis* or *force majeure* [...] under constant monitoring and review. Where the Commission considers it appropriate on the basis of relevant information, it may propose the repeal of the Council Implementing Decision referred to in paragraph 4 or the adoption of a new Council Implementing Decision authorising the amendment or prolongation of the specific derogations referred to in Articles 2 to 7 for a period, which shall not exceed an additional period of six months. Where the requesting Member State submits conclusive evidence to the Commission demonstrating the continued existence of the conditions referred to in Article 1(2) or (3) or *force majeure*, the Commission shall, on the basis of such evidence, submit a proposal for a new Council Implementing Decision to amend or prolong the specific derogations referred to in Articles 2 to 6 or the **Solidarity Response Plan** for a period, **which shall not exceed an additional period of six months**. The Member State concerned shall provide the Commission specific information needed for it to carry out this review and to make the proposal for repeal or prolongation as well as any other information the Commission may request.

7. Member States shall continue for the the maximum period as referred to in Article 3 to apply the procedural derogations set out in the Council implementing decision referred to in paragraph 4 in respect of those applicants whose applications for international protection have been registered within the period during which those derogations may be applied until a final decision is taken on their application or until the third-country nationals or stateless persons concerned are returned in accordance with Article 6.

8. In exercising their powers and carrying out their responsibilities pursuant to this Article, the Commission and the Council shall ensure at all times that the principle of **necessity and** proportionality is respected.

Commented [LG24]: AT supports this provision. The total timeframe of the Council implementing decision must not exceed one year.

² A recital will be added to explain that the pledging exercise will take place at the latest during the Council meeting deciding on the implementing decision.

9. When submitting the request referred to in paragraph 1, a Member State may notify the Commission that it considers it necessary to apply the derogation set out in Article 2 before it is authorised to do so in a Council Implementing Decision as referred to in paragraph 4 of this Article. In such a case, the Member State concerned may apply the derogation laid down in Article 2 from the day following the request and for a period not exceeding 15 days. The Member State shall indicate in the request the precise reasons for which an immediate action is required.

CHAPTER V

FINAL PROVISIONS

Article 10

Specific provisions and guarantees

1. In a situation of **crisis referred to in Article 1(2)(b)**, where applying the derogations referred to in Articles 2 to 6, the Member State concerned shall duly inform third-country nationals or stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the measures applied, the location of the registration points, including the border crossing points, accessible for registering and lodging an application for international protection, and the duration of the measures. Information may be provided via information panels, this being without prejudice to [Articles 8 and 19(2) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]].
2. The extension of the time limit for registration of applications for international protection in accordance with Article 2 is without prejudice to [the obligations to comply with the deadlines set out in Article 10(1)(b) of [*Regulation on EURODAC*]].
3. The derogations in accordance with Article 2 do not affect the process of determining the Member State responsible within the framework of [*Asylum and Migration Management*]. In case the process of determining the Member State responsible is longer than the maximum duration of the emergency asylum procedure, the process shall be completed in the territory of the determining Member State.
4. The Member State facing a situation of crisis **referred to in Article 1(2)(b)** shall not apply Articles 2 to 6 longer than what is strictly necessary to address the situation of instrumentalisation [...], and in any case, no longer than the period set out in the Council Implementing Decision referred to in **Article 8(4)**.

Article 11

Cooperation and assessment

1. **In order to ensure the smooth functioning of Council implementing decision referred to in Article 8(4) of this Regulation, the Commission shall convene a first meeting of the Technical Level EU Migration Forum as referred to in Article 7d(4) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*] immediately following the adoption of that Council Implementing Decision. Following that first meeting of the Technical Level EU Migration Forum shall meet as many times as necessary.**

2. The Commission, relevant European Union institutions and agencies and the Member State facing a situation of crisis [...] *or force majeure* shall closely cooperate and regularly inform each other on the implementation of the **Council Implementing Decision** [...] referred to in Article 8. The Member State concerned shall continue reporting all relevant data including statistics that are relevant for the implementation of this Regulation, via the EU Migration Preparedness and Crisis Management Network⁷.

3. The Member State facing a situation of crisis or instrumentalisation shall maintain close cooperation with the United Nations High Commissioner for Refugees and any other organisations entrusted by the Member State with tasks in accordance with this Chapter and Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] and Directive XXX/XXX [*Reception Conditions Directive recast*].

RECITAL

(xx) Cooperation with other Crisis instruments: In a situation of Crisis, all mechanisms for crisis foreseen in the Permanent EU Migration Toolbox should be mobilised, particularly the financial and operational support that Union agencies, Union Funds and the Union Civil Protection Mechanism can provide in accordance with their respective Regulations. The Commission in the context of the Technical Level Migration Forum should ensure coordination and exchange of information with other platforms relevant to manage the crisis situation, including the EU Migration Preparedness and Crisis Management Network (in accordance with Commission Recommendation (EU) 2020/1366 (4)) and the integrated political crisis response (IPCR) arrangements (5).

Article 12

Entry into force

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

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President

BULGARIA

Article 1. *Subject matter*

Paragraph 2, recital to letter “a”

We would like the phrase „*lack of capacity in the Member State of first entry*“ to be deleted. In a crisis, every system for asylum is vulnerable and cannot resist the pressure. As a compromise, we can accept the Croatian proposal, expressed during the meeting.

Article 3 *Measures applicable to the asylum border procedure in a situation of crisis [...] or force majeure*

Paragraph 3

In a situation of **crisis referred to in Article 1(2)(b)**, by way of derogation from Article **41a(a) and (b)**, [...] and Article **41e(2)(a)** of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], [...] Member States may **in a border procedure** decide **at the locations at the external border, in the proximity to the external border or transit zones or [...] in other designated locations within its territory** on the admissibility and on the merits of all applications made by any third country national or stateless person registered within the period during which this point is applied.

Paragraph 5

Full support to the proposal.

Paragraph 6

In a situation of crisis [...] or *force majeure*, by way of derogation from Article 41c(2) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], the duration of the border procedure shall last no more than twenty weeks including appeal starting from the date of the registration of that application. ~~Following this period, the applicant shall be authorised to enter the Member State's territory for the completion of the procedure for international protection~~

Since the phrase „*shall be authorised to enter the Member States territory*“ is a red line for Bulgaria we suggest the last sentence to be deleted. The focus of this text should be on the derogation not on the consequences. The same approach is used in Art.4 Para 1.

CROATIA

Article 1 Subject matter

Croatia can support ES PRES proposal that situations of crisis also include instrumentalisation. Instrumentalisation does not necessarily have to lead to crisis. However, in 2015, 10,000 persons reached the Croatian border with Serbia in a single night. These are therefore unpredictable situations. If the scope of influx or instrumentalised persons is not such that it would interfere with the functioning of CEAS, this Regulation will not be applied. Nevertheless, we believe that, in cases where it should be applied, there need to be clear rules of derogation, which would indeed be achieved in the way that ES proposes.

As regards the recital referring to paragraph 2, we think that the wording “lack of capacity” may be interpreted to mean that the crisis occurred because MS does not have sufficient capacities or that MS has no capacities at all which generally is not a case. MS have capacities which are insufficient in cases of mass influx. We therefore propose the following wording: “insufficient capacity” or “due to inability of MS to process”.

Recital proposal: **A mass influx of persons crossing the border even within a short period of time may lead to a situation of crisis in a particular Member State. That may also have consequences for the functioning of the asylum and migration system, not only in that Member State but in the Union as a whole, due to unauthorised movements and the insufficient capacity in the Member State of first entry to process the disproportional number of applications for international protection of such third-country nationals or stateless persons. It is necessary to lay down specific rules and mechanisms that should enable effective action to address such situations.**

Article 3 Measures applicable to the asylum border procedure in a situation of crisis [...] or force majeure

Paragraph 2 The Regulation provides for derogation from adequate capacity in line with Article 41b. However, it does not seem that the derogation also refers to the procedure for notifying the Commission about the locations for adequate capacity in line with Article 41bc. *Measure applicable in case the adequate capacity of a Member State is reached APR* (e.g. when Article 41bd *Notification by a Member State in case the adequate capacity is reached* and Article 41f *Locations for carrying out the asylum border procedure* apply, where it is prescribed that MS will notify the change in border procedure locations to the Commission within 2 months). Does the derogation also refer to this procedure of notifying the Commission?

We suggest that paragraph 3 be reformulated since it is not clear to what exactly the derogation refers to in case of instrumentalisation (does it refer to all types of decisions as we have understood?). Article 41e(2)(a) reads as follows:

- (a) the determining authority considers that the grounds for **rejecting an application as inadmissible** or for applying the **accelerated examination** procedure are not applicable or no longer applicable;

Pursuant to **paragraph 5**, Article 41bb of the APR will not apply in case of a crisis situation (the adequate capacity will not be applied). We would like a clarification about whether there is a possibility of derogation from the APR once the adequate capacity is reached in line with the APR.

Article 4 Extension of time limits set out for take charge requests, take back notifications and transfers in a situation of a situation of crisis referred to in Article 1(2)(a) or force majeure

We propose that the deadline for replying to a take charge request **in paragraph 2(b)** is longer than 2 months since it should be kept in mind that the MS that are in a crisis situation are mostly the MS on the external border and they will receive most take charge requests (HR receives most requests from DE, FR and CH). Likewise, since the failure to comply with the deadline results in the transfer of responsibility, we propose a deadline of 3 months.

We would like to know whether the extension of deadline in point b) refers to all cases or only those with the hit in Eurodac.

We believe that the wording in paragraph 3: “*shall lie with it or be transferred to it*” is not clear. More precisely, is the responsibility already determined or is yet to be determined? It would therefore be useful to make a reference to certain points, e.g. “shall lie with according to paragraph 2, point d)”.

Article 7 Solidarity and support measures in a situation of crisis [...]

Paragraph 2 - we would like a clarification regarding why a *shall* provision is used for the measures of solidarity and a *may* provision for the measures of derogation.

We propose the following wording for paragraph 2:

“The Member State facing a situation of crisis [...] shall send a reasoned request to the Commission specifying:

- the type and level of solidarity measures needed, **or/and**
- **authorisation to apply the relevant derogations in accordance with Article 8(1).**”

In paragraph 4, point (ii), we would like to point out that the reference refers to Article 8(4) and not Article 7.

Paragraph 5 - we would like to know whether the fair share could be exceeded in that case as well.

Article 8 Authorisation procedure and adoption of implementing acts

We propose that greater emphasis is made in paragraph 2, subparagraph 1 that measures are proposed in close consultation with the requesting Member State.

Proposal:

“Where the requesting Member State submits to the Commission conclusive evidence demonstrating the existence of the conditions referred to in Article 1(2)(a) or Article 1(2)(b) or of a situation of *force majeure*, the Commission shall, on the basis of that evidence **and in close consultation with the requesting Member State**, without delay, make a proposal for an appropriate Council Implementing Decision referred to in paragraph 4 [...].”

Subparagraph 2 - we propose that the recital specifies what other information the Commission will take into account when drafting the proposal for the implementing Council decision.

Paragraph 4 Point (d) - as we understand, new pledges in case of crisis situations will be set out in the Council decision only if there are insufficient funds in the solidarity reserve. In that case, we propose that the wording “as well as” be deleted as this would mean that the pledges are always set out in the Council decision.

Proposal for point (d):

“ (d) where relevant, **establish a** Solidarity Response Plan, including the specific solidarity measures provided for in Article 7 required to address the situation and their levels, and in accordance with Article 7 (5) ~~as well as~~ the specific contributions³ by each Member State not subject to the specific situation referred to in point (b) of this subparagraph pledged in accordance with the mandatory fair share set out in Article 44k of the Regulation (EU) XXX/XXX [*Asylum and Migration Management*]. “

In paragraph 5, we propose that subparagraph 2 be reformulated considering the explanation of the Commission that apart from third-country nationals, this provision also refers to the border crossing point where instrumentalisation is taking place.

Article 11 Cooperation and assessment

We propose that a reference to Article 6a of the AMMR be added in the recital referring to paragraph 2 of this Article so as to avoid any confusion about whether this refers to some other Toolbox.

THE CZECH REPUBLIC

General comments

CZ raises general scrutiny reservation on the whole text of the proposal. We are not of the opinion that the proposal goes in the right direction.

Firstly, **we do not agree with the proposal regarding instrumentalisation which has been included under the notion of crisis**. CZ is of the opinion that instrumentalisation is a situation of such a serious nature that should be self-standing. We have to take into consideration the situations of instrumentalisation very seriously.

The second main concern **relates to Article 4a**. In our view, the text in paragraph 2 does not take into account the agreed principle of flexible solidarity without any mandatory redistribution of third-country nationals. This mandatory element cannot be accepted. Our concern is described below further.

Article 1

Paragraph 2 – definition of mass influx – recital – scrutiny reservation. It is unclear why only a lack of the capacity of MS of first entry may be taken into account. Does this mean that the situation of mass Influx and consequently crisis, may occur only in a Member State of first entry?

Article 4

Paragraph 4 – the notion “any other reason” should be explained further. Maybe the explaining recital should help in order to better understand and applied these rules.

As regards the time limit of one year. We have concerns on this and its potential influence on secondary movements, but we may be flexible in this point.

Article 4a

The situation of a mass influx is defined very vaguely. As regards the time limit in subparagraph 2, we find it too long. We understand that the proposed time limit is the maximum one. However, how should be assessed what time limit should be applied in certain situations?

Paragraph 2 – We have to raise the reservation on the content of this paragraph. This proposed wording, in our view, breaches the agreed principle of flexible solidarity without any mandatory redistribution of third-country nationals. Although this principle should be applied only in very exceptional circumstances, this mandatory element cannot be accepted by the Czech Republic.

Article 7

In our view, it is necessary to explain very clearly the relation between the responsibility offsets and derogations from Dublin rules in Articles 4 and 4a.

We propose to add the sentence that **all types of solidarity contributions are of equal value.**

Paragraph 4 lett. iii)

The obligation to take over the responsibility for asylum claims **above the fair share** without the possibility to contribute by different means, such as financial contribution or any other alternative measures **cannot be supported.** Moreover, this provision is not in line with the concept of flexible solidarity and therefore it is a red line for the Czech Republic.

Paragraph 6

The new procedure presumed in this paragraph is unclear, in our view. Nevertheless, we find it as an interesting idea, which should discuss further.

FRANCE

Propos liminaires :

La France rappelle sa réserve d'examen sur l'ensemble du règlement et remercie les Présidences pour ce compromis.

Par ailleurs, la France demande fermement que l'ancien système des modifications apparentes pour les suppressions soit rétabli, afin de faciliter le travail des experts, qui se fait dans des délais de plus en plus contraints.

La France remercie la Présidence pour la suppression de la procédure de notification et soutient fermement la nouvelle procédure d'autorisation. Cette procédure est indispensable à la préservation de l'équilibre du Pacte, et doit donc être regardée comme une condition de son aboutissement.

Article 1 : Objet :

La France demande de scinder l'article 1 en deux articles distincts, l'un portant sur l'objet et le champ d'application du règlement et l'autre sur les définitions, dans un souci de clarté et de cohérence avec la structure classique des textes européens. Elle rappelle sa demande que la crise soit précisément définie dans le règlement. A cet égard, la mention « *understood as* » n'est pas suffisante

La France suggère d'intégrer le second sous-paragraphe du paragraphe 2, sous b), qui fixe le champ d'application des dérogations possibles en situation de crise de l'article 1, paragraphe 2, sous b) à l'article relatif à l'objet et au champ d'application du règlement (qui devra être distinct de l'article relatif aux définitions).

Paragraphe 1 :

La France soutient les précisions ajoutées par les Présidences qui clarifient le cadre juridique du règlement. Il est notamment utile de préciser que les seules mesures applicables sont celles prévues par la décision d'exécution du Conseil.

Paragraphe 2 :

La France demande à nouveau que le règlement définisse les notions de crise et d'instrumentalisation : le terme « *means* » devrait être utilisé à la place de « *understood as* », comme c'est le cas dans les autres textes du Pacte.

La France soutient le fait que l'instrumentalisation soit un cas particulier de crise, mais rappelle que ces deux situations (crise « afflux massif » et crise « instrumentalisation ») ne doivent pas permettre les mêmes dérogations.

Point a) (crise « afflux massif »)

La France remercie les Présidences pour la suppression du risque imminent de crise et l'inclusion des arrivées régulières dans la définition, qui répondent à nos demandes.

La France rappelle sa réserve d'examen sur la définition de la situation de crise, qui doit être strictement encadrée compte tenu des dérogations prévues par le règlement.

La France propose que soit intégré le caractère soudain, en plus d'exceptionnel, de l'afflux massif des ressortissants de pays tiers. De surcroît, la France demande que le premier considérant en note de bas de page soit modifié de la façon suivante pour refléter cette notion de crise soudaine.

Enfin, la France indique être satisfaite du considérant précisant la notion de force majeure, qui permettra d'encadrer son application et, par suite, les dérogations prévues par ce règlement.

Point b) (crise « instrumentalisation ») :

La France rappelle sa position selon laquelle il est nécessaire que la définition de l'instrumentalisation soit strictement identique à celle du Code Frontières Schengen (CFS).

Proposition rédactionnelle :

Article 1 : Subject matter

1. This Regulation addresses situations of crisis, including instrumentalisation, and force majeure
[...]

Member States may only apply the measures provided for [...]

2. This Regulation shall not affect the fundamental principles and guarantees [established by the acts] from which derogations are allowed pursuant to this Regulation.

3. Member States may apply the derogations provided for in a Council Implementing Decision

referred to in Article 8(4) of this Regulation in [...] the situation referred to in article 2, letter (b) only in respect of third-country nationals or stateless persons who are subject to instrumentalisation and who are either apprehended or found in the proximity of the external border, meaning the Member State's land borders, including river and lake borders, sea borders and its airports, river ports, sea ports and lake ports, provided that they are not internal borders, in connection with an unauthorised crossing by land, sea or air, or who are disembarked following search and rescue operations or who have presented themselves at border crossing points ».

Article 2 : definitions

For the purpose of this Regulation, a situation of crisis ~~means is to be understood:~~

(a) an exceptional **and sudden** situation of mass influx of third-country nationals or stateless persons arriving [...] in a Member State or disembarked on its territory following search and rescue operations, being of such a scale and nature, that it renders the Member State's asylum, reception or return system non-functional [...] such that there may be serious consequences for the functioning the Common European Asylum System or the Common Framework as set out in Regulation (EU) XXX/XXX [Asylum and Migration Management] (hereinafter "crisis"), or

(b) [...] a situation of instrumentalisation [...] where a third country or non-state actor encourages or facilitates the movement of third country nationals and stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security; [...]

~~Member States may apply derogations provided for in a Council Implementing Decision referred to in Article 8(4) of this Regulation in [...] the situation referred to in letter (b) only in respect of third-country nationals or stateless persons who are subject to instrumentalisation and who are either apprehended or found in the proximity of the external border, meaning the Member State's land borders, including river and lake borders, sea borders and its airports, river ports, sea ports and lake ports, provided that they are not internal borders, in connection with an unauthorised crossing by land, sea or air, or who are disembarked following search and rescue operations or who have presented themselves at border crossing points ».~~

Recitals

(xx) A mass influx of persons crossing the border in particular ~~even~~ within a short period of time may lead to a situation of crisis in a particular Member State. That may also have consequences for the functioning of the asylum and migration system, not only in that Member State but in the Union as a whole, due to unauthorised movements and the lack of capacity in the Member State of first entry to process the applications for international protection of such third-country nationals or stateless persons. It is necessary to lay down specific rules and mechanisms that should enable effective action to address such situations.

Article 2 : Dégagements applicables en situation de crise ou de force majeure :

La France demande que le délai d'enregistrement ne puisse être que de trois semaines au maximum après la présentation de la demande.

Article 3 : mesures applicables à la procédure d'asile à la frontière en situation de crise ou de force majeure :

Paragraphe 1 à 3 :

La France considère que, s'agissant du champ d'application de la procédure d'asile à la frontière (PAF), il est nécessaire de laisser deux possibilités au Conseil en fonction de la crise :

- Prioriser les ressources sur une nationalité à très faible taux de protection qui serait à l'origine de la crise, en abaissant le taux de protection jusqu'à 5 %, en dessous duquel la procédure à la frontière est obligatoire ;
- Ou au contraire pouvoir placer en PAF les nationalités protégées au-delà de 20%, en rehaussant le seuil et ainsi en renforçant les contrôles et procédures à la frontière en cas de crise.

De ce fait, le paragraphe 1 ne convient pas dans sa rédaction actuelle et la France demande qu'il prévienne uniquement la possibilité d'abaisser le taux de protection jusqu'à 5 %, en dérogation au critère du taux de protection de 20 %.

En outre, il est primordial que les Etats membres disposent d'une diversité de mesures et d'outils adaptés pour leur permettre de faire face à une situation de force majeure, qui est par nature imprévisible. En cas de force majeure, la France insiste pour qu'un État puisse soit relever le taux de protection de référence pour le placement en procédure à la frontière (paragraphe 2 : jusqu'à 75 % (crise « afflux massif »)), soit placer tous les demandeurs en procédure à la frontière (paragraphe 3 (crise « instrumentalisation »)). Contrairement à la réponse de la Présidence lors de la réunion des conseillers JAI du 4 juillet 2023, la France considère que la force majeure n'implique pas nécessairement que les procédures à la frontière ne puissent plus être appliquées ; a force majeure peut concerner d'autres procédures, notamment sur le territoire, qui ont précisément besoin que les procédures à la frontière soient renforcées pour être soulagées.

Paragraphe 5 :

La France remercie la Présidence pour sa réponse indiquant qu'en cas d'augmentation du champ d'application de la procédure à la frontière (paragraphe 2 et 3), la capacité adéquate n'est plus appliquée de manière générale. La France soutient cette proposition et comprend que le concept de capacité adéquate s'applique de nouveau pleinement dès que la décision d'exécution du Conseil a cessé de produire ses effets, soit au terme de la période de maximum de 6 mois prévue par la décision d'exécution du Conseil (art. 8, paragraphe 6), soit lors que cette décision a été abrogée (art. 8, paragraphe 6), soit lorsque la situation d'instrumentalisation a cessé (art. 10, paragraphe 4).

Il est cohérent que la capacité adéquate ne s'applique plus également en cas d'application de la dérogation prévue au paragraphe 1 (réduction du taux de protection de référence jusqu'à 5 % selon la demande de la France).

Paragraphe 7 :

La France insiste sur sa demande de suppression du paragraphe 7 afin de ne pas multiplier les cas où l'entretien peut être omis. L'article 12, paragraphe 5, d'APR prévoit déjà que l'entretien peut être omis lorsque l'autorité de détermination est en mesure d'accorder le statut de réfugié ou la protection subsidiaire, si la protection subsidiaire confère les mêmes droits et avantages que le statut de réfugié. La France estime que cette condition d'identité des droits et avantages est impérative afin de ne pas favoriser les mouvements secondaires : en particulier, si le titre de séjour attaché à la protection subsidiaire est plus court que celui attaché au statut de réfugié, cela pourrait inciter les bénéficiaires de cette protection à se rendre dans un autre Etat membre pour obtenir le statut de réfugié.

Article 4 : prolongation des délais prévus pour les demandes de prise en charge, les notifications de reprise en charge et les transferts dans une situation de crise visée à l'article 1, paragraphe 2, sous a), ou de force majeure :

La France attire de nouveau l'attention de la Présidence sur la coquille rédactionnelle dans le titre de l'article 4 (les termes « *a situation of* » sont en doublon).

Paragraphe 1

La France demande à la Présidence de préciser pourquoi ce paragraphe prévoit que les dérogations ne sont applicables que si la situation « *renders it impossible for a Member State facing that situation to comply with the time limits set out in [...]* ». Quel est l'apport de ces termes par rapport à la situation de crise de type « afflux massif » ou de force majeure ? Est-ce pour limiter les cas de recours à ces dérogations en situation d'instrumentalisation ?

Paragraphe 2

La France souhaite avoir confirmation que les quatre dérogations aux délais sont possibles uniquement ensemble et qu'il n'est pas possible de n'appliquer que l'une d'elles. La France estime préférable que ces prolongations ne soient activables qu'ensemble afin d'éviter qu'un Etat membre puisse choisir les règles auxquelles il souhaite déroger en fonction des flux.

La France soutient la proposition de la Présidence, notamment sur l'encadrement des délais qui est nécessaire afin de ne pas perturber le fonctionnement du système Dublin.

La France demande à la Présidence de confirmer le point suivant : l'article 29, paragraphe 1, du règlement AMMR prévoit deux délais distincts pour émettre une requête aux fins de prise en charge, selon que l'Etat membre où la demande a été enregistrée considère qu'un autre Etat membre est responsable de l'examen de la demande (2 mois maximum), ou qu'un hit Eurodac ou un hit VIS a été enregistré (1 mois). La dérogation prévue au paragraphe 2, sous a) qui étend le délai à 4 mois pour émettre une requête aux fins de prise en charge couvre-t-elle bien ces deux situations, sans distinction ?

La France demande également à la Présidence de confirmer le point suivant : les paragraphes 1 et 2 de l'article 30 AMMR prévoient respectivement que l'Etat membre requis doit répondre à la requête aux fins de prise en charge dans le délai d'1 mois à compter de la réception de la requête, et dans le délai de 2 semaines en cas de hit Eurodac ou hit VIS. La dérogation prévue au paragraphe 2, sous b) qui étend le délai de réponse à 2 mois couvre-t-elle bien ces deux situations, sans distinction ?

Paragraphe 4 :

A la seconde phrase, la France demande la suppression de la formule « *or for any other reason* », qui ajoute des cas par nature non définis au champ d'application de la dérogation.

La France considère que les termes « *by another Member State* » sont trop vagues et prêtent à confusion. Ils devraient être remplacés par « *by the responsible Member State* ».

La France estime que la mention « *that Regulation* » est incorrecte et doit être remplacée par « *Regulation (EU) XXX/XXX [Asylum and Migration Management]* ».

Article 4a (nouveau) : Dérogations à l'obligation de reprendre en charge un demandeur en situation de crise « afflux massif » (article 1, paragraphe 2, point a) :

La France s'oppose aux dérogations aux critères de responsabilité, qui sont redondantes avec les compensations de responsabilité, dont l'utilisation est d'ailleurs facilitée par le présent règlement.

La France estime que ces dérogations sont de nature à provoquer des mouvements secondaires, notamment en encourageant les demandeurs à ne pas rester dans l'Etat membre qui procède à la détermination de l'Etat membre responsable de leur demande.

En outre, ces dérogations s'appliquent sur une période trop longue (demandes enregistrées dans les six mois précédant l'adoption de la décision d'exécution du Conseil), ce qui est de nature à inciter les demandeurs dont la demande est en cours d'examen dans l'Etat membre en situation de crise « afflux massif » à réaliser un mouvement secondaire pour bénéficier des règles dérogatoires à Dublin.

Tout l'intérêt des relocalisations et des compensations de responsabilité est d'inciter les demandeurs à respecter les règles de Dublin : il n'est pas acceptable d'introduire des règles qui les incitent au contraire à ne pas les respecter.

Article 5 : Conditions matérielles d'accueil (CMA) en situation de crise ou de force majeure :

La France considère qu'une modulation des CMA ne pourrait être possible qu'à la condition *sine qua non* qu'elle se fasse dans le respect de la dignité humaine, et qu'un socle minimal de prestations soit garanti et contrôlé à ce titre (nourriture, eau, vêtements, soins médicaux, hébergement temporaire).

Article 6 : Mesures applicables pour la procédure de retour à la frontière en situation de crise :

La France ne partage pas l'analyse de la Commission sur le point c) du paragraphe 1, s'agissant de la mention du (f) de l'article 6, paragraphe 2 de la directive Retour RECAST (orientation générale partielle du Conseil). En effet, dans la rédaction de la directive Retour RECAST, le risque de fuite est obligatoirement présumé lorsque **l'un des critères** (f), (m), (n) ou (p) est rempli, ces critères n'étant pas cumulatifs.

La première partie de l'article 6, paragraphe 1, point c), du présent règlement est donc redondante avec l'article 6, paragraphe 2, de la directive Retour RECAST et ne permet pas de dérogation supplémentaire par rapport à la directive. Par conséquent, la France demande la suppression du point f).

La France soutient l'extension de la présomption du risque de fuite faite dans la 2^e partie de l'article 6, paragraphe 1, point c). Toutefois, plutôt que de faire référence à l'article 7 de la directive Retour RECAST, ne serait-il pas préférable de faire référence au 6, paragraphe 1, point j), de la directive Retour RECAST ? Par ailleurs, la présomption du risque de fuite pourrait être étendue aux condamnations antérieures et à l'ordre public (points k) et r)).

Proposition rédactionnelle :

Article 6: Measures applicable to the return border procedure in a situation of crisis, paragraphe 1

(c) In addition to the cases provided for by Articles 6(2) of Directive XXX [*recast Return Directive*], Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when **one of the objective ~~the~~** criterion referred to in Article 6 (1), points ~~(f)~~ (i), (k), (r) is fulfilled ~~or when the applicant, third country national or stateless person concerned is manifestly and persistently not fulfilling the obligation to cooperate established by Article 7 of that Directive.~~

Article 7 : Solidarité et mesures de soutien dans une situation de crise ou d'instrumentalisation :

La France pose une réserve d'examen sur cet article afin d'apprécier l'articulation entre la proposition de ce règlement et le règlement AMMR.

La France rappelle sa demande tendant à ce que des mesures de solidarité soient également possibles en situation de force majeure : avec le mécanisme proposé, il reviendra au Conseil d'en apprécier *in fine* la pertinence, mais ces mesures permettront une flexibilité.

Par souci de cohérence, la France demande que la numérotation des sous-paragraphes soit harmonisée. En effet, au paragraphe 1, les points i) et ii) renvoient à des sous-sous-paragraphes, tandis qu'au paragraphe 4, les points i), ii) et iii) renvoient à des sous-paragraphes.

Paragraphe 1 :

Au point a), la France rappelle sa concession, lors des négociations sur le règlement AMMR, sur la relocalisation de ressortissants de pays tiers en situation irrégulière, mais attire de nouveau l'attention sur les conséquences qu'elle pourrait avoir, dans la mesure où ces relocalisations, mêmes facultatives, sont susceptibles d'affecter le système européen de retour dans son ensemble : non seulement elles s'éloignent de l'esprit du Pacte (qui consiste d'abord à relocaliser des étrangers en situation régulière) mais elles sont aussi consommatrices de ressources pour les administrations en charge de ces transferts, ressources qui ne seront dès lors pas dédiées aux retours en dehors de l'UE. Ce constat sera d'autant plus prégnant en situation de crise, lorsque les ressources des Etats membres seront fortement contraintes.

Paragraphe 3 :

La France rappelle sa position selon laquelle elle estime que les termes « *expeditiously assess* » ne sont pas assez précis. Il est préférable de prévoir un délai maximum de deux semaines. En réponse à la Commission sur le point selon lequel un délai prévu pour la Commission justifie qu'un délai soit également prévu pour le Conseil, la France estime que cela lui paraît garantir une meilleure prévisibilité de l'ensemble et soutient cette proposition.

Paragraphe 4 :

La France remercie la Présidence pour le recours accru aux compensations de responsabilité, ainsi que pour la création d'un mécanisme de déduction en cas de contribution supérieure à la *fair share*.

Cependant, la France estime que le délai de trois ans prévu pour bénéficier de la déduction en cas de contribution supérieure à la *fair share* est trop court. Il n'est pas certain qu'une crise intervienne dans cet intervalle. Par conséquent, la France demande que ce délai soit plus long (ex. porté à dix ans).

La France demande des précisions s'agissant de la situation d'un Etat membre déjà en situation de pression migratoire bénéficiant de la solidarité prévue dans AMMR qui serait ensuite confronté à une situation de crise et demanderait à bénéficier de la solidarité prévue dans SCIFM : les précédentes contributions de solidarité dont il a bénéficié en situation de pression migratoire seraient-elles prises en compte et valorisées dans le calcul des contributions de solidarité pour la situation de crise, notamment en ce qui concerne les compensations de responsabilité ?

En outre, la France réitère son interrogation sur les modalités permettant de bénéficier de cette déduction : les termes « *entitled* » à la deuxième phrase et « *claimed* » à la troisième phrase du point iii) ne sont pas suffisamment précis. Il convient de prévoir une procédure.

Paragraphe 6 :

La France s'interroge sur la pertinence de ce paragraphe 6 : est-il vraiment nécessaire de prévoir une convocation du Forum de haut-niveau sur la migration pour prendre les mesures des règlements AMMR ou de ce règlement, alors que l'Etat membre concerné activera l'un de ces mécanismes ? Ce paragraphe ne semble avoir aucune plus-value.

Proposition rédactionnelle :

Article 7 (Solidarity and support measures in a situation of crisis [...]), paragraphs 3 and 4

3. Following the submission of the reasoned request referred to in the first subparagraph of paragraph 2, the Commission, in close cooperation with the requesting Member State concerned and relevant Union agencies, shall ~~expeditiously~~ assess the situation **within two weeks** and the type and level of the solidarity measures needed and, in consultation with the requesting Member State, prepare, where appropriate, a Solidarity Response Plan indicating the type and level of the solidarity and support measures needed.

4. Where it is established in the Council implementing decision referred to in Article 8(4) that the requesting Member State is facing a situation of crisis [...], the following rules shall apply:

(i **a**) Where the Solidarity Pool under Regulation (EU) XXX/XXX [Asylum and Migration Management] contains unallocated solidarity pledges or solidarity pledges that have not been implemented yet and are available, the Member State facing a situation of crisis [...] shall make use of the Solidarity Pool. [...]

(ii **b**) Where the Solidarity Pool does not contain enough solidarity pledges to cover the needs identified in the Solidarity Response Plan referred to in paragraph 3, the Member States facing a situation of crisis or instrumentalisation shall also make use of contributions contained in the Council implementing decision as referred to in Article 7(4).

(iii **c**) Where the relocation pledges or responsibility offsets in the Council implementing decision referred to in Article 8(4) or the pledges available in the Solidarity Pool are below the relocation needs established in the Solidarity Response Plan included in the Council Implementing Decision, the contributing Member States shall take responsibility for applications for international protection for which the Member State facing a situation of crisis or instrumentalisation has been determined as responsible up to the relocation needs identified in the Solidarity Response Plan established in the Council Implementing Decision, including above their fair share where necessary by way of derogation from Article 44h(5) third indent. Except for Article 44h(5) third indent, Article 44h(5) to (7) of Regulation (EU) XXX/XXX [Asylum and Migration Management] shall apply mutatis mutandis. If a Member State according to this provision has taken responsibility for applications above their fair share that Member State shall be entitled to deduct from their fair share in future relocation pledges or responsibility offsets in Council implementing decisions referred to in Article 8(4), with the corresponding amount of applications for which that Member State went above its fair share. Such deduction can only be claimed within ~~three~~ **XXX** years from when the responsibility shifted for applications beyond that Member State's fair share.

Article 8 (ancien) : Procédure de notification :

La France remercie la Présidence pour la suppression de cet article.

Article 8 (nouveau, ancien 9) : Procédure d'autorisation et adoption d'actes d'exécution :

La France rappelle sa réserve d'examen sur cet article 8.

Paragraphe 2 :

La France réitère ses doutes sur la nature juridique des « *conclusives evidence* » et demande à ce que ces termes soient remplacés par « *compelling evidence* ». La France propose un considérant qui en précise la portée sans toutefois prévoir une liste exhaustive qui pourrait nuire à l'applicabilité de ces procédures d'urgence.

Paragraphe 9 :

La France remercie la Présidence pour la prise en compte de ses remarques sur l'ancien article 8 et demande la suppression du terme « *notify* » dans ce paragraphe qui nuit à la lisibilité de l'ensemble en laissant supposer qu'il y a deux procédures. La France demande à ce que ce terme soit remplacé par « *report to* ».

Proposition rédactionnelle :

Article 8 (Authorisation procedure and adoption of implementing acts), paragraphs 2 and 9

2. Where the requesting Member State submits to the Commission ~~conclusive~~ **compelling** evidence demonstrating the existence of the conditions referred to in Article 1(2)(a) or Article 1(2)(b) or of a situation of force majeure, the Commission shall, on the basis of that evidence, without delay, make a proposal for an appropriate Council Implementing Decision referred to in paragraph 4 [...].

9. When submitting the request referred to in paragraph 1, a Member State may **report to** ~~notify~~ the Commission that it considers it necessary to apply the derogation set out in Article 2 before it is authorised to do so in a Council Implementing Decision as referred to in paragraph 4 of this Article. In such a case, the Member State concerned may apply the derogation laid down in Article 2 from the day following the request **until the Commission proposal as set out in paragraph 2 or, where applicable, the Council decision referred to in paragraph 4** and for a period not exceeding **four weeks** ~~15 days~~. The Member State shall indicate in the request the precise reasons for which an immediate action is required.

Recital

(xx) The compelling evidence submitted by a Member State requesting the authorisation to apply the derogations provided for by the Regulation refers to a set of evidences that would be considered to be reliable and substantial and whose probative value could not be seriously challenged. For example, this includes data, statements and cross findings from relevant organisations such as the European Border and Coast Guard Agency, the European Union Agency for Asylum, the United Nations High Commissioner for Refugees or national authorities of the Member States.

Article 10 : dispositions spécifiques et garanties, Article 11 : coopération et évaluation, Article 12 : entrée en vigueur :

La France indique que ces articles devraient être renumérotés pour devenir les articles 9, 10 et 11.

La France s'oppose fermement à toute dérogation aux durées d'enregistrement dans Eurodac III.

L'article 10, paragraphe 2, doit impérativement demeurer inchangé.

La France soutient l'ajout du nouveau paragraphe 1 à l'article 11 : il est nécessaire d'opérationnaliser rapidement les mesures de solidarité prévues par la décision d'exécution du Conseil.

GERMANY

We enter a general scrutiny reservation on the entire proposal. Our initial assessment follows; we reserve the right to make further comments.

General comments:

- We thank the Swedish Presidency for its efforts over the past six months.
- As a whole, we see the revised proposal of the Crisis Regulation very critically, as it implies a significant lowering of standards.
- In this context, we would like to refer to the protocol declaration made by Germany, together with other Member States, on the occasion of the JHA Council of 8 June 2023, according to which exemptions from the border procedure for minors and their family members remain very important to us. This is still the case.
- Assuming that the consultations on the legal text continue, we would like to introduce the following points that are important to us:
- We would like to express that we have opposed and continue to oppose the inclusion of the instrumentalisation provisions in the Crisis Regulation.
- With regard to the Instrumentalisation Regulation, Germany already advocated specifying the scope of the Instrumentalisation Regulation, making exemptions to the proposed asylum border procedure, and reducing the length of the asylum border procedure. This has not been taken into account so far, which is why we cannot support the provisions for instrumentalisation situations first presented by the SWE Presidency as they stand.
- Germany generally strives to strike a balance between responsibility and solidarity at the highest possible level in all of the Commission's legislative proposals.
- In any case, it is important that access to international protection is always ensured and that minimum humanitarian and human rights standards regarding procedure, care and accommodation are met.

- The conditions for the implementation of the exemptions as well as the scope of application of the crisis, force majeure and instrumentalisation situations must be precisely defined.
- In crisis situations, there is an increased risk of violations of minimum human rights standards. As there is also a risk of human rights standards being violated in exceptional situations, we advocate an independent monitoring by EU institutions.
- We would like to point out that some references to articles require an adjustment to the currently available texts in order to clearly understand the deviations (e.g. references in Article 3, Article 5 and Article 8).
- We would like to ask for clarification on how the Crisis Regulation would relate to the already existing Temporary Protection Directive. The continued application of the Temporary Protection Directive is important for Germany.

Article 1 - The definition of a situation of crisis and a situation of instrumentalisation

- Clarifying sentence: To ensure that the **scope of application of the Crisis Regulation is clearly defined** and not overstretched, the term "force majeure" should be specifically defined in addition to the term "crisis situation" (cf. Article 1(2)(a) Crisis Regulation) in Article 1. In our view, this can actually only cover narrowly defined situations, such as environmental disasters or a pandemic. We do not consider a reference in a recital to be sufficient.
- We welcome the clarifying addition in para. 1, sentence 2. Furthermore, in Article 1 para. sentence 1, "...where it is strictly necessary and proportionate for responding to such situations" should be added at the end.
- Regarding the definition of instrumentalisation in Art. 1(2)(b), we would like to point out again that we can only have one definition for the same term. Consistency with the SBC must therefore be ensured, even if the legal acts are attributed to different legal acquis. Therefore, we welcome the addition of the recitals corresponding to the SBC.

- In this context, we consider it necessary to take into account the principle of proportionality and welcome the inclusion of Article 8(8). In addition, and for clarification in the specific instrumentalisation situation, however, we continue to adhere to our text proposal submitted in the context of the Instrumentalisation Regulation, which refers in particular to an unexpected, significantly increase of asylum applications at the external border ("in particular in an emergency situation characterized by an unexpected, significantly increased caseload of asylum applications at the external border"). We ask that this be taken into account.
- We welcome in principle the limitation of the scope of application of the derogations in the case of instrumentalisation in personal and geographical terms (Article 1 (2)(b) subpara. 2), but we still need to examine this aspect. We also welcome in principle that the specific group of persons affected is to be defined in the Council decision (Article 8 para. 5). However, we request that "[...] by land, sea or air, or who are disembarked following search and rescue operations [...]" be deleted from Article 1(2)(b) subpara. 2.

Article 2 – Registration of applicants for international protection

- We advocate that in the case of crisis, force majeure or instrumentalisation, personnel support from EUAA and Frontex can first be assigned to the Member State and that these agencies support the Member States in the registration process. Only if this measure is not sufficient, the deadlines should be extended.
- We advocate for a **reduction of the registration deadline** of four weeks **in crisis as well as force majeure situations**.
- In addition, we would like to remind of our request for a **registration period of 2 weeks in case of instrumentalisation**.
- Furthermore, we advocate for prioritized registrations of families with minors and vulnerable persons in times of a sudden influx of asylum seekers. The "shall" provision of the first sentence of para. 2 should apply not only to situations of instrumentalisation, but also to crisis and force majeure.

- In addition, para. 2 should state “persons with special procedural needs within the meaning of the (EU)XXX/XXX (Asylum Procedures Regulation) and persons with special reception needs within the meaning of the (Recast Reception Conditions Directive)”.

Article 3 – Measures applicable to the asylum border procedure

- We still have a scrutiny reservation and questions about the proposals on specific derogations.
- **We are critical about an expansion of border procedures; this also applies to the recognition rate in Article 3(2) and the provision in Art. 3(3) (instrumentalisation), according to which, in principle, all persons can be covered by the border procedure. Human rights and humanitarian standards must be fully respected**
- What exactly does the clarification in para. 5 regarding Art. 41bb mean? Do Art. 41ba and 41bc ff. still apply?
- Regarding para. 4: We also advocate within the framework of the Crisis Regulation for the **retention of the general exemption of unaccompanied minors as well as a general exemption of minors under the age of 18 and their family members as well as persons with an identifiable disability from the border procedure.** In addition, we advocate for possibilities of exemption for persons who have special reception/care needs or require special procedural guarantees (e.g. persons with disabilities who are not already generally exempted, pregnant women, LGBTIQ*, etc.; cf. recital 15 APR) if the necessary support cannot be provided, as provided for in the Council's general approach to the Asylum Procedure Regulation. Simply prioritizing the applications of vulnerable groups is not sufficient.
- Regarding para. 6: We are critical about the proposed **extension of the maximum duration** of the border procedure and advocate for a reduction of the maximum procedural deadlines set out in the proposal.
- We reject the proposed derogation from Article 12(5) of the Asylum Procedure Regulation in Article 3(7), according to which it should be possible to omit a personal interview in this case.

Article 4 – Extension of time limits set out for take charge requests, take back notifications and transfers in a situation of crisis referred to in Article 1 (2)(a) or force majeure

- We welcome the fact that derogations from the time limits of the AMMR for determining the responsible Member State are now also provided for situations of force majeure.
- With regard to para. 4, we wonder what is meant by "for any other reasons". We think this is too broad.
- We welcome in principle an extension of the transfer deadline, as provided for in para. 4. However, if the crisis situation or force majeure situation ceases to exist, there should always be an appropriate minimum time limit for transfer.
- We would like to know what the relationship is between para. 4 and Article 35(2) AMMR? We assume that Article 35(2) AMMR remains unaffected.

Article 4a – Derogation from the obligation to take back an applicant in a situation of crisis referred to Article 1 (2)(a)

- This proposal exceeds the provisions of solidarity and support measures in crisis situations from Art. 7 of this proposed regulation. The relation to Art. 7 still needs to be clarified in our point of view.
- We recognize that the Presidency has installed safeguards. However, we are critical of the fact that the proposal exceeds the "fair share". An obligation beyond the "fair share" should only apply if the MS concerned has previously sought for assistance by the relevant EU agencies and this has not been sufficient.
- It is important to us that this does not permanently undermine the "Dublin" procedure and that the principle of "fair share" is maintained.
- Therefore, the provision of Article 7 (4) (iii) sentence 3 should also apply in this case (possibility of a corresponding deduction in the future).

Article 5 – Material reception conditions

- We welcome that access to legal counselling is guaranteed.
- Overall, we are critical of the proposed derogations from the Reception Conditions Directive. We would like to point out once again that, in our view, no derogation should be possible from Article 17(2)(c) of the proposal for the Reception Conditions Directive. In addition, access for legal advisors, UNHCR and in particular access for NGOs as well as for family members remains important.

Article 6 – Measures applicable to the return border procedure

- Regarding Article 6, we wonder what the reasons and aims of the provision are, especially with regard to para. 1 point c) and para. 2. We still have a scrutiny reservation in this regard.

Article 7 – Solidarity and support measures in a situation of crisis or instrumentalisation

- We support the aim of ensuring efficient, crisis-proof and solidarity-based mechanisms and obligations - especially for the distribution of asylum seekers - that can be used to respond quickly and effectively in affected MS.
- We can support in principle the approach of Article 7 (esp. para. 1 to 3), which allows affected MS to request assistance and solidarity measures, and COM to examine this and prepare a "Solidarity Response Plan".
- Regarding Article 7(4), in particular point (iii), we have a scrutiny reservation. We are critical of a possible obligation beyond the "fair share"; however, the proposal of the Presidency regarding the possibility of a corresponding deduction in the three subsequent years could be a compromise.

Article 8 – Authorisation procedure and adoption of implementing acts

- We welcome that force majeure is now also included in the authorization procedure.
- If the affected MS could already be fully or partially relieved by solidarity and support measures, this should, in our view, take precedence over the derogations provided for.
- We welcome in principle that the existence of the particular situation has to be established by the Commission upon reasoned request of a Member State and that the Council should decide on the measures to be applied by means of a Council Implementing Decision following a proposal by the COM.
- We support the fact that the application of the derogations will be limited in time.
- We consider monitoring and ex-post review by the Commission and the Council to be very useful.
- We can also support the addition to para. 3. We welcome the clarifying provision in Article 8 (3), according to which the COM must take into account whether the benefiting Member State according to Article 7 is already covered by the regular solidarity mechanism of the AMMR.
- The same applies to the concretization in para. 5, which we can also support in principle (but see our question on Article 7).
- Para. 9: We consider the approach of the Presidency to limit the notification procedure only to the deviation from the registration deadline (Art. 2) to be right, even if we are critical of the procedure itself. We also consider the short period of application to be right.

Article 11

We welcome the fact that Article 11(3) provides for cooperation with UNHCR and other organizations.

GREECE

Following JHA Counselors meetings on the 4/7 and 7/7/2023 we would like to submit the following comments and drafting suggestions for the proposal of Crisis and Force Majeure Regulation.

We support the inclusion of instrumentalisation in the definition of crisis. However we propose the following clarifying additions in the recital.

Recital

(xx) A mass influx of persons crossing the border even within a short period of time may lead to a situation of crisis in a particular Member State, **taking into account population, GDP and its geographical specificities, including the size of the territory.** That may also have consequences for the functioning of the asylum and migration system, not only in that Member State but in the Union as a whole, due to unauthorised movements and the lack of capacity in the Member State of first entry to process the applications for international protection of such third-country nationals or stateless persons. It is necessary to lay down specific rules and mechanisms that should enable effective action to address such situations.

Article 3

On asylum border procedures and in par. 2 we propose the following additions :

par 2. In a situation of crisis **referred to in Article 1(2)(a) [...]**, by way of derogation from Article **41a (a) and (b)** of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], Member States may in a border procedure take decisions **on the admissibility of all applications made by any third country national or stateless person and** on the merits of an application in cases where the applicant is of a nationality, or, in the case of stateless persons, a former habitual resident of a third country, for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 75% or lower, in addition to the cases referred to in Article 40(1) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*]

After the clarifications in today's meeting and the explanatory flowcharts we deem that par 5 is superfluous and it should be deleted should be deleted.

Article 4

We support the flexibility in the Dublin deadlines in the case of Crisis or force majeure. The derogations as foreseen in art 4 par 2 should be applicable at the same time. A recital explaining, that point a, b, c refers to both family criteria and Eurodac/ Vis hits is necessary to clarify the implementation of these provisions.

On par. 4 we welcome the fact that shift of responsibility is foreseen in a situation of crisis or force majeure. However, depending on the gravity of the situation, we would call for a shorter deadline (eg six months) instead of one year.

Article 4a

We support the provision

Article 6

We deem that par 2 of this art should be a “may” provision instead of shall, taking into consideration that in the context of crisis maximum flexibility is required, also in relation to returns.

Article 7

EL expresses concerns that the procedure foreseen in art 7 par 4 (i) may lead to shortfalls in the solidarity needs identified in AMMR. To simplify the process, we propose the Council implementing decision for the Solidarity response plan of the MS in crisis to foresee also for the gaps in respect with the needs of MS under pressure, in case the solidarity pool is exhausted.

Article 7(5)

Where [...] the solidarity needs of other Member States that are benefitting Member States pursuant to Articles 44c or 44d of the Regulation (EU) XXX/XXX [Asylum and Migration Management] cannot be addressed as a result of the use made by the Member State facing a situation of crisis of the pledges available in the Solidarity Pool pursuant to paragraph 4, ~~the High level Migration Forum shall be reconvened as matter of urgency, following the procedure set out in Article 44g of the Regulation (EU) XXX/XXX [Asylum and Migration Management].~~ **the Council Implementing decision in Article 8(4) shall also include the solidarity measures made use of under Article 7(4)(i) of this Regulation in order to replenish the solidarity needs in the Regulation (EU) XXX/XXX [Asylum and Migration Management].**

Article 8

EL is of the position that the derogations needed in a situation of crisis or force majeure should be at the discretion of the MS concerned. Therefore we propose the following drafting :

1. A Member State facing a situation of crisis or force majeure[...], may ~~request the authorisation to apply the required , given for~~ those exceptional circumstances, ~~request the authorisation to apply the relevant~~ derogations, ~~choosing between those~~ provided for in Articles 2 to 6.
3. The Commission proposal referred to in paragraph 2 shall include:
 - (b) where appropriate, the relevant derogations required for the specific situation that the Member State concerned should be authorised to apply ~~while ensuring the respect of the full discretion of the Member State concerned in choosing between the derogations provided for in Articles 2 to 6;~~
4. As a matter of urgency, the Council shall assess the proposal and depending on the outcome of such assessment adopt expeditiously an Implementing Decision authorising the Member State concerned to apply the specific derogations provided for in Articles 2 to 6 and allowing the Member State to benefit from the specific solidarity measures provided for in Article 7.

The Council Implementing Decision shall:

- (c) where relevant, identify, the specific derogations, ~~provided for in Articles 2 to 6 that the Member State concerned is authorised to apply;~~ ~~from those listed in the he Commissions'~~ proposal referred to in paragraph 3 (b), that the Member State concerned is authorised to apply,

HUNGARY

Hungary maintains all the comments made during the technical discussions so far and we would like to reiterate our technical and procedural concerns expressed regarding the adoption procedure and the substance of the AMMR and APR regulations as these files are interlinked with the Crisis Regulation. Furthermore, Hungary would like to ask for a simulation exercise which would explain the foreseen procedures during crisis situations especially if these situations occur at the same time (e.g.: if a Member State being under migratory pressure according to AMMR, faces a migratory crisis and instrumentalization in the same time. We would be particularly interested to hear how this Member State would differentiate among the migrants arriving, without documents, and implement the various derogations with different legal basis and connected to different types of crises).

We would also like to stress as a general comment that the Common European Asylum System has to be based on the principle of extraterritoriality. Additionally, we believe that there are situations (such as instrumentalization) where protecting the interests of the Union and of migrants requires restricting the possibility of lodging asylum applications to an external location, such as a consulate.

With regards to **Article 1** and the definition of crisis we think that instrumentalization should be treated separately from the migratory crisis situations as instrumentalization should be considered as a hybrid threat which may include other types of risks beyond migration. This should be also reflected in the title of the regulation. Furthermore, we think that the definition of migratory crisis would leave it to the sole subjective discretion of the Commission to decide what it considers to be a crisis. Additionally, we do not agree with limiting the definition of instrumentalization only to persons apprehended or found in the proximity of the external border as this would be an incentive for human smuggling.

While reiterate our general comments based on the need for the application of the principle of extraterritoriality we cannot agree with paragraphs (2), (3) and (7) of **Article 3**, as these provisions would only lead to further escalation of the crisis situation (and instrumentalization).

As far as we see the current proposal for the Crisis Regulation would create additional pull-factors on top of the ones resulted in by the future application of the AMMR and APR Regulations. Furthermore, Member States at the Western Balkan migratory route such as Hungary would have additional responsibilities (in line with **Articles 4 and 4a**) and in the same time would be obliged to provide solidarity which could take the form of mandatory distribution of migrants (in line with **Articles 7 and 8**), while our efforts to protect the external borders would still not be recognised.

Hungary can not accept a solidarity mechanism which contains mandatory distribution (relocation or responsibility offsets) of migrants, and in this regard, we would like to propose the following changes (with red colour) to **Articles 7 and 8** (please note that in line with our changes suggested to Article 8, Point iii of Paragraph 4 in Article 7 can be deleted):

CHAPTER III

SOLIDARITY MEASURES APPLICABLE IN A SITUATION OF CRISIS [...]

Article 7

Solidarity and support measures in a situation of crisis [...]

1. Where a Member State is facing a situation of crisis [...], it may request support and solidarity measures from other Member States in order to manage that situation. The Member State facing that situation may request the following types of contributions:
 - a) relocations, to be conducted following the procedures set out in Articles 57 and 58 of Regulation (EU) XXX/XXX [*Asylum and Migration Management*],
 - (i) of applicants for international protection;
 - (ii) where bilaterally agreed by the contributing and benefitting Member State 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;

- b) responsibility offsets, as referred to in Article 44h of Regulation (EU) XXX/XXX [*Asylum and Migration Management*] and following the procedure set out in Article 58a thereof;
- c) financial contributions aiming at projects that are relevant to address the situation of crisis [...] in the Member State concerned or in relevant third countries, in full respect of human rights, to be provided by other Member States following the rules set out in Article 44(i) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*];
- d) alternative solidarity measures as referred to in Article 44a(2)(c) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*], specifically needed to address the crisis [...] situation and following the rules set out in Article 44j(2) and (3) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*]; such measures shall be counted as financial solidarity, and their concrete value shall be established based on objective criteria;
- e) measures aimed at responding to the situation of crisis [...], including specific measures to support return, through cooperation with third countries or outreach to the relevant third countries;

[...]

2. The Member State facing a situation of crisis [...] shall send a reasoned request to the Commission specifying the type and level of solidarity measures needed.

The Member State facing that situation may submit this reasoned request together with the request referred to in Article **8(1)**.

3. Following the submission of the reasoned request referred to in the first subparagraph of paragraph 2, the Commission, in close cooperation with the requesting Member State concerned and relevant Union agencies, shall expeditiously assess the situation and the type and level of the solidarity measures needed and, in consultation with the requesting Member State, prepare, where appropriate, a Solidarity Response Plan indicating the **different types** and level of the solidarity and support measures needed.
4. Where it is established in the Council implementing decision referred to in Article **8(4)** that the requesting Member State is facing a situation of crisis [...], the following rules shall apply:
 - (i) Where the Solidarity Pool under Regulation (EU) XXX/XXX [*Asylum and Migration Management*] contains unallocated solidarity pledges or solidarity pledges that have not been implemented yet and are available, the Member State facing a situation of crisis [...] shall make use of the Solidarity Pool. [...]
 - (ii) Where the Solidarity Pool does not contain enough solidarity pledges to cover the needs identified in the Solidarity Response Plan referred to in paragraph 3, the Member States facing a situation of crisis or instrumentalisation shall **also** make use of contributions contained in the Council implementing decision as referred to in Article **7(4)**.

(iii) ~~Where the relocation pledges or responsibility offsets in the Council implementing decision referred to in Article 8(4) or the pledges available in the Solidarity Pool are below the relocation needs established in the Solidarity Response Plan included in the Council Implementing Decision, the contributing Member States shall take responsibility for applications for international protection for which the Member State facing a situation of crisis or instrumentalisation has been determined as responsible up to the relocation needs identified in the Solidarity Response Plan established in the Council Implementing Decision, including above their fair share where necessary by way of derogation from Article 44h(5) third indent. Except for Article 44h(5) third indent, Article 44h(5) to (7) of Regulation (EU) XXX/XXX [Asylum and Migration Management] shall apply mutatis mutandis. If a Member State according to this provision has taken responsibility for applications above their fair share that Member State shall be entitled to deduct from their fair share in future relocation pledges or responsibility offsets in Council implementing decisions referred to in Article 8(4), with the corresponding amount of applications for which that Member State went above its fair share. Such deduction can only be claimed within three years from when the responsibility shifted for applications beyond that Member State's fair share.~~

5. Where [...] the solidarity needs of other Member States that are benefitting Member States pursuant to Articles 44c or 44d of the Regulation (EU) XXX/XXX [Asylum and Migration Management] cannot be addressed **as a result of the use made by the Member State facing a situation of crisis of the pledges available in the Solidarity Pool pursuant to paragraph 4**, the High level Migration Forum shall be reconvened as matter of urgency, following the procedure set out in Article 44g of the Regulation (EU) XXX/XXX [Asylum and Migration Management].

6. Where, as a result of the measures required to support the Member State facing a situation of crisis, the asylum or reception systems of another Member State reaches the limits of its capacity, the High Level Migration Forum shall, as a matter of urgency, examine the situation, and the Council may take appropriate action, including authorising full or partial reductions of solidarity contributions or provide for solidarity and support measures for the Member State affected in accordance with the procedures set out in the Asylum Migration Management Regulation or this Regulation as appropriate.

CHAPTER IV

PROCEDURAL RULES [...]

[...]

Article 8

Authorisation procedure and adoption of implementing acts

1. A Member State facing a situation of crisis or *force majeure* [...], may, given those exceptional circumstances, request the authorisation to apply the relevant derogations provided for in Articles 2 to 6.
2. Where the requesting Member State submits to the Commission conclusive evidence demonstrating the existence of the conditions referred to in Article 1(2)(a) or Article 1(2)(b) or of a situation of *force majeure*, the Commission shall, on the basis of that evidence, without delay, make a proposal for an appropriate Council Implementing Decision referred to in paragraph 4 [...].

The Commission may also make such a proposal where it considers it appropriate on the basis of information provided by the requesting Member State and any other information available to it⁴.

3. The Commission proposal referred to in paragraph 2 shall include:
- (a) a description of the situation faced by the Member State concerned and whether it is a situation of crisis [...] or *force majeure*;
 - (b) where **appropriate**, the relevant derogations required for the specific situation that the Member State concerned should be authorised to apply;
 - (c) where **appropriate**, the Solidarity Response Plan and the relevant solidarity measures and their level required for the specific situation while ensuring the respect of the full discretion of the **contributing** Member State in choosing between the types of solidarity measures **and fully respecting that the Member States may pledge different types of solidarity measures or a combination of them.**

When setting up the solidarity needs of the Member State facing a situation of crisis [...], the Commission shall take into account whether the Member State concerned is already a benefitting Member State pursuant to Articles 44c and 44d of Regulation (EU) XXX/XXX [*Asylum and Migration Management*] and the level of unallocated pledges or solidarity pledges not yet implemented and available.

Where the Solidarity Pool does not contain enough solidarity pledges to cover the needs identified in the Solidarity Response Plan referred to in Article 7(3), additional needs shall be included in the proposal, **and fully respecting that the Member States may pledge different types of solidarity measures or a combination of them.**

[...]

4. As a matter of urgency, the Council shall assess the proposal and depending on the outcome of such assessment adopt **expeditiously** an Implementing Decision authorising the Member State concerned to apply the specific derogations provided for in Articles 2 to 6 and allowing the Member State to benefit from the specific solidarity measures provided for in Article 7.

The Council Implementing Decision shall:

- (a) establish the existence of a situation of crisis, instrumentalisation or *force majeure* as appropriate;

- (b) identify the Member State or Member States affected by the situation referred to in point (a) of this paragraph and benefitting from the measures set out in the Decision;
- (c) where relevant, **identify** the specific derogations provided for in Articles 2 to 6 that the Member State concerned is authorised to apply;
- (d) where relevant, **establish a** Solidarity Response Plan, including the specific solidarity measures provided for in Article 7 required to address the situation and their levels, as well as the specific contributions⁵ by each Member State not subject to the specific situation referred to in point (b) of this subparagraph pledged in accordance with the mandatory fair share set out in Article 44k of the Regulation (EU) XXX/XXX [*Asylum and Migration Management*];
- (e) **fully respect the type of solidarity measures or a combination of them, pledged by the contributing Member State.**

When setting the specific contributions referred to in letter d as part of the Solidarity Response Plan, [...] the contributing Member States shall have full discretion in choosing between the types of solidarity measures or a combination of them. However, only those listed in Article 7) 1 a) b) c) d) shall count towards the mandatory fair share. Member States pledging alternative solidarity measures shall indicate their financial value based on objective criteria.

IRELAND

Variable geometry: At the outset, IE would like to refer to the paper IE submitted to PRES, CLS and CION concerning variable geometry in the Migration Pact, which includes IE's proposed amendments to a number of articles of the Crisis and Force Majeure Regulation and which IE would like to discuss and see included in the text going forward, as discussed and agreed with the last PRES.

Article 1:

- ✓ Regarding the definition of crisis, IE generally believes it could be based on clearer criteria, particularly as under Article 9 it is up to the Member State to provide conclusive evidence and following receipt of this conclusive evidence the Commission must make a proposal for a Council Implementing Decision. IE notes the inclusion of an explanatory note in a recital with regard to the definition of crisis in the context of a mass influx, however, the concern remains that a loose definition of crisis in the context of a mass influx may lead to a permanent situation of crisis.
- ✓ IE notes PRES has decided to include a definition of force majeure by way of recital. IE would have preferred to have the definition included in the actual text, but can accept this approach in the spirit of compromise.

Article 2: IE thanks the PRES for the clarification regarding paragraph 2 provided in the Counsellors meeting of 05 July. IE has no issues with Article 2 in general, and can accept the changes introduced, but would like unaccompanied minors to be specifically mentioned.

Article 3:

- ✓ Regarding Art. 3.2 and 3.3, IE agrees the wording needs to be streamlined.
- ✓ Regarding Art. 3.5, IE would like some further clarity on how the derogation in a situation of crisis of the adequate capacity would work in practice, for instance around issues regarding its applicability again. In addition, it is important to note also that according to the APR individuals who present a security risk or threat to public order should always be subject to the border procedure, and IE would prefer if such categories of TCN remain within the border procedure.

Article 4: IE does not have an issue per se with the concept of derogation of the time limits set out in the AMMR, but more clarity is needed regarding how these derogations will interact with other elements of the Pact dealing with responsibility-solidarity discussions.

Article 5: IE is generally happy with the text, however, we agree with comments made by CION that in particular in situations that do not involve a mass-influx of cases it would be difficult to understand a large scale suspension of material reception conditions, even if temporary. It may be necessary to introduce some wording making reference to MS always maintaining a degree of proportionality when applying this measure.

Article 6: IE has no comments with the text.

Article 7: IE thanks PRES for the additional clarity provided to establish how the Solidarity Pool and the Solidarity Response Plan will interact in a situation of crisis. Given that a crisis is by nature “exceptional” as per definition in Art. 1.2(a), it may be preferable not to apply a time limit to the next time the contributing MS will deduct from their fair share in a similar situation.

Regarding Article 7.3 it may be wise to have a deadline for both the CION assessment and the subsequent Council decision-“expeditiously assess the situation” may be too broad of a term.

Article 8, 9, 10, 11: IE have no comments and is generally happy with the texts.

ITALY

REGULATION ADDRESSING SITUATIONS OF CRISIS AND FORCE MAJEURE

(ST 10463/2/23 - REV2)

The Italian delegation has the pleasure to submit the following comments and amendment proposals for the kind consideration by the Presidency:

Article 2 - Registration of applications for international protection in a situation of crisis [...] or force majeure

Para. 3. Where applying paragraph 1, Member States [...] may [...] prioritise the registration of applications which are likely to be well founded. [...] and/or manifestly unfounded.

Comment: *Manifestly unfounded applications might also be authorised, consistently with Article 3.4.*

Article 3 - Measures applicable to the asylum border procedure in a situation of crisis [...] or force majeure

Para 2. In a situation of crisis **referred to in Article 1(2)(a)** [...], by way of derogation from Article **41a(b)** of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], Member States may in a border procedure take decisions on the merits of an application in cases where the applicant is of a nationality, or, in the case of stateless persons, a former habitual resident of a third country, for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 75% or lower, instead of the cases referred to in Article 40(1)(i) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*];

Comment: *the application of the 75% threshold, if so requested by a MS in crisis, should be considered replacing the 20% threshold (which would be, actually, encompassed), so that two scenarios may be figured out: either a) a MS may ask for derogation for cases under 20% (flexible BP) pursuant to Article 3.1; or b) a MS may ask for an extension of the threshold from 20 to 75% (mandatory BP).*

Para 4. Where applying paragraphs 2 or 3, the Member State concerned shall prioritise the examination of those applications for international protection lodged by persons with special procedural or special reception needs as defined in [*Reception Conditions Directive recast* and in *Asylum Procedure Regulation*] and family members of minors. The Member State concerned may also prioritise the examination of applications for international protection which are likely to be well-founded and/or manifestly unfounded.

Comment: the two kinds of applications might be prioritised.

5. .

Comment: the derogation to adequate capacity and annual cap should cause the unlimited processing of cases in a BP.

Para 7. In a situation of [...] **crisis referred to in Article 1(2)(b)**, by way of derogation from Article 12(5) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] the personal interview may be omitted also in case where the determining authority is able to take a positive decision on the basis of the evidence available with regard to the subsidiary protection status. An applicant who is granted subsidiary protection on the basis of the evidence available and considers to be entitled to refugee status, may apply for a hearing and the status redetermination to be carried out once the crisis situation has ended.

Comment: following up to the Commission's comments on a possible increase of litigation, aimed at obtaining the refugee status, Italy proposes this amendment as a middle ground solution.

Article 4 - Extension of time limits set out for take charge requests, take back notifications and transfers in a situation of crisis referred to in Article 1(2)(a) or force majeure

Para 1. In a situation of crisis referred to in article 1(2)(a) or force majeure which renders it impossible for a Member State facing that situation to comply with the time limits set out in [...] Articles 29, 30, 31 and 35 of Regulation (EU) XXX/XXX [*Asylum and Migration Management*] or to receive persons it is responsible for pursuant to that Regulation, Member States may simultaneously derogate from the time limits set out in Articles 29, 30, 31 and 35 of that Regulation.

Comment: the amendment is meant to stress the cumulative effect of the derogations provided for in this Article.

Para 4. Where paragraph 1 is applied, transfers pursuant to Article 35 of Regulation (EU) XXX/XXX [*Asylum and Migration Management*] to the responsible Member State facing a situation of crisis referred to in Article 1(2)(a) or force majeure, shall not be carried out until that member State is no longer facing that situation. Where because of the persistence of the situation of crisis referred to in Article 1(2)(a) or force majeure or for any other reason, the transfer does not take place within one year of the acceptance of the take charge request or of the confirmation of the take back notification by that Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3) of that Regulation, by way of derogation from Article 35 of Regulation (EU) XXX/XXX [*Asylum and Migration Management*], the Member State responsible, facing a situation of crisis, 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.

Comment: the acceptance or confirmation would be made by the Member State in situation of crisis. Hence, “that” should replace “another”. The specification (“facing a situation of crisis”) is added for avoidance of doubt.

Article 5 - Material reception conditions in a situation of a situation of crisis [...] or force majeure

Para 1. In a situation of crisis [...] or *force majeure*, by way of derogation from Articles 16 and 17(1), (2) point (c) and paragraphs (6) to (8) of Directive XXX/XXX [*Reception Conditions Directive recast*], the Member State may temporarily from the moment the application for international protection is made until registration and then for the maximum period as referred in Article 3(6) or from the moment the application for international protection is made until registration and then for the period as referred in Article 41c(2) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] in case derogation under Article 2(c) is not applied set other modalities for material reception conditions in relation to applicants apprehended or found as a result of **the crisis** [...] according to this Regulation or who have presented themselves at border crossing points or disembarked on its territory following search and rescue operations. Member States shall cover the applicants' basic needs, in particular food, water, clothing, adequate medical care, and temporary shelter adapted to the seasonal weather conditions, and in full respect of human dignity. The derogation from Article 17(2)(c) of Directive XXX/XXX [*Reception Conditions Directive recast*] is without prejudice to the access of legal advisers in accordance with [Articles 8(4), 14(1) and 16(3) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] and the access of UNHCR in accordance with Article 18 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*].

Comment: the case of SAR disembarkations is to be also mentioned, since they are not included in the case of applicants at border crossing points.

Article 7 - Solidarity and support measures in a situation of crisis [...]

Para 5. Where [...] para. 4(i) applies, **the pledges available in the Solidarity Pool under Regulation (EU) XXX/XXX [Asylum and Migration Management]** , shall be replenished by the the Council implementing decision referred to in Article 8(4) .

Comment: Since the solidarity needs are presumed to have already been assessed and quantified, pursuant to the procedures in AMMR, including the High Level Migration Forum, pledges drawn from the Solidarity Pool (for the sake of an expedite response in a situation of crisis) should be replenished as soon as possible directly through the Council implementing decision referred to in Article 8(4). This amendment would avoid restarting the process of pledging.

Article 8 - Authorisation procedure and adoption of implementing acts

Para. 1. A Member State facing a situation of crisis or *force majeure* or an imminent risk of a situation of force majeure [...], may, given those exceptional circumstances, request the authorisation to apply the relevant derogations provided for in Articles 2 to 6.

Para. 4.

(...) The Council Implementing Decision shall:

- (a) establish the existence of a situation of crisis, instrumentalisation or *force majeure* or an imminent risk of a situation of force majeure, as appropriate;

Comment: in cases of force majeure, the concept of imminent risk would be relevant. Actually, during the pandemic the imminent and inherent risk of spreading the infection was predictable and ought to be prevented. Hence the suggested wording in para. 1 and 4 of Article 8.

LATVIA

Latvia would like to thank the Presidency for the work in order to carry on with the discussions related to crisis, force majeure and most importantly to instrumentalization of migrants for political purposes.

Latvia has always stressed, that an immediate, adequate and unified EU response to the instrumentalisation of migrants is needed. It is vital to ensure the security and integrity of the EU in situations, where migration is used as a tool against one or several Member States, exploiting persons for political purposes of hostile regimes.

As of 2021, when it was brought to political spotlight, instrumentalisation of migrants still remains a highly worrying challenge. Therefore, a comprehensive and truly sustainable solution at the EU level has to be found as soon as possible to address these situations. It is crucial for Latvia that instrumentalisation remains high on the agenda in all future discussions.

In order to advance the negotiations of the Migration and asylum pact it was to agreed to consider a merging of the proposals for the Regulation addressing situations of instrumentalisation and the Crisis and Force Majeure Regulation. Yet, it is important that as a result of this exercise instrumentalisation does not become just one of the types of crisis situations in the field of migration and asylum. This phenomenon without a doubt is, and therefore should be treated as, a completely separate category, deserving a special legal status / definition / actions to address it.

Following the latest discussions on the proposal as presented by Spanish presidency Latvia remains concerned that instrumentalization has been losing its particularities and turning into a situation of mass influx.

In Latvia's view the specificities related to the instrumentalization should addressed in more details.

Latvian national experts continue evaluating the proposal and in light of explanations given during discussions, therefore **we maintain a general scrutiny reservation.**

Consequently, **please find below our preliminary view** on the main aspects discussed earlier:

- In the light of the above, Latvia **find it difficult to support** the new revisions, defining instrumentalisation as a type of migration / asylum crisis situation. In more general Latvia considers that more precise definitions, including on force majeure, would be of benefit in order to better apply derogations foreseen.

As a matter of principle we are **hesitant** towards the new addition (in Article 7(4)(iii)), providing that Member States will be obliged to provide solidarity contributions above their fair share where necessary. Thus the whole mechanism partially loses its proportionality (balance between solidarity and responsibility), as well as predictability.

LUXEMBOURG

Luxembourg maintains a **general scrutiny reservation on the whole text.**

Article 1

- Luxembourg maintains a reservation on the inclusion of instrumentalisation under the crisis definition. Furthermore, we can agree with the proposed way forward to include a reference to force majeure in the recitals, but would suggest rewording the corresponding recital.
- Concerning the recitals on instrumentalisation, Luxembourg requests that the following proposed sentence is put in a separate recital:
“Furthermore, humanitarian aid operations should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.”

Article 2

- As a general remark, Luxembourg considers that the flexibility provided for in the Council mandate on AMMR to extend the registration deadline to 21 days *“Where [...] there is a disproportionate number of third-country nationals or stateless persons that make an application within the same period of time”* (Art. 27 (3) APR) is sufficient and the proposed derogation in §1 therefore not needed.
- Furthermore, we suggest to include a specific reference to unaccompanied minors in §2.

Article 3

- Concerning §2, Luxembourg is of the opinion that the proposed recognition rate of 75% or lower bears the risk that, given the fact that Eurostat statistics refer to the previous calendar year, there is a risk of negative repercussions if a person from a third country with a rapidly evolving protection need due to a crisis situation will need to enter a border procedure, notably in light of the suggested extended duration of the border procedure and the derogations from the material reception conditions.
- Regarding §3, Luxembourg recalls its position that minors and their family members should be exempted from the border procedure under AMMR. This is particularly valid in a situation of crisis given the extended duration of the border procedure and the derogations from the material reception conditions.

- Concerning §6, Luxembourg considers that the proposed duration of 20 weeks is excessive and should not go beyond 16 weeks.
- Luxembourg maintains a scrutiny reservation on §7 as the added value of this § is not clear.

Article 4

- Regarding §4, Luxembourg echoes the concerns expressed by others concerning the reference to “*or for any other reasons*”. Furthermore, we can agree with the one year period and would not want to see that period to be shortened.

Article 4a

- Luxembourg thanks the Presidency and the Commission for the clarifications regarding this Article. In light of these explanations, we would suggest to adjust the title of the Article to make it clear that the derogations only apply in a crisis situation of particular intensity.
- Regarding §1, second subparagraph, Luxembourg considers that a reflection on the shortening of the six months period should take place.

Article 5

- Luxembourg maintains a substantial reservation on this article. Within the overall Regulation, these derogations are excessive, notably in light of the proposed derogation under Article 3(3). In particular, we oppose the derogations from article 17(2)(c) RCD as well those from paragraphs (6) to (8).

Article 6

- In line with its position on Article 3(6), Luxembourg maintains a substantial reservation regarding the extended deadline for the return border procedure by additional 8 weeks in §1(a).

Article 7

- Luxembourg welcomes the deletion of “*any other measures*” under former §1(f).
- Concerning §3, Luxembourg welcomes the role of the Commission to assess the situation and prepare, where appropriate, a Solidarity Response Plan. We would like to see this approach reflected under Article 8.
- Concerning §4(iii), Luxembourg would like to thank the Presidency for having included the possible deductions in case a Member State has to contribute above its fair share as a response to a crisis situation. Luxembourg maintains a scrutiny reservation on this point.

- In addition to the proposed recital under Article 11, Luxembourg suggests to add a paragraph concerning the support of Union agencies, taken from the proposal on an Instrumentalisation Regulation (Article 4(4)) with a slight adjustment:

“A Member State facing a situation of crisis may, in accordance with the rules set out in regulations on respective agencies, request support from the EU Asylum Agency, from the European Border and Coast Guard Agency, or from Europol in accordance with their mandates.”

Article 8

- Luxembourg recalls its proposal to provide for a stronger role of the Commission within the authorisation procedure in §2:
“[...] the Commission may, following an evaluation of the evidence presented, without delay, make a proposal [...]”. §6 should also be adjusted accordingly.
- In the same spirit, §3(a) should be amended:
“(a) an assessment of the evidence provided by the Member State concerned and whether it fulfills the criteria of a situation of [...]”.
- In the proposed recital, Luxembourg suggests the addition of
“the principle of proportionality and necessity”.
- In the same vein, Luxembourg welcomes the addition to §8.
- Regarding §9, Luxembourg refers to its position on Article 2. Flexibilities under APR are sufficient.

Article 10

Luxembourg considers it necessary to underline that there should be no derogation from obligations governing or obstacles to the making of an application. Access to the procedure should not be limited.

MALTA

Article 1

- Paragraph 1

MT has a scrutiny reservation on the addition of the word ‘including’ since instrumentalisation does not necessarily lead to a situation of crisis.

- Paragraph 2

MT has a scrutiny reservation on this paragraph since instrumentalisation does not necessarily lead to a situation of crisis.

- Paragraph 2(a)

MT maintains its substantive reservation on this point.

While welcoming the reference to ‘a Member State’, which means that a crisis situation in an individual Member State is enough to trigger the mechanism, we have a number of serious concerns with regards to the definition of a situation of crisis. These are as follows:

- When assessing the impact of a situation of mass influx in a Member State to determine whether this translates into a situation of crisis, one should take into account objective criteria like population, GDP and territory and this should be reflected at least in a recital, as follows;

A mass influx of persons crossing the border even within a short period of time may lead to a situation of crisis in a particular Member State, taking into account population, GDP and its geographical specificities, including the size of the territory. That may also have consequences for the functioning of the asylum and migration system, not only in that Member State but in the Union as a whole, due to unauthorised movements and the lack of capacity in the Member State of first entry to process the applications for international protection of such third-country nationals or stateless persons. It is necessary to lay down specific rules and mechanisms that should enable effective action to address such situations.

- This mechanism should not be triggered only when the Member State's systems have reached such a critical point that these are no longer functional. In this regard it should be noted that even though a number of Member States have experienced a crisis situation, national systems, while unable to cope effectively with the situation, have always remained functional. Therefore, the term 'non-functional' when describing the Member State's asylum, reception or return system, should be replaced with 'severe difficulties or extreme pressures'; and
- The reference to having 'serious consequences for the functioning of the CEAS or the Common Framework' gives the impression that the whole Union needs to be affected by this exceptional situation of mass influx in a Member State for the mechanism to be triggered. This effectively means that while a Member State might be genuinely faced with a situation of crisis due to the number of irregular arrivals, when compared to its size and population, this mechanism might not be triggered. To give a practical example, if Malta receives 10,000 arrivals in a year, we would be facing a crisis situation, however, these numbers would not be of such a magnitude as to have serious consequences for the functioning of the CEAS as the number of arrivals would still be low compared to the overall number of arrivals in the EU. In view of this, we are of the opinion that the wording 'serious consequences for the functioning of the CEAS or the Common Framework' should be deleted.

Furthermore, MT would still like the Commission to clarify what is meant by the word 'nature' when describing the mass influx and its relevance to the establishment of a situation of crisis.

Against this background, Malta calls for the following amendment to Article 1(2)(a):

- a) *an exceptional situation of mass influx of third-country nationals or stateless persons arriving [...] in a Member State or disembarked on its territory following search and rescue operations, being of such a scale [...] and nature, that it ~~renders~~ places severe difficulties on the Member State's asylum, reception or return system, taking into account also the size of the country. ~~non-functional~~ [...] In such situations ~~that~~ there may also be serious consequences for the functioning of the Common European Asylum System or the Common Framework as set out in Regulation (EU) XXX/XXX [Asylum and Migration Management] [...], or*

Article 2

MT has a reservation on this article due to our concerns on the definition of a situation of crisis.

Furthermore, and akin to the provision in Article 3(4), MT is of the opinion that Member States should also have the possibility to prioritize the registration of applications that are likely to be manifestly unfounded.

Malta calls for the following change in Article 2(3):

3. Where applying paragraph 1, Member States [...] may [...] prioritise the registration of applications which are likely to be well founded or likely to be manifestly unfounded. [...]

Article 3

MT has a reservation on this article due to our concerns on the definition of a situation of crisis.

Article 4

MT has a reservation on this article due to our concerns on the definition of a situation of crisis.

Article 4a

While MT agrees in principle with the aim of this article, MT is concerned by the fact that these derogations only apply where the mass influx is of such scale and intensity that there is a serious risk that it renders the CEAS non-functional. For a small Member State like Malta, such a proviso effectively means that we won't be able to apply these derogations since even though we might easily face a situation of crisis given our small size, it is unlikely that our numbers would risk rendering the CEAS non-functional.

Malta calls for the following amendment:

In a situation of crisis referred to in Article 1(2)(a), ~~where the mass influx is of such scale and intensity that there is a serious risk that it renders the Common European Asylum System non-functional~~, by way of derogation from Article 26(1)(b) and Article 28(4) of Regulation (EU) XXX/XXX [Asylum and Migration Management], a Member State facing that situation may be relieved of its obligation to take back an applicant or a third-country national or stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [Eurodac Regulation] where that responsibility was determined pursuant to Article 8(2) of Regulation (EU) XXX/XXX [Asylum and Migration Management], or to take back an applicant pursuant to Article 28(4) of that Regulation.

Article 5

MT has a reservation on this article due to our concerns on the definition of a situation of crisis.

- Paragraph 1

MT is of the opinion that Member States should also be in a position to apply these derogations to persons who have been disembarked following search and rescue operations.

*1. In a situation of crisis [...] or force majeure, by way of derogation from Articles 16 and 17(1), (2) point (c) and paragraphs (6) to (8) of Directive XXX/XXX [Reception Conditions Directive recast], the Member State may temporarily from the moment the application for international protection is made until registration and then for the maximum period as referred in Article 3(6) or from the moment the application for international protection is made until registration and then for the period as referred in Article 41c(2) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] in case derogation under Article 2(c) is not applied set other modalities for material reception conditions in relation to applicants apprehended or found as a result of the crisis [...] according to this Regulation or who have presented themselves at border crossing points **or disembarked on its territory following search and rescue operations**. Member States shall cover the applicants' basic needs, in particular food, water, clothing, adequate medical care, and temporary shelter adapted to the seasonal weather conditions, and in full respect of human dignity. The derogation from Article 17(2)(c) of Directive XXX/XXX [Reception Conditions Directive recast] is without prejudice to the access of legal advisers in accordance with [Articles 8(4), 14(1) and 16(3) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and the access of UNHCR in accordance with Article 18 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].*

Article 6

MT has a reservation on this article due to our concerns on the definition of a situation of crisis.

Article 7

General comment

MT maintains its reservation on this article due to our concerns on the definition of a situation of crisis.

- Paragraphs 4-6

MT is deeply concerned by the fact that point (i) of paragraph 4 will further increase the risk of shortfalls for Member States benefitting from the AMMR solidarity mechanism, a risk which is already inherent in the solidarity mechanism.

In more practical terms, in case a Member State facing a situation of crisis makes use of solidarity pledges from the AMMR solidarity pool, there's a high probability that this will result in a situation where the needs of benefitting Member States under the AMMR will not be addressed. While taking note that in such a scenario there will be the reconvening of the High-Level Migration Forum, MT notes that there are no guarantees that the contributing Member States will pledge enough contributions to address the shortfall that has been created. Moreover, the fact that some Member States might have to apply Dublin offsets for a number higher than their fair share further increases the risk of possible shortfalls for Member States benefitting from solidarity measures under the AMMR.

In this regard, Malta calls for the following amendments:

Where [...] the solidarity needs of other Member States that are benefitting Member States pursuant to Articles 44c or 44d of the Regulation (EU) XXX/XXX [Asylum and Migration Management] cannot be addressed as a result of the use made by the Member State facing a situation of crisis of the pledges available in the Solidarity Pool pursuant to paragraph 4, the Council Implementing decision in Article 8(4) shall also include the solidarity measures made use of under Article 7(4)(i) of this Regulation in order to replenish the solidarity needs in the Regulation (EU) XXX/XXX [Asylum and Migration Management]. the High-level Migration Forum shall be reconvened as matter of urgency, following the procedure set out in Article 44g of the Regulation (EU) XXX/XXX [Asylum and Migration Management].

Article 8

General comment

MT has a reservation on this article due to our concerns on the definition of a situation of crisis.

- Paragraph 3 (b)

MT supports the Greek delegation in amending this paragraph, as follows:

*(b) where **appropriate**, the relevant derogations **in consultation with the requesting Member State** required for the specific situation that the Member State concerned should be authorised to apply;*

- Paragraph 9

MT is of the opinion that in a situation of crisis, the possibility to apply the derogations requested before the adoption of the Council Implementing Decision should be extended to all derogations and not limited to Article 2. Furthermore, this possibility should extend for the whole period from when the request is made until the Member State concerned is authorised to adopt the derogations via a Council implementing Decision, and not be limited to a 15 days' period.

Article 11

MT has a reservation on this article due to our concerns on the definition of a situation of crisis.

Article 12

MT is of the opinion that this Regulation should start to apply two years after its entry into force, akin to the other legislative texts linked to this Regulation.

Other comments

MT is of the opinion that the possibility to grant immediate protection should be retained as one of the tools available to Member States to make use of in a situation of crisis so as not to overburden their asylum system. In this regard, immediate protection could be activated by an individual Member State, rather than EU wide, thus providing Member States with the possibility to decide whether to suspend the examination of the applications for international protection or not.

MT is also of the opinion that in addition to the derogations already listed in the Regulation, a possible derogation from the obligation to carry out an accelerated procedure, with the exception of cases constituting a danger to national security, could also be envisaged

THE NETHERLANDS

We thank the Presidency for the compromise proposals in the above-mentioned document and for the opportunity to share our written comments. You will find our comments and reservations below.

Article 2 - Registration of applications for international protection in a situation of crisis [..] or force majeure

(2): Scrutiny reservation

We note some words are missing ('*the Member State concerned*').

Furthermore, we think that in such situations, it may be very difficult to recognize vulnerability. By also including family members of minors in the group to be prioritised, this group will probably become (very) large. It would therefore be preferable to make these provisions less binding and to formulate them more as an obligation of means.

Therefore, we propose:

'the Member State concerned may shall prioritise'.

Article 3 - Measures applicable to the asylum border procedure in a situation of crisis [...] or force majeure

(2): Scrutiny reservation

According to NL, the purpose of this paragraph is unclear. Under Article 41a of the APR, there is already a possibility to decide in cases other than those mentioned in Article 41b APR.

(4): Scrutiny reservation

Same comment as Article 2(2). We think that in such situations, it may be very difficult to recognize vulnerability. By also including family members of minors in the group to be prioritised, this group will probably become (very) large. It would therefore be preferable to make these provisions less binding and to formulate them more as an obligation of means.

Therefore, we propose:

‘the Member State concerned **may shall** prioritise’.

(6): Reservation

For NL, it is also important that the Regulation should include the possibility to extend the time limits for deciding on an application for international protection in cases in times of crisis or force majeure. For instance, it should be possible to extend the time limit to 24 weeks in cases where the applicant frustrates or delays the procedure, analogous to Article 41c(2).

(7): Scrutiny reservation

We still have some questions concerning this paragraph. We wonder why this is only provided for situations of instrumentalisation. We also think that, in order to grant subsidiary protection, the refugee status has to be rejected. How is this to be substantiated without interview?

Article 4 - Extension of time limits set out for take charge requests, take back notifications and transfers in a situation of a situation of crisis referred to in Article 1(2)(a) or force majeure

(1): Scrutiny reservation

With regard to the sentence “with renders it impossible etc”, it is unclear if this is determined on a situation-by-situation basis, or whether it is an automatic consequence of the assessment/conclusion that a situation referred to in Article 1(2)(a) or force majeure exists.

(3):

Missing from this enumeration are the consequences if the deadline in the second part of c is not met (confirm the receipt within one month of such notification).

(4): Reservation

To our opinion, the mentioned derogation from Article 35 is not really a derogation from Article 35, because article 35 regulates that the responsibility between MS shifts if the transfer is not carried out within the transfer period.

NL cannot accept this paragraph 4 yet. Also with a view on our objections with regards to Article 4a.

Article 4a - Derogations from the obligation to take back an applicant in a situation of crisis referred to in Article 1(2)(a)

Reservation

We cannot agree with this Article 4a.

The essence of this article seems to be that the MS in a crisis situation will be relieved of its Dublin obligations. This is now rather complexly described in this article. However, what we miss first of all are actions, for example from the agencies and the Commission, to prevent a member state from falling into the crisis situation. All efforts should then be aimed at keeping Dublin working.

Beyond that, it's quite a step taken right away. Why not first a postponement of transfers, but a cancellation of transfers right away?

Furthermore, consistency with the solidarity system of the AMMR is desirable. Possibly with the off sets, where it is important that these can then be discounted with a member state's solidarity obligations.

(1):

It is unclear how it will be decided that where 'the mass influx is of such scale and intensity that there is a serious risk that it renders the Common European Asylum System non-functional'

Article 5 - Material reception conditions in a situation of a situation of crisis [...] or force majeure

(1): Reservation

According to NL, the reference to Article 17(2)(c) and paragraphs (6) and (8) of the (recast) Reception Directive should be deleted. This Article provides for granting access to the applicant for family members, legal counsellors, lawyers and representatives of UNHCR and NGO.

The reference to Article 18 APR should be to Article 5b APR.

Article 7 - Solidarity and support measures in a situation of crisis [...]

Reservation

According to NL, it should be included in the text that solidarity is only possible if it has not been established that there are systemic shortcomings (recital 31 and article 44e (3) of the AMMR).

We also think, that if the Council identifies a crisis situation in a Member State, it may be that Dublin transfers to that Member States are no longer possible because of the risk that a transfer to that Member State may entail a breach of Article 3 ECHR. Measures should aim at keeping a Member State in a position in which it is able to keep up its responsibilities. It should also be possible to extend time limits to adjust reception facilities and emergency shelters.

Furthermore, if, due to a situation of crisis, it is (temporarily) not possible to transfer to the responsible Member State under the AMMR, this should be regarded as solidarity. This should be reflected in the text.

(1): Scrutiny reservation

We wonder how a situation of crisis or instrumentalisation relates to migratory pressure under the AMMR, risk of migratory pressure and a significant migratory situation. According to NL, The Crisis Regulation can also concern a situation that is expected. It should not only refer to an unexpected crises. When there is migratory pressure, many measures are already being taken. Can they exist side by side, or is it also conceivable that a member state has to deal with both with crisis and with migratory pressure?

(1)(a)(ii): We wonder how the transfer of beneficiaries of international protection benefits the Member State that is facing a situation of crisis or instrumentalisation. We also note that in the AMMR, this category is no longer part of the Council position, but it is in the EP amendments.

(1)(b): According to NL, the wording in sub b) means that these offsets are only possible if there is a possibility under AMMR. In AMMR, these offsets are deliberately not included as an equivalent form of solidarity. In our opinion, it neither should be in this regulation.

(1)(d): We propose to align the text with the AMMR. According to NL, sub d) is sufficient and sub e) is not necessary.

(3): Scrutiny reservation

The Solidarity Response Plan was deleted from the Council position in the AMMR (Article 52), so we think it should be deleted here as well. We propose to refer to, and align this with Article 44d AMMR.

(4): Scrutiny reservation

(4)(ii): The reference should be to Article 8(4)

(4)(iii): We have a scrutiny reservation on this sub.

(6): Scrutiny reservation. We need to study this further

Article 8 - Authorisation procedure and adoption of implementing acts

(3): Scrutiny reservation

We propose to align sub (c) with the AMMR.

Furthermore, it is unclear where the additional needs mentioned in the last subparagraph should come from.

Article 11 - Cooperation and assessment

(1): Scrutiny reservation

POLAND

Horizontal position:

1. PL sees the need to create an EU legislative instrument in the event of a crisis situation, a force majeure situation, and above all, a situation of instrumentalization of migration.
2. In view of the above, we believe that the phenomenon of the instrumentalization of migration should be better emphasized in the current crisis regulation, primarily due to its political importance. PL supported the regulation on the instrumentalization of migration, and in the face of the EU Council's failure to grant a mandate for negotiations with the EP, it opted for its inclusion in the Crisis Regulation. However, due to its causes and consequences of hybrid attacks using the instrumental exploitation of migrants, PL supports those Member States that emphasize the need to separate it in the current regulation and treat it as a separate situation.
3. We maintain our critical position on the crisis regulation due to the lack of agreement on adopting a general approach to the AMMR and APR and derogations from them contained in the regulation currently under discussion, as well as a package approach to the elements of the pact.
4. We also maintain scrutiny reservations on the entire text.
5. PL welcomes referring the current text to texts for which a general approach has been adopted, instead of the original EC proposals which have been substantially modified.
6. We welcome the possibility of applying certain derogations even without the authorization contained in the Council implementing act. Such flexibility is particularly needed in a crisis situation requiring an immediate response by a Member State.
7. The presented position is the result of experts' analyzes and does not determine PL's final position on the Crisis Regulation.

Detailed position:

Article 1: Subject matter

1. PL welcomes adding the "force majeure" situation in the footnote. This is a good starting point for developing its definition.
2. We are pleased about deleting "an imminent risk of such a situation" from the definition of a crisis situation, which was not covered by any derogation.
3. After analyzing the proposal to extend the scope of the regulation, we would prefer that the instrumentalization of migration, which is a very specific emergency caused by the artificial creation of a migration route in order to destabilize the situation in the MS and the EU - which is a hybrid attack and a threat to security, should be treated as a separate category, not a subtype crisis. This should be reflected in the name of the regulation. It is important for us to take into account all the solutions developed in the course of work on the Regulation on the instrumentalization of migration, as well as to consider the possibility of suspending the acceptance of asylum applications in the above situation.
4. **(2)(b) recital (xx) first line 4:** technical note - "onto or from within"

Article 3: Measures applicable to the asylum border procedure in a situation of crisis [...] or force majeure

- AT support: persons posing a threat to security and public order should always, regardless of the situation, be referred to the border procedure. For PL, it is also important to maintain the border procedure for families with children due to the characteristics of the influx of third-country nationals to PL, as well as specific groups of foreigners used by hostile regimes in a hybrid attack.
- (7) – CZ support: the force majeure situation should also be included here.

Article 4: Extension of time limits set out for take charge requests, take back notifications and transfers in a situation of a situation of crisis referred to in Article 1(2)(a) or force majeure

- We welcome the extension of procedural deadlines.

Article 4a: Derogations from the obligation to take back an applicant in a situation of crisis referred to in Article 1(2)(a)

- It is an interesting proposal to unburden (in the event of a mass influx of foreigners) the MS responsible for those foreigners whom it should accept under the take back procedure. The MS that fails to transfer becomes responsible and continues to apply the Dublin procedures (with the listed exceptions: art. 8(2), 9(1) and (2), 15(5), 21(1) and (2) AMMR).

However, pursuant to Art. 4a (1) subpar. 1 the above-mentioned provision may only be applied up to six months before the adoption of the Council Implementing Decision referred to in Art. 8(4) and applies only in cases where the application for international protection was registered in the MS up to 6 months before the decision was taken (Article 8(4)). This is a temporary solution, so the position on the Council's decision is crucial here. For this reason, PL is in favor of specifying specific deadlines for the procedure.

Article 5: Material reception conditions in a situation of a situation of crisis [...] or force majeure

- It seems that the reference to Art. 2c should be changed to art. 3(6)⁶. Article 2c - is a reference to the numbering of articles from the draft Regulation on instrumentalisation on migration.

⁶ 1. In a situation of crisis [...] or force majeure, by way of derogation from Articles 16 and 17(1), (2) point (c) and paragraphs (6) to (8) of Directive XXX/XXX [Reception Conditions Directive recast], the Member State may temporarily from the moment the application for international protection is made until registration and then for the maximum period as referred in Article 3(6) or from the moment the application for international protection is made until registration and then for the period as referred in Article 41c(2) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] in case derogation under Article 2(c) is not applied set other modalities for material reception conditions in relation to applicants apprehended or found as a result of the crisis [...] according to this Regulation or who have presented themselves at border crossing points. Member States shall cover the applicants' basic needs, in particular food, water, clothing, adequate medical care, and temporary shelter adapted to the seasonal weather conditions, and in full respect of human dignity. The derogation from Article 17(2)(c) of Directive XXX/XXX [Reception Conditions Directive recast] is without prejudice to the access of legal advisers in accordance with [Articles 8(4), 14(1) and 16(3) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and the access of UNHCR in accordance with Article 18 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].

Article 6: Measures applicable to the return border procedure in a situation of crisis [...]

- As we have argued before, we believe that a force majeure situation does not preclude the use of the border procedure for return, especially since art. 3 mentions the possibility of applying the asylum border procedure also in this case.

Article 7: Solidarity and support measures in a situation of crisis [...]

- PL is against the proposed provision in the view of adopting a general approach to AMMR that PL voted against (particularly criticising the solidarity mechanism). The current regulation goes even further, imposing on the Member States participation in solidarity above fair share, which in PL's opinion is incorrectly constructed - **redline**.
- (1)(b) - PL understands the need to simplify existing mechanisms (especially in a mass influx situation) and, in this context, treating solidarity offsets as first-order measures. On the other hand this will result in distributing migrants to be relocated among a smaller number of Member States that were not the countries of their destination. This will result in an increased number of secondary movements.

PL noted the possibility of deducting additional contributions in the next 3 years, but such a situation does not protect the Member State, which itself may find itself under increased migration pressure as a result of the need to accept an additional pool of migrants - **redline**.

- (1)(f) - in our opinion, each situation described in the emergency regulation requires a high level of flexibility of legal measures. Therefore, PL opts for the reinstatement of the previous provision - support for SK.
- (5) – PL remains critical towards the lack of reference to other forms of solidarity other than those that Member States have to contribute in the form of pledges - support for CZ.

Article 8: Authorization procedure and adoption of implementing acts

- (9) - PL welcomes the possibility of using this derogation without authorisation. Support for LT and MT: extension for the indicated period to 30 days.

PORTUGAL

PT maintains a scrutiny reservation on the whole proposal.

Article 1

We support the introduction of the recital specifying what is to be understood as *force majeure*, which brings some clarity regarding its scope of application.

Article 3

2. Even though this is an optional provision, we cannot support this disposition which implies extending the scope of the border procedure, allowing its application to applicants nationals of third countries with a recognition rate of up to 75%, in case of crisis. The application of this provision could lead to the application of the border procedure to a high number of applicants with protection needs.
4. Portugal defends the need to exclude families with minors from the border procedure.
6. Our position is that the border procedure should take place in the shortest possible time, even in a situation of crisis. Thus, we cannot support the extension of the deadline to 20 weeks, defending that the maximum deadline of 16 weeks foreseen in APR should be maintained.
7. Scrutiny reservation. The granting of subsidiary protection implies that there is first the rejection of the refugee status.

Article 5

We uphold our position that MS should not be able to derogate from material reception conditions. Regarding the access of applicants to family members and persons representing relevant NGO, we consider this is an essential guarantee for the protection of their fundamental rights. The derogations from the RCD are concerning to us, especially when seen in conjunction with the 20 weeks deadline proposed for the border procedure.

ROMANIA

On the following articles we can agree with the proposed text: art. 1, art. 2 para 2, art. 2 para 3, art. 3 para 3 to 6 subject to consideration of our comments at para 1, art.4, art. 4a, art.5, art. 6 para 2, art. 7, art. 8, art. 10 and art. 11.

Some comments on other articles:

Art. 2 para 1 – we propose prolongation of the deadline for registration of asylum applications, from 4 to 8 weeks.

Art. 3 para 1 - we consider it necessary to suspend the application of the border procedure in all cases where it is mandatory or, at least, to reduce the cases in which it applies, given the amplitude and the effects of a crisis or force majeure situation on the asylum system in the affected MS. In this regard, we propose the following text variant:

In a situation of crisis referred to in Article 1(2)(a) or force majeure, by way of derogation from Article 41b(1) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], Member States may not be required to examine in a border procedure applications made by applicants referred to in Article 40(1), except for letter f) of that Regulation.

Art. 3 para 2 - we do not support the inclusion of this category of persons in the application of the border procedure, as it would represent an unjustified administrative burden in a crisis situation. We do not understand the added value of this text when the APR makes it compulsory to apply the border procedure to countries of origin with an admissibility rate of less than 20%. This article allows MS to apply the border procedure also to migrants coming from countries of origin with an admissibility rate lower than 75%, which would require an additional effort from MS under pressure, as the border procedure involves shorter deadlines, as well as detention.

Art. 3 para 7 - We do not support issuing decisions granting subsidiary protection without an interview because it would lead to the granting of a form of international protection without individual analysis and individual persons would not be able to present individual reasons for granting subsidiary protection or even refugee status. Even in the case of generalized violence, an individual analysis of the case is required, with individuals being able to invoke individual grounds for granting refugee status which require individual analysis. Furthermore, the granting of subsidiary protection without a personal interview could give rise to difficulties in application, including in situations where, after the form of protection has been granted, situations arise which could lead to the cessation of that form of protection.

Art. 6 para 1 - We agree with the text of paragraph 1 letter a) and b). With regard to letter (c), we propose either to delete **manifestly and persistently** from the text, so that the application of Art. 6 para. 1 letter (c) shall be carried out as soon as it is established that the obligations of cooperation laid down in Article 7 of the Return Directive have not been fulfilled, **or** maintaining in the text the two pre-conditions, respectively **manifestly and persistently**, provided that they are not cumulative, meaning that we propose replacing **and** with **or**. At the same time, in case of maintaining these pre-conditions, we ask for clarifications on the minimum criteria to be met, in order to establish how many times it is allowed to fail to fulfill the cooperation obligations established by art. 7 of the Return Directive, so that we do not find ourselves in the validation of **manifestly and persistently** pre-conditions.

Art. 8 para 9 - With regard to para. (9), we consider it necessary to clarify the situation in which the MS does not receive, by Council Decision, authorization to apply derogations after the 15-day period.

THE SLOVAK REPUBLIC

Art. 3(6)

The Slovak Republic welcomes the extension from 12 to 20 weeks of the border procedure deadline in case of a crisis or force majeure. In spite of this, any further extension beyond the proposed 20-week period would also be welcomed

Art. 4(2)(d) and Art. 4(4)

The Slovak Republic understands the explanation provided by the EC during the meeting (7 July) that the complete suspension of transfers during the period in which MS is in a situation of crisis or force majeure is not possible due to the right of access to the asylum procedure. However, we believe that the period of 1 year after which responsibility should switch if the transfer does not take place is too short and should be extended to at least 18 months.

Art. 4 (4)

The Slovak Republic appreciates the explanation provided by the European Commission at the meeting of 7 July that the derogation should apply to all Dublin decisions with pending transfers during the period in which MS is experiencing a crisis or force majeure. In order to ensure legal clarity, it should be stated in the wording, e.g., as follows:

*Where paragraph 1 is applied, transfers pursuant (...) shall not be carried out (...). **Transfers that are accepted***

1) but pending at the time of the issuance of the council implementing decision

OR

2) and specified in the council implementing decision

are subject to this provision.

Art. 4a

Scrutiny reservation.

The Slovak Republic appreciates explanation at the meeting (7 July), however remains sceptical of these new derogations, as these can constitute a disproportionate pressure on the other Member states, especially if these derogations are not considered solidarity measures or do not result in a decrease in the fair share of that state.

Art. 5(1)

In order to improve clarity, it would be appropriate to explicitly mention in the text that Article 3(6) refers to the crisis regulation, for example: *In situation of (...) then for the maximum period as referred in Article 3(6) **of this Regulation** or (...)*

Art. 7(4)(iii)

It is important to note that, although Slovakia deems responsibility offsets to be an interesting tool (both in AMMR and in this regulation), we still have some reservations/concerns regarding their mandatory character (in relation to the principle of full discretion in Art. 8(4)).

Art. 8 (9)

Slovakia suggests that the following wording be included in the text to clarify the situation after the two weeks have expired: *In such a case, (...) for a period not exceeding 15d days, **unless further authorised pursuant to paragraph 4***

Art. 10(3)

This provision appears to have been derived from the previous proposal on instrumentalization regulation, hence the term "emergency asylum procedure" was retained in the text. The current wording does not clarify what an "emergency asylum procedure" is, therefore it should either be deleted or explained within the text - for example in Art. 3, which describes the measures applicable to the asylum border procedure.

SLOVENIA

General comment:

We would like to reiterate the scrutiny reservation regarding the whole text of the proposal.

Article 1

The Republic of Slovenia supports a clear definition of situations of crisis, therefore we believe Article 1 should be amended and further clarified. We listened carefully to the clarifications from the European Commission, but our opinion is that crucial terms in regulation should be properly defined as only clear and precise definitions made possible for Member States to implement the provisions effectively.

Article 3

The Republic of Slovenia does not support the derogation from the mandatory border procedure and the omission of a personal interview in the case of a positive decision for subsidiary protection status. In our opinion, it is important for the border procedure to remain within the widest possible scope and with as few derogations as possible, as this could lead to abuses, which would later increase secondary migration and threaten the goal of the border procedure. Despite this, Slovenia is in favour of a derogation in connection with the duration of the border procedure.

Regarding the prioritisation of certain categories, we point out that priority treatment can only be effective in the case when the range of categories intended for it is not enormous.

Article 4

The Republic of Slovenia is not in favour of extending the deadlines in connection with the Dublin procedure. Therefore, we could support only the extension of the deadline for the transfer and the fact that the situation of instrumentalization is not included in the derogation regarding the Dublin procedures.

Article 7

Paragraph 3: Given the situation in the Member State, clear deadlines are necessary.

Paragraph 4, point (iii): The newly added text further complicates the provision, as it is now possible for the contributing Member State to take more than its fair share, which we do not support. The purpose of the regulation is not to put into the situation of crisis another Member State, despite the fact that a certain guarantee is foreseen in the continuation of the provision, which reduces future commitments. This also goes against the very concept of solidarity.

Article 11

Slovenian Administration for Civil Protection and Disaster Relief does not support the text of the recital, in which the Union Civil Protection Mechanism is mentioned; therefore, they propose changing the text so that the first sentence reads as follow:

“Cooperation with other Crisis instruments: Migration preparedness and crisis mechanism is consistent with and complementary to the established EU crisis instruments (funds, agencies, mechanisms).”

The proposal, in accordance with the title of the recital, only laid down the necessity of cooperation with other crisis instruments, including the Union Civil Protection Mechanism. Civil protection in the EU is an independent policy and not just one of the tools in the toolbox for managing migration. The relationship with the field of migration is governed by the fundamental act in the field of civil protection in the EU, namely Decision on a Union Civil Protection Mechanism (second paragraph of Article 26).