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Subject: Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person

The present note sets out the outcome of the discussions on the abovementioned proposal at the Asylum Working Party meeting on 7 December 2015 as well as at previous meetings of Friends of Presidency (Asylum) and JHA Counsellors.

The following delegations have general scrutiny reservations on the text appearing in the Annex: AT, BE, BG, EE, EL, LV, FI, FR, PT and SI.

CZ, ES, FR, HU, LT, PL, RO, SI and SK have general reservations on the substance of the proposal; HU and SI have also parliamentary scrutiny reservations.

During previous discussions, a number of delegations underlined their wish for a thorough assessment of the functioning of the emergency relocation schemes and stressed the need to address the shortcomings in their implementation. Some delegations expressed their preference for linking the discussions on this proposal with the efforts which should lead to effective border controls and proper management of migratory flows and insisted on the voluntary nature of the proposed mechanism. Furthermore, several delegations were in favour of addressing this proposal as part of a broader package on asylum ("Dublin IV").

Delegations' oral and written comments appear in the footnotes in the Annex and the most recent drafting suggestions made for the meeting on 7 December 2015 are in **bold** and ~~strikethrough~~.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 78(2)(e)¹ thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

¹ **CY, ES, FI** and **CZ** questioned the choice of the legal basis. **COM** explained that the proposal represents a derogation from the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum, as defined in the Chapter III of the Dublin Regulation, referred to in Article 78(2)(e) TFEU.

Whereas:

- (1) Regulation (EU) No 604/2013 of the European Parliament and of the Council establishes mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person, based on objective criteria set in its Chapter III.
- (2) In accordance with Article 80 of the Treaty, the policies of the Union in the area of border checks, asylum and immigration and their implementation should be governed by the principles of solidarity and fair sharing of responsibility between Member States and Union acts adopted in this area must contain appropriate measures to give effect to this principle.
- (3) Situations of extreme pressure being placed on a Member State's asylum system may jeopardize the application of Regulation (EU) No 604/2013. While this Regulation provides for a process for early warning, preparedness and management of asylum crisis, it does not enable in such situations to derogate from the set responsibility criteria. In order to promote a balance of efforts between Member States in dealing with these crisis situations and to ensure a swift access to the procedures for granting international protection, a crisis mechanism for the relocation of applicants in clear need of international protection should therefore be put in place². The application of relocation measures in respect of a particular Member State should be without prejudice to the possibility to apply in parallel Article 33(3) of this Regulation to the same Member States. Article 33(3) of this Regulation is not a precondition for the application of relocation measures.

² **EL** is of the view that a permanent allocation mechanism should be put in place, instead of a crisis relocation mechanism.

- (4) The application of relocation measures in respect of a particular Member State should be without prejudice to the possibility for the Council to adopt provisional measures on a proposal from the Commission pursuant to Article 78(3) in the event of an emergency situation in a Member State characterised by a sudden inflow of nationals of third country nationals.³
- (5) The crisis relocation mechanism should be seen in the context of a wider set of measures that Member States may need to take to ensure effective migration policies, including in the area of first⁴ reception and return of third country nationals not having the right to remain on the territory of the Member States in accordance with provisions of Directive 2008/115/EC ('hotspots')⁵.
- (6) ~~A comprehensive evaluation of the Dublin Regulation is currently being conducted by the Commission that could lead to a wider revision of the Dublin system.~~
- (7) A clear and workable relocation system is envisaged based on a threshold of the average rate at Union level of decisions granting international protection in the procedures at first instance as defined by Eurostat out of the total number at Union level of decisions on asylum applications for international protection taken at first instance, based on the latest available statistics. On the one hand, this threshold would have to ensure, to the maximum extent possible, that all applicants in clear need of international protection would be in a position to fully and swiftly enjoy their protection rights in the Member State of relocation. On the other hand, it would prevent, to the maximum extent possible, applicants who are likely to receive a negative decision to their application from being relocated to another Member State and therefore prolong unduly their stay in the Union. A threshold of 75%, based on the latest available updated Eurostat quarterly data for first instance decisions, should be used.

³ **NL** questioned the possibility for the COM to come up with further proposals in application of Article 78(3) TFEU and considered that the current proposal should cover all possible future situations. **COM** explained that Article 78(3) can still be used in case criteria for using the current proposal are not met.

⁴ **EL** suggested replacing "first" by "initial"

⁵ **EL** and **IT** suggested deleting the word 'hotspots'.

- (8) Relocation of applicants in clear need of international protection should take place on the basis of the formula for a distribution key set out in Annex III. The proposed distribution key should be based on a) the size of the population (40 % weighting), b) the total of the GDP (40 % weighting), c) the average number of asylum applications per one million inhabitants over the period 2010-2014 (10 % weighting, with a 30% cap of the population and GDP effect on the key, to avoid disproportionate effects of that criterion on the overall distribution) and d) the unemployment rate (10 % weighting, with a 30% cap of the population and GDP effect on the key, to avoid disproportionate effects of that criterion on the overall distribution).
- (9) Within three months of the entry into force of the delegated act referred to in Article 33a(3), a Member State may, in exceptional circumstances and giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union, notify the Council, the European Parliament and the Commission that it is unable to take part in the relocation process of up to 30 % of applicants allocated to it in accordance with that delegated act. Such exceptional circumstances include, in particular, a situation characterised by a sudden and massive inflow of nationals of third countries of such a magnitude as to place extreme pressure even⁶ on a well prepared asylum system otherwise functioning in line with the relevant Union *acquis* on asylum or a risk of sudden and massive inflow of nationals of third countries of such a high probability that it warrants an immediate action. Following an assessment, the Commission should submit proposals to the Council and the European Parliament for a delegated act regarding **an extension for the requesting Member State of the time limit for relocating up to 30 % of the applicants allocated to this Member State by up to 12 months. In case the Member State of relocation becomes itself a beneficiary of the relocation mechanism due to extreme pressure on its asylum system, this Member State should be totally freed of its previous relocation obligations. a temporary suspension of the relocation of up to 30 % of applicants allocated to the Member State concerned. Where justified, the Commission may**

⁶ CZ questioned the use of word "even" and considered that the mechanism should only apply to Member States which are "well prepared".

~~propose to extend the time limit for relocation of the remaining allocation by up to 12 months beyond the duration of the delegated act.~~⁷

- (10) [...]
- (11) It is necessary to ensure that a swift relocation procedure is put in place and to accompany the implementation of the relocation procedure by a close administrative cooperation between Member States and operational support provided by EASO.
- (12) National⁸ security and public order should be taken into consideration throughout the relocation procedure, until the transfer of the applicant is implemented. In full respect to the fundamental rights of the applicant, including the relevant rules on data protection, where a Member State has reasonable grounds for regarding an applicant as a danger to its national security or public order, it should inform the other Member States thereof⁹.
Member States should consult the Schengen Information System, the Visa Information System and their national databases before the transfer of the person.¹⁰
- (13) When deciding which applicants in clear need of international protection should be relocated from the Member State benefiting from relocation, priority should be given to vulnerable applicants within the meaning of Article 21 and 22 of Directive 2013/33/EU of the European Parliament and of the Council¹¹. In this respect, special needs of applicants, including health, should be of primary concern. The best interests of the child should always be a primary consideration.

⁷ Some delegations considered the new text had to be clarified. See also footnote 38 relating to Article 33b(2).

⁸ **DE** suggested deleting the word "national". **FI** and **RO** drew attention to the use of "national security and public order" concept, including in the national legislation.

⁹ **EL** sought clarification on how security and public order considerations could be put in practice and suggested replacing the wording "the other Member States thereof" by "sufficiently and in detail the Member State of relocation".

¹⁰ **BG, HR, RO** wished that the situation of MS which do not have full access to SIS and VIS is taken into account.

CY entered scrutiny reservation, **CZ** suggested deleting the new text added.

IT considered that only beneficiary MS and MS of relocation should do these checks.

¹¹ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96).

- (14) Integration of applicants in clear need of international protection in the host society is the cornerstone of a well-functioning Common European Asylum System. Therefore, in order to decide which specific Member State should be the Member State of relocation, specific account should be given to the specific qualifications and characteristics of the applicants concerned, such as their language skills and other individual indications based on demonstrated family¹², cultural or social ties which could facilitate their integration into the Member State of relocation. In the case of particularly vulnerable applicants, consideration should be given to the capacity of the Member State of relocation to provide adequate support to those applicants and to the necessity of ensuring a fair distribution of those applicants among Member States. With due respect of the principle of non-discrimination, Member States of relocation may indicate their preferences for applicants based on the above information on the basis of which the Member State benefiting from relocation, in consultation with EASO and, where applicable, liaison officers may compile lists of possible applicants identified for relocation to that Member State.¹³
- (15) The appointment by Member States of liaison officers in the Member State benefiting from relocation should facilitate the effective implementation of the relocation procedure, including the appropriate identification¹⁴ of the applicants who could be relocated, taking into account in particular their vulnerability and qualifications. As regards both the appointment of liaison officers in the Member State benefiting from relocation and the fulfilment of their tasks, the Member State of relocation and the Member State benefiting from relocation should exchange all relevant information¹⁵ ~~and continue cooperating closely throughout the relocation procedure.~~ Close cooperation **among liaison officers**

¹² **EL** underlined that the experience from the first relocations shows that it is very difficult to ascertain the existence of relatives beyond the first degree and considers that this would lead to delays and to the invocation of relatives who do not exist.

¹³ **DE, EL, FI, FR** and **IT** suggested deleting the last two sentences of recital 14 relating to Member States' preferences which may lead to discrimination. **CY** raised a scrutiny reservation on this suggestion. **FI** raised doubts on the wording of recital 14. **EL** asked for clarifications regarding the role of Liaison Officers who may compile lists of possible applicants identified for relocation as referred to at the end of the paragraph.

¹⁴ **EL** raised concerns over the reference to "appropriate identification of the applicants who could be relocated" and would like to clarify how this could be done by Liaison Officers.

¹⁵ **EL** sought clarification of "all relevant information".

throughout the relocation procedure should also facilitate collaboration among **the** Dublin Units in the process of matching and the arrangement of transfers.¹⁶

- (16) Measures should be taken in order to avoid secondary movements of relocated persons from the Member State of relocation to other Member States. In particular, applicants should be informed of the consequences of onward irregular movement within the Member States and of the fact that, if the Member State responsible grants them international protection, in principle, they are only entitled to the rights attached to international protection in that Member State.¹⁷
- (16a) A comprehensive evaluation of the Dublin Regulation is currently being conducted by the Commission.**
- (17) In order to avoid secondary movements of beneficiaries of international protection, Member States should also inform the beneficiaries about the conditions under which they may legally enter and stay in another Member State and could impose reporting obligations. In addition, in order to ensure that beneficiaries of international protection who entered the territory of another Member State than the Member State of relocation without fulfilling the conditions of stay in that other Member State are taken back by the Member State of relocation, it is necessary to encompass beneficiaries of international protection who have been relocated in the scope of this Regulation.

¹⁶ **CZ, DE, NL and RO** considered that the amended text does not necessarily reflect how the cooperation works in practice and should be modified.

¹⁷ **EL** raised concerns regarding the last phrase, and in particular the wording starting at "and of the fact that ...". This is a major disincentive for relocation candidates. A derogation from the Long Term Residents Directive should be examined, to the effect that establishment in another Member State can take place in less than 5 years.

- (18) Additionally, in line with the objectives set out in Directive 2013/33/EU, the harmonisation of reception conditions amongst Member States should help to limit secondary movements of applicants for international protection influenced by the variety of conditions for their reception. With a view to reaching the same objective, Member States should consider imposing reporting obligations and providing applicants for international protection with material reception conditions that include housing, food and clothing only in kind as well as, where appropriate ensuring that applicants are directly transferred to the Member State of relocation.¹⁸ Likewise, during the period of the examination of applications for international protection, as provided in the asylum and Schengen acquis, except for serious humanitarian reasons, Member States should neither provide applicants with national travel documents, nor give them other incentives, such as financial ones, which could facilitate their irregular movements to other Member States. In case of irregular movements to other Member States, applicants should be sent back to the Member State of relocation.¹⁹
- (19) In order to promptly handle crisis situations resulting from the extreme migratory pressure on the asylum system of specific Member States, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission also in respect of establishing the application of relocation measures in respect of a particular Member State as well on the suspension of the application of such measures.

¹⁸ **BG** suggested the following wording of the first sentence: "Efforts shall be made by Member States for harmonisation of reception conditions amongst them with the purpose of limiting secondary movements."

CZ, FI, FR and **PT** raised doubts on the wording of the first and second sentence and its conformity with the reception conditions directive.

¹⁹ **DE** suggested replacing the wording "applicants should be sent back to the Member State of relocation" by "Chapter VI of this Regulation is applicable".

(20) In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of ascertaining the fulfilment of the relocation conditions as well as the other elements provided for under Article 33(a)4 and 33(d)2 of this Regulation. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(21) *[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]*

OR

(22) *[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]*

OR

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

(22) *In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]*

OR

(21) *[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.*

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

(22) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(23) Regulation (EU) No 604/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 604/2013 is amended as follows:

(1) In Article 2 the following points are added:

- "o) 'relocation' means the transfer of an applicant from the territory of the Member State which the criteria laid down in Chapter III of this Regulation indicate as responsible for examining his or her application for international protection ('Member State benefiting from relocation') to the territory of the Member State of relocation;²⁰
- p) 'Member State of relocation' means the Member States which becomes responsible for examining the application for international protection pursuant to this Regulation of an applicant following his or her relocation²¹ to the territory of that Member State."²²

²⁰ **DE** suggested the following definition of 'relocation': 'relocation' means the transfer of an applicant from the territory of the Member State where his biographical data are registered and his fingerprints have been taken and transmitted to the Eurodac- central system either under article 9 or Article 14 of Regulation (EU) No. 03/2013 for the first time,('Member State benefiting from relocation') to the territory of the Member State of relocation;

²¹ **DE** and **EL** suggested replacing the word "relocation" by "transfer".

²² **COM** considers that this definition of the MS of relocation, i.e. the MS responsible for the examination of the application for international protection of the applicant being relocated, implies that the MS of relocation is the MS responsible for the examination from the moment the applicant has been transferred from the MS benefiting from relocation. If, for logistical purposes, a transit stop is needed in a MS of transit while the person is being relocated from the MS benefiting from relocation to the MS of relocation, and if the applicant being relocated applies for asylum in the MS of transit, then the Dublin regulation applies, whereby the MS of transit shall carry out the transfer to the MS responsible for the examination of the application, i.e. the MS of relocation. **CZ** expressed doubts on these explanations.

(2) In Article 4(1) the following point is added:

“(g) where applicable, the relocation procedure set out in Section VII of Chapter VI.”

(3) In Article 18(1) the following point is added:

"(e) take back, under the conditions laid down in Articles 23, 24, 25 and 29 a beneficiary of international protection, who after having been relocated, made an application in another Member State than the Member State of relocation or who is on the territory of another Member State than the Member State of relocation without a residence document."²³

²³ **CY, ES, FR, PT** and **SK** raised doubts on the inclusion of reference to 'beneficiaries of international protection' which, in their view, would broaden the scope and the legal basis of the Dublin Regulation, which only deals with 'applicants for international protection'.

(4) In Chapter VI, the following Section VII is added:

"SECTION VII

Crisis relocation mechanism

Article 33a

Crisis relocation mechanism²⁴

1. Where, on the basis of substantiated information, in particular the information gathered by EASO pursuant to Regulation (EU) No 439/2010 and by the European Agency for the Management of Operational Cooperation at the External Borders established by Council Regulation (EC) No 2007/2004*, the Commission establishes that a Member State is confronted with a crisis situation jeopardizing the application of this Regulation²⁵ due to extreme pressure characterised by a large and disproportionate inflow of third-country nationals or stateless persons, which places significant demands on its asylum system, the crisis relocation mechanism referred to in paragraph 2 shall²⁶ be applied for the benefit of that Member State.

²⁴ **FR**, supported by **ES**, called for a better articulation between the provisions on the early warning mechanism (Article 33 of the Dublin Regulation) and the current proposal. **COM** noted that there was no intention to create an automatic link between the two mechanisms. It should be possible to apply the crisis relocation mechanism without activating the early warning mechanism.

NL, supported by **EL**, proposed to remove the condition of a crisis situation for activating the relocation mechanism from the current proposal, and to create a permanent and fair mechanism of relocation of all asylum seekers among Member States (irrespective of whether there is a “crisis situation” in a Member State).

²⁵ **BE, DE, FI** and **PL** sought clarifications of the wording "jeopardizing the application of this Regulation" and considered that the mechanism should apply in situations where asylum systems of Member States are jeopardized. **COM** noted this provision should be read together with recital 3 and Article 33(1) of the Dublin Regulation. Article 33(3) is not a pre-condition for application of relocation.

DE entered a scrutiny reservation.

²⁶ **FR** suggested replacing "shall" by "may".

2. Under the crisis relocation mechanism, a number of **applicants applications** for international protection **determined in accordance with this Regulation** shall be **relocated to examined** by the Member State of relocation in derogation from the principle set out in Article 3(1) according to which an application shall be examined by the Member State which the criteria set out in Chapter III indicate as being responsible²⁷. In addition, the detailed procedural rules set out in Annex IV²⁸ shall apply, in derogation from Articles 21, 22 and 29.²⁹
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 on the application of the crisis relocation mechanism for the benefit of a Member State.³⁰
4. In the delegated acts referred to in paragraph 3 the Commission shall:
 - (a) ascertain that there is a crisis situation referred to in paragraph 1 in the Member State benefiting from relocation,³¹
 - (b) determine the number of persons to be relocated from that Member State³²,
 - (c) determine the distribution of those persons between Member States by applying the formula for a distribution key referred to in Article 33b, and

²⁷ **BE, CZ, DE, FR** and **IT** questioned the proposal to derogate from the whole Chapter III rather than from the first entry criterion set out in Article 13(1) of the Dublin Regulation. **DE** raised a scrutiny reservation on paragraph 2. **COM** noted that the purpose of the proposal is to cover all types of crisis situations and not only those appearing in the frontline MS but agreed that situations relating to e.g. family reunifications could be specifically addressed.

²⁸ Annex IV was not discussed at previous meetings.

FI and **DE** considered that the Annex (or at least some parts) should form integral part of the text.

RO suggested, in its written comments, the introduction of a new subparagraph in paragraph 3 of Annex IV "The relevant information submitted to the contact points of the Member States shall also include the photo and the fingerprints of the applicant proposed for relocation by the beneficiary Member State."

²⁹ **RO** preferred the previous version of the text.

³⁰ **AT, BE, BG, CZ, ES, FI, FR, LT, LV, PL, PT** and **RO** raised concerns regarding the choice of delegated acts and called for bigger involvement of Member States/Council. **COM** explained the reasons for choosing delegated acts procedure which is the most efficient in handling emergency situations and at the same time provides the Council and the EP with the possibility to object to the act.

PT has a scrutiny reservation on the use of delegated acts.

³¹ **DE** entered a scrutiny reservation.

³² **DE** suggested deleting "from that Member State".

(d) set the period of application of the crisis relocation mechanism.

5. ³³When ascertaining whether there is a crisis situation referred to in point (a) of paragraph 4, the Commission shall establish that the crisis is of such a magnitude as to place extreme pressure even³⁴ on a well prepared asylum system which is functioning in line with all relevant aspects of the EU asylum acquis, also taking account of the size of the Member State concerned.

In making this assessment, the Commission shall, inter alia, take into account the total number of applicants for international protection and of irregular entries of third country nationals and stateless persons in the six months³⁵ preceding the adoption of the delegated act, the increase in such numbers compared to the same period in the previous year as well as the number of applications per capita in the Member State benefiting from relocation over the previous 18 months compared to the Union average.

6. For determining the number of persons to be relocated referred to in point (b) of paragraph 4, the Commission shall take into account the following, in particular:

(a) the number of applicants for international protection per capita in the Member State benefiting from relocation in the 18 months, and in particular in the six months, preceding the adoption of the delegated act compared to the Union average,³⁶

³³ **DE** and **PT** entered a scrutiny reservation.

AT, BG, CZ, EL, ES, FI, FR, LV, NL, PL and **RO** raised doubts on the criteria provided in paragraphs 5 and 6 and considered that some were rather vague and hard to measure. **COM** explained that the criteria are not exhaustive but considered to be the most relevant. This is an exceptional mechanism which should be used as a last resort when all other means of dealing with the crisis situations have been exploited (assistance from EASO, RABITs, etc.). **CZ** suggested adding the COM explanations to the text of the proposal.

³⁴ **CZ** questioned the use of word "even" and considered that the mechanism should only apply to Member States which are well prepared.

³⁵ **IT** considered that the 6-month period should be extended.

³⁶ **EL, ES** and **IT** considered that the number of irregular entries should also be taken into account in letter (a). **COM** clarified that the irregular entries criterion is used in paragraph 5 to determine whether there is a crisis but has not been included in paragraph 6 which sets out criteria for determining the number of persons to be relocated. The criteria in both paragraphs are not exhaustive ('inter alia' 'in particular')

EL suggested replacing "applicants for international protection" by "persons in clear need of international protection".

- (b) the capacity of the asylum system of that Member State, **notably its reception and administrative capacities**, and³⁷
- (c) the participation of the Member State in previous solidarity initiatives as well as the extent to which the Member State has benefited from previous EU solidarity measures.³⁸

The number of persons to be relocated shall not exceed 40%³⁹ of the number of applications lodged with that Member State in the six months preceding the adoption of the delegated act.

Article 33b

Distribution key

1. Relocation shall take place pursuant to the formula for a distribution key as set out in Annex III.⁴⁰
2. A Member State may, in exceptional circumstances, within three months of the entry into force of the delegated act referred to in Article 33a(3), notify the Council, the European Parliament and the Commission that it is temporarily unable to take part in the relocation process of up to 30 % of applicants allocated to it in accordance with that delegated act, giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union.

³⁷ **BG** and **PL** suggested adding reference to capacities to ensure protection of external borders and to integration programmes.

IT considered the additions were not appropriate.

AT, **EL**, **FI**, **FR** and **PL** raised doubts on the new text and requested further clarifications, **DE** entered a reservation. **RO** and **SI** supported the additions.

³⁸ **CZ** considered this text too vague.

³⁹ **EL** considered the percentage too low and suggested increasing it. **COM** explained that the percentage should on one hand help create a significant impact for the beneficiary MS and on the other hand not overburden the Member States of relocation.

⁴⁰ The distribution key was not discussed at previous meetings.

The Commission shall assess the reasons given and submit proposals to the Council and the European Parliament regarding **an extension for the requesting Member State of the time limit for relocating up to 30 % of the applicants allocated to this Member State by up to 12 months beyond the date referred to in the delegated act referred to in Article 33a(3) as the period of application of the crisis relocation mechanism. In case the Member State of relocation becomes itself a beneficiary of the relocation mechanism due to extreme pressure on its asylum system, this Member State should be totally freed of its previous relocation obligations.** ~~temporary suspension of the relocation of up to 30 % of applicants allocated to the Member State concerned in accordance with the delegated act referred to in Article 33a(3). Where justified, the Commission may propose to extend the time limit for relocating the applicants in the remaining allocation by up to 12 months beyond the date referred to in the delegated act as the period of application of the crisis relocation mechanism.~~⁴¹

3. The participation of a Member State to relocation pursuant to the distribution key is suspended where that Member State is a Member State benefiting from relocation.

⁴¹ **PL** and **RO** entered scrutiny reservations on the suspension mechanism. **BE, BG, DE, FI, IT, MT, NL** and **PL** considered that the new text was unclear notably with regard to the quotas of the MS to which the suspension and possibly exemption would apply. **CZ, NL** asked for clarifications of the last sentence and especially its coherence with paragraph 3.

Article 33c

Scope of the crisis relocation mechanism⁴²

1. Relocation shall only take place in respect of applicants who have lodged their application for international protection in a Member State confronted with a crisis situation referred to in Article 33a(1) and where that Member State would have otherwise been responsible pursuant to the criteria for determining the Member State responsible set out in Chapter III.⁴³
2. Relocation shall only be applied in respect of applicants belonging to nationalities for which the proportion of decisions granting international protection among decisions taken at first instance on applications for international protection as referred to in Chapter III of Directive 2013/32/EU is, according to the latest available updated quarterly Union-wide average Eurostat data, 75% or higher⁴⁴. In the case of stateless persons, the country of former habitual residence shall be taken into account. Quarterly updates shall only be taken into account in respect of applicants who have not already been identified as applicants who could be relocated in accordance with point 3 of annex IV.⁴⁵

⁴² **DE** suggested reflection on a possible widening of the scope of the proposal by including not only applicants for international protection but all persons in clear need of international protection, in order to prevent that persons in clear need of international protection elude relocation by not applying for protection or withdrawing their application after the relocation decision.

⁴³ **DE** entered a scrutiny reservation. **BE** considered that the text should be modified as in Art. 33a(2).

⁴⁴ **EL** and **IT** considered the percentage should be either reduced or deleted. **COM** explained that it should help prevent relocation of persons who would not have good chances of getting international protection.

⁴⁵ **EL** sought clarification of the last sentence. **COM** explained that persons who are already in the relocation procedure should not be taken into account.

Article 33d

Complementary measures to be taken by the Member State benefiting from relocation⁴⁶

1. Member State benefiting from relocation shall, on the date of entry into force of the delegated act referred to in Article 33a(3), present a roadmap to the Commission with measures to ensure the appropriate implementation of the crisis relocation mechanism. Where applicable, these measures shall be presented as part of a crisis management action plan pursuant to Article 33(3). The Member State benefiting from relocation shall fully implement these measures.
 2. The Commission shall be empowered to adopt a delegated act in accordance with Article 45 to suspend the application of the crisis relocation mechanism for the benefit of a Member State where the Member State benefiting from relocation does not comply with the obligations referred to in paragraph 1. The Commission shall first give the Member State concerned the opportunity to present its views. Such suspension shall not affect the transfers of applicants that are pending following approval of the Member State of relocation pursuant to point 4 of annex IV."
- (5) In Article 45, the following paragraphs are added:
- "6. The power to adopt delegated acts referred to in Article 33a and 33d shall be conferred on the Commission for a period of 5 years from [the date of entry into force of this Regulation – OPOCE should replace with exact date]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

⁴⁶ CZ considered that there is a need to establish a monitoring mechanism in view of the accomplishment of obligations resulting from the roadmaps

7. The delegation of power referred to in Article 33a and 33d may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
8. A delegated act adopted pursuant to Article 33a and 33d shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four weeks of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two weeks at the initiative of the European Parliament or of the Council. The delegated act shall be applicable for a maximum of two years."
- (6) New annexes III and IV as set out in the annex to this Regulation are added.⁴⁷

Article 2

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

The President

For the Council

The President

⁴⁷ **AT** and **DE** considered that a new Article should be added relating to prevention of secondary movements, which should address, inter alia, granting of benefits, extension of detention possibilities and procedural provisions.