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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]

(Text with EEA relevance)

{SWD(2020) 207 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

In the Political Guidelines of the Commission, President Ursula von der Leyen announced a New Pact on Migration and Asylum, involving a comprehensive approach to external borders, asylum and return systems, the Schengen area of free movement and the external dimension.

The New Pact on Migration and Asylum, presented together with this proposal for a new Regulation on Asylum and Migration Management[1], represents a fresh start on migration based on a comprehensive approach to migration management. This proposal puts in place a common framework for asylum and migration management at EU level as a key contribution to the comprehensive approach and seeks to promote mutual trust between the Member States. Based on the overarching principles of solidarity and a fair sharing of responsibility, the New Pact advocates integrated policy-making bringing together policies in the areas of asylum, migration, return, external border protection, the fight against migrants' smuggling and relations with key third countries reflecting a whole of government approach. It recognises that a comprehensive approach also means a stronger, more sustainable and tangible expression of the principle of solidarity and fair sharing of responsibility, which finds its balance in a broader context, widening the focus beyond the issue of which Member State is responsible for examining an application for international protection. These principles should therefore be applied to the whole of migration management, ranging from ensuring access to international protection to tackling irregular migration and unauthorised movements.

The challenges of migration management, ranging from ensuring a balance of efforts in dealing with asylum applications to ensuring a quick identification of those in need of international protection or effective return of those who are not in need of protection, should not have to be dealt with by individual Member States alone, but by the EU as a whole. In addition, the strain on Member States' asylum systems continues to put a heavy burden on Member States of first arrival as well as on the asylum systems of other Member States through unauthorised movements. The current migration system is insufficient in addressing these realities. In particular, there is currently no effective solidarity mechanism in place and no efficient rules on responsibility. A European framework that can manage the interdependence between Member States' policies and decisions is therefore required. This framework must take into account the ever-changing realities of migration, which have meant increased complexity and an intensified need for coordination.

This proposal for a new Regulation on Asylum and Migration Management aims at replacing the current Dublin Regulation and relaunches the reform of the Common European Asylum System (CEAS) through the establishment of a common framework that contributes to the comprehensive approach to migration management through integrated policy-making in the field of asylum and migration management, including both its internal and external components. This new approach anchors the existing system in a wider framework that is able to reflect the whole of government approach and ensure coherence and effectiveness of the actions and measures taken by the Union and its Member States. This approach also includes a new and more comprehensive mechanism for solidarity to ensure the normal functioning of

[1] OJ L […], […], p. […].

the migration system, as well as streamlined criteria and more efficient mechanisms for determining the Member State responsible for examining an application for international protection.

This proposal provides for a new solidarity mechanism that is flexible and responsive in design in order to be adjustable to the different situations presented by the different migratory challenges faced by the Member States, by setting solidarity measures from among which Member States can choose to contribute. This new approach to solidarity provides continuous and diverse support to Member States under pressure or risk of pressure and includes a specific process to address the specificities of disembarkations following search and rescue (SAR) operations. In addition, Member States will be able to offer voluntary contributions at any time. The Commission will ensure the coordination of such measures at all times.

This proposal also includes provisions to strengthen the return of irregular migrants. For this purpose, it introduces a mechanism to facilitate cooperation with third countries on return and readmission and which complements the mechanism established by Article 25a of the Visa Code Regulation (EU) 810/2019[2]. This new mechanism empowers the Commission to present to the Council a report identifying effective measures to incentivise and improve the cooperation with third countries to facilitate return and readmission, as well as cooperation among Member States for the same aim, while taking into due consideration the overall interests and relations with the third countries concerned. The Commission will rely on input of the European External Action Service and EU Delegations. The Commission and the Council will then consider any appropriate further actions to be implemented in that respect, within the limits of their respective competencies. This mechanism and the new EU Return Coordinator, supported by a network of high-level representatives, announced in the New Pact on Migration and Asylum, will contribute to a common strategic and coordinated approach on return and readmission among the Member States, the Commission and Union agencies.

Furthermore, the solidarity measures will also include new possibilities for Member States to provide assistance to each other in carrying out returns, in the form of return sponsorship. Under this new form of solidarity measure, Member States would commit to return irregular migrants on behalf of another Member State, carrying out all the activities necessary for this purpose directly from the territory of the benefitting Member State (e.g. return counselling, leading policy dialogue with third countries, providing support for assisted voluntary return and reintegration). Such activities are additional to the ones carried out by the European Border and Coast Guard Agency (EBCGA) by virtue of its mandate and notably include measures that the Agency cannot implement (e.g. offering diplomatic support to the benefitting Member State in relations with third countries). However, when return will not have been finalised within 8 months, the irregular migrants would be transferred to the territory of the Member State providing sponsorship with a view to continuing from there the efforts to enforce the return decisions.

The new approach to migration management also includes improving the rules on responsibility for examining an application for international protection, in order to contribute to reducing unauthorised movements in a proportionate and reasonable manner.

[2] Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code), OJ L 188, 12.7.2019, p. 25.

This proposal further establishes a governance framework built on national strategies of the Member States, which will feed into a European Strategy on Asylum and Migration Management that will set out the strategic approach to managing asylum and migration at the European level and on the implementation of asylum, migration, and return policies in accordance with the comprehensive approach.

Reform of the Common European Asylum System (CEAS)

The Pact builds on the Commission proposals to reform the CEAS from 2016 and 2018 and introduces additional new elements to ensure the balance needed for a common framework bringing together all aspects of asylum and migration policy. The proposed 2016 asylum reform consisted of seven legislative proposals: the recast Dublin Regulation[3], the recast Eurodac Regulation[4], the Regulation establishing the European Union Agency for Asylum[5], the Asylum Procedure Regulation[6], the Qualification Regulation[7], the recast Reception Conditions Directive[8] and the Union Resettlement Framework Regulation[9]. In September 2018, the Commission also tabled an amended proposal to the Regulation establishing the EU Agency for Asylum[10].

Whereas significant progress was made on a number of these proposals, and provisional political agreements were reached between the co-legislators on the proposals for the Qualification Regulation, the Reception Conditions Directive, the Union Resettlement Framework Regulation, the Eurodac Regulation and the first proposal establishing the EU Agency for Asylum, less progress was achieved on the proposals for the Dublin Regulation and the Asylum Procedure Regulation, mainly due to diverging views in the Council. There was also not sufficient support for agreeing on only some of the asylum reform proposals ahead of an agreement on the full reform.

Together with this proposal, the Commission is presenting a proposal amending the 2016 proposal for an Asylum Procedure Regulation[11] and the proposal for a Regulation introducing a screening[12] of third-country nationals and stateless persons at the external borders, which establish a seamless link between all stages of the migration procedure, including a new pre-entry phase as well as a quicker return of third-country nationals without a right to remain in the Union.

In addition, the Commission is presenting a proposal amending the 2016 proposal for recast Eurodac Regulation[13] to put in place a clear and consistent link between specific individuals and the procedures they are subjected to in order to better assist with the control of irregular migration and the detection of unauthorised movements and to support the implementation of the new solidarity mechanism.

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3 COM(2016) 270 final.
4 COM(2016) 194 final.
5 COM(2016) 271 final.
6 COM(2016) 467 final.
7 COM(2016) 466 final.
8 COM(2016) 465 final.
9 COM(2016) 468 final.
10 COM(2018) 633 final.
11 OJ L […], […], p. […].
12 OJ L […], […], p. […].
13 OJ L […], […], p. […].

Finally, the Commission is also presenting a proposal for a Regulation on the management of crisis situations in order to set out the tools necessary to deal with crisis situations and *force majeure*. This instrument aims at addressing exceptional situations of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State, or an imminent risk of such arrivals, being of such a scale and nature that it renders the Member State's asylum, reception or return system non-functional, and which risk having serious consequences for the functioning of, or result in the impossibility of applying, the Common European Asylum System and the migration management system of the Union, as well as providing for derogatory rules in situations of *force majeure*.

1.2. Objectives of the proposal

A comprehensive approach to migration management is required to build mutual trust between Member States, to ensure the consistency of the EU approach on asylum, migration management, external border protection and relations with relevant third countries, whilst recognising that the effectiveness of the overall approach depends on all components being jointly addressed and in an integrated manner. It also takes account of the recent judgments by the Court of Justice in joined cases C-715/17, C-718/17 and C-719/17, where the Court found that "the burdens […] must, in principle, be divided between all the other Member States, in accordance with the principle of solidarity and fair sharing of responsibility between the Member States, since, in accordance with Article 80 TFEU, that principle governs the Union's asylum policy".

The Commission proposed in 2016 a system where, when on the basis of the hierarchy of the responsibility criteria, a Member State was determined to be responsible for examining an application for international protection, that Member State would remain permanently responsible for examining any further applications or representations made by the same applicant. The system was supplemented with a compulsory and automatic corrective allocation mechanism that, based on a reference key, was triggered when a Member State was faced with disproportionate pressure, ensuring a clear and binding system of responsibility sharing between Member States. The European Parliament adopted its negotiation mandate on 16 November 2017, which included a proposal to replace the criterion of first entry and the default criterion of first application with an allocation system where the applicant would be able to choose to be allocated to one of the four Member States with the fewest applications. On the side of the Council, the Member States were unable to agree on a common approach and the negotiations stalled.

With a view to overcome the current deadlock and provide a wider and solid framework for the migration and asylum policies, the Commission intends to withdraw the 2016 proposal. This proposal repeals and replaces 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 Dublin III Regulation").

In particular, this proposal aims to:

- establish a common framework that contributes to the comprehensive approach to asylum and migration management based on the principles of integrated policy-making and of solidarity and fair sharing of responsibility;

- ensure sharing of responsibility through a new solidarity mechanism by putting in place a system to deliver solidarity on a continued basis in normal times and assist Member States with effective measures (relocation or return sponsorship and other contributions aimed at strengthening the capacity of Member States in the field of asylum, reception and return and in the external dimension) to manage migration in practice where they are faced with migratory pressure. This approach also includes a specific process for solidarity to be applied to arrivals following search and rescue operations;
- enhance the system's capacity to determine efficiently and effectively a single Member State responsible for examining an application for international protection. In particular, it would limit the cessation of responsibility clauses as well as the possibilities for shift of responsibility between Member States due to the actions of the applicant, and significantly shorten the time limits for sending requests and receiving replies, so as to ensure that applicants will have a quicker determination of the Member State responsible and hence a quicker access to the procedures for granting international protection;
- discourage abuses and prevent unauthorised movements of the applicants within the EU, in particular by including clear obligations for applicants to apply in the Member State of first entry or legal stay and remain in the Member State determined as responsible. This also requires proportionate material consequences in case of non-compliance with their obligations.

1.3. Consistency with existing policy provisions in the policy area

The system for determining which Member State is responsible for examining an application for international protection is the cornerstone of the Common European Asylum System. It is fully linked with the legal and policy instruments in the field of asylum, in particular asylum procedures, standards for the qualification for individuals for international protection, and reception conditions, as well as resettlement.

This proposal is also consistent with the rules concerning border control at the external borders as set out in the Schengen Borders Code and contributes to the objective of effective external border management as a necessary corollary to the free movement of persons within the Union. By widening the scope of the measures to address migratory challenges, the proposal further reduces the need to reintroduce border controls at the internal borders.

In addition, consistency is ensured with the effective European integrated border management at Union and national level as defined in the Regulation on the European Border and Coast Guard. European integrated border management is a necessary corollary to the free movement of persons within the Union and is a fundamental component of an area of freedom, security and justice. It is also central to this proposal and contributes to the implementation of the principle of integrated policy to improve the comprehensive approach to migration management foreseen in this proposal.

This proposal is fully consistent with the Communication on the New Pact on Migration and Asylum and the Roadmap of initiatives accompanying it, including the proposal for a targeted amendment of the Asylum Procedure Regulation and the Regulation introducing a screening, which ensure that migrants are subject to an identity, health and security screening and are channelled to either a return or an asylum procedure including, where relevant, the asylum or return border procedure set out in the amending proposal of the Asylum Procedure

Regulation. The proposal is also consistent with the proposal amending the 2016 proposal for recast Eurodac Regulation[14].

This proposal is also fully consistent with the Migration Preparedness and Crisis Blueprint that provides an operational framework for monitoring and anticipation of migration flows and the migratory situation, building resilience as well as organising a coordinated response to a migration crisis. In particular, the proposal makes full use of the reports issued and the activities of the network set-up under the Blueprint.

The proposal further strengthens the EU return legal framework and policy, by reinforcing the capacity of the Union to act on cooperation with third countries through a mechanism empowering the Commission to consider and put forward measures to improve such cooperation, going beyond the measures already foreseen in the Visa Code.

Consistency is also ensured with the provisional political agreements already reached on the Qualification Regulation, the recast Reception Conditions Directive, the Union Resettlement Framework Regulation, and the Regulation establishing the European Union Agency for Asylum, which the Commission fully supports. Since the objectives underpinning these proposals remain valid today, an agreement on these proposals should be reached as soon as possible.

However, since no agreement could be found on the proposal for a Dublin Regulation published on 4 May 2016, and since this proposal includes a new structured solidarity mechanism and also takes into account other changes proposed in 2016 aimed primarily at making the procedures leading to a Dublin transfer more effective, such as take back notifications and limiting shift of responsibility, it is necessary to withdraw that proposal.

The Commission also proposed a crisis relocation mechanism in September 2015[15], in order to design a structural solution for dealing with crisis situations such as those in Greece and Italy that led to the two relocation decisions adopted by the Council in September 2015[16]. Since the proposal for a Regulation on Asylum and Migration Management includes provisions to address the realities of migratory flows through relocation and return sponsorship in times of migratory pressure, and since the proposal for a Regulation addressing situations of crisis and *force majeure* in the field of migration and asylum also foresees specific rules for relocation and return sponsorship to structurally deal with situations of crisis, the Commission intends to withdraw the proposal for a crisis relocation mechanism of September 2015 and repeal the Temporary Protection Directive[17].

1.4. Consistency with other Union policies

This proposal is consistent with the comprehensive, long-term approach to migration management set out in the New Pact on Migration and Asylum, involving putting migration policy at the heart of relations with third country partners; integrating the management of

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14 OJ L […], […], p. […].

15 COM (2015) 450 final.

16 Council Decision 2015/1523 of 14 September 2015 and Council Decision (EU 2015/1601 of 22 September 2015.

17 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7.8.2001, p. 12.

external borders into the wider EU's migration management policy; building seamless, fair and efficient procedures for asylum and return and reinforcing the Schengen area of free movement based on trust between Member States. A key part of this approach is promoting legal pathways to the EU to attract talents for the EU labour market and providing protection to those in need through resettlement and other complementary pathways to protection and developing dedicated policies to help the integration of third-country nationals into European societies.

By putting in place a framework that addresses the whole of route approach to migration management through building partnerships with third countries, this Regulation contributes to the EU's objectives of an ambitious and broad-ranging external policy based on partnership with third countries. This also ensures consistency with the Unions humanitarian goals expressed through support for refugees in third countries.

This proposal is consistent with the proposal for screening and in particular contributes to the strong safeguards for the fundamental rights through the monitoring mechanism provided for therein. In the proposal of the regulation establishing the obligation of screening at the external borders of third-country nationals who, in principle, do not fulfil entry conditions - a new monitoring mechanism is proposed to ensure that fundamental rights are observed throughout the screening and that any allegations of the breach of fundamental rights are properly investigated. This monitoring is part of the governance provisions of the proposed Regulation, which set out that Member States should integrate the results of their national monitoring mechanism under the Screening Regulation in their national strategies provided for in this proposed Regulation. In addition, the annual Migration Management Report will also include the results of the reporting on monitoring and propose improvements where appropriate.

In order to support solidarity measures focused on relocation and the subsequent transfers, in addition to the transfers covered by the procedures for determination of responsibility of Member States, this proposal foresees lump sums to be paid to Member States and is fully consistent with the EU budget to incentivise such measures and the efficient application of the Regulation.

This proposal further strengthens policies in the field of security. Through specific rules set out in this Regulation, responsibility for examining an application for international protection will be quickly established where the person presents a risk to national security and public order, and will prevent any further transfers of such persons to other Member States. Therefore, the proposal also reinforces the security objective provided for in the proposal for a Screening Regulation, under which such a security check will be mandatory.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. Legal basis

This proposal repeals and replaces Regulation (EU) No 604/2013 and widens the scope to include a common framework that contributes to the comprehensive approach to migration management, in addition to introducing a broader approach to solidarity, and should therefore be adopted on the appropriate legal basis, namely Article 78, second paragraph, point (e) and Article 79, second paragraph, point (c) of the Treaty on the Functioning of the European Union (TFEU), in accordance with the ordinary legislative procedure.

2.2. Variable geometry

Ireland is bound by Regulation (EU) No 604/2013, following the notification of their wish to take part in the adoption and application of that Regulation based on the Protocol 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 (TEU) and to the TFEU[18].

In accordance with the above-mentioned Protocol, Ireland may decide to take part in the adoption of this proposal. They also have this option after adoption of the proposal.

Under the Protocol on the position of Denmark, annexed to the TEU and the TFEU, Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of the TFEU (with the exception of "measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas"). However, given that Denmark applies the current Dublin Regulation, on the basis of an international agreement that it concluded with the EC in 2006[19], it shall, in accordance with Article 3 of that Agreement, notify the Commission of its decision whether or not to implement Parts III, V and VII of the amended Regulation.

2.3. Impact of the proposal on non EU Member States associated to the Dublin system

In parallel to the association of several non-EU Member States to the Schengen acquis, the Union has concluded several agreements associating these countries also to the Dublin/Eurodac acquis:

– the agreement associating Iceland and Norway, concluded in 2001;
– the agreement associating Switzerland, concluded on 28 February 2008;
– the protocol associating Liechtenstein, concluded on 7 March 2011.

In order to create rights and obligations between Denmark – which as explained above has been associated to the Dublin/Eurodac acquis via an international agreement – and the associated countries mentioned above, two other instruments have been concluded between the Union and the associated countries[20].

In accordance with the three above-cited agreements, the associated countries shall accept the Dublin/Eurodac acquis and its development without exception. They do not take part in the adoption of any acts amending or building upon the Dublin acquis (including therefore this proposal) but have to notify to the Commission within a given time-frame of their decision

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18 The same applies to the United Kingdom during the transition period under the Withdrawal Agreement.

19 Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L66, 8.3.2006, p. 38.

20 Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (concluded on 24.10.2008, OJ L 161, 24.06.2009, p. 8) and Protocol to the Agreement between the Community, Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State, Iceland and Norway, OJ L 93, 3.4.2001.

whether or not to accept the content of that act, once approved by the European Parliament and the Council. In case Norway, Iceland, Switzerland or Liechtenstein do not accept an act amending or building upon the Dublin/Eurodac acquis, the respective agreements will be terminated, unless the Joint/Mixed Committee established by the agreements decides otherwise, by unanimity.

The proposed Regulation has a wider scope beyond the subject matter of the above-cited agreements, setting out a comprehensive approach based on a common framework for migration management whilst preserving the core provisions relating to the determination of responsibility for examining an application for international protection, which remain a key part of the Regulation. In order to ensure that the agreements with Denmark and the Associated Countries regulating their participation in the Dublin system are preserved, Denmark, Norway, Iceland, Switzerland and Liechtenstein will, should this act be accepted, only be bound by Parts III, V and VII of this Regulation.

2.4. Subsidiarity

Title V of the TFEU on the Area of Freedom, Security and Justice confers certain powers on these matters to the European Union. These powers must be exercised in accordance with Article 5 of the Treaty on the European Union, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the European Union.

This proposal streamlines the current rules set out in Regulation (EU) No 604/2013 and aims at ensuring the correct application of these rules which will limit unauthorised movements of third-country nationals between Member States, issues which are cross-border by nature. These rules are complemented with a new solidarity mechanism to put in place a system to address situations where Member States are faced with migratory pressure. This approach also foresees the inclusion of solidarity measures applied to arrivals following search and rescue operations in order to provide support to Member States dealing with the challenges of such arrivals.

Achievement of these objectives requires action at the EU level since they are cross-border by nature. It is clear that actions taken by individual Member States cannot satisfactorily reply to the need for a common EU approach to a common problem.

2.5. Proportionality

In accordance with the principle of proportionality, as set out in Article 5 of the Treaty on European Union, this Regulation does not go beyond what is necessary in order to achieve its objectives.

As regards the comprehensive approach based on a common framework, this Regulation establishes the key principles of such an approach underpinned by a monitoring and governance structure necessary to ensure its implementation. Through the principles of integrated policy-making and those relating to solidarity and fair sharing of responsibility, Member States have a shared interest to ensure the coherent implementation of migration management at EU level. These provisions do not go beyond what is necessary to achieve the objective of addressing the situation effectively.

As regards the streamlining of the rules for determining the Member State responsible for examining an application for international protection, the changes proposed are limited to what is necessary to enable an effective operation of the system, both in relation to the swifter access of applicants to the procedure for granting international protection and to the capacity of Member States' administrations to apply the system.

As regards the introduction of a new solidarity mechanism, Regulation (EU) No 604/2013 does not provide, in its current form, for tools to address situations where Member States are faced with migratory pressure. In addition, the current Regulation does not address the specific situation presented by arrivals following search and rescue operations. The provisions on solidarity that the proposal introduces seek to address this gap. These provisions do not go beyond what is necessary to achieve the objective of addressing the situation effectively.

2.6. Choice of the instrument

Given that the existing Dublin mechanism was established by means of a Regulation, the same legal instrument is used to put in place a comprehensive approach based on a common framework for effective migration management, streamlining the Dublin mechanism and complementing it with a solidarity mechanism.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Collection of knowledge of implementation and application of existing legislation

3.1. Evidence-based policy-making

The Commission has conducted an analysis of the situation and its results are contained in more detail in the Staff Working Document that accompanies the New Pact on Migration and Asylum and its legislative and non-legislative proposals. It highlights the recent developments in the field of migration management and underlines that the relaunch of the reform of the system for determining the Member State responsible for examining an application for international protection and a new way of burden sharing are key elements to a fresh start.

The analysis highlights that, although the number of irregular arrivals to the Union has dropped dramatically by 92% since the height of the crisis in 2015, there are still a number of structural challenges that put Member States' asylum, reception and return systems under strain. These include an increasing proportion of applicants for international protection without genuine claims who are unlikely to receive protection in the EU with a resulting increased administrative burden and delays in granting protection for those in genuine need of protection as well as a persistent phenomenon of onward movement of migrants within the EU. Moreover, the challenges for Member States' authorities in ensuring the safety of applicants and their staff when facing the COVID-19 crisis must also be acknowledged.

Whilst the number or irregular arrivals has decreased over time, the share of migrants arriving from countries with recognition rates lower than 20% has risen from 13% in 2015 to 55% in 2018. At the same time, there has also been an increasing share of complex cases, which are more resource consuming to process, as the arrival of third-country nationals with clear international protection needs in 2015-2016 has been partly replaced by mixed arrivals of persons of nationalities with more divergent recognition rates. Furthermore, notwithstanding the EU-wide decrease in irregular arrivals, the number of applications for international protection has continued to climb, reaching a fourfold difference to the number of arrivals.

This trend points towards applicants not applying in the first Member State of arrival, multiple applications for international protection within the EU, and the need for reform of the current Dublin system. Finally, the challenges posed by disembarkations following search and rescue operations persist. In 2019, half of all irregular arrivals by sea were disembarked following search and rescue operations putting a particular strain on certain Member States solely due to their geographical location.

The analysis further details that third-country nationals whose applications for international protection are rejected, representing around 370,000 persons in the EU every year[21], need to be channelled into the return procedure. According to the statistics available to the Commission, this represents around 80% of the total number of return decisions issued every year[22]. The increasing proportion of applicants for international protection unlikely to receive such protection in the EU results in an increased burden to process not only the applications, but also the return of irregular migrants who never applied for international protection or whose applications have been rejected, including as manifestly unfounded or inadmissible. And it naturally affects the speed in granting the status to those who are in genuine need of international protection.

The analysis highlights that there are important structural weaknesses and shortcomings in the design and implementation of the European asylum and migration policy. Member States' asylum and return systems remain largely not harmonised, thus creating differences in the protection standards, inefficiencies in the procedures and encouraging unauthorised movements of migrants across Europe to seek better reception conditions and prospects for their stay with unwanted effects for the Schengen area. Migration management can be seen through the perspective of different policy areas, each with their own focus and actors. Each policy area seeks to address individual challenges, without recognising how this affects the overall framework of migration management and how it fits into the comprehensive framework that is necessary to benefit from a well-managed system. Overall, the evidence paper acknowledges that there is a lack of integrated policy-making, which brings together the different policies into a coherent whole.

The evidence paper further highlights that the lack of a sustainable system which works for all Member States has consequences for the possibility to ensure immediate and real reactivity to external factors. Namely, there is no structured solidarity mechanism in the current Dublin system or in the CEAS in general, even though the pressure on individual Member States can vary greatly and shift suddenly and in an unpredictable way.

Furthermore, the lack of a coherent EU approach on the link between termination of legal stay due to a negative asylum decision and the beginning of return procedures including requesting readmission to third countries, decreases the effectiveness of the entire migration management system. In addition, there is insufficient or unreliable data, or the data sources are not efficiently exploited enough to give a complete picture. Quantitative data provided in January 2020 by Member States concerning the intensity of unauthorised movements observed in their country was scarce; contributions from nineteen Member States instead pointed to the number

[21] The average of negative asylum decisions by the determining authorities in 2015-2019 in the EU-27.

[22] The ratio between the average number of negative asylum decisions and the average number of return decisions issued in the period 2015-2019 (456,625) is 81.6% of the total number of return decisions issued.

of applications for international protection received, as well as in some cases to the number of incoming/outgoing Dublin transfer requests.

These challenges can only be addressed by making the European asylum and migration system more efficient, comprehensive and sustainable by viewing the EU's migration management as a set of interlocking policies based on integrated policy-making and rules, where the effectiveness and shortcomings of each single part affect the system as a whole.

In addition, the analysis points to the fact that a wider solidarity concept is needed. This solidarity concept should be compulsory in nature in order to be able to respond predictably and effectively to the changing realities with an increasing share of mixed migration flows towards the Union, and to ensure fair sharing of responsibility in line with the Treaty. Support from one Member State to another is necessary not only in the form of relocation of applicants that are not in the border procedure but also in certain cases of other groups, such as applicants that are in the border procedure and also beneficiaries of international protection. In addition, Member States should have the possibility to benefit from solidarity in the field of return to be better able to manage the increasing share of mixed migration flows. The evidence further suggests that solidarity between Member States that have taken the form of contributions to capacity building and other areas of support have proved effective in assisting a Member State facing migratory pressure. Lessons learned from previous and ongoing solidarity schemes, highlight that solidarity should also be available on a constant basis in the context of disembarkations following SAR operations. The evidence paper also underlines that migratory pressure stems from different factors and should be evaluated according to a number of criteria, which extend beyond the asylum field to the migratory situation of Member States, as well as to that of the EU as a whole (holistic qualitative assessment).

In addition, in certain cases, support to the proper functioning of the asylum, reception and return systems as well as border management has also proved effective. Member States' mutual support and support at EU level for improving and reinforcing the relations with certain third countries, in particular as regards readmission, could also be of real assistance to some Member States in certain cases.

Finally, the evidence paper highlights the need for simplified and more efficient rules for the procedure to determine the Member State responsible for examining an application for international protection. The challenges related to the current Dublin system's rules on responsibility are addressed through a number of measures in the new proposal. Some of these were already proposed in 2016, and some are based on the current Dublin rules.

Member States' responsibilities for migration also need to be adjusted to take account of the new situation and be fairly shared, in view of the wider framework for migration management. Common rules for how to handle mixed migratory flows, either at arrival or when third-country nationals who avoided the checks at external borders are apprehended inland, are needed to establish their identity, as well as to carry out health and security checks, building on the practices that have already been developed within the hotspot approach. Further and extensive support should come from the EU agencies and by means of EU funding both in helping Member States to provide the solidarity contributions they will have to provide and in managing their different responsibilities for migratory flows.

3.2. Ex-post evaluations/fitness checks of existing legislation

Following its commitment announced in the European Agenda for Migration, the Commission commissioned external studies on the evaluation of the Dublin system in 2016.[23] The evaluation assessed the effectiveness, efficiency, relevance, consistency and EU added value of the Dublin III Regulation. It examined the extent to which the Regulation addressed its objectives, the wider policy needs of the EU and the needs of the target stakeholders.[24] The evaluation included an in-depth study on the practical implementation of the Dublin III Regulation in the Member States.[25] The main findings are summarised below, and set out in further detail in the Staff Working Document that accompanies the New Pact and its proposals. In addition, the European Parliament requested the European Council on Refugees and Exiles (ECRE) to carry out a study on 'Dublin Regulation on international protection applications'[26] in February 2020.

The relevance of the Dublin III Regulation

The system for determining the Member State responsible for examining an application for international protection is a cornerstone of the EU asylum acquis and its objectives remain valid. An EU instrument for establishing criteria and a mechanism for determining the Member State responsible is essential as long as separate national asylum systems exist within the Union. Without this, Member States would have to rely on ad hoc agreements as in pre-Dublin times, which would make the determination of responsibility between Member States extremely difficult. The evaluation concluded that no national or bilateral instrument could provide the same effect overall, which could result in a failure to address applications for international protection falling between national jurisdictions. Mixed views were expressed regarding the actual impact of the Regulation, which should ensure a swift access to the asylum procedures for the applicant and lead to a long-term strategy discouraging multiple applications. This would further provide efficiency to the asylum system by preventing misuse and would reduce the overall costs.

The recent European Parliament study also confirms the need for a system where one Member State is responsible for examining an application for international protection on the basis of common criteria and related evidentiary requirements, despite its current weaknesses.

Implementation of the Regulation

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23 Evaluation and implementation reports available at: http://ec.europa.eu/dgs/home-affairs/what-wedo/policies/asylum/examination-of-applicants/index_en.htm.

24 The evaluation was based on desk research, quantitative analysis and consultations with legal/policy advisors in a total of 19 Member States (BE, BG, CH, CY, EL, FR, HR, HU, IT, LT, LV, MT, NL, NO, PL, RO, SE, SI, SK). Information from the other 12 Member States participating in the Dublin III Regulation was not received in time to be included in the report.

25 A broad range of stakeholders were consulted, including: Dublin units in national asylum administrations, legal/policy advisors, NGOs, lawyers/legal representatives, appeal and review authorities, law enforcement authorities, detention authorities, applicants and/or beneficiaries of international protection. A total of 142 interviews were conducted. Field visits were conducted in 15 Member States (AT, BE, DE, EL, FR, HU, LU, IT, MT, NL, NO, PL, SE, UK, CH), whereas in 16 (BG, CY, CZ, DK, EE, ES, FI, HR, IE, LT, LV, PT, RO, SI, SK, LI) phone interviews were conducted.

26 Evaluation report available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642813/EPRS_STU(2020)642813_EN.pdf.

The most significant problem highlighted in the external study commissioned by the Commission, which has also been confirmed by Member States and stakeholders in the consultations held since the Commission adopted its proposal in 2016, was the lack of consistent and correct implementation across the Member States. It was further concluded that the design of the Dublin III Regulation had a number of shortcomings that made it more difficult to achieve its main objectives. The hierarchy of criteria as set out in the Dublin III Regulation does not take into account the realities faced by the migration systems of the Member States, nor does it aim for a balance of efforts. The method of allocating responsibility delays access to the asylum procedure. Under the current system applicants may wait up to 10 months (in the case of "take back" requests) or 11 months (in the case of "take charge" requests), before the procedure for examining the claim for international protection starts. This hinders the system's aim to ensure an applicant's swift access to the asylum procedure. In addition, multiple applications for international protection remain a common problem in the EU. In 2019, 32% of the applicants had already launched previous applications in other Member States. This suggests that the Regulation has had little or no effect on reaching the objective of preventing applicants from pursuing multiple applications, thereby reducing unauthorised movements.

It is also clear that the Dublin III Regulation was not designed to deal with situations of migratory pressure or a fair sharing of responsibility across the Member States. Nor does it take into account the situation of migration management of mixed migratory flows and the consequent pressure these flows put on Member States' migration systems.

3.3. Stakeholder consultations

The political profile of migration over recent years and the negotiations on the 2016 proposals mean that there has already been a rich and detailed debate on the issues covered by this Regulation. In addition, the Commission consulted the European Parliament, Member States, and stakeholders on a number of occasions to gather their views on the New Pact on Migration and Asylum.

Particular attention was focussed on engagement with the European Parliament that has repeatedly expressed the importance of a holistic approach to a sustainable asylum and migration policy. The need for a holistic approach to migration was also supported in the position papers presented by several political groups in the European Parliament and a general call was made for a swift conclusion on the proposals for migration and asylum. The European Parliament has expressed the view that a holistic approach to migration should take into account the EU external dimension, the ability to tackle the root causes of migration and develop new partnerships with third countries, a stable search and rescue mechanism, and support resettlements, legal pathways and integration measures.

The European Parliament also called for a system of compulsory solidarity that includes relocation and the need for long-term solutions and strong solidarity on asylum measures. This has also emerged in the context of the coronavirus pandemic, in order to avoid humanitarian crises.

Ahead of the launch of the New Pact on Migration and Asylum, the Commission has engaged in continuous discussions with all Member States and thereafter throughout the preparation of the Pact. Member States understood the need for progress in solving the weaknesses of the current system, the need for a new system of fair sharing of responsibility to which all Member States would be under the obligation to contribute, strong border protection, importance of the external dimension of migration, and improved returns. The Commission's

intention of finding new forms of solidarity, for instance through return sponsorship, was generally welcomed during the consultation phase.

In parallel, the Romanian, Finnish, Croatian and German Presidencies have held both strategic and technical exchanges on the future of various aspects of migration policy that further emphasised these points.

In the framework of several Council fora organised under the Finnish Presidency, including the Tampere 2.0 conference held on 24-25 October 2019 in Helsinki and the Salzburg Forum held in Vienna on 6-7 November 2019, Member States welcomed the intention of the European Commission to relaunch the Dublin reform in order to find new forms of solidarity to which all Member States can make meaningful contributions. Member States underlined that solidarity measures should go hand in hand with measures of responsibility. Furthermore, they underlined the urgent need to combat unauthorised movements within the EU as well as to enforce returns for those who are not in need of international protection.

The Commission has also taken into consideration many recommendations of national and local authorities[27], non-governmental and international organisations, such as UNHCR[28], IOM[29], as well as think tanks and academia, on how to envisage a fresh start and address the current migration challenges in accordance with human rights standards. In their view, a fresh start on the reform should revise certain rules for the determination of responsibility and provide for a mechanism of compulsory solidarity including for persons disembarked further to a SAR operation. Non-governmental organisations also advocate for a common understanding of responsibility among Member States and called for the revised Dublin rules to include a more permanent relocation mechanism[30].

The Commission has also taken into consideration the stakeholders' views on the need to build a comprehensive approach to migration management through a holistic approach to migration and asylum. The stakeholders consulted have expressed their views on how to elaborate a new principle of solidarity and fair sharing of responsibility, and have generally welcomed the Commission's intention to relaunch the reform of the Dublin Regulation in order to find new forms of solidarity.

Commissioner Johansson also held, on several occasions, targeted consultations with civil society organisations, relevant local non-governmental organisations in the Member States as well as social and economic partners. In this consultation process, specific recommendations focused on a common approach to child-specific standards following to the Communication of 2017 on Children in Migration[31] and the need to build a system which is fair and ensures that fundamental rights will be protected.

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27 For example, Berlin Action Plan on a new European Asylum Policy, 25 November 2019, signed by 33 organisations and municipalities.

28 UNHCR Recommendations for the European Commission's proposed Pact on Migration and Asylum, January 2020.

29 IOM Recommendations for the new European Union Pact on Migration and Asylum, February 2020.

30 CEPS Project Report, *Search and rescue, disembarkation and relocation arrangements in the Mediterranean. Sailing Away from Responsibility?*, June 2019.

31 The Initiative for Children in Migration called for a common approach to address the issue of missing (unaccompanied and separated) children, to establish effective mechanisms to tackle the risks of trafficking, and the adoption of child-specific standards for asylum procedures.

The Commission also took into account the contributions and studies of the European Migration Network[32], which have been launched at its initiative and which over the last years have produced several specialised studies and ad hoc queries.

3.4. Fundamental rights

This proposal is fully compatible with and respects fundamental rights and general principles of the Union as well as international law.

In particular, better informing asylum seekers about the application of this Regulation and their rights and obligations within it will on the one hand enable them to better defend their rights and on the other hand contribute to diminish the level of unauthorised movements as asylum seekers will be better inclined to comply with the system. The effectiveness of the right to judicial remedy will be increased, by specifying the scope of the appeal and setting out the objective for courts or tribunals to take decisions within a harmonised time limit. A request for suspensive effect must be decided within a harmonised time limit.

The right to liberty and freedom of movement will be reinforced by shortening the time limits under which a person may be detained in an exceptional case prescribed under the Regulation and only if it is in line with the principles of necessity and proportionality.

The respect for private and family life will be reinforced, in particular by enlarging the scope of the Regulation to include siblings as well as families formed in transit countries.

The rights of unaccompanied minors have also been strengthened through better defining the implementation of the principle of the best interests of the child and by setting out a mechanism for making a best interests of the child-determination in all circumstances implying the transfer of a minor. The time limit for sending a take charge request is also adapted to take into account the complexity of cases concerning family tracing and reunification. The rules relating to evidence have been streamlined in order to ensure quick determination of responsibility and to further strengthen the right to family unity. Equally, relocation of unaccompanied minors will always have to be given priority and Member States will receive a higher financial incentive in that respect in the form of a contribution.

In order to prevent unauthorised movements, the proposal limits the right to material reception conditions in the Member State where the applicant is required to be present, with the exception of the obligation for all Member States to ensure a standard of living in accordance with Union law, including the EU Charter, and international obligations.

4. BUDGETARY IMPLICATIONS

The total financial resources necessary to support the implementation of this proposal amount to EUR 1 113.500 million foreseen for the period 2021-2027. This would cover the operational costs including the transfer costs in the form of lump sums for transfers under this proposed Regulation and for transfers in connection with relocation in the context of the solidarity provisions, relating to relocation of applicants for international protection, beneficiaries of international protection and illegally staying third-country nationals. Higher financial incentives are foreseen for the relocation of unaccompanied minors.

[32] All studies and reports of the European Migration Network are available at: https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network_en.

The financial needs are compatible with the current multiannual financial framework and also entail the use of special instruments as defined in the Council Regulation (EU, Euratom) No 1311/2013[33].

5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

This Regulation sets out a common framework that seeks to recognise that the challenge of irregular arrivals of migrants in the Union should not have to be assumed by individual Member States alone, but by the Union as a whole. The Regulation contributes to the comprehensive approach by promoting integrated policy-making within its field of application.

The proposal retains the link between responsibility in the field of asylum and the respect by Member States of their obligations to protect the external border, taking into account international obligations of carrying out search and rescue operations, subject to exceptions designed to protect family life and the best interests of the child. The current criteria for determining responsibility are essentially preserved, but targeted changes are proposed, notably to strengthen family unity by extending the definition of family member, clarifying a Member State's responsibility following search and rescue operations, and introducing a new criterion relating to the possession of educational diplomas.

The main amendments made intend to, on the one hand, improve the efficiency of the system, notably by reinforcing the responsibility of a given Member State for examining an application for international protection, once that responsibility has been established. On the other hand, the amendments serve to limit unauthorised movements, in particular by deleting certain rules on cessation or shift of responsibility between Member States.

The system is supplemented with a new approach to solidarity, based on a framework that allows for real time assessment of the situation in the Member States and the EU. In addition, procedural rules are set out to facilitate relocation and return sponsorship as a means of solidarity.

5.1. Setting out a common framework based on the comprehensive approach to migration management

In order to implement the common framework, the proposal sets out a number of principles that should guide the implementation of migration management including the need for integrated policy-making and ensuring the principle of solidarity and fair sharing of responsibility. A governance structure is set out, where Member States will have national strategies in place regarding the implementation of this framework, including on contingency planning to prevent the build-up of migratory pressure and also on monitoring of fundamental rights.

These strategies will contribute to a new European Strategy on the implementation of the different elements covering the comprehensive approach and will set out the strategic approach to migration management at Union level, enabling a forward looking perspective on the risks and opportunities present in migration management and how best to deal with them.

[33] Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020, OJ L 347, 20.12.2013, p. 884.

The Commission will annually publish a Migration Management report that will include a short-term projection of the evolution of the migratory situation and allow for a timely response to evolving trends in migration and responses to the results of the monitoring framework. This framework will be complemented by a system of regular monitoring of the migratory situation through situational reporting by the Commission. This work will be supported by the activities under the Migration Preparedness and Crisis Blueprint, notably the monitoring and reporting activities provided therein.

5.2. Solidarity mechanism

- **Solidarity measures Member States will be under the obligation to ensure in situations of migratory pressure**

A new mechanism is put in place that is able to deliver solidarity capable of addressing migratory pressure. The solidarity mechanism is flexible in design so that it can be applied to situations with different migratory flows and realities. Solidarity contributions that Member States will be under the obligation to provide consist of either relocation or return sponsorship and there is also the possibility to contribute to measures aimed at strengtehning the capacity of Member States in the field of asylum, reception and return and in the external dimension. Member States will be under the obligation to contribute through a share calculated on the basis of a distribution key based on 50% GDP and 50% population. The share of the benefitting Member State shall be included in the distribution key so as to ensure that all Member States are giving effect to the principle of fair sharing of responsibility.

Relocation

The proposed scope of relocation includes applicants for international protection that are not subject to the border procedure pursuant to Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]. Any meaningful links between the person to be relocated and the relocating Member State is built in as a procedural element. In cases of migratory pressure, relocation will also include beneficiaries of international protection for up to three years from when such persons were granted international protection.

Return sponsorship

The proposed Regulation includes the possibility for Member States to choose to provide their solidarity contribution in the form of return sponsorship. Under return sponsorship, a Member State commits to support a Member State under migratory pressure by carrying out the necessary activities to return individually identified illegally staying third-country nationals from the territory of a Member State benefitting from a compulsory solidarity measure, in close coordination. For this purpose, the sponsoring Member State would for instance provide counselling on return and reintegration to illegally staying third-country nationals, assist the voluntary return and reintegration of irregular migrants using their programme and resources, lead or support the policy dialogue with third countries for facilitating readmission of irregular migrants present in the benefitting Member State and ensure the delivery of a valid travel document. However, if these efforts prove to be unsuccessful after 8 months, the

sponsoring Member State would transfer the persons concerned and continue its efforts to return them in accordance with the Return Directive 2008/115/EC[34].

The activities covered by return sponsorship are additional to those carried out by the European Border and Coast Guard Agency and they notably include activities that the Agency cannot implement by virtue of its mandate (e.g. offering diplomatic support to the benefitting Member State in relations with third countries). Where Member States indicate that they will undertake return sponsorship, they shall also indicate the nationalities of the third countries for which they are willing to support the return: this is to ensure that sponsorship is used to return third-country nationals for which the Member States concerned can bring added value.

- **Solidarity measures following disembarkations from search and rescue operations**

The annual Migration Management Report will set out the short-term projections anticipated on all routes for disembarkations following such operations and the solidarity response that would be required to contribute to the needs of the Member States of disembarkation relating to both relocation of applicants not in the border procedure or capacity needs of the concerned Member States. The report will also indicate the share of required solidarity measures for each Member State and specify the total number of third-country nationals covered by the solidarity measures. Other Member States shall then indicate which type of solidarity measure they intend to take either through relocation of applicants or measures in the field of strengthening capacities or the external dimension.

Where the contributions by the Member States are sufficient, the Commission shall adopt an implementing act, which shall establish a solidarity pool with the aim of providing support to the challenges faced by the Member State of disembarkation.

Where the indications by Member States fall short of the needs identified in the Migration Management Report, the Commission will adopt an implementing act setting out the shares of each Member State according to the distribution key for relocation. Where Member States have indicated that they intend to take measures in the field of capacity or the external dimension the Commission will establish the measures in the implementing act. If however the indications from Member States to take measures in the field of capacity or the external dimension amount to over 30% of the required number of persons to be relocated, the Commission will ensure that the Member States will have to contribute half of their share to relocation. In such cases, Member States may also choose to contribute through return sponsorship.

Throughout the year as disembarkations take place, the Commission will use the pool and prepare lists to distribute the persons to be relocated to the contributing Member States from each disembarkation or group of disembarkations. Where the solidarity pools risk being insufficient due to an increasing number of disembarkations, the Commission will amend the implementing act setting out an additional amount of projected measures for relocation for the particular benefitting Member State or Member States, which should be capped to 50% of the amount set out in the implementing acts. In addition, where a Member State of disembarkation risks coming under migratory pressure, its solidarity pool may be used for the purpose of relocating persons quickly until the implementing act foreseen for situations of

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

pressure is adopted. The pools of other Member States of disembarkation may also be used for this purpose as long as this does not jeopardise the functioning of their pool.

Where the Migration Management Report identifies that Member States have particular challenges due to the presence on their territory of third-country nationals who are applicants for international protection and are vulnerable, regardless of how they crossed the external borders, the solidarity pool may also be used for the purpose of quickly relocating such persons.

Compulsory solidarity in situations of migratory pressure

Assessment of migratory pressure and the solidarity response

Where a Member State has informed the Commission that it considers being under migratory pressure, including a risk of pressure as a result of a large number of arrivals, including where these arrivals stem from search and rescue operations, the Commission will make an assessment of the situation taking into account the particular situation prevailing in the Member State, on the basis of a number of criteria and the information available, including the information gathered under the Migration Preparedness and Crisis Blueprint. Where the assessment indicates that a Member State is under migratory pressure, it will identify the overall needs of the Member State and indicate the appropriate measures needed to address the situation and all other Member States shall contribute through measures of relocation or return sponsorship or a combination of such measures. Where a Member State is itself a benefitting Member State, it is not under the obligation to contribute to solidarity. Member States shall indicate the type of contributions they will provide in the Solidarity Response Plans, which are sent to the Commission.

In addition, where the report on migratory pressure indicates a need for other solidarity measures aimed at strengthening its capacity in the field of asylum, reception or return or measures in the area of the external dimension in order to address migratory flows, the contributing Member States may indicate such measures in their Solidarity Response Plans instead of relocation or return sponsorship. Such measures could take different forms ranging from assistance with putting in place enhanced reception capacity including infrastructure or other systems to enhance the reception conditions of asylum seekers. This could also include financing directed at managing the asylum and migration situation in a specific third country that is generating particular migratory flows to a Member State. In the field of return, such measures could include, for instance, the financial or other assistance focussed on infrastructure and facilities that may be necessary to improve the enforcement of returns or providing material or transport means for carrying out operations. Where the Commission assesses that they are proportionate to the share of the Member State and in line with the objectives set out in the Asylum and Migration Fund, these contributions will be specified in the implementing act.

If, however, the indications from Member States to take measures in the field of capacity or the external dimension amount to over 30% of the required number of persons to be relocated or subject to return sponsorship, the Commission will ensure that the Member States will have to contribute half of their share to these measures.

A Member State may also request a reduction in its share where it can demonstrate that over the preceding 5 years, it has been responsible for more than twice the EU per capita average of applications for international protection, and can request a deduction of 10% of its share. The deduction will then be distributed proportionately among the other Member States.

Commission implementing acts on solidarity measures

Within two weeks from the submission of the Solidarity Response Plans, the Commission will adopt an implementing act setting out the solidarity measures to be taken by Member States for the benefit of the Member State under migratory pressure.

The implementing act shall set out the total number of persons to be relocated and/or to be subject to return sponsorship, taking into account the capacity and needs of the benefitting Member State in the area of asylum and return identified in the assessment and specify the share of each Member State on the basis of a distribution key adjusted in line with the requests made by Member States who have demonstrated that they qualify for a deduction.It shall also specify the measures in the field of capacity building, operational support, or measures in the external dimension to be taken by a contributing Member State instead of relocation or return sponsorship.

The implementing act shall be adopted according to Article 8 of Regulation (EU) No 182/2011, whereby on duly justified imperative grounds of urgency due to the situation of migratory pressure in a benefitting Member States, the Commission is empowered to adopt immediately applicable implementing acts which remain in force for a period not exceeding 1 year.

- **General provisions on Solidarity**

Solidarity Forum

In situations of migratory pressure, where solidarity contributions indicated by Member States in the Solidarity Response Plans do not correspond to the needs identified in the assessment on migratory pressure, the Commission convenes the Solidarity Forum, which will provide an opportunity for Member States to adjust the category of their contributions in their Solidarity Response Plans.

Where projected solidarity contributions are not sufficient to ensure the efficient functioning of the solidarity support for disembarkations following SAR operations, the Commission will convene the Solidarity Forum before it adopts the additional implementing act foreseen in that Article.

Other forms of solidarity

A Member State may, at any time, request voluntary solidarity support from other Member States. Any Member State may make voluntary contributions for the benefit of that Member State, including by means of relocation of applicants for international protection subject to the border procedure in line with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] or of illegally staying third-country nationals. In addition, Member States may on a volunatary basis make contributions aimed at strengthening the capacity of Member States in the field of asylum, reception and return and in the external dimension. Member States which have contributed or plan to contribute with solidarity measures shall inform the Commission through the submission of a Solidarity Support Plan annexed to this proposal. Where such voluntary contributions correspond to the measures set out in an implementing act on migratory pressure, the level of contributions by Member States will be deducted from the share indicated in the implementing act.

Relocation procedure

The proposed Regulation sets out the procedures to be followed before and after relocation and the obligations of both the benefitting Member State and the Member State of relocation. The obligations of the benefitting Member State include provisions relating to the identification and registration of the persons concerned for the purpose of relocation and the obligation to ensure that the person concerned does not present a danger to national security of public order. Where the benefitting Member State concludes that the person concerned presents such security risk, that person shall not be relocated. Where the person to be relocated is an applicant, the benefitting Member State must also primarily assess that it cannot itself be determined as the Member State responsible pursuant to the criteria linked to family reunification or residence/visa before applying the relocation procedure, as these persons would have a strong link to the benefitting Member State and should not be relocated elsewhere. The obligations of the Member State of relocation include the obligation to relocate a person which is not a danger to national security or public order, and, where the person is an applicant, to carry out the procedure for determining the Member State responsible when this was not done in the benefitting Member State. Where the person is a beneficiary for international protection, the Member State of relocation must automatically grant the respective status granted by the benefitting Member State, in order to ensure that the beneficiary retains his or her status and corresponding rights even though he or she is relocated to another Member State.

Return sponsorship procedure

A Member State that commits to provide return sponsorship has to engage and closely coordinate with the benefitting Member State in order to determine the specific support measures that are necessary for carrying out the return of individually identified illegally staying third-country nationals from the territory of the benefitting Member State. Based on the result of the coordination between the Member States concerned, the sponsoring Member State would take the necessary measures aimed at facilitating and successfully concluding return procedures, for instance by providing support for assisted voluntary return and reintegration, leading or supporting policy dialogue with specific third countries, ensuring the identification and delivery of valid travel documents or organising the practical arrangements for return operations such as charter or scheduled flights. At this stage, the benefitting Member State remains nonetheless responsible for carrying out return procedures (e.g. issuance of the return decision, appeals) in relation to the individuals concerned and shall apply the Return Directive.

The sponsoring Member States would implement the supporting measures during a pre-determined period of time, set at 8 months. This period would start running from the day in which the Commission adopts an implementing act on solidarity in situations of migratory pressure. If the sponsored third-country nationals are not yet subject to a return decision when the implementing act is adopted, the period would be counted starting from when the return decisions are issued or, if the persons unsuccessfully applied for asylum and consequently received return decisions, from when the third-country nationals no longer have a right to remain and are not allowed to remain.

When despite the joint efforts by the Member States concerned returns have not been successfully carried out, at the expiry of the 8-month period, the third-country nationals would be transferred onto the territory of the sponsoring Member State. For this purpose, the procedure described in the previous section would apply *mutatis mutandis*.

- **Financial support**

The proposal provides for financial incentives for relocation. A financial contribution of EUR 10,000 will be given per relocated person (including following return sponsorship if return

was not successful). The financial contribution will be EUR 12,000 when the relocated person is an unaccompanied minor. In addition, a financial contribution of EUR 500 will be given to cover the transfer costs of persons in connection with relocation and with the procedures set out in this Regulation.

- **Amendments to other legislative instruments**

The proposal includes an amendment to the Regulation (EU) XXX/XXX [*Asylum and Migration Fund*] to introduce the financial provisions underpinning this proposed Regulation.

The proposal also includes an amendment to Directive 2003/109/EC (Long-Term Residence Directive). For those who are in need of protection, the prospect of obtaining long-term resident status in a shorter period of time will be an important contribution towards facilitating the full and quick integration of beneficiaries of international protection in the Member State of residence. Beneficiaries of international protection should be able to obtain long-term resident status in the Member State which granted them international protection after three years of legal and continuous residence in that Member State, while ensuring that for other conditions to obtain the status, beneficiaries of international protection will be subject to the same conditions as other third-country nationals.

5.3. Streamlining the procedure for determining responsibility and improving its efficiency

With the aims of ensuring that the procedure for determining responsibility for examining an application for international protection operates smoothly and in a sustainable way, that it fulfils the aim of quick access to the examination procedure and to protection for those in need of it, and that unauthorised movements are discouraged, a number of improvements to the system are proposed, in particular:

- The obligation of an applicant to apply in the Member State either of first irregular entry or, in case of legal stay, in that Member State, as proposed in 2016. The applicant is then required to be present in that Member State during the determination procedure, and in the Member State responsible following that determination. The aim is to ensure an orderly management of flows, to facilitate the determination of the Member State responsible, and hence quicker access to the procedure for granting international protection, and to prevent unauthorised movements. With this amendment, it is clarified that an applicant neither has the right to choose the Member State of application nor the Member State responsible for examining the application. In case of non-compliance with this obligation, an applicant will only be entitled to material reception rights where he or she is required to be present.
- Persons granted immediate protection pursuant to Regulation (EU) XXX/XXX [*Regulation addressing situations of crisis and force majeure in the field of asylum and migration*] are included in the definition of applicant to ensure that even though their applications are pending (suspended), the Member State that granted that protection status is not relieved of its obligation to determine the Member State responsible for examining the application and respect the criteria and mechanisms set out in this Regulation. Where another Member State is determined as the Member State responsible, the immediate protection should cease when the transfer is carried out. Should the persons concerned move to other Member States and apply for international protection there, the Member State responsible would also be obliged to take them back pursuant to the procedures set out in this Regulation.
- As proposed in 2016, before applying the criteria for determining the Member State responsible, the Regulation introduces an obligation for Member States to ensure that a

person is not a danger to national security or public order of a Member State before a transfer is carried out. This obligation applies to any person subject to the procedures set out in the Regulation, even though the person was not subject to screening or has for any other reason not been through a security check. It is for the first Member State in which the application was registered to assess whether there are reasonable grounds to consider the applicant a danger to national security or public order of a Member State before applying the responsibility criteria. If the assessment shows that the applicant presents a security risk, that Member State shall become the Member State responsible. In the situation that the person concerned presents a security risk after responsibility is already determined, the transfer may take place, provided that the specific provision referring to the exchange of security related information is respected.

- The requirement of the cooperation of applicants is enhanced with a view to ensure that the authorities have all information needed to determine the Member State responsible and whether the applicant qualifies for international protection, as well as to prevent the circumvention of the rules, notably absconding. The Regulation sets out proportionate obligations for applicants concerning the timely provision of all the elements and information relevant for determining the Member State responsible and also concerning cooperation with the competent authorities of the Member States. It is also explicitly stated that applicants have an obligation to be present and available for the authorities of the relevant Member State and respect the transfer decision. Non-fulfilment of the legal obligations set out in the Regulation will have proportionate procedural consequences for the applicant, such as preclusion of accepting information that was unjustifiably submitted too late.
- The Regulation enlarges the scope of the information which must be provided to applicants. The personal interview serves to facilitate the process of determining the Member State responsible by helping in gathering all the necessary information. However, it should not result in delaying the procedure when the applicant has absconded or when sufficient information has already been provided.
- The rule that the criteria shall be determined on the basis of the situation obtaining when the application was first registered with a Member State, applies to all criteria, including those regarding family members and minors. A clear cut-off deadline for providing relevant information will enable a quick assessment and decision.
- The Regulation maintains the extended definition of family members proposed in 2016 in two ways: by (1) including the sibling or siblings of an applicant and by (2) including family relations which were formed after leaving the country of origin but before arrival on the territory of the Member State. Siblings are a targeted but important category where the possibility to prove and check the family relation is relatively easy and thus the potential for abuse is low. The extension to cover families formed during transit reflects recent migratory phenomena such as longer stays outside the country of origin before reaching the EU, including in refugee camps. These targeted extensions of the family definition aim to provide for a meaningful link between the person concerned and the Member State responsible, taking into account also the wider implications for the families concerned; they are therefore also expected to reduce the risk of unauthorised movements or absconding for persons covered by the extended rules.
- The rules on evidence necessary for establishing responsibility are made more flexible, in particular in order to facilitate efficient family reunification. The rules clarify that formal proof, such as original documentary evidence and DNA testing, should not be necessary in cases where the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

- A number of modifications are proposed to streamline and strengthen the responsibility criteria set out in Articles 19, 21, and 22. In order to enhance the stability of the system, in Article 19 the criteria of responsibility regarding visas and residence documents have been clarified and their application extended to 3 years respectively. Equally, in Article 21 on irregular entry, the clause envisaging a cessation of responsibility after 12 months from irregular entry has been extended to 3 years, and the clause in relation to illegal stay has been deleted since this provision proved to be complicated to apply in practice because of the difficulty to provide the necessary proof. In relation to the criterion of visa waived entry, the exception concerning subsequent entries to a Member States for which the need for an entry visa is waived is also deleted, in line with the approach that the Member State of first entry should, as a rule, be responsible and in view of preventing unauthorised movements after entry.
- In addition, a new criterion related to the possession a diploma or qualification issued by an educational institution established by a Member State is added in order to ensure that an applicant can have his or her application examined by a Member State in which he or she has meaningful links. Such diploma or qualification should represent, as a minimum, secondary education equivalent to level 2 of the International Standard Classification of Education, operated by an education establishment or higher education institution defined in Directive (EU) 2016/801 of the European Parliament and of the Council[35], in accordance with national law or administrative practice of the Member States.
- The Regulation establishes shorter time limits for the different steps of the procedure, in order to speed up the determination procedure to grant swifter access of an applicant to the asylum procedure. This concerns time limits for submitting and replying to a take charge request, with the exception of unaccompanied minors, making a take back notification, and taking a transfer decision.
- Expiry of deadlines will only in certain cases result in a shift of responsibility between Member States. Such shifts appear to have encouraged circumventing the rules and obstructing the procedure. The rules leading to shift of responsibility where the time limit for sending a take back notification has expired have therefore been deleted, as well as the rules leading to the cessation or shift of responsibility due to the applicant's behaviour. If the applicant absconds from a Member State in order to evade a transfer to the Member State responsible, the transferring Member State will be able to use the remaining time of the 6-month time limit to carry out the transfer from the moment the applicant becomes available to the authorities again.
- As proposed in 2016, take back requests have been transformed into simple take back notifications, given that the responsible Member State will be evident from the Eurodac hit. The notified Member State will now be given the opportunity to rapidly object to the notification on the grounds that the limited rules for shift and cessation of responsibility apply, i.e. where another Member State did not transfer the person to the Member State responsible in time, applied the discretionary clause, or the person concerned left the territory of the Member States in compliance with a return decision. This will be a significant tool to address unauthorised movements, considering the current prevalence of take back rather than take charge requests.

[35] Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, OJ L 132, 21.5.2016, p. 21.

- An obligation for the Member State responsible has been added to take back a beneficiary of international protection or a resettled person, who made an application or is irregularly present in another Member State. This obligation will give Member States the necessary legal tool to enforce transfers back, which is important to limit unauthorised movements.
- The rules on remedies have been adapted in order to considerably speed up and harmonise the appeal process. In addition to clarifying the applicant's right to request suspensive effect of a transfer decision during an appeal or review, the proposal establishes a specific, short time limit for the courts or tribunals to take such decisions.
- The conciliation procedure as a dispute resolution mechanism, which has not been formally used since it was foreseen in the 1990 Dublin Convention (albeit in a slightly different form), is amended in order to make it more operational and facilitate its use.
- The objectives of the existing early warning and preparedness mechanism will be taken over by the new European Union Agency for Asylum, as set out notably in Chapter 5 on monitoring and assessment and Chapter 6 on operational and technical assistance in the proposal on a European Union Agency for Asylum. The deletion of that mechanism proposed in 2016 has therefore been maintained in this Regulation.
- A network of responsible units is set up and facilitated by the European Union Agency for Asylum to enhance practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance.
- In relation to unaccompanied minors, the proposal clarifies that the Member State where the minor first lodged his or her application for international protection will be responsible, unless it is demonstrated that this is not in the best interests of the minor. This rule will allow a quick determination of the Member State responsible and thus allow swift access to the procedure for this vulnerable group of applicants, also in view of the shortened time limits proposed.
- The provision on guarantees for unaccompanied minors is adapted to make the best interests assessment more operational. Thus, before transferring an unaccompanied minor to another Member State, the transferring Member State shall make sure that that Member State will take the necessary measures under the Asylum Procedure Regulation and the Reception Conditions Directive without delay. It is also stipulated that any decision to transfer an unaccompanied minor must be preceded by an assessment of his/her best interests, to be done swiftly by qualified staff.

2020/0279 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[36],

Having regard to the opinion of the Committee of the Regions[37],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Union, in constituting an area of freedom, security and justice, should ensure the absence of internal border controls for persons and frame a common policy on asylum, immigration and management of the external borders of the Union, based on solidarity between Member States, which is fair towards third-country nationals.

(2) To this end, a comprehensive approach is required with the objective of reinforcing mutual trust between Member States which should bring together policy in the areas of asylum and migration management and towards relations with relevant third countries, recognising that the effectiveness of such an approach depends on all components being jointly addressed and in an integrated manner.

(3) This Regulation should contribute to that comprehensive approach by setting out a common framework for the actions of the Union and of the Member States in the field of asylum and migration management policies, by elaborating on the principle of solidarity and fair sharing of responsibility in accordance with Article 80 of the Treaty on the Functioning of the European Union (TFEU). Member States should therefore take all necessary measures, *inter alia*, to provide access to international protection and adequate reception conditions to those in need, to enable the effective application of the rules on determining the Member State responsible for examining an application for international protection, to return illegally staying third-country nationals, to

[36] OJ C , , p. .
[37] OJ C , , p. .

prevent irregular migration and unauthorised movements between them, and to provide support to other Member States in the form of solidarity contributions, as their contribution to the comprehensive approach.

(4) The common framework should bring together the management of the Common European Asylum System and that of migration policy. The objective of migration policy should be to ensure the efficient management of migration flows, the fair treatment of third-country nationals residing legally in Member States and the prevention of, and enhanced measures to combat, illegal migration and migrant smuggling.

(5) The common framework is needed in order to effectively address the increasing phenomenon of mixed arrivals of persons in need of international protection and those who are not and in recognition that the challenge of irregular arrivals of migrants in the Union should not have to be assumed by individual Member States alone, but by the Union as a whole. To ensure that Member States have the necessary tools to effectively manage this challenge in addition to applicants for international protection, irregular migrants should also fall within the scope of this Regulation. The scope of this Regulation should also include beneficiaries of international protection, resettled or admitted persons as well as persons granted immediate protection.

(6) In order to reflect the whole of government approach and ensure coherence and effectiveness of the actions and measures taken by the Union and its Member States acting within their respective competencies, there is a need for integrated policy-making in the field of asylum and migration management, including both its internal and external components, which is part of the comprehensive approach.

(7) Member States should have sufficient human and financial resources and infrastructure to effectively implement asylum and migration management policies and should ensure appropriate coordination between the relevant national authorities as well as with the national authorities of the other Member States.

(8) Taking a strategic approach, the Commission should adopt a European Asylum and Migration Management Strategy on the implementation of asylum and migration management policies. The Strategy should be based on relevant reports and analyses produced by Union agencies and on the national strategies of the Member States.

(9) National strategies of the Member States should include information on contingency planning and on the implementation of the principles of integrated policy-making and of solidarity and fair sharing of responsibility of this Regulation and legal obligations stemming therefrom at national level.

(10) In order to ensure that an effective monitoring system is in place to ensure the application of the asylum acquis, the results of the monitoring undertaken by the European Union Asylum Agency and Frontex, of the evaluation carried out in accordance with Council Regulation No 1053/2013 as well as those carried out in line with Article 7 of Regulation (EU) XXX/XXX [*Screening Regulation*] should also be taken into account in these strategies.

(11) Bearing in mind the importance of ensuring that the Union is prepared and able to adjust to the developing and evolving realities of asylum and migration management, the Commission should annually adopt a Migration Management Report setting out the likely evolution of the migratory situation and the preparedness of the Union and the Member States to respond and adapt to it. The Report should also include the

results of the reporting on monitoring foreseen in the national strategies and should propose improvements where weaknesses are apparent.

(12) In order to ensure that the necessary tools are in place to assist Member States in dealing with challenges that may arise due to the presence on their territory of third-country nationals that are vulnerable applicants for international protection, regardless of how they crossed the external borders, the Report should also indicate whether the said Member States are faced with such challenges. Those Member States should also be able to rely on the use of the 'solidarity pool' for the relocation of vulnerable persons.

(13) For the effective implementation of the common framework and to identify gaps, address challenges and prevent the building up of migratory pressure, the Commission should monitor and regularly report on the migratory situation.

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

(15) To strengthen cooperation with third countries in the area of return and readmission of illegally staying third-country nationals, it is necessary to develop a new mechanism, including all relevant EU policies and tools, to improve the coordination of the different actions in various policy areas other than migration that the Union and the Member States may take for that purpose. That mechanism should build on the analysis carried out in accordance with Regulation (EU) 810/2019 of the European Parliament and of the Council[38] or of any other information available, and take into account the Union's overall relations with the third country. That mechanism should also serve to support the implementation of return sponsorship.

(16) In order to ensure a fair sharing of responsibility and a balance of effort between Member States, a solidarity mechanism should be established which is effective and ensures that applicants have swift access to the procedures for granting international protection. Such a mechanism should provide for different types of solidarity measures and should be flexible and able to adapt to the evolving nature of the migratory challenges facing a Member State.

(17) Given the need to ensure the smooth functioning of the solidarity mechanism established in this Regulation, a Solidarity Forum comprising the representatives of all Member States should be established and convened by the Commission.

(18) Given the specific characteristics of disembarkations arising in the context of search and rescue operations conducted by Member States or private organisations whether under instruction from Member States or autonomously in the context of migration, this Regulation should provide for a specific process applicable to people disembarked

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

following those operations irrespective of whether there is a situation of migratory pressure.

(19) Given the recurring nature of disembarkations from search and rescue operations on the different migratory routes, the annual Migration Management Report should set out the short-term projections of disembarkations anticipated for such operations and the solidarity response that would be required to contribute to the needs of the Member States of disembarkation. The Commission should adopt an implementing act establishing a pool of solidarity measures ('the solidarity pool') with the aim of assisting the Member State of disembarkation to address the challenges of such disembarkations. Such measures should comprise applicants for international protection that are not in the border procedure or measures in the field of strengthening of capacity in the field of asylum, reception and return, or operational support, or measures in the external dimension.

(20) In order to provide a timely response to the specific situation following disembarkations from search and rescue operations, the Commission, with the assistance of Union Agencies, should facilitate the swift relocation of eligible applicants for international protection who are not in the border procedure. Under the coordination of the Commission, the European Union Asylum Agency and the European Border and Coast Guard Agency should draw up the list of eligible persons to be relocated indicating the distribution of those persons among the contributing Member States.

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

(22) The overall contribution of each Member State to the solidarity pool should be determined through indications by Member States of the measures by which they wish to contribute. Where Member States contributions are insufficient to provide for a sustainable solidarity response the Commission should be empowered to adopt an implementing act setting out the total number of third-country nationals to be covered by relocation and the share of this number for each Member State calculated according to a distribution key based on the population and the GDP of each Member State. Where the indications from Member States to take measures in the field of capacity or the external dimension would lead to a shortfall of greater than 30% of the total number of relocations identified in the Migration Management Report, the Commission should be able to adjust the contributions of these Member States which should then contribute half of their share identified according to the distribution key either by way or relocation, or when so indicated, through return sponsorship.

(23) In order to ensure that support measures are available at all times to address the specific situation of disembarkations from search and rescue operations, where the number of disembarkations following search and rescue operation have reached 80% of the solidarity pools for one or more of the benefitting Member States, the Commission should adopt amended implementing acts increasing the total number of contributions by 50%.

(24) The solidarity mechanism should also address situations of migratory pressure in particular for those Member States which due to their geographical location are exposed to or likely to be exposed to migratory pressure. For this purpose, the Commission should adopt a report identifying whether a Member State is under migratory pressure and setting out the measures that could support that Member State in addressing the situation of migratory pressure.

(25) When assessing whether a Member State is under migratory pressure the Commission, based on a broad qualitative assessment, should take account of a broad range of factors, including the number of asylum applicants, irregular border crossings, return decisions issued and enforced, and relations with relevant third countries. The solidarity response should be designed on a case-by-case basis in order to be tailor-made to the needs of the Member State in question.

(26) Only persons who are more likely to have a right to stay in the Union should be relocated. Therefore, the scope of relocation of applicants for international protection should be limited to those who are not subject to the border procedure set out in Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*].

(27) The solidarity mechanism should include measures to promote a fair sharing of responsibility and a balance of effort between Member States also in the area of return. Through return sponsorship, a Member State should commit to support a Member State under migratory pressure in carrying out the necessary activities to return illegally staying third-country nationals, bearing in mind that the benefitting Member State remains responsible for carrying out the return while the individuals are present on its territory. Where such activities have been unsuccessful after a period of 8 months, the sponsoring Member States should transfer these persons in line with the procedures set out in this Regulation and apply Directive 2008/115/EC; if relevant, Member States may recognise the return decision issued by the benefitting Member State in application of Council Directive 2001/40[39]. Return sponsorship should form part of the common EU system of returns, including operational support provided through the European Border and Coast Guard Agency and the application of the coordination mechanism to promote effective cooperation with third countries in the area of return and readmission.

(28) Member States should notify the type of solidarity contributions that they will take through the completion of a solidarity response plan. Where Member States are themselves benefitting Member States they should not be obliged to make solidarity contributions to other Member States. At the same time, where a Member State has incurred a heavy migratory burden in previous years, due to a high number of applications for international protection it should be possible for a Member State to request a reduction of its share of the solidarity contribution to Member States under migratory pressure where such contribution consists of relocation or return sponsorship. That reduction should be shared proportionately among the other Member States taking such measures.

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

[39] Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149, 2.6.2001, p. 34.

these Member States in order to ensure that they contribute half of their share to relocation or return sponsorship.

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

(31) A distribution key based on the size of the population and of the economy of the Member States should be applied as a point of reference for the operation of the solidarity mechanism enabling the determination of the overall contribution of each Member State.

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

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

(34) It is appropriate that a clear and workable method for determining the Member State responsible for the examination of an application for international protection should be included in the Common European Asylum System[40]. That method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

(35) This Regulation should be based on the principles underlying Regulation (EU) No 604/2013 of the European Parliament and of the Council[41] while developing the

[40] As set out by the European Council at its special meeting in Tampere on 15 and 16 October 1999.

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

principle of solidarity and fair sharing of responsibility as part of the common framework. To that end, a new solidarity mechanism should enable a strengthened preparedness of Member States to manage migration, to address situations where Member States are faced with migratory pressure and to facilitate regular solidarity support among Member States.

(36) This Regulation should apply to applicants for subsidiary protection and persons eligible for subsidiary protection in order to ensure equal treatment for all applicants and beneficiaries of international protection, and consistency with the current Union asylum acquis, in particular with Regulation (EU) XXX/XXX [*Qualification Regulation*].

(37) Persons granted immediate protection pursuant to Regulation (EU) XXX/XXX [*Regulation addressing situations of crisis and force majeure in the field of asylum and migration*] should continue to be considered as applicants for international protection, in view of their pending (suspended) application for international protection within the meaning of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]. As such, they should fall under the scope of this Regulation and be considered as applicants for the purpose of applying the criteria and mechanisms for determining the Member State responsible for examining their applications for international protection or the procedure for relocation as set out in this Regulation.

(38) In order to limit unauthorised movements and to ensure that the Member States have the necessary tools to ensure transfers of beneficiaries of international protection who entered the territory of another Member State than the Member State responsible without fulfilling the conditions of stay in that other Member State to the Member State responsible, and to ensure effective solidarity between Member States, this Regulation should also apply to beneficiaries of international protection. Likewise, this Regulation should apply to persons resettled or admitted by a Member State in accordance with Regulation (EU) XXX/XXX [*Union Resettlement Framework Regulation*] or who are granted international protection or humanitarian status under a national resettlement scheme.

(39) At the same time, and given the importance of facilitating the full integration of beneficiaries of international protection in the Member State of residence, the prospect of obtaining long-term resident status in a shorter period of time should be provided for. Beneficiaries of international protection should be able to obtain long-term resident status in the Member State which granted them international protection after three years of legal and continuous residence in that Member State. As regards other conditions to obtain the status, beneficiaries of international protection should be required to fulfil the same conditions as other third-country nationals. Council Directive 2003/109/EC[42] should therefore be amended accordingly.

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

[42] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 016, 23.1.2004, p. 44.

(41) Directive XXX/XXX/EU [*Reception Conditions Directive*] of the European Parliament and of the Council[43] should apply to the procedure for the determination of the Member State responsible as regulated under this Regulation, subject to the limitations in the application of that Directive.

(42) Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] of the European Parliament and of the Council[44] should apply in addition and without prejudice to the provisions concerning the procedural safeguards regulated under this Regulation, subject to the limitations in the application of that Regulation.

(43) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.

(44) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Charter of Fundamental Rights of the European Union, respect for family life should be a primary consideration of Member States when applying this Regulation.

(45) In order to prevent that persons who represent a security risk are transferred among the Member States, it is necessary to ensure that the Member State where an application is first registered does not apply the responsibilty criteria or the benefitting Member State does not apply the relocation procedure where there are reasonable grounds to consider the person concerned a danger to national security or public order.

(46) The processing together of the applications for international protection of the members of one family by a single Member State should make it possible to ensure that the applications are examined thoroughly, the decisions taken in respect of them are consistent and the members of one family are not separated.

(47) The definition of a family member in this Regulation should include the sibling or siblings of the applicant. Reuniting siblings is of particular importance for improving the chances of integration of applicants and hence reducing unauthorised movements. The scope of the definition of family member should also reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The definition should therefore include families formed outside the country of origin, but before their arrival on the territory of the Member State. This limited and targeted enlargement of the scope of the definition is expected to reduce the incentive for some unauthorised movements of asylum seekers within the EU.

(48) In order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent on account of the applicant's pregnancy or maternity, state of health or old age, should be a binding responsibility criterion. When the

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43 Directive XXX/XXX/EU (full text)

44 Directive XXX/XXX/EU (full text)

applicant is an unaccompanied minor, the presence of a family member or relative on the territory of another Member State who can take care of him or her should also become a binding responsibility criterion. In order to discourage unauthorised movements of unaccompanied minors, which are not in their best interests, in the absence of a family member or a relative, the Member State responsible should be that where the unaccompanied minor's application for international protection was first registered, unless it is demonstrated that this would not be in the best interests of the child. Before transferring an unaccompanied minor to another Member State, the transferring Member State should make sure that that Member State will take all necessary and appropriate measures to ensure the adequate protection of the child, and in particular the prompt appointment of a representative or representatives tasked with safeguarding respect for all the rights to which they are entitled. Any decision to transfer an unaccompanied minor should be preceded by an assessment of his or her best interests by staff with the necessary qualifications and expertise.

(49) The rules on evidence should allow for a swifter family reunification than until now. It is therefore necessary to clarify that formal proof, such as original documentary evidence and DNA testing, should not be necessary in cases where the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility for examining an application for international protection.

(50) Where persons are in possession of a diploma or other qualification, the Member State where the diploma was issued should be responsible for examining their application. This would ensure a swift examination of the application in the Member State with which the applicant has meaningful links based on such a diploma.

(51) Considering that a Member State should remain responsible for a person who has irregularly entered its territory, it is also necessary to include the situation when the person enters the territory following a search and rescue operation. A derogation from this responsibility criterion should be laid down for the situation where a Member State has relocated persons having crossed the external border of another Member State irregularly or following a search and rescue operation. In such a situation, the Member State of relocation should be responsibile if the person applies for international protection.

(52) Any Member State should be able to derogate from the responsibility criteria in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection registered with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation.

(53) In order to ensure that the procedures set out in this Regulation are respected and to prevent obstacles to the efficient application of this Regulation, in particular in order to avoid absconding and unauthorised movements between Member States, it is necessary to establish clear obligations to be complied with by the applicant in the context of the procedure, of which he or she should be duly informed in a timely manner. Violation of those legal obligations should lead to appropriate and proportionate procedural consequences for the applicant and to appropriate and proportionate consequences in terms of his or her reception conditions. In line with the Charter of Fundamental Rights of the European Union, the Member State where such an applicant is present should in any case ensure that the immediate material needs of that person are covered.

(54) In order to limit the possibility for applicants' behaviour to lead to the cessation or shift of responsibility to another Member State, rules allowing for cessation or shift of responsibility where the person leaves the territory of the Member States for at least three months during examination of the application or absconds to evade a transfer to the Member State responsible for more than 18 months should be deleted. The shift of responsibility when the time limit for sending a take back notification has not been respected by the notifying Member State should also be removed in order to discourage circumventing the rules and obstruction of procedure. In situations where a person has entered a Member State irregularly without applying for asylum, the period after which the responsibility of that Member State ceases and another Member State where that person subsequently applies becomes responsible should be extended, to further incentivise persons to comply with the rules and apply in the first Member State of entry and hence limit unauthorised movements and increase the overall efficiency of the CEAS.

(55) A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection unless the applicant has absconded, has not attended the interview without justified reasons or the information provided by the applicant is sufficient for determining the Member State responsible. As soon as the application for international protection is registered, the applicant should be informed in particular of the application of this Regulation, the fact that the Member State responsible for examining his or her application for international protection is based on objective criteria, of his or her rights as well as of the obligations under this Regulation and of the consequences of not complying with them.

(56) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred. The scope of the effective remedy should be limited to an assessment of whether applicants' fundamental rights to respect of family life, the rights of the child, or the prohibition of inhuman and degrading treatment risk to be infringed upon.

(57) In order to facilitate the smooth application of this Regulation, Member States should in all cases indicate the Member State responsible in Eurodac after having concluded the procedures for determining the Member State responsible, including in cases where the responsibility results from the failure to respect the time limits for sending or replying to take charge requests, carrying a transfer, as well as in cases where the Member State of first application becomes responsible or it is impossible to carry out the transfer to the Member State primarily responsible due to systemic deficiencies resulting in a risk of inhuman or degrading treatment and subsequently another Member State is determined as reponsible.

(58) In order to ensure the speedy determination of responsibility, the deadlines for making and replying to requests to take charge, for making take back notifications, as well as for making and deciding on appeals, should be streamlined and shortened.

(59) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality thereby only being allowed as a measure of last resort. In particular, the detention of applicants must be in accordance with Article 31 of the Geneva Convention. The procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. As regards the general guarantees governing detention, as well as detention conditions, where appropriate, Member States should apply the provisions of Directive XXX/XXX/EU [*Reception Conditions Directive*] also to persons detained on the basis of this Regulation.

(60) Deficiencies in, or the collapse of, asylum systems, often aggravated or contributed to by particular pressures on them, can jeopardise the smooth functioning of the system put in place under this Regulation, which could lead to a risk of a violation of the rights of applicants as set out in the Union asylum *acquis* and the Charter of Fundamental Rights of the European Union, other international human rights and refugee rights.

(61) In accordance with Commission Regulation (EC) No 1560/2003[45], transfers to the Member State responsible for examining an application for international protection may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers by providing adequate information to the person concerned and should ensure that supervised or escorted transfers are undertaken in a humane manner, in full compliance with fundamental rights and respect for human dignity, as well as the best interests of the child and taking utmost account of developments in the relevant case law, in particular as regards transfers on humanitarian grounds.

(62) In order to ensure a clear and efficient relocation procedure, specific rules for a benefitting and a contributing Member State should be set out. The rules and safeguards relating to transfers set out in this Regulation should apply to transfers for the purpose of relocation except where they are not relevant for such a procedure.

(63) To support Member States who undertake relocation as a solidarity measure, financial support from the Union budget should be provided. In order to incentivise Member States to give priority to the relocation of unaccompanied minors a higher incentive contribution should be provided.

(64) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communication between competent departments, reducing time limits for procedures or simplifying the processing of take charge requests or take back notifications, or establishing procedures for the performance of transfers.

(65) Continuity between the system for determining the Member State responsible established by Regulation (EU) No 604/2013 and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Regulation (EU) XXX/XXX [*Eurodac Regulation*].

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

(66) A network of competent Member State authorities should be set up and facilitated by the European Union Agency for Asylum to enhance practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance.

(67) The operation of the Eurodac system, as established by Regulation (EU) XXX/XXX [*Eurodac Regulation*], should facilitate the application of this Regulation.

(68) The operation of the Visa Information System, as established by Regulation (EC) No 767/2008 of the European Parliament and of the Council[46], and in particular the implementation of Articles 21 and 22 thereof, should facilitate the application of this Regulation.

(69) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the European Court of Human Rights.

(70) Regulation (EU) 2016/679 of the European Parliament and of the Council[47] applies to the processing of personal data by the Member States under this Regulation. Member States should implement appropriate technical and organisational measures to ensure and be able to demonstrate that processing is performed in accordance with that Regulation and the provisions specifying its requirements in this Regulation. In particular those measures should ensure the security of personal data processed under this Regulation and in particular to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed. The competent supervisory authority or authorities of each Member State should monitor the lawfulness of the processing of personal data by the authorities concerned, including of the transmission to the authorities competent for carrying out security checks.

(71) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[48].

(72) The examination procedure should be used for the adoption of a standard form for the exchange of relevant information on unaccompanied minors; of uniform conditions for the consultation and exchange of information on minors and dependent persons; of uniform conditions on the preparation and submission of take charge requests and take back notifications; of two lists of relevant elements of proof and circumstantial evidence, and the periodical revision thereof; of a *laissez passer*; of uniform conditions for the consultation and exchange of information regarding transfers; of a standard form for the exchange of data before a transfer; of a common health certificate; of uniform conditions and practical arrangements for the exchange of

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

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

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

information on a person's health data before a transfer, and of secure electronic transmission channels for the transmission of requests.

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

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

(75) A number of substantive changes are to be made to Regulation (EU) No 604/2013. In the interests of clarity, that Regulation should be repealed.

(76) The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.

(77) This Regulation respects the fundamental rights and observes the principles which are acknowledged, in particular, in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the Charter as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. This Regulation should therefore be applied accordingly.

(78) Since the objective of this Regulation, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, and the establishment of a solidarity mechanism to support Member States in addressing a situation of migratory pressure, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(79) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of

this Regulation and is not bound by it or subject to its application. Given that Parts III, V and VII of this Regulation constitute amendments within the meaning of Article 3 of the Agreement concluded between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention[49], Denmark has to notify the Commission of its decision whether or not to implement the content of such amendments at the time of the adoption of the amendments or within 30 days hereafter.

(80) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified their wish to take part in the adoption and application of this Regulation]

OR

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

(82) As regards Iceland and Norway, Parts III, V and VII of this Regulation constitute new legislation in a field which is covered by the subject matter of the Annex to the Agreement concluded by the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway[50].

(83) As regards Switzerland, Parts III, V and VII of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland[51].

(84) As regards Liechtenstein, Parts III, V and VII of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland to which Article 3 of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland[52] refers.

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49 OJ L 66, 8.3.2006, p. 38

50 OJ L 93, 3.4.2001 p. 40.

51 OJ L 53, 27.2.2008, p. 5.

52 OJ L 160, 18.6.2011, p. 37.

HAVE ADOPTED THIS REGULATION:

PART I

SCOPE AND DEFINITIONS

Article 1

Aim and subject matter

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

(a) sets out a common framework for the management of asylum and migration in the Union;

(b) establishes a mechanism for solidarity;

(c) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.

Article 2

Definitions

For the purposes of this Regulation:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty and who is not a person enjoying the right to free movement under Union law as defined in Article 2, point (5) of Regulation (EU) 2016/399 of the European Parliament and of the Council[53];

(b) 'application for international protection' or 'application' means a request for protection made to a Member State by a third-country national or a stateless person, who can be understood as seeking refugee status or subsidiary protection status;

(c) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a decision has not been taken, or has been taken and is either subject to or can still be subject to a remedy in the Member State concerned, irrespective of whether the applicant has a right to remain or is allowed to remain in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], including a person who has been granted immediate protection pursuant to Regulation (EU) XXX/XXX [*Regulation addressing situations of crisis and force majeure in the field of asylum and migration*];

(d) 'examination of an application for international protection' means examination of the admissibility or the merits of an application for international protection in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] and Regulation (EU) XXX/XXX [*Qualification Regulation*], excluding procedures for determining the Member State responsible in accordance with this Regulation;

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

(e) ‘withdrawal of an application for international protection’ means either explicit or implicit withdrawal of an application for international protection in accordance with Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*];

(f) ‘beneficiary of international protection’ means a third-country national or a stateless person who has been granted international protection as defined in Article 2(2) of Regulation (EU) XXX/XXX [*Qualification Regulation*];

(g) ‘family members’ means, insofar as the family already existed before the applicant or the family member arrived on the territory of the Member States, the following members of the applicant’s family who are present on the territory of the Member States:

(i) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,

(ii) the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

(iii) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,

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

(v) the sibling or siblings of the applicant;

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

(i) ‘minor’ means a third-country national or a stateless person below the age of 18 years;

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

(k) ‘representative’ means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary;

(l) ‘residence document’ means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the

Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;

(m) ‘visa’ means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States, including:

(i) an authorisation or decision issued in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than 90 days,

(ii) an authorisation or decision issued in accordance with its national law or Union law required for entry for a transit through or an intended stay in that Member State not exceeding 90 days in any 180-day period,

(iii) an authorisation or decision valid for transit through the international transit areas of one or more airports of the Member States;

(n) ‘diploma or qualification’ means a diploma or qualification which is obtained after at least a three months’ period of study in a recognised, state or regional programme of education or vocational training at least equivalent to level 2 of the International Standard Classification of Education, operated by an education establishment in accordance with national law or administrative practice of the Member States;

(o) ‘education establishment’ means any type of public or private education or vocational training establishment established in a Member State and recognised by that Member State or considered as such in accordance with national law or whose courses of study or training are recognised in accordance with national law or administrative practice;

(p) ‘absconding’ means the action by which an applicant does not remain available to the competent administrative or judicial authorities, such as by leaving the territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the applicant’s control;

(q) ‘risk of absconding’ means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria defined by national law to believe that an applicant who is subject to a transfer procedure may abscond;

(r) ‘benefitting Member State’ means the Member State benefitting from the solidarity measures in situations of migratory pressure or for disembarkations following search and rescue operations as set out in Chapters I-III of Part IV of this Regulation;

(s) ‘contributing Member State’ means a Member State that contributes or is obliged to contribute to the solidarity measures to a benefitting Member State set out in Chapters I-III of Part IV of this Regulation;

(t) ‘sponsoring Member State’ means a Member State that commits to return illegally staying third-country nationals to the benefit of another Member State, providing the return sponsorship referred to in Article 55 of this Regulation;

(u) ‘relocation’ means the transfer of a third-country national or a stateless person from the territory of a benefitting Member State to the territory of a contributing Member State;

(v) ‘search and rescue operations’ means operations of search and rescue as referred to in the 1979 International Convention on Maritime Search and Rescue adopted in Hamburg, Germany on 27 April 1979;

(w) ‘migratory pressure’ means a situation where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries which generate migratory movements that place a burden even on well-prepared asylum and reception systems and requires immediate action;

(x) ‘resettled or admitted person’ means a person who has been accepted by a Member State for admission pursuant to Regulation (EU) XXX/XXX [*Union Resettlement Framework Regulation*] or under a national resettlement scheme outside the framework of that Regulation;

(y) ‘Asylum Agency’ means the European Union Agency for Asylum as established by Regulation (EU) XXX/XXX [*European Union Asylum Agency*];

(z) ‘return decision’ means an administrative or judicial decision or act stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return that respects Directive 2008/115/EC of the European Parliament and of the Council[54];

(aa) ‘illegally staying third-country national’ means a third-country national who does not fulfil or no longer fulfils the conditions of entry as set out in Article 6 of Regulation (EU) 2016/399 or other conditions for entry, stay or residence in a Member State.

PART II

COMMON FRAMEWORK FOR ASYLUM AND MIGRATION MANAGEMENT

Article 3

Comprehensive approach to asylum and migration management

The Union and the Member States shall take actions in the field of asylum and migration management on the basis of a comprehensive approach. That comprehensive approach shall address the entirety of the migratory routes that affect asylum and migration management and shall consist of the following components:

(a) mutually-beneficial partnerships and close cooperation with relevant third countries, including on legal pathways for third-country nationals in need of international protection and for those otherwise admitted to reside legally in the Member States addressing the root causes of irregular migration, supporting partners hosting large numbers of migrants and refugees in need of protection and building their capacities in border, asylum and migration management, preventing and combatting irregular migration and migrant smuggling, and enhancing cooperation on readmission;

(b) close cooperation and mutual partnership among Union institutions and bodies, Member States and international organisations;

(c) full implementation of the common visa policy;

(d) effective management and prevention of irregular migration;

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

(e) effective management of the Union's external borders, based on the European integrated border management;

(f) full respect of the obligations laid down in international and European law concerning persons rescued at sea;

(g) access to procedures for granting and withdrawing international protection on Union territory and recognition of third-country nationals or stateless persons as refugees or beneficiaries of subsidiary protection;

(h) determination of the Member State responsible for the examination of an application for international protection, based on shared responsibility and rules and mechanisms for solidarity;

(i) access for applicants to adequate reception conditions;

(j) effective management of the return of illegally staying third-country nationals;

(k) effective measures to provide incentives for and support to the integration of beneficiaries of international protection in the Member States;

(l) measures aimed at reducing and tackling the enabling factors of irregular migration to and illegal stay in the Union, including illegal employment;

(m) full deployment and use of the operational tools set up at Union level, notably the European Border and Coast Guard Agency, the Asylum Agency, EU-LISA and Europol, as well as large-scale Union Information Technology systems;

(n) full implementation of the European framework for preparedness and management of crisis.

Article 4

Principle of integrated policy-making

1. The Union and Member States shall ensure coherence of asylum and migration management policies, including both the internal and external components of those policies.

2. The Union and Member States acting within their respective competencies shall be responsible for the implementation of the asylum and migration management policies.

3. Member States, with the support of Union Agencies, shall ensure that they have the capacity to effectively implement asylum and migration management policies, taking into account the comprehensive approach referred to in Article 3, including the necessary human and financial resources and infrastructure.

Article 5

Principle of solidarity and fair sharing of responsibility

1. In implementing their obligations, the Member States shall observe the principle of solidarity and fair sharing of responsibility and shall take into account the shared interest in the effective functioning of the Union's asylum and migration management policies. Member States shall:

(a) establish and maintain national asylum and migration management systems that provide access to international protection procedures, grant such protection to those who are in need and ensure the return of those who are illegally staying;

(b) take all measures necessary and proportionate to reduce and prevent irregular migration to the territories of the Member States, in close cooperation and partnership with relevant third countries, including as regards the prevention and fight against migrant smuggling;

(c) apply correctly and expeditiously the rules on the determination of the Member State responsible for examining an application for international protection and, where necessary, carry out the transfer to the Member State responsible pursuant to Chapters I-VI of Part III;

(d) provide support to other Member States in the form of solidarity contributions on the basis of needs set out in Chapters I-III of Part IV;

(e) take all reasonable and proportionate measures to prevent and correct unauthorised movements between Member States.

2. Financial and operational support by the Union for the implementation of the obligations shall be provided in accordance with the Regulation (EU) XXX/XXX [*Asylum and Migration Fund*] and Regulation (EU) XXX/XXX [*Integrated Border Management Fund*].

Article 6

Governance and monitoring of the migratory situation

1. The Commission shall adopt a European Asylum and Migration Management Strategy setting out the strategic approach to managing asylum and migration at Union level and on the implementation of asylum and migration management policies in accordance with the principles set out in this Part. The Commission shall transmit the Strategy to the European Parliament and the Council.

2. The European Asylum and Migration Management Strategy shall take into account the following:

(a) the national strategies of the Member States referred to paragraph 3 of this Article;

(b) information gathered by the Commission under the Commission Recommendation No XXX on an EU Migration Preparedness and Crisis Management Mechanism hereinafter referred to as Migration Preparedness and Crisis Blueprint; the reports issued under that framework as well as the activities of the Migration Preparedness and Crisis Management Network;

(c) relevant reports and analyses from Union agencies;

(d) information gathered in the course of evaluations undertaken in the Schengen evaluation and monitoring mechanism in accordance with Article 4 of Regulation (EU) No 1053/2013[55].

3. Member States shall have national strategies in place to ensure sufficient capacity for the implementation of an effective asylum and migration management system in accordance with the principles set out in this Part. Those strategies shall include contingency planning at national level, taking into account the contingency planning pursuant to Regulation (EU) XXX/XXX [*European Union Asylum Agency*], Regulation (EU) 2019/1896[56] (European Border and Coast Guard Agency) and Directive XXX/XXX/EU [*Reception Conditions Directive*] and the reports of the Commission issued within the framework of the Migration Preparedness and Crisis Blueprint. Such national strategies shall include information on how the Member State is implementing the principles set out in this Part and legal obligations stemming therefrom at national level. They shall take into account other relevant strategies and existing support measures notably under Regulation (EU) XXX/XXX [*Asylum and Migration Fund*] and Regulation (EU) XXX/XXX [*European Union Asylum Agency*] and be coherent with and complementary to the national strategies for integrated border management established in accordance with Article 8(6) of Regulation (EU) 2019/1896. The results of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, of the evaluation carried out in accordance with Council Regulation No 1053/2013 as well as those carried out in line with Article 7 of Regulation (EU) XXX/XXX [*Screening Regulation*], should also be taken into account in these strategies.

4. The Commission shall adopt a Migration Management Report each year setting out the anticipated evolution of the migratory situation and the preparedness of the Union and the Member States. In the case of migratory flows generated by search and rescue operations, the Commission shall consult the concerned Member States and the Report shall set out the total number of projected disembarkations in the short term and the solidarity response that would be required to contribute to the needs of the Member States of disembarkation through relocation and through measures in the field of capacity building, operational support and measures in the field of the external dimension. The Report shall also indicate whether particular Member States are faced with capacity challenges due to the presence of third-country nationals who are vulnerable and include the results of the reporting on monitoring listed in paragraph 3 including the information gathered within the framework of the Migration Preparedness and Crisis Blueprint and propose improvements where appropriate.

5. The Member States shall establish the national strategies by [one year after the entry into force of this Regulation] at the latest. The first European Asylum and Migration Management Strategy shall be adopted by [18 months after the entry into force of

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

56 Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, OJ L 295, 14.11.2019, p. 1.

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

6. The Commission shall monitor and provide information on the migratory situation through regular situational reports based on good quality data and information provided by Member States, the External Action Service, the Asylum Agency, the European Border and Coast Guard Agency, Europol and the Fundamental Rights Agency and notably the information gathered within the framework of the Migration Preparedness and Crisis Blueprint and its Network.

Article 7

Cooperation with third countries to facilitate return and readmission

1. Where the Commission, on the basis of the analysis carried out in accordance with Article 25a(2) or (4) of Regulation (EU) No 810/2009 of the European Parliament and of the Council[57] and of any other information available, considers that a third country is not cooperating sufficiently on the readmission of illegally staying third-country nationals, and without prejudice to Article 25(a)(5) of that Regulation, it shall submit a report to the Council including, where appropriate, the identification of any measures which could be taken to improve the cooperation of that third country as regards readmission, taking into account the Union's overall relations with the third country.

2. Where the Commission considers it appropriate, it shall also identify in its report measures designed to promote cooperation among the Member States to facilitate the return of illegal staying third-country nationals.

3. On the basis of the report referred to in paragraph 1, the Commission and the Council, within their respective competencies, shall consider the appropriate actions taking into account the Union's overall relations with the third country.

4. The Commission shall keep the European Parliament regularly informed of the implementation of this Article.

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

PART III

CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE

CHAPTER I

GENERAL PRINCIPLES AND SAFEGUARDS

Article 8

Access to the procedure for examining an application for international protection

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter II of Part III indicate is responsible.

2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was registered shall be responsible for examining it.

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

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

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

   If a security check provided for in Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] has been carried out, but the first Member State in which the application for international protection was registered has justified reasons to examine whether there are reasonable grounds to consider the applicant a danger to national security or public order of that Member State, that Member State shall carry out the examination as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III.

Where the security check carried out in accordance with Article 11 of Regulation (EU) XXX/XXX [*Screening Regulation*] or in accordance with the first and second subparagraphs of this paragraph shows that there are reasonable grounds to consider the applicant a danger to national security or public order of the Member State carrying out the security check, that Member State shall be the Member State responsible.

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

Article 9

Obligations of the applicant

1. Where a third-country national or stateless person intends to make an application for international protection, the application shall be made and registered in the Member State of first entry.

2. By derogation from paragraph 1, where a third-country national or stateless person is in possession of a valid residence permit or a valid visa, the application shall be made and registered in the Member State that issued the residence permit or visa.

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

3. The applicant shall fully cooperate with the competent authorities of the Member States in matters covered by this Regulation, in particular by submitting as soon as possible and at the latest during the interview referred to in Article 12, all the elements and information available to him or her relevant for determining the Member State responsible. Where the applicant is not in a position at the time of the interview to submit evidence to substantiate the elements and information provided, the competent authority may set a time limit within the period referred to in Article 29(1) for submitting such evidence.

4. The applicant shall be required to be present in:

   (a) the Member State referred to in paragraphs 1 and 2 pending the determination of the Member State responsible and, where applicable, the implementation of the transfer procedure;

   (b) the Member State responsible;

   (c) the Member State of relocation following a transfer pursuant to Article 57(9).

5. Where a transfer decision is notified to the applicant in accordance with Article 32(2) and Article 57(8), the applicant shall comply with that decision.

Article 10

Consequences of non-compliance

1. The applicant shall not be entitled to the reception conditions set out in Articles 15 to 17 of Directive XXX/XXX/EU [*Reception Conditions Directive*] pursuant to Article

17a of that Directive in any Member State other than the one in which he or she is required to be present pursuant to Article 9(4) of this Regulation from the moment he or she has been notified of a decision to transfer him or her to the Member State responsible, provided that the applicant has been informed of that consequence pursuant to Article 8(2), point (b) of Regulation (EU) XXX/XXX [*Screening Regulation*]. This shall be without prejudice to the need to ensure a standard of living in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations.

2. Elements and information relevant for determining the Member State responsible submitted after expiry of the time limit referred to in Article 9(3) shall not be taken into account by the competent authorities.

Article 11

Right to information

1. As soon as possible and at the latest when an application for international protection is registered in a Member State, its competent authorities shall inform the applicant of the application of this Regulation and of the obligations set out in Article 9 as well as the consequences of non-compliance set out in Article 10, and in particular:

   (a) that the right to apply for international protection does not encompass a choice by the applicant in relation to either the Member State responsible for examining the application for international protection or the Member State of relocation;

   (b) of the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of leaving the Member State where he or she is required to be present pursuant to Article 9(4), in particular that the applicant shall only be entitled to the reception conditions as set out in Article 10(1);

   (c) of the criteria and the procedures for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration;

   (d) of the aim of the personal interview pursuant to Article 12 and the obligation to submit and substantiate orally or through the provision of documents information as soon as possible in the procedure any relevant information that could help to establish the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information, as well as any assistance that the Member State can offer with regard to the tracing of family members or relatives;

   (e) of the obligation for the applicant to disclose, as soon as possible in the procedure any relevant information that could help to establish any prior residence permits, visas or educational diplomas;

   (f) of the possibility to challenge a transfer decision within the time limit set out in Article 33(2) and of the fact that the scope of that challenge is limited as laid down in Article 33(1);

(g) of the right to be granted, on request, legal assistance free of charge where the person concerned cannot afford the costs involved;

(h) that the competent authorities of Member States and the Asylum Agency will process personal data of the applicant including for the exchange of data on him or her for the sole purpose of implementing their obligations arising under this Regulation;

(i) of the categories of personal data concerned;

(j) of the right of access to data relating to him or her and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article 41 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data, and of the contact details of the data protection officer;

(k) in the case of an unaccompanied minor, of the role and responsibilities of the representative and of the procedure to file complaints against a representative in confidence and safety and in full respect of the child's right to be heard in this respect;

(l) where applicable, of the relocation procedure set out in Articles 57 and 58.

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

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

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

Article 12

Personal interview

1. In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article 11.

2. The personal interview may be omitted where:

(a) the applicant has absconded;

(b) the applicant has not attended the personal interview and has not provided justified reasons for his or her absence;

(c) after having received the information referred to in Article 11, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible within the period referred to in Article 29(1).

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

4. The personal interview shall be conducted in a language that the applicant understands or is reasonably supposed to understand and in which he or she is able to communicate. Interviews of unaccompanied minors shall be conducted in a child-friendly manner, by staff who are appropriately trained and qualified under national law, in the presence of the representative and, where applicable, the minor's legal advisor. Where necessary, Member States shall have recourse to an interpreter, and where appropriate a cultural mediator, who is able to ensure appropriate communication between the applicant and the person conducting the personal interview. The applicant may request to be interviewed and assisted by staff of the same sex.

5. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law. Applicants who are identified as being in need of special procedural guarantees pursuant to Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], shall be provided with adequate support in order to create the conditions necessary for effectively presenting all elements allowing for the determination of the Member State responsible.

6. The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. The summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.

Article 13

Guarantees for minors

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.

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

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

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

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

4. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:

   (a) family reunification possibilities;

   (b) the minor's well-being and social development, taking into particular consideration the minor's background;

   (c) safety and security considerations, in particular where there is a risk of the minor being a victim of any form of violence and exploitation, including trafficking in human beings;

   (d) the views of the minor, in accordance with his or her age and maturity;

   (e) where the applicant is an unaccompanied minor, the information provided by the representative in the Member State where the unaccompanied minor is present.

5. Before transferring an unaccompanied minor to the Member State responsible or, where applicable, to the Member State of relocation, the transferring Member State shall make sure that the Member State responsible or the Member State of relocation takes the measures referred to in Articles 14 and 23 of Directive XXX/XXX/EU [*Reception Conditions Directive*] and Article 22 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] without delay. Any decision to transfer an unaccompanied minor shall be preceded by an assessment of his/her best interests. The assessment shall be based on the factors listed in paragraph 4 and the conclusions of the assessment on these factors shall be clearly stated in the transfer decision. The assessment shall be done swiftly by staff with the qualifications and expertise to ensure that the best interests of the minor are taken into consideration.

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

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

   The staff of the competent authorities referred to in Article 41 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.

7. With a view to facilitating the appropriate action to identify the family members or relatives of the unaccompanied minor living in the territory of another Member State

pursuant to paragraph 6, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

CHAPTER II

CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Article 14

Hierarchy of criteria

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.

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

Article 15

Unaccompanied minors

1. Where the applicant is an unaccompanied minor, only the criteria set out in this Article shall apply, in the order in which they are set out in paragraphs 2 to 5.

2. The Member State responsible shall be that where a family member of the unaccompanied minor is legally present, unless it is demonstrated that it is not in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

3. Where the applicant has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, unless it is demonstrated that it is not in the best interests of the minor.

4. Where family members or relatives as referred to in paragraphs 2 and 3, are staying in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.

5. In the absence of a family member or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be that where the unaccompanied minor's application for international protection was first registered, unless it is demonstrated that this is not in the best interests of the minor.

6. The Commission is empowered to adopt delegated acts in accordance with Article 68 concerning:

   (a) the identification of family members or relatives of unaccompanied minors;

(b) the criteria for establishing the existence of proven family links;

(c) the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor are staying in more than one Member State.

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

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

Article 16

Family members who are beneficiaries of international protection

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

Article 17

Family members who are applicants for international protection

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

Article 18

Family procedure

Where several family members submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined as follows:

(a) responsibility for examining the applications for international protection of all the family members shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;

(b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

Article 19

Issue of residence documents or visas

1. Where the applicant is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.

2. Where the applicant is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009. In such a case, the represented Member State shall be responsible for examining the application for international protection.

3. Where the applicant is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:

   (a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;

   (b) where the various visas are of the same type the Member State which issued the visa having the latest expiry date;

   (c) where the visas are of different types, the Member State which issued the visa having the longest period of validity or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.

4. Where the applicant is in possession of one or more residence documents or one or more visas which expired less than three years before the application was registered, paragraphs 1, 2 and 3 shall apply.

5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the Member State issuing the residence document or visa shall not be responsible if it can establish that fraud was committed after the document or visa was issued.

Article 20

Diplomas or other qualifications

1. Where the applicant is in possession of a diploma or qualification issued by an education establishment established in a Member State and the application for international protection was registered after the applicant left the territory of the Member States following the completion of his or her studies, the Member State in which that education establishment is established shall be responsible for examining the application for international protection.

2. Where the applicant is in possession of more than one diploma or qualification issued by education establishments in different Member States, the responsibility for

examining the application for international protection shall be assumed by the Member State which issued the diploma or qualification following the longest period of study or, where the periods of study are identical, by the Member State in which the most recent diploma or qualification was obtained.

Article 21

Entry

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [*Eurodac Regulation*], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the first Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than 3 years after the date on which that border crossing took place.

2. The rule set out in paragraph 1 shall also apply where the applicant was disembarked on the territory following a search and rescue operation.

3. Paragraphs 1 and 2 shall not apply if it can be established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [*Eurodac Regulation*], that the applicant was relocated pursuant to Article 57 of this Regulation to another Member State after having crossed the border. In that case, that other Member State shall be responsible for examining the application for international protection.

Article 22

Visa waived entry

If a third-country national or a stateless person enters into the territory of the Member States through a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection. That responsibility shall cease if the application is registered more than three years after the date on which the person entered the territory.

Article 23

Application in an international transit area of an airport

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

CHAPTER III

DEPENDENT PERSONS AND DISCRETIONARY CLAUSES

Article 24

Dependent persons

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

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

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

3. The Commission is empowered to adopt delegated acts in accordance with Article 68 concerning:

   (a) the elements to be taken into account in order to assess the dependency link;

   (b) the criteria for establishing the existence of proven family links;

   (c) the criteria for assessing the capacity of the person concerned to take care of the dependent person;

   (d) the elements to be taken into account in order to assess the inability to travel for a significant period of time.

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

Article 25

Discretionary clauses

1. By way of derogation from Article 8(1), each Member State may decide to examine an application for international protection by a third-country national or a stateless

person registered with it, even if such examination is not its responsibility under the criteria laid down in this Regulation.

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

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

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

CHAPTER IV

OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

Article 26

Obligations of the Member State responsible

1. The Member State responsible under this Regulation shall be obliged to:

(a) take charge, under the conditions laid down in Articles 29, 30 and 35, of an applicant whose application was registered in a different Member State;

(b) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, an applicant or a third-country national or a stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*];

(c) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a beneficiary of international protection in relation to whom that Member State has been indicated as the Member State responsible under Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*];

(d) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, a resettled or admitted person who has made an application for international protection or who is irregularly staying in a Member State other than the Member State which accepted to admit him or her in accordance with Regulation (EU) XXX/XXX [*Union Resettlement Framework Regulation*] or which granted international protection or humanitarian status under a national resettlement scheme.

2. For the purposes of this Regulation, the situation of a minor who is accompanying the applicant and meets the definition of family member shall be indissociable from that of his or her family member and the minor shall be taken charge of or taken back by the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, unless it is demonstrated that this is not in the best interests of the child. The same principle shall be applied to children born after the applicant arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

3. In the situations referred to in paragraph 1, points (a) and (b), the Member State responsible shall examine or complete the examination of the application for international protection pursuant to Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*].

Article 27

Cessation of responsibilities

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

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

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

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

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

CHAPTER V

PROCEDURES

SECTION I

START OF THE PROCEDURE

Article 28

Start of the procedure

1. The Member State where an application for international protection is first registered pursuant to Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*] or, where applicable, the Member State of relocation shall start the process of determining the Member State responsible without delay.

2. The Member State where an application is first registered or, where applicable, the Member State of relocation shall continue the process of determining the Member State responsible if the applicant leaves the territory of that Member State without authorisation or is otherwise not available to the competent authorities of that Member State.

3. The Member State which has conducted the process of determining the Member State responsible or which has become responsible pursuant to Article 8(4) of this Regulation shall indicate in Eurodac without delay pursuant to Article 11(1) of Regulation (EU) XXX/XXX [*Eurodac Regulation*]:

   (a) its responsibility pursuant to Article 8(2);

   (b) its responsibility pursuant to Article 8(4);

   (c) its responsibility due to its failure to comply with the time limits laid down in Article 29;

   (d) the responsibility of the Member State which has accepted a request to take charge of the applicant pursuant to Article 30.

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

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

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

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

SECTION II

PROCEDURES FOR TAKE CHARGE REQUESTS

Article 29

Submitting a take charge request

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

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

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

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

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

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

3. In the cases referred to in paragraphs 1 and 2, the take charge request by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the applicant's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

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

Article 30

Replying to a take charge request

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within one month of receipt of the request.

2. Notwithstanding the first paragraph, in the case of a Eurodac hit with data recorded pursuant to Article 13 and 14a of Regulation (EU) XXX/XXX [*Eurodac Regulation*] or of a VIS hit with data recorded pursuant to Article 21(2) of Regulation (EC) No 767/2008, the requested Member State shall give a decision on the request within two weeks of receipt of the request.

3. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.

4. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

   (a) Proof:

      (i) this refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary;

      (ii) the Member States shall provide the Committee provided for in Article 67 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs;

   (b) Circumstantial evidence:

      (i) this refers to indicative elements which while being refutable may be sufficient according to the evidentiary value attributed to them;

      (ii) their evidentiary value, in relation to the responsibility for examining the application for international protection shall be assessed on a case-by-case basis.

5. The requirement of proof shall not exceed what is necessary for the proper application of this Regulation.

6. The requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

7. Where the requesting Member State has asked for an urgent reply pursuant to Article 29(2), the requested Member State shall reply within the period requested or, failing that, within two weeks of receipt of the request.

8. Where the requested Member State does not object to the request within the one-month period set out in paragraph 1 by a reply which gives full and detailed reasons, or where applicable within the two-week period set out in paragraphs 2 and 7, this shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

SECTION III

PROCEDURES FOR TAKE BACK NOTIFICATIONS

Article 31

Submitting a take back notification

1. In a situation referred to in Article 26(1), point (b), (c) or (d) the Member State where the person is present shall make a take back notification without delay and in any event within two weeks after receiving the Eurodac hit.

2. A take back notification shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or relevant elements from the statements of the person concerned.

3. The notified Member State shall confirm receipt of the notification to the Member State which made the notification within one week, unless the notified Member State can demonstrate within that time limit that its responsibility has ceased pursuant to Article 27.

4. Failure to act within the one-week period set out in paragraph 3 shall be tantamount to confirming the receipt of the notification.

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

SECTION IV

PROCEDURAL SAFEGUARDS

Article 32

Notification of a transfer decision

1. The determining Member State whose take charge request as regards the applicant referred to in Article 26(1), point (a) was accepted or who made a take back notification as regards persons referred to in Article 26(1), point (b), (c) and (d) shall take a transfer decision at the latest within one week of the acceptance or notification.

2. Where the requested Member State accepts to take charge of an applicant or to take back a person referred to in Article 26(1), point (b), (c) or (d), the requesting or the notifying Member State shall notify the person concerned in writing without delay of the decision to transfer him or her to the Member State responsible and, where applicable, of the fact that it will not examine his or her application for international protection.

3. If a legal advisor or other counsellor is representing the person concerned, Member States may choose to notify the decision to such legal advisor or counsellor instead of to the person concerned and, where applicable, communicate the decision to the person concerned.

4. The decision referred to in paragraph 1 shall contain information on the legal remedies available, including on the right to apply for suspensive effect, and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned is required to appear, if that person is travelling to the Member State responsible by his or her own means.

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

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

Article 33

Remedies

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

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

(a) whether the transfer would result in a real risk of inhuman or degrading treatment for the person concerned within the meaning of Article 4 of the Charter of Fundamental Rights;

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

2. Member States shall provide for a period of two weeks after the notification of a transfer decision within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

3. The person concerned shall have the right to request, within a reasonable period of time from the notification of the transfer decision, a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within one month of the date when that request reached the competent court or tribunal.

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

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

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

4. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.

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

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

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

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

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

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

SECTION V

DETENTION FOR THE PURPOSES OF TRANSFER

Article 34

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.

2. Where there is a risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively, based on an individual assessment of the person's circumstances.

3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where an applicant or another person referred to in Article 26(1), point (b), (c) or (d) is detained pursuant to this Article, the period for submitting a take charge request or a take back notification shall not exceed two weeks from the registration of the application. Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge request or a take back notification shall not exceed one week from the date on which the person was placed in detention. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply on a take charge request. Such reply shall be given within one week of receipt of the take charge request. Failure to reply within the one-week period shall be tantamount to accepting the take charge request and shall entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting or notifying Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within four weeks of:

(a) the date on which the request was accepted or the take back notification was confirmed, or

(b) the date when the appeal or review no longer has suspensive effect in accordance with Article 33(3).

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

4. Where a person is detained pursuant to this Article, the detention shall be ordered in writing by judicial authorities. The detention order shall state the reasons in fact and in law on which it is based.

5. As regards the detention conditions and the guarantees applicable to applicants detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive XXX/XXX/EU [*Reception Conditions Directive*] shall apply.

SECTION VI

TRANSFERS

Article 35

Detailed rules and time limits

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

decision where there is a suspensive effect in accordance with Article 33(3). That time limit may be extended up to a maximum of one year if the transfer cannot be carried out due to imprisonment of the person concerned.

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

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

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

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

2. Where the transfer does not take place within the time limits set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the requesting or notifying Member State.

   Notwithstanding the first subparagraph, where the person concerned absconds and the requesting or notifying Member State informs the Member State responsible before the expiry of the time limits set out in paragraph 1, first subparagraph, that the person concerned has absconded, the transferring Member State shall retain the right to carry out the transfer within the remaining time at a later stage, should the person become available to the authorities again, unless another Member State has carried out the procedures in accordance with this Regulation and transferred the person to the responsible Member State after the person absconded.

3. If a person has been transferred erroneously or a decision to transfer is overturned on appeal or review after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Article 36

Costs of transfer

1. In accordance with Article 17 of Regulation (EU) XXX/XXX [*Asylum and Migration Fund*], a contribution shall be paid to the Member State carrying out the transfer for the transfer of an applicant or another person as referred to in Article 26(1), point (b), (c) or (d), pursuant to Article 35.

2. Where the person concerned has to be transferred back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal

or review after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.

3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.

Article 37

Exchange of relevant information before a transfer is carried out

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

2. The transferring Member State shall transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:

   (a) any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care that may be required;

   (b) contact details of family members, relatives or any other family relations in the receiving Member State, where applicable;

   (c) in the case of minors, information on their education;

   (d) an assessment of the age of an applicant;

   (e) information collected during the screening in accordance with Article 13 of Regulation (EU) XXX/XXX [*Screening Regulation*].

3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 41 of this Regulation using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. The information exchanged shall only be used for the purposes set out in paragraph 1 of this Article and shall not be further processed.

4. With a view to facilitating the exchange of information between Member States, the Commission shall, by means of implementing acts, draw up a standard form for the transfer of the data required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

5. The rules laid down in Article 40(8) and (9) shall apply to the exchange of information pursuant to this Article.

Article 38

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

Where the Member State carrying out a transfer is in possession of information that indicates that there are reasonable grounds to consider the applicant or another person as referred to in Article 26(1), point (b), (c) or (d), a danger to national security or public order in a Member State, that Member State shall also communicate such information to the Member State responsible.

Article 39

Exchange of health data before a transfer is carried out

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

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

2. The transferring Member State shall only transmit the information referred to in paragraph 1 to the Member State responsible after having obtained the explicit consent of the applicant and/or of his or her representative or when such transmission is necessary to protect public health and public security, or, where the person concerned is physically or legally incapable of giving his or her consent, to protect the vital interests of the person concerned or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.

3. The processing of personal health data referred to in paragraph 1 shall only be carried out by a health professional who is subject, under national law or rules established by national competent bodies, to the obligation of professional secrecy or by another person subject to an equivalent obligation of professional secrecy.

4. The exchange of information under this Article shall only take place between the health professionals or other persons referred to in paragraph 3. The information exchanged shall only be used for the purposes set out in paragraph 1 and shall not be further processed.

5. The Commission shall, by means of implementing acts, adopt uniform conditions and practical arrangements for exchanging the information referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).

6. The rules laid down in Article 40(8) and (9) shall apply to the exchange of information pursuant to this Article.

CHAPTER VI

ADMINISTRATIVE COOPERATION

Article 40

Information sharing

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the person covered by the scope of this Regulation as is adequate, relevant and limited to what is necessary for:

   (a) determining the Member State responsible;

   (b) examining the application for international protection;

   (c) implementing any obligation arising under this Regulation.

2. The information referred to in paragraph 1 shall only cover:

   (a) personal details of the person concerned, and, where appropriate, his or her family members, relatives or any other family relations (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);

   (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);

   (c) other information necessary for establishing the identity of the person concerned, including biometric data taken of the applicant by the Member State, in particular for the purposes of Article 57(6) of this Regulation, in accordance with Regulation (EU) XXX/XXX [*Eurodac Regulation*];

   (d) places of residence and routes travelled;

   (e) residence documents or visas issued by a Member State;

   (f) the place where the application was lodged;

   (g) the date on which any previous application for international protection was lodged, the date on which the current application was registered, the stage reached in the proceedings and the decision taken, if any.

3. Provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for international protection, obtained by the requesting Member State. In that case, the applicant must know for what specific information he or she is giving his or her approval.

4. Any request for information shall only be sent in the context of an individual application for international protection or transfer for the purpose of relocation. It shall set out the grounds on which it is based and, where its purpose is to check

whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. Such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to an individual applicant.

5. The requested Member State shall be obliged to reply within three weeks. Any delays in the reply shall be duly justified. Non-compliance with the three week time limit shall not relieve the requested Member State of the obligation to reply. If the research carried out by the requested Member State which did not respect the maximum time limit withholds information which shows that it is responsible, that Member State may not invoke the expiry of the time limits provided for in Article 29 as a reason for refusing to comply with a request to take charge. In that case, the time limits provided for in Article 29 for submitting a request to take charge shall be extended by a period of time equivalent to the delay in the reply by the requested Member State.

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission in accordance with Article 41(1).

7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:

   (a) determining the Member State responsible;

   (b) examining the application for international protection;

   (c) implementing any obligation arising under this Regulation.

8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that it has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.

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

Article 41

Competent authorities and resources

1. Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. The Member States shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge,

take back notifications and, if applicable, complying with their obligations under Chapters I-III of Part IV.

2. The Commission shall publish a consolidated list of the authorities referred to in paragraph 1 in the *Official Journal of the European Union*. Where there are changes to that list, the Commission shall publish an updated consolidated list once a year.

3. Member States shall ensure that the authorities referred to in paragraph 1 shall receive the necessary training with respect to the application of this Regulation.

4. The Commission shall, by means of implementing acts, establish secure electronic transmission channels between the authorities referred to in paragraph 1 and between those authorities and the Asylum Agency for transmitting information, biometric data taken in accordance with Regulation (EU) XXX/XXX [*Eurodac Regulation*], requests, notifications, replies and all written correspondence and for ensuring that senders automatically receive an electronic proof of delivery. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Article 42

Administrative arrangements

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details for the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:

   (a) exchanges of liaison officers;

   (b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back applicants;

   (c) solidarity contributions made pursuant to Chapters I-III of Part IV.

2. Member States may also maintain the administrative arrangements concluded under Regulation (EC) No 343/2003 and Regulation (EU) No 604/2013. To the extent that such arrangements are not compatible with this Regulation, the Member States concerned shall amend the arrangements in such a way as to eliminate any incompatibilities.

3. Before concluding or amending any arrangement as referred to in paragraph 1, point (b), the Member States concerned shall consult the Commission as to the compatibility of the arrangement with this Regulation.

4. If the Commission considers the arrangements referred to in paragraph 1, point (b), to be incompatible with this Regulation, it shall, within a reasonable period, notify the Member States concerned. The Member States shall take all appropriate steps to amend the arrangement concerned within a reasonable time in such a way as to eliminate any incompatibilities observed.

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

Article 43

Network of responsible units

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

CHAPTER VII

CONCILIATION

Article 44

Conciliation

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

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

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

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

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

PART IV

SOLIDARITY

CHAPTER I

SOLIDARITY MECHANISMS

Article 45

Solidarity contributions

1. Solidarity contributions for the benefit of a Member State under migratory pressure or subject to disembarkations following search and rescue operations shall consist of the following types:

   (a) relocation of applicants who are not subject to the border procedure for the examination of an application for international protection established by Article 41 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*];

   (b) return sponsorship of illegally staying third-country nationals;

   (c) relocation of beneficiaries of international protection who have been granted international protection less than three years prior to adoption of an implementing act pursuant to Article 53(1);

   (d) capacity-building measures in the field of asylum, reception and return, operational support and measures aimed at responding to migratory trends affecting the benefitting Member State through cooperation with third countries.

2. Such contributions may, pursuant to Article 56, also consist of:

   (a) relocation of applicants for international protection subject to the border procedure in accordance with Article 41 of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*];

   (b) relocation of illegally staying third-country nationals.

Article 46

Solidarity Forum

A Solidarity Forum shall comprise all Member States. The Commission shall convene and preside the Solidarity Forum in order to ensure the smooth functioning of this Part.

Article 47

Solidarity for disembarkations following search and rescue operations

1. This Article and Articles 48 and 49 shall apply to search and rescue operations that generate recurring arrivals of third-country nationals or stateless persons onto the territory of a Member State and to vulnerable persons as set out in Article 49(4).

2. Where the Migration Management Report referred to in Article 6(4) indicates that one or more Member States faced with the situations referred to in paragraph 1, it shall also set out the total number of applicants for international protection referred to in Article 45(1), point (a) that would need to be relocated in order to assist those Member States. The report shall also identify any capacity-building measures referred to in Article 45(1), point (d) which are necessary to assist the Member State concerned.

3. Within two weeks of the adoption of the Migration Management Report, the Commission shall invite all other Member States that are not expected to be faced with arrivals on their territory as referred to in paragraph 1 to provide the solidarity contributions referred to in paragraph 2. In its request, the Commission shall indicate the total number of applicants to be relocated by each Member State in the form of solidarity contributions referred to in Article 45(1), point (a) by each Member State, calculated according to the distribution key set out in Article 54. The distribution key shall include the share of the benefitting Member States.

4. Within one month of the adoption of the Migration Management Report, Member States shall notify the Commission of the contributions they intend to make, by completing the SAR Solidarity Response Plan set out in Annex I. Member States shall indicate whether they intend to provide contributions in the form of:

   (a) relocation in accordance with Article 45(1), point (a); or

   (b) measures in accordance with Article 45(1), point (d) identified in the Migration Management Report; or

   (c) relocation in accordance with Article 45(1), point (a) of vulnerable persons pursuant to Article 49(4).

5. Where the Commission considers that the solidarity contributions indicated by all the Member States pursuant to paragraph 4 fall significantly short of the total solidarity contributions set out in the Migration Management Report, the Commission shall convene the Solidarity Forum. The Commission shall invite Member States to adjust the number and, where relevant, the type of contributions. Member States that adjust their contributions shall submit revised SAR Solidarity Response Plans in the course of the Solidarity Forum.

Article 48

Commission implementing acts for search and rescue operations

1. Within two weeks from the submission of the SAR Solidarity Response Plans referred to in Article 47(4) or two weeks from the end of the Solidarity Forum referred to in Article 47(5), and where the total solidarity contributions indicated by all the Member States in their Plans corresponds to, or is considered by the Commission to be sufficiently close to the total solidarity contributions set out in the Migration Management Report, the Commission shall adopt an implementing act setting out the solidarity measures indicated by Member States pursuant to Article 47(4) or Article 47(5). Such measures shall constitute a solidarity pool for each Member State expected to be faced with disembarkations in the short term.

   Where the Asylum Agency notifies the Commission and the Member States that 80% of the solidarity pool in the first subparagraph has been used for one or more of the

benefitting Member States, the Commission shall convene the Solidarity Forum to inform the Member States of the situation and request Member States to increase their contributions. Following the end of the Solidary Forum, where Member States have indicated their readiness to make increased contributions the Commission shall amend the implementing act establishing a solidarity pool referred to in the first subparagraph in relation to the benefitting Member State concerned to increase the contributions indicated by Member States.

2. Where the total number or type of solidarity contributions indicated by Member States pursuant to Article 47(5) still falls significantly short of the total solidarity contributions set out in the Migration Management Report leading to a situation where the solidarity pool is not able to provide a foreseeable basis of ongoing support to the Member States referred to in Article 47(2), the Commission shall, within two weeks after the end of the Solidarity Forum, adopt an implementing act establishing a solidarity pool for each Member State expected to be faced with disembarkations in the short term. That implementing act shall set out:

(a) the total number of third-country nationals to be covered by relocation to contribute to the needs of the Member States referred to in Article 47(2) as identified in the Migration Management Report;

(b) the number and share referred to in point (a) for each Member State, including the benefitting Member States calculated according to the distribution key set out in Article 54;

(c) the measures indicated by Member States as set out in Article 45(1), point (d).

Where Member States have indicated measures set out in Article 45(1), point (d), those measures shall be in proportion to the contributions that the Member States would have made by means of the relocations referred to in Article 45(1), point (a) as a result of the application of the distribution key set out in Article 54. They shall be set out in the implementing act except where the indications by Member States would lead to a shortfall of greater than 30% of the total number of relocations identified in the Migration Management Report. In those cases, the contributions set out in the implementing act shall be adjusted so that those Member States indicating such measures are required to cover 50% of their share calculated in accordance with the distribution key set out in Article 54 through relocation or return sponsorship as referred to in Article 45(1) point (b) or a combination of both. The Member States concerned shall immediately indicate to the Commission how they intend to cover their share in this regard. The Commission shall adjust the contributions set out in the implementing act regarding relocation, return sponsorship and the measures referred to in Article 45(1), point (d) for those Member States accordingly.

Where one or more Member States have not submitted an SAR Solidarity Response Plan within the time limits set out in Article 47(4) and Article 47(5), the Commission shall determine the amount and type of contributions to be made by those Member States.

Where the Asylum Agency notifies the Commission and the Member States that 80% of the solidarity pool in the first subparagraph has been used for one or more of the benefitting Member States, the Commission shall convene the Solidarity Forum to inform the Member States of the situation and the additional needs of the Member States. Following the Solidary Forum the Commission shall adopt an amendment to the implementing act establishing a solidarity pool referred to in the first

subparagraph in relation to the benefitting Member State concerned to increase the total number of third-country nationals covered by the solidarity measures referred to in point (a) of the first subparagraph by a maximum of 50%. The share of each Member State referred to in point (b) of the first subparagraph shall be amended accordingly. Where the provisions of the second subparagraph are applied and Member States have indicated that they shall contribute through return sponsorship, the share of these measures shall be increased by 50%. The measures referred to in Article 45(1), point (d) shall also be increased by a share that is in proportion to a 50% increase of that Member States share calculated according to the distribution key set out in Article 54.

3. The implementing act referred to in paragraphs 1 and 2 shall be adopted in accordance with the examination procedure referred to in Article 67(2).

Article 49

Solidarity pool for search and rescue operations

1. Within two weeks of the adoption of the implementing act referred to in Article 48(1) or Article 48(2), the Member State referred to in Article 47(2) shall notify the Commission of its request for solidarity support. Following that request, the Commission shall draw on the solidarity pool and coordinate the implementation of the solidarity measures for each disembarkation or group of disembarkations taking place in a period of two weeks.

2. Under the coordination of the Commission, the Asylum Agency and the European Border and Coast Guard Agency shall draw up the list of eligible persons to be relocated and to be subject to return sponsorship. The list shall indicate the distribution of those persons among the contributing Member States taking into account the total number of persons to be relocated or to be subject to return sponsorship by each contributing Member State, the nationality of those persons and the existence of meaningful links between them and the Member State of relocation or of return sponsorship. Priority shall be given to the relocation of vulnerable persons. The Asylum Agency and the European Border and Coast Guard Agency shall assist the Commission in monitoring the use of the solidarity pool.

3. Where the Commission has adopted a report concluding that a Member State referred to in Article 47(2) is under migratory pressure as set out in Article 51(3), the remaining solidarity contributions from the solidarity pool established under Article 48(1) or Article 48(2) may be used for the purpose of immediately alleviating the migratory pressure on that Member State. In such cases, the provisions of paragraph 2 shall apply.

   This paragraph shall not apply where an implementing act provided for in Article 53 is adopted. As from the adoption of that implementing act drawing on the list of eligible persons to be relocated and to be subject to return sponsorship as provided for in paragraph 2 shall cease.

   Where the solidarity pool referred to in the first subparagraph is insufficient for the purpose of immediately alleviating the challenges faced by the Member State referred to in Article 47(2), solidarity contributions from the solidarity pool of the other Member States established under Article 48(1) or Article 48(2) may be used

insofar as this does not jeopardize the functioning of the pool for those Member States.

4. Where the Migration Management Report identifies that a Member State referred to in Article 47(2) is faced with capacity challenges due to the presence of applicants who are vulnerable regardless of how they crossed the external borders, the solidarity pool established under Article 48(1) or Article 48(2) may also be used for the purpose of relocation of vulnerable persons. In such cases, the provisions of paragraph 2 shall apply.

5. The Commission shall support and facilitate the procedures leading to the relocation of applicants and the implementation of return sponsorship, paying particular attention to unaccompanied minors. It shall coordinate the operational aspects of relocation and return sponsorship, including with the assistance of experts or teams of experts to be deployed by the Asylum Agency or the European Border and Coast Guard Agency.

Article 50

Assessment of migratory pressure

1. The Commission shall assess the migratory situation in a Member State where:

   (a) that Member State has informed the Commission that it considers itself to be under migratory pressure;

   (b) on the basis of available information, it considers that a Member State may be under migratory pressure.

2. The Asylum Agency and the European Border and Coast Guard Agency shall assist the Commission in drawing up the assessment of migratory pressure. The Commission shall inform the European Parliament, the Council and the Member States, without delay, that it is undertaking an assessment.

3. The assessment of migratory pressure shall cover the situation in the Member State concerned during the preceding six months, compared to the overall situation in the Union, and shall be based in particular on the following information:

   (a) the number of applications for international protection by third-country nationals and the nationality of the applicants;

   (b) the number of third-country nationals who have been detected by Member State authorities while not fulfilling, or no longer fulfilling, the conditions for entry, stay or residence in the Member State including overstayers within the meaning of Article 3(1)(19) of Regulation (EU) 2017/2226 of the European Parliament and of the Council[58];

   (c) the number of return decisions that respect Directive 2008/115/EC;

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

(d) the number of third-country nationals who left the territory of the Member States following a return decision that respects Directive 2008/115/EC;

(e) the number of third-country nationals admitted by the Member States through Union and national resettlement [or humanitarian admission] schemes;

(f) the number of incoming and outgoing take charge requests and take back notifications in accordance with Articles 34 and 36;

(g) the number of transfers carried out in accordance with Article 31;

(h) the number of persons apprehended in connection with an irregular crossing of the external land, sea or air border;

(i) the number of persons refused entry in accordance with Article 14 of Regulation EU (No) 2016/399;

(j) the number and nationality of third-country nationals disembarked following search and rescue operations, including the number of applications for international protection;

(k) the number of unaccompanied minors.

4. The assessment of migratory pressure shall also take into account the following:

(a) the information presented by the Member State, where the assessment is carried out pursuant to paragraph 1, point (a);

(b) the level of cooperation on migration with third countries of origin and transit, first countries of asylum, and safe third countries as defined in Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*];

(c) the geopolitical situation in relevant third countries that may affect migratory movements;

(d) the relevant Recommendations provided for in Article 15 of Council Regulation (EU) No 1053/2013[59], Article 13, 14 and 22 of Regulation (EU) XXX/XXX [*European Union Asylum Agency*] and Article 32(7) of Regulation (EU) 2019/1896;

(e) information gathered pursuant to Commission Recommendation of XXX on an EU mechanism for Preparedness and Management of Crisis related to Migration (Migration Preparedness and Crisis Blueprint)

(f) the Migration Management Report referred to in Article 6(4);

(g) the Integrated Situational Awareness and Analysis (ISAA) reports under Council Implementing Decision (EU) 2018/1993 on the EU Integrated Political Crisis Response Arrangements, provided that the Integrated Political Crisis Response is activated or the Migration Situational Awareness and Analysis (MISAA) report issued under the first stage of the Migration Preparedness and Crisis Blueprint, when the Integrated Political Crisis Response is not activated;

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

(h) information from the visa liberalisation reporting process and dialogues with third countries;

(i) quarterly bulletins on migration, and other reports, of the European Union Agency for Fundamental Rights.

(j) the support provided by Union Agencies to the benefitting Member State.

Article 51

Report on migratory pressure

1. The Commission shall consult the Member State concerned during its assessment undertaken pursuant to Article 50(1).

   The Commission shall submit the report on migratory pressure to the European Parliament and to the Council within one month after the Commission informed them that it was carrying out an assessment pursuant to Article 50(2).

2. In the report, the Commission shall state whether the Member State concerned is under migratory pressure.

3. Where the Commission concludes that the Member State concerned is under migratory pressure, the report shall identify:

   (a) the capacity of the Member State under migratory pressure in the field of migration management, in particular asylum and return as well as its overall needs in managing its asylum and return caseload;

   (b) measures that are appropriate to address the situation and the expected timeframe for their implementation consisting, as appropriate, of:

      (i) measures that the Member State under migratory pressure should take in the field of migration management, and in particular in the field of asylum and return;

      (ii) measures referred to in Article 45(1), points (a), (b) and (c) to be taken by other Member States;

      (iii) measures referred to in Article 45(1), point (d) to be taken by other Member States.

4. Where the Commission considers that a rapid response is required due to a developing situation in a Member State, it shall submit its report within two weeks at the latest from the date on which it informed the European Parliament, the Council and the Member States pursuant to Article 50(2) that it was carrying out an assessment.

Article 52

Solidarity Response Plans in situations of migratory pressure

1. Where the report referred to in Article 51 indicates that a Member State is under migratory pressure, the other Member States which are not themselves benefitting Member States shall contribute by means of the solidarity contributions referred to in Article 45(1), points (a), (b) and (c). Member States shall prioritise the relocation of unaccompanied minors.

2. Where the report referred to in Article 51 identifies measures referred to in paragraph 3, point (b)(iii) of that Article, other Member States may contribute by means of those measures instead of measures referred to in Article 51(3)(b)(ii). Such measures shall not lead to a short fall of more than 30% of the total contributions identified in the report on migratory pressure under Article 51(3)(b)(ii).

3. Within two weeks from the adoption of the report referred to in Article 51, Member States shall submit to the Commission a Solidarity Response Plan by completing the form in Annex II. The Solidarity Response Plan shall indicate the type of contributions from among those set out in Article 51(3)(b)(ii) or, where relevant, the measures set out in Article 51(3)(b)(iii) that Member States propose to take. Where Member States propose more than one type of contribution set out in Article 51(3)(b)(ii), they shall indicate the share of each.

   Where the Solidarity Response Plan includes return sponsorship, Member States shall indicate the nationalities of the illegally staying third-country nationals present on the territory of the Member State concerned that they intend to sponsor.

   Where Member States indicate measures set out in Article 51(3)(b)(iii) in the Solidarity Response Plan they shall also indicate the detailed arrangements and the time-frame for their implementation.

4. Where the Commission considers that the solidarity contributions indicated in the Solidarity Response Plans do not correspond to the needs identified in the report on migratory pressure provided for in Article 51, it shall convene the Solidarity Forum. In such cases, the Commission shall invite Member States to adjust the type of contributions in their Solidarity Response Plans in the course of the Solidarity Forum by submitting revised Solidarity Response Plans.

5. A Member State proposing solidarity contributions set out in Article 51(3)(b)(ii), may request a deduction of 10% of its share calculated according to the distribution key set out in Article 54 where it indicates in the Solidarity Response Plans that over the preceding five years it has examined twice the Union average per capita of applications for international protection.

Article 53

Commission implementing acts on solidarity in situations of migratory pressure

1. Within two weeks from the submission of the Solidarity Response Plans referred to in Article 52(3) or, where the Solidarity Forum is convened pursuant to Article 52(4), within two weeks from the end of the Solidarity Forum, the Commission shall adopt an implementing act laying down the solidarity contributions for the benefit of the Member State under migratory pressure to be taken by the other Member States and the timeframe for their implementation.

2. The types of contributions set out in the implementing act shall be those indicated by Member States in their Solidarity Response Plans. Where one or more Member States have not submitted a Solidarity Response Plan, the Commission shall determine the types of contributions to be made by the Member State taking into account the needs identified in the report on migratory pressure.

   Where the type of contribution indicated by Member States in their solidarity response plans is that referred to in Article 45(1), point (d), the Commission shall assess whether the measures proposed are in proportion to the contributions that the

Member States would have made by means of the measures referred to in Article 45(1), points (a), (b) or (c) as a result of the application of the distribution key set out in Article 54.

Where the measures proposed are not in proportion to the contributions that the contributing Member State would have made by means of the measures referred to in Article 45(1), points (a), (b) or (c), the Commission shall set out in the implementing act the measures proposed while adjusting their level.

Where the measures proposed would lead to a shortfall greater than 30% of the total number of solidarity measures identified in the report on migratory pressure under Article 51(3)(b)(ii), the contributions set out in the implementing act shall be adjusted so that those Member States indicating such measures would be required to cover 50% of their share calculated according to the distribution key set out in Article 54 through measures set out in Article 51(3)(b)(ii). The Commission shall adjust measures referred to in Article 51(3)(b)(iii) indicated by those Member States accordingly.

3. The implementing act shall set out:

(a) the total number of persons to be relocated from the requesting Member State pursuant to Article 45(1), points (a) or (c), taking into account the capacity and needs of the requesting Member States in the area of asylum identified in the report referred to in Article 51(3)(b)(ii);

(b) the total number of persons to be subject to return sponsorship from the requesting Member State pursuant to Article 45(1), point (b), taking into account the capacity and needs of the requesting Member States on return identified in the report referred to in Article 51(3)(b)(ii);

(c) the distribution of persons to be relocated and/or those to be subject to return sponsorship among the Member States including the benefitting Member State, on the basis of the distribution key set out in Article 54;

(d) the measures indicated by Member States pursuant to second, third and fourth subparagraph of paragraph 2.

The distribution referred to in paragraph 3 point (c) shall be adjusted where a Member State making a request pursuant to Article 52(5) demonstrates in the Solidarity Response Plan that over the preceding 5 years it has been responsible for twice the Union average per capita of applications for international protection. In such cases the Member State shall receive a deduction of 10/% of its share calculated according to the distribution key set out in Article 54. This deduction shall be distributed proportionately among the Member States making contributions referred to in Article 45(1) points (a), (b) and (c);

4. Where contributions have been made in response to a request by a Member State for solidarity support from other Member States to assist it in addressing the migratory situation on its territory to prevent migratory pressure pursuant to Article 56(1) within the preceding year, and where they correspond to the type of measures set out in the implementing act, the Commission shall deduct these contributions from the corresponding contributions set out in the implementing act.

5. On duly justified imperative grounds of urgency due to the migratory pressure present in a benefitting Member State, the Commission shall adopt immediately

applicable implementing acts in accordance with the urgency procedure referred to in Article 67(3).

Those acts shall remain in force for a period not exceeding 1 year.

6. The Commission shall report on the implementation of the implementing act one month after it ceases to apply. The report shall contain an analysis of the effectiveness of the measures undertaken.

Article 54

Distribution key

The share of solidarity contributions referred to in Article 45(1), points (a), (b) and (c) to be provided by each Member State in accordance with Articles 48 and 53 shall be calculated in accordance with the formula set out in Annex III and shall be based on the following criteria for each Member State, according to the latest available Eurostat data:

(a) the size of the population (50% weighting);

(b) the total GDP (50% weighting).

Article 55

Return sponsorship

1. A Member State may commit to support a Member State to return illegally staying third-country nationals by means of return sponsorship whereby, acting in close coordination with the benefitting Member State, it shall take measures to carry out the return of those third-country nationals from the territory of the benefitting Member State.

2. Where a Member State commits to provide return sponsorship and the illegally staying third-country nationals who are subject to a return decision issued by the benefitting Member State do not return or are not removed within 8 months, the Member State providing return sponsorship shall transfer the persons concerned onto its own territory in line with the procedure set out in Articles 57 and 58. This period shall start from the adoption of the implementing act referred to in Article 53(1) or, where applicable, in Article 49(2).

3. Where a Member State commits to provide return sponsorship in relation to third-country nationals who are not yet subject to a return decision in the benefitting Member State, the period referred to in paragraph 2 shall start to run from either of the following dates:

(a) the date when a return decision is issued by the benefitting Member State; or

(b) where a return decision is issued as a part of a decision rejecting an application for international protection or where a return decision is issued in a separate act, at the same time and together with the decision rejecting an application for international protection in accordance with Article 35a of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], the date when the applicant or third-country national no longer has a right to remain and is not allowed to remain.

4. The measures referred to in paragraph 1 shall include one or more of the following activities carried out by the sponsoring Member State:

(a) providing counselling on return and reintegration to illegally staying third-country nationals;

(b) using the national programme and resources for providing logistical, financial and other material or in-kind assistance, including reintegration, to illegally staying third-country nationals willing to depart voluntarily;

(c) leading or supporting the policy dialogue and exchanges with the authorities of third countries for the purpose of facilitating readmission;

(d) contacting the competent authorities of third countries for the purpose of verifying the identity of third-country nationals and obtaining a valid travel document;

(e) organising on behalf of the benefitting Member State the practical arrangements for the enforcement of return, such as charter or scheduled flights or other means of transport to the third country of return.

These measures shall not affect the obligations and responsibilities of the benefitting Member State laid down in Directive 2008/115/EC.

Article 56

Other solidarity contributions

1. Where a Member State requests solidarity support from other Member States to assist it in addressing the migratory situation on its territory to prevent migratory pressure, it shall notify the Commission of that request.

2. Any Member State may, at any time, in response to a request for solidarity support by a Member State, or on its own initiative, including in agreement with another Member State, make contributions by means of the measures referred to in Article 45 for the benefit of the Member State concerned and with its agreement. Contributions referred to in article 45, point (d) shall be in accordance with the objectives of Regulation (EU) XXX/XXX [Asylum Migration Fund].

3. Member States which have contributed or plan to contribute with solidarity contributions in response to a request for solidarity support by a Member State, or on its own initiative, shall notify the Commission, thereof by completing the Solidarity Support Plan form set out in Annex IV. The Solidarity Response Plan shall include, where relevant, verifiable information, including on the scope and nature of the measures and their implementation.

CHAPTER II

PROCEDURAL REQUIREMENTS

Article 57

Procedure before relocation

1. The procedure set out in this Article shall apply to:

(a) persons referred to in Article 45(1), points (a) and (c) and in Article 45(2), point (a);

(b) persons referred to in Article 45(1), point (b) where the period referred to in Article 55(2) has expired, and Article 45(2), point (b).

2. Before applying the procedure set out in this Article, the benefitting Member State shall ensure that there are no reasonable grounds to consider the person concerned a danger to national security or public order of that Member State. If there are reasonable grounds to consider the person a danger to national security or public order, the benefitting Member State shall not apply the procedure set out in this Article and shall, where applicable, exclude the person from the list referred to in Article 49(2).

3. Where relocation is to be applied, the benefitting Member State shall identify the persons who could be relocated. Where the person concerned is an applicant for or a beneficiary of international protection, that Member State shall take into account, where applicable, the existence of meaningful links between the person concerned and the Member State of relocation. Where the identified person to be relocated is a beneficiary for international protection, the person concerned shall be relocated only after that person consented to relocation in writing.

Where relocation is to be applied pursuant to Article 49, the benefitting Member State shall use the list drawn up by the Asylum Agency and the European Border and Coast Guard Agency referred to in Article 49(2).

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

4. When the period referred to in Article 55(2) expires, the benefitting Member State shall immediately inform the sponsoring Member State that the procedure set out in paragraphs 5 to 10 shall be applied in respect of the illegally staying third-country nationals concerned.

5. The benefitting Member State shall transmit to the Member State of relocation as quickly as possible the relevant information and documents on the person referred to in paragraphs 2 and 3.

6. The Member State of relocation shall examine the information transmitted by the benefitting Member State pursuant to paragraph 5, and verify that there are no reasonable grounds to consider the person concerned a danger to its national security or public order.

7. Where there are no reasonable grounds to consider the person concerned a danger to its national security or public order, the Member State of relocation shall confirm within one week that it will relocate the person concerned.

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

In exceptional cases, where it can be demonstrated that the examination of the information is particularly complex or that a large number of cases need checking at

that time, the Member State of relocation may give its reply after the one-week time limit mentioned in the first and second subparagraphs, but in any event within two weeks. In such situations, the Member State of relocation shall communicate its decision to postpone a reply to the benefitting Member State within the original one-week time limit.

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

8. The benefitting Member State shall take a transfer decision at the latest within one week of the confirmation by the Member State of relocation. It shall notify the person concerned in writing without delay of the decision to transfer him or her to that Member State.

9. The transfer of the person concerned from the benefitting Member State to the Member State of relocation shall be carried out in accordance with the national law of the benefitting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within 4 weeks of the confirmation by the Member State of relocation or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3).

10. Articles 32(3), (4) and (5), Articles 33 and 34, Article 35(1) and (3), Article 36(2) and (3), and Articles 37 and 39 shall apply *mutatis mutandis* to the transfer for the purpose of relocation.

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

Article 58

Procedure after relocation

1. The Member State of relocation shall inform the benefitting Member State of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

2. Where the Member State of relocation has relocated an applicant for whom the Member State responsible has not yet been determined, that Member State shall apply the procedures set out in Part III, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5), and Article 21(1) and (2).

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

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

3. Where the Member State of relocation has relocated an applicant for whom the benefitting Member State had previously been determined as responsible on other

grounds than the criteria referred to in Article 57(3) third subparagraph, the responsibility for examining the application for international protection shall be transferred to the Member State of relocation.

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

4. Where the Member State of relocation has relocated a beneficiary for international protection, the Member State of relocation shall automatically grant international protection status respecting the respective status granted by the benefitting Member State.

5. Where the Member State of relocation has relocated a third-country national who is illegally staying on its territory, of Directive 2008/115/EC shall apply.

Article 59

Other obligations

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

Article 60

Operational coordination

Upon request, the Commission shall coordinate the operational aspects of the measures offered by the contributing Member States, including any assistance by experts or teams deployed by the Asylum Agency or the European Border and Coast Guard Agency.

CHAPTER III

FINANCIAL SUPPORT PROVIDED BY THE UNION

Article 61

Financial support

Funding support following relocation pursuant to Chapters I and II of Part IV shall be implemented in accordance with Article 17 of Regulation (EU) XXX/XXX [*Asylum and Migration Fund*].

PART V

GENERAL PROVISIONS

Article 62

Data security and data protection

1. Member States shall implement appropriate technical and organisational measures to ensure the security of personal data processed under this Regulation and in particular

to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed.

2. The competent supervisory authority or authorities of each Member State shall monitor the lawfulness of the processing of personal data by the authorities referred to in Article 41 of the Member State in question.

3. The processing of personal data by the Asylum Agency shall be subject to Regulation (EU) XXX/XXX [*European Union Asylum Agency*], in particular as regards the monitoring of the European Data Protection Supervisor.

Article 63

Confidentiality

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

Article 64

Penalties

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

Article 65

Calculation of time limits

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

(a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;

(b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;

(c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

Article 66

Territorial scope

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

Article 67

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011 shall apply.

Article 68

Exercise of the delegation

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

2. The power to adopt delegated acts referred to in Articles 15(6) and 24(3) shall be conferred on the Commission for a period of 5 years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 15(6) and 24(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 15(6) and 24(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European

Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 69

Monitoring and evaluation

By [18 months after entry into force] and from then on annually, the Commission shall review the functioning of the measures set out in Chapters I-III of Part IV of this Regulation.

[Three years after entry into force, the Commission shall report on the implementation of the measures set out in this Regulation.]

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

Article 70

Statistics

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council[60], Member States shall communicate to the Commission (Eurostat), statistics concerning the application of this Regulation and of Regulation (EC) No 1560/2003.

PART VI

AMENDMENTS TO OTHER UNION ACTS

Article 71

Amendments to the Long Term Residence Directive

1. Directive 2003/109/EC is amended as follows:

Article 4 is amended as follows:

(a) in paragraph 1, the following sub-paragraph is added:

"With regard to beneficiaries of international protection, the required period of legal and continuous residence shall be three years".

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

Article 72

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

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

1. Article 16 is replaced by the following:

" 1. Member States shall receive, in addition to their allocation calculated in accordance with point (a) of Article 11(1), an amount of EUR 10 000 for each person admitted through resettlement or humanitarian admission.

2. Where appropriate, Member States may also be eligible for an additional amount of EUR 10 000 for family members of persons referred to in paragraph 1, if the persons are admitted to ensure family unity.

3. The amount referred to in paragraph 1 shall take the form of financing not linked to costs in accordance with Article [125] of the Financial Regulation.

4. The additional amount referred to in paragraph 1 shall be allocated to the Member State programme. The funding shall not be used for other actions in the programme except in duly justified circumstances and as approved by the Commission through the amendment of the programme. The amount referred to in paragraph 1 may be included in the payment applications to the Commission, provided that the person in respect of whom the amount is allocated was resettled or admitted.

5. Member States shall keep the information necessary to allow the proper identification of the persons resettled or admitted and of the date of their resettlement or admission, while applicable provisions concerning data retention periods shall prevail.

6. To take account of current inflation rates and relevant developments in the field of resettlement, and within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 of this Regulation to adjust, if deemed appropriate, the amount referred to in paragraph 1 of this Article, to take into account the current rates of inflation, relevant developments in the field of resettlement, as well as factors which can optimise the use of the financial incentive brought by those amounts."

2. Article 17 is replaced by the following:

"1. A Member State shall receive a contribution of:

(a) EUR [10 000] per applicant for whom that Member State becomes responsible as a result of relocation in accordance with Articles 48, 53 and Article 56 Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*];

(b) EUR [10 000] per beneficiary of international protection relocated in accordance with Articles 53 and 56 of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*];

(c) EUR [10 000] per illegally staying third-country national relocated in accordance with Article 53, when the period referred to in Article 55(2) has expired, and Article 56 of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*].

(d) The contribution in points (a), (b) and (c) is increased to EUR [12 000] for each unaccompanied minor relocated in accordance with Article 48, Article 53 and

Article 56 of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*].

2. A Member State carrying out the transfer shall receive a contribution of EUR 500 to cover the transfer of persons pursuant to paragraph 1 for each person, applicant or beneficiary subject to relocation.

3. A Member State shall receive a contribution of EUR 500 to cover the transfer of a person referred to in Article 26(1)(a), (b), (c) or (d) pursuant to Article 35 of Regulation (EU) XXX/XXX [*Asylum and Migration Management Regulation*].

4. A Member State will receive amounts referred to in paragraphs 1 to 3 for each person provided that the person in respect of whom the contribution is allocated was relocated.

5. The amounts referred to in this Article shall take the form of financing not linked to costs in accordance with Article [125] of the Financial Regulation.

6. Member States shall keep the information necessary to allow the proper identification of the persons transferred and of the date of their transfer, while applicable provisions concerning data retention periods shall prevail.

7. Within the limits of available resources, the Commission shall be empowered to adopt delegated acts in accordance with Article 32 to adjust, if deemed appropriate, the amounts referred to in paragraphs 1, 2 and 3 of this Article to take into account the current rates of inflation, relevant developments in the field of transfer of applicants for international protection and of beneficiaries of international protection from one Member State to another, as well as factors which can optimise the use of the financial incentive brought by those amounts."

PART VII

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

Article 73

Repeal

Regulation (EU) No 604/2013 is repealed.

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

Article 74

Transitional measures

Where an application has been registered after [*the first day following the entry into force of this Regulation*], the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date.

Article 75

Entry into force and applicability

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

It shall apply to applications for international protection registered as from [the first day of the thirteenth month following its entry into force]. The Member State responsible for the examination of an application for international protection submitted before that date shall be determined in accordance with the criteria set out in Regulation 604/2013.

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*

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Regulation on Asylum and Migration Management

1.2. Policy area(s) concerned *(Programme cluster)*

10 - Migration

1.3. The proposal/initiative relates to:

☐ **a new action**

☐ **a new action following a pilot project/preparatory action**[61]

✓ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Grounds for the proposal/initiative

1.4.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

In its New Pact on Migration and Asylum the Commission announces a fresh start on migration. This proposal puts in place a common framework for asylum and migration management at EU level as a key contribution to the comprehensive approach and seeks to reinforce mutual trust between the Member States, based on the overarching principle of solidarity and fair sharing of responsibility. It promotes integrated policy-making within migration and asylum policies, including the need to take account of policies in other relevant areas, with a special regard to close cooperation and mutual partnerships with relevant third countries. It recognises that a comprehensive approach also means a stronger, more sustainable and tangible expression of the principle of solidarity and fair sharing of responsibility, which finds its balance in a broader context, widening their focus beyond the issue of which Member State is responsible for examining an application for international protection. These principles should therefore be applied to the whole of migration management, ranging from tackling irregular migration to unauthorised movements.

The proposal streamlines the current rules provided for in Regulation EU (No) 604/2013 and aims at ensuring the correct application of the rules which will limit unauthorised movements of third country nationals between Member States. These rules are complemented with a new solidarity mechanism to address situations where Member States are faced with migratory pressure. This approach also foresees the inclusion of a specific process for solidarity applied to arrivals following search and rescue operations.

Such a solidarity mechanism is underpinned by financial incentives for Member States demonstrating solidarity that would lead to, inter alia, relocation of applicants

[61] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

for and beneficiaries of international protection, and of irregular migrants. Higher incentive payments will be made for relocation of unaccompanied minors. This would significantly change the current financial landscape and support should be provided to address the financial costs related to such relocations in the form of financing not linked to costs as defined in article 125 of the Financial Regulation.

Specific objective: Enhance protection and solidarity

ABM/ABB activity(ies) concerned

10 – Migration

-To put in place a common framework that enhances the efficiency and effectiveness of the comprehensive approach on asylum and migration management though integrated policy making and mutual trust among Member States

-To enhance the efficiency of the system for determining the Member State responsible for examining an application for international protection lodged in a Member State by a third country national or a stateless person.

-To enhance solidarity and responsibility-sharing between the Member States.

The proposal aims to:

- establish a common framework that contributes to the comprehensive approach to asylum and migration management based on the principles of integrated policy-making and of solidarity and fair sharing of responsibility;
- ensure sharing of responsibility through a new solidarity mechanism by putting in place a system to deliver solidarity on a continued basis in normal times and assist Member States with effective measures (relocation or return sponsorship and other contributions aimed at strengtehning the capacity of Member States in the field of asylum, reception and return and in the external dimension) to manage migration in practice where they are faced with migratory pressure. This approach also includes a specific process for solidarity to be applied to arrivals following search and rescue operations;
- enhance the system's capacity to determine efficiently and effectively a single Member State responsible for examining an application for international protection. In particular, it would limit the cessation of responsibility clauses as well as the possibilities for shift of responsibility between Member States due to the actions of the applicant, and significantly shorten the time limits for sending requests and receiving replies, so as to ensure that applicants will have a quicker determination of the Member State responsible and hence a quicker access to the procedures for granting international protection
- discourage abuses and prevent unauthorised movements of the applicants within the EU, in particular by including clear obligations for applicants to apply in the Member State of first entry and remain in the Member State determined as responsible. This also requires proportionate procedural and material consequences in case of non-compliance with their obligations.

Expected results and impact

Member States and the European Union as a whole will benefit from a reformed Regulation on Asylum and Migration Management, incorporating the set of guiding

principles for the effective management of migration through a common framework that contributes to the implementation of the comprehensive approach, simplified procedures and by providing for solidarity to Member States to assist them in addressing situations of migratory pressure. Member States would be able to benefit from voluntary solidarity measures at all times.

The budgetary means set out further in this document cover the estimated Union contributions that will serve as incentive for the widened possibilities for relocation. At the same time, Union contributions will also support the transfers following the determination of the Member State responsible for examining an application for international protection and transfers of relocated persons. This support to the proper implementation of the system will provide for solidarity to Member States including in the context of persons disembarked following search and rescue operations. This in turn would be beneficial to applicants for international protection, as they will benefit from a more efficient system for determining the responsible Member State, and will enable a quicker access to the procedure for examining an application in substance.

Relocation costs

Under the present proposal, the Member State to which asylum applicants, irregular migrants or beneficiaries of international protection are relocated is entitled to receive a Union contribution of EUR 10 000 for each person relocated.

When the person relocated is an unaccompanied minors the Union contribution will be of EUR 12 000. The higher contribution is justified based on the fact that the further processing of unaccompanied minors following relocation would be more complex and consequently more costly.

Transfer costs

Under the present proposal, the Member State carrying out the transfer to the Member State of relocation is entitled to receive a Union contribution of EUR 500 for each person transferred.

In addition, transfer costs related to the normal transfer procedures (take charge requests and take back notifications) will also be supported by the EU under the present proposal and the Member State carrying out the transfer to the Member State responsible, is entitled to receive a Union contribution of EUR 500 for each person transferred.

1.4.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante)

The establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person cannot be achieved by the Member States acting on their own and can only be achieved at Union level.

Expected generated Union added value (ex-post) The added value of this proposal is streamlining and enhancing the effectiveness of the current Dublin Regulation and providing for a solidarity mechanism that is applied during periods of pressure in a Member State for its benefit or in cases of persons disembarked following search and rescue operations.

1.4.3. Lessons learned from similar experiences in the past

The crisis of 2015 exposed significant structural weaknesses and shortcomings in the design and implementation of the European asylum and migration policy, including the Dublin system which was not designed to ensure a sustainable sharing of responsibility for applicants for international protection across the EU. The conclusions of the European Council of 28 June 2018 called for a reform of the Dublin Regulation based on a balance of responsibility and solidarity, taking into account the persons disembarked following search and rescue operations. The evaluation commissioned by the Commission in 2016 concluded that while such a system is still needed at Union level, the current Dublin system is not satisfactory thus requiring changes aimed at streamlining it and making it more efficient. In addition, the current Dublin system was not designed as an instrument for solidarity and sharing of responsibility. The migration crisis exposed this deficiency, which calls for inclusion of a solidarity mechanism in the proposal.

1.4.4. Compatibility and possible synergy with other appropriate instruments

This proposal is compatible with the Asylum and Migration Fund (AMF). AMF already foresees the possibility of transfer of applicants for international protection as part of the national programme of each Member State on a voluntary basis (Article 17 (5) of Regulation (EU) No. 471/2018). With the widened scope of relocation provided for in this proposal, the relocation and transfer costs should also be foreseen. If the appropriations (EUR 1 113 500 000 foreseen for 2022-2027) will not be fully used for the implementation of the expected needs for the implementation of the new system, the remaining amounts will be redeployed for other actions under the AMF. In case the needs for the implementation of a new system would exceed the estimations (i.e. more asylum seekers would need to be relocated and transferred), additional resources should be requested.

1.5. Duration and financial impact

☐ **limited duration**

☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

✓ **unlimited duration**

Implementation with a start-up period from 2022 to 2027,

followed by full-scale operation.

1.6. Management mode(s) planned[62]

✓ **Direct management** by the Commission

☐ by its departments, including by its staff in the Union delegations;

☐ by the executive agencies

✓ **Shared management** with the Member States

✓ **Indirect management** by entrusting budget implementation tasks to:

☐ third countries or the bodies they have designated;

✓ international organisations and their agencies (to be specified);

☐ the EIB and the European Investment Fund;

☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;

☐ public law bodies;

✓ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

✓ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

If more than one management mode is indicated, please provide details in the 'Comments' section.

Comments

The relocation and transfers will be implemented under the Thematic facility of the AMF, mainly through **direct management** (or **indirect management** in case the body implementing the action is pillar assessed). However, depending on the situation it may be more appropriate to provide the Union contributions through shared management, by topping up the national programmes

[62] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Funding implemented under the **direct and indirect management** will be implemented under the AMF Thematic Facility, which also falls under the general monitoring and evaluation mechanism of AMF. Streamlined templates and rules will be established in order to collect indicators from the grant and contribution agreements' beneficiaries at the same pace as for the shared management, in order to ensure the disclosure of comparable data.

When the Union contribution will be provided through **shared management**, the following rules shall apply:

Funding implemented by Member States under shared management will follow the rules set out in the Common Provisions Regulation (COM(2018) 375) referred further as the CPR proposal, in Regulation 2018/2016 (Financial Regulation) and the Asylum and Migration Fund (COM(2018)471), referred further as AMF proposal.

In line with the CPR proposal, each Member State will establish a management and control system for its programme and ensure the quality and the reliability of the monitoring system. Therefore, for shared management, a coherent and efficient reporting, monitoring and evaluation framework is in place. Member States are required to set up a monitoring committee to which the Commission may participate in advisory capacity. Member States may decide to set up a single monitoring committee to cover more than one programme. Monitoring committees will review all issues that affect programme progress towards achieving its objectives.

For the HOME affairs funds, Member States will submit to the Commission an annual performance report on the implementation of the programme and the progress in achieving the milestones and targets. The report should also raise any issues affecting the performance of the programme and describe the action taken to address them.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

According to the AMF proposal, 60% of the AMF envelope is reserved for programmes of Member States. The remaining 40% of the financial envelope will be managed through a thematic facility. The objective of introducing the thematic facility is to balance the predictability of multiannual allocation of funding to Member States' programmes with flexibility in disbursing funding periodically to actions with a high level of added value to the Union on the basis of a two-year programming cycle. The thematic facility will be used for resettlement and transfers.

The control strategy will be based on the Financial Regulation and on the CPR proposal.

For the part implemented through **direct and indirect management** under the thematic facility, the management and control system will build on the experience gained in 2014-2020 in both Union actions and emergency assistance. A simplified

scheme will be established allowing a swift processing of the applications for funding while reducing the risk of errors: eligible applicants will be limited to Member States and International organisations, funding will be based on simplified cost options, standard templates will be developed for funding applications, grant/contribution agreements and reporting, a standing evaluation committee will examine the applications as soon as they are received.

When the Union contribution will be provided through **shared management**, the following rules shall apply:

The Member States will receive an additional contribution for each person falling in the categories covered by this Regulation.

The corresponding amounts will be allocated to the Member States through the amendment of their programme. These programmes are managed under shared management in line with Article 63 of the Financial Regulation, the CPR proposal and the AMF proposal.

The payment arrangements for shared management are set out in the CPR proposal. CPR proposal provides for an annual pre-financing, followed by a maximum of four interim payments per programme and year based on the payment applications sent by the Member States during the accounting year. As per the CPR proposal, the pre-financing is cleared within the final accounting year of the programmes.

For the part implemented through shared management, the CPR proposal builds on the management and control strategy in place for the 2014-2020 programming period but introduces some measures aimed at simplifying the implementation and reducing the control burden at the level of both beneficiaries and Member States. The new elements include:

-the removal of the designation procedure for the programme authorities;

-management verifications (administrative and on-the-spot) to be carried out by the managing authority on a risk basis (compared to the 100 % administrative controls required in the 2014-2020 programming period).

-managing authorities may apply, under certain conditions, proportionate control arrangements in line with the national procedures.

-conditions to avoid multiple audits on the same operation/expenditure.

The programme authorities will submit to the Commission interim payment claims based on expenditure incurred by beneficiaries. In order to mitigate the risk of reimbursing ineligible expenditure, the CPR caps the Commission's interim payments at 90%, given that at this moment only part of the national controls have been carried out. The Commission will pay the remaining balance following the annual clearance of accounts exercise, upon receipt of the assurance package from the programme authorities. The assurance package includes the accounts, the management declaration and the audit authority's opinions on the accounts, the management and control system and the legality and regularity of the expenditure declared in the accounts. This assurance package will be used by the Commission to determine the amount chargeable to the Fund for the accounting year.

Any irregularities detected by the Commission or the European Court of Auditors after the transmission of the annual assurance package may lead to a net financial correction.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

RISKS

In past years, DG HOME has not been facing important risks of errors in its spending programmes.

For the relocation and transfers supported through **direct/indirect management**, the risk of errors is expected to be lower than in the current Union actions and emergency assistance (currently at around 3% of residual error rate). Indeed, many of the risk factors will not exist in the funding of relocation and transfers: eligible applicants will be limited to Member States and International organisations, funding will be exclusively based on simplified cost options, and standardised templates will be developed to simplify both the application and the reporting. Additionally, assurance regarding the reality of the relocations and transfers is high thanks to the existing operational monitoring mechanisms.

For the support provided through **shared management**:

The management and control system follows the general requirements set in the CPR proposal and complies with the requirements of the Financial Regulation.

Regarding the financial contribution for relocation, and transfers, Member States may include them in the payment applications to the Commission only provided that the person in respect of whom the contribution is claimed was effectively transferred. Member States are obliged to carry out controls and audits to verify whether the conditions to claim to the Commission the contribution have been met. In addition, Member States are obliged to keep appropriate supporting documents for the time period set up in the CPR proposal.

Multi-annual programming coupled with annual clearance based on the payments made by the Responsible Authority aligns the eligibility periods with the annual accounts of the Commission.

INTERNAL CONTROL SYSTEM – MITIGATING CONTROLS

The first DG HOME Anti-Fraud Strategy was adopted in 2013. The current Anti-Fraud Strategy was updated in February 2018 and will be valid until the current MFF comes to an end. In view of the MFF 2021-2027 and the new Commission Anti-Fraud Strategy adopted in 2019, DG HOME is currently working on updating its Anti-Fraud Strategy. The aim of the new DG HOME Strategy will be to adapt to the evolving situation and further strengthen the DG's anti-fraud activities. The new DG HOME Anti-Fraud Strategy will be adopted at the latest by 2021.

DG HOME has also established in 2016 a control strategy for emergency assistance that will be the basis for the establishment of the control strategy for the part on the direct/indirect management.

Additionally for **shared management**, in November 2015, DG HOME adopted an Audit Strategy for the shared management part of Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF). A Control Strategy for AMIF/ISF shared management is currently being developed by DG HOME. This strategy will

include all controls needed for the management of the national programmes under AMIF and ISF.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

Negligible control costs and very low error risk.

The costs of controls are expected to remain the same as in the current period.

For **direct/indirect management**, the cost of controls is expected to be smaller than for the Union actions, due to standardised procedures for application, evaluation and reporting, simplified costs and strong limitations to the eligible applicants.

For **shared management**, the cost of controls may potentially be reduced for Member States due to the risk-based approach to management and controls being introduced in the CPR proposal. For the present (2014-2020) programming cycle, as of 2017 the cumulative cost of control by the Member States is estimated at approximately 5 % of the total amount of payments requested by the Member States for the year 2017.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

DG HOME's Anti-fraud strategy mentioned in 2.2.2 applies.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading of the multiannual financial framework and new expenditure budget line(s) proposed

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Heading 4: Migration and Border Management Chapter 10: Migration	Diff./Non-diff.[63]	from EFTA countries[64]	from candidate countries[65]	from third countries	within the meaning of Article [21(2)(b)] of the Financial Regulation
4	10 02 01 – Asylum and Migration Fund	Diff.	NO	NO	YES[66]	NO
4	10 01 01 – Support expenditure for the "Asylum and Migration Fund"	Non-diff.	NO	NO	YES	NO
4	XX 01 01 01 (Headquarters and Commission Representation Offices)	Non-diff.	NO	NO	NO	NO
4	XX 01 01 02 (Headquarters and Commission Representation Offices)	Non-diff.	NO	NO	NO	NO
4	XX 01 01 02 (Headquarters and Commission Representation Offices)	Non-diff.	NO	NO	NO	NO

63 Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
64 EFTA: European Free Trade Association.
65 Candidate countries and, where applicable, potential candidates from the Western Balkans.
66 possible voluntary contribution from the Schengen Associated Countries if these would participate in the new Dublin system

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	**4**	Migration and Border Management

			2021	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	***Post 2027***	**TOTAL**
Operational appropriations (split according to the budget lines listed under 3.1)	Commitments	(1)		87.800	120.100	225.500	226.300	226.300	227.500		1 113.500
	Payments	(2)		70.240	113.640	204.420	226.140	226.300	227.260	45.500	1 113.500
Appropriations of an administrative nature financed from the envelope of the programme[67]	Commitments = Payments	(3)									
TOTAL appropriations for the envelope of the programme	Commitments	=1+3		87.800	120.100	225.500	226.300	226.300	227.500		1 113.500
	Payments	=2+3		70.240	113.640	204.420	226.140	226.300	227.260	45.500	1 113.500

[67] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

Heading of multiannual financial framework	7	European Public Administration

This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the Annex to the Legislative Financial Statement , which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	*Post 2027*	TOTAL
Human resources			1.815	1.815	1.815	1.815	1.815	1.815		10.890
Other administrative expenditure			0.120	0.120	0.120	0.120	0.120	0.120		0.720
TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)		1.935	1.935	1.935	1.935	1.935	1.935	-	11.610

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	*Post 2027*	TOTAL
TOTAL appropriations across HEADINGS of the multiannual financial framework	Commitments		89.735	122.035	227.435	228.235	228.235	229.435		1 125.110
	Payments		72.175	115.575	206.355	228.075	228.235	229.195	45.500	1 125.110

3.2.2. *Summary of estimated impact on appropriations of an administrative nature*

☐ The proposal/initiative does not require the use of appropriations of an administrative nature

☑ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL
HEADING 7 of the multiannual financial framework								
Human resources		1.815	1.815	1.815	1.815	1.815	1.815	10.890
Other administrative expenditure		0.120	0.120	0.120	0.120	0.120	0.120	0.720
Subtotal HEADING 7 of the multiannual financial framework		1.935	1.935	1.935	1.935	1.935	1.935	11.610
Outside HEADING 7[68] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 7 of the multiannual financial framework								
TOTAL		1.935	1.935	1.935	1.935	1.935	1.935	11.610

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

[68] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.2.1. Estimated requirements of human resources

☐ The proposal/initiative does not require the use of human resources.

☑ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

Years		2021	2022	2023	2024	2025	2026	2027
• Establishment plan posts (officials and temporary staff)								
Headquarters and Commission's Representation Offices		11	11	11	11	11	11	11
Delegations								
Research								
• External staff (in Full Time Equivalent unit: FTE) - AC, AL, END, INT and JED [69] Heading 7								
Financed from HEADING 7 of the multiannual financial framework	- at Headquarters	2	2	2	2	2	2	2
	- in Delegations							
Financed from the envelope of the programme [70]	- at Headquarters							
	- in Delegations							
Research								
Other (specify)								
TOTAL		**13**	**13**	**13**	**13**	**13**	**13**	**13**

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

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Description of tasks to be carried out:

Officials and temporary staff	Support, process and monitor the activities related to the implementation of this proposal, mainly regarding the solidarity mechanism and the legal framework necessary to implement it. 9 FTE (7 AD, 1 CA and 1 SNE) shall be assigned to the relevant policy unit and 4 FTE (2 AD and 2 AST) to the relevant fund management unit.
External staff	Support, process and monitor the activities related to the implementation of this proposal, mainly regarding the operation of proposal with respect to the determination of responsibility established for the Member States to examine applications for international protection.

[69] AC= Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

[70] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.3. Third-party contributions[71]

The proposal/initiative:

✓ does not provide for co-financing by third parties

☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL
Specify the co-financing body		p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	
TOTAL appropriations co-financed		p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	

3.3. Estimated impact on revenue

✓ The proposal/initiative has no financial impact on revenue.

☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Impact of the proposal/initiative[72]						
	2021	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**
Article …….							

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[71] Possible contribution from the Schengen Associated Countries if these would participate in the new Dublin system

[72] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.