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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Balance between solidarity and responsibility under the Pact on Migration and Asylum - Discussion paper

Following the COREPER debates on 3, 17 and 31 May and 5 June 2023, the Presidency has taken good note of the generally expressed need for a sustainable, predictable and practicable system of flexible responsibility and solidarity. The previous note (10065/23) set out in detail the main building blocks for such system, based on a balance between solidarity and responsibility. In the light of the latest COREPER debate on 5 June 2023, the Presidency has made some further adjustments to the draft texts of AMMR and APR, set out in 10084/23 and 10084/23. The Presidency is convinced that these texts, which will be presented to Home Affair ministers on 8 June 2023, can be the basis for a general approach on both the AMMR and the APR.

The Presidency proposes the same numbers it has previously presented to COREPER, with an adjustment regarding the financial contributions:

- The **30.000** proposed by the Presidency for **the adequate capacity** for carrying out the border procedure at Union level is ambitious enough to significantly enhance the efficient processing of asylum applications.
- The **multiplicator 4 proposed** by the Presidency for **the annual cap**, regarding the maximum number of applications, takes due account of the duration of the border procedure of a maximum of six months. Applicants considered a danger to national security or public order of the Member States should always be dealt with in the border procedure, regardless of whether the cap is reached.
- The **30.000 minimum annual number proposed by the Presidency for relocation** is ambitious enough to relieve pressure on benefitting Member States and also takes into consideration the operational challenges linked to the implementation of relocations.
- The **EUR 600 million minimum annual amount proposed by the Presidency for financial contributions** is considered as having an equivalent level of ambition to relocation.

The final adjustments that have been made to the draft proposals are the following.

For the APR:

- The **substantiated notification** to the Commission to allow a Member State to temporarily not apply the border procedure when the number of applicants that are subject to the border procedure in a Member State is equal to or exceeds the adequate capacity is maintained. However, the latest APR text introduces an **authorisation requirement in case the annual cap is reached**, according to which the Commission will have to verify that the number of applications that the Member State concerned has examined in the border procedure since the beginning of the year, is equal to or exceeds the annual cap.

- As regards the possibility to reject an application as **inadmissible on the basis of the concepts of first country of asylum or safe third country**, it is no longer required that it shall be clear 'beforehand' that the applicant will be admitted or readmitted to that country.
- Regarding the **safe third country concept**, the Presidency has carefully listened to the concerns that have been voiced, often from opposite perspectives. The way in which the Presidency has tried to accommodate these concerns is that it has:
 - on the one hand, **deleted the reference to transit, short stay** and to the cultural and linguistic ties in the relevant parts of the text;
 - on the other hand, included the safe third country concept (and the exemptions from the border procedure) as a subject that needs to be **part of a future review** of the APR, as this is a topic which the Union will have to come back to as part of our migration policy, and in particular the external dimension thereof.

For the AMMR:

- The **clause on the review, in particular regarding the definition of family members**, by the Commission three years after the entry into application of the AMMR has been further adjusted with a view to taking into account comments by delegations.
- The Presidency proposes to further reduce the period after which there will be a **cessation of responsibility** of the Member State which **rejected an application in the border procedure**, from 18 months to 15 months from the decision becoming final. In this way the use of the border procedure will be further incentivised and the additional efforts that are demanded from frontline Member States are duly taken into account by this new ground of cessation of responsibility, which hitherto does not exist.

- The Presidency also suggests reducing the time limit for the responsibility of the country of **irregular entry** from 2.5 to 2 years.
- Regarding **voluntary responsibility offsets**, the latest text now allows that these can be made not only when relocation pledges reach 50% of the relocation figure set out in the Commission Recommendation, but also **where the contributing Member State has pledged 50 % or more of its mandatory fair share in relocations**. Obviously the benefitting Member State needs to agree thereto.
- **Strengthened safeguards for solidarity**: no type of solidarity (relocations, financial contributions or responsibility offsets) shall be triggered for the benefit of a Member State which is not complying with its responsibility obligations under AMMR. The determination of whether a Member State is in compliance cannot be left to the judgment of another Member State. Such consequence can only be drawn in exceptional cases where the Commission would have established that a Member State has “systemic shortcomings with regard to the rules set out in Part III of this Regulation that could result in serious consequences for the functioning of this Regulation”.
- It has been clarified that **possible situations of instrumentalisation of migrants** have to be taken into account by the Commission when assessing whether a Member State is under migratory pressure, at risk of migratory pressure or facing a significant migratory situation.
- New text has been inserted in the AMMR text clarifying that actions undertaken by Member States for **putting in place adequate reception capacity** for the border procedure shall be **eligible for financial support** financially by the Union Funds, under the 2021-2027 MFF.

In light of the above, the Presidency invites delegations to indicate whether they can support the amended proposals as the basis for a general approach on the AMMR and the APR.