



Council of the  
European Union

Brussels, 30 June 2023  
(OR. en)

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Interinstitutional File:  
2020/0277(COD)

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10463/2/23  
REV 2

LIMITE

JAI 825  
ASILE 69  
MIGR 201  
CODEC 1083

#### NOTE

From:	Presidency
To:	JHA Counsellors (Asylum)
No. prev. doc.:	11207/20
No. Cion doc.:	COM(2020) 613 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL addressing situations of crisis, instrumentalisation and <i>force majeure</i> in the field of migration and asylum - Presidency compromise text

For the purpose of discussions in the JHA Counsellors (Asylum) on 4 July 2023, delegations will find in the Annex a Presidency compromise text on the above-mentioned proposal.

Changes as compared to the previous Presidency text have been marked in **bold**. Deleted text is indicated with [...].

2020/0277 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**addressing situations of crisis and *force majeure* in the field of migration and asylum**

(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)(c), (d) and (e) and Article 79(2)(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<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

#### *Subject matter*

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

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

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

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

- (a)<sup>3</sup> an exceptional situation of mass influx of third-country nationals or stateless persons arriving [...] in a Member State or disembarked on its territory following search and rescue operations, being of such a scale [...] and nature, that it renders the Member State's asylum, reception or return system non-functional [...] **such that there may be** serious consequences for the functioning the Common European Asylum System or the Common Framework as set out in Regulation (EU) XXX/XXX [*Asylum and Migration Management*] [...], or

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<sup>3</sup> **RECITALS**

- (xx) **A mass influx of persons crossing the border even within a short period of time may lead to a situation of crisis in a particular Member State. That may also have consequences for the functioning of the asylum and migration system, not only in that Member State but in the Union as a whole, due to unauthorised movements and the lack of capacity in the Member State of first entry to process the applications for international protection of such third-country nationals or stateless persons. It is necessary to lay down specific rules and mechanisms that should enable effective action to address such situations.**
- (xx) **In addition to situations of crisis, Member States may be faced with abnormal and unforeseeable circumstances outside their control, the consequences of which could not have been avoided in spite of the exercise of all due care. Such situations of force majeure could prevent the MS to apply with obligations and union law and could have consequences not only in that Member State but in the Union as a whole.**

- b)<sup>4</sup> [...] a situation of instrumentalisation [...] where a third country or non-state actor encourages or facilitates the movement of third country nationals **and stateless persons** to the external borders or to a Member State, with the aim of destabilising the Union or a Member State where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security; [...]

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

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#### <sup>4</sup> RECITALS

- (xx) **A situation of instrumentalisation of migrants may arise where a third country or non-state actor instigates irregular migration into the Union by encouraging or facilitating, or even forcing the movement of third country nationals or stateless persons to the external borders, onto or from within its territory and then onwards to those external borders or to the territory of one or more Member States, where such actions are indicative of an intention of a third country or a non-state actor to destabilise the Union or a Member State, where the nature of such actions is liable to put at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security.**
- (xx) **Situations in which non state actors are involved in organised crime, in particular smuggling, should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State. Furthermore, humanitarian aid operations should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.**
- (xx) **Following the invitation of the European Council to the Commission in its conclusions of 22 October 2021 to propose any necessary changes to the Union's legal framework and concrete measures to ensure an immediate and appropriate response to the hybrid threat in line with Union law and international obligations, this Regulation contributes to establishing a comprehensive and permanent framework to equip the Member States facing a situation of instrumentalisation with the necessary tools to respond effectively and swiftly to that situation in full respect of fundamental rights and international obligations.**

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

*Article 2*

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

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

### Article 3

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

1. In a situation of crisis **referred to in Article 1(2)(a)** or *force majeure*, by way of derogation from Article 41b(1) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], Member States may not be required to examine in a border procedure applications made by applicants referred to in Article 40(1)(i) of that Regulation.
2. In a situation of crisis **referred to in Article 1(2)(a) [...]**, by way of derogation from Article **41a(b)** of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], Member States may in a border procedure take decisions on the merits of an application in cases where the applicant is of a nationality, or, in the case of stateless persons, a former habitual resident of a third country, for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 75% or lower, in addition to the cases referred to in Article 40(1) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*];
3. In a situation of **crisis referred to in Article 1(2)(b)**, by way of derogation from Article **41a(a) and (b)**, [...] and Article **41e(2)(a)** of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*], [...] Member States may decide at the locations at the external border, in the proximity to the external border or transit zones or [...] in other designated locations within its territory on the admissibility and on the merits of all applications made by any third country national or stateless person registered within the period during which this point is applied.

4. Where applying paragraphs 2 or 3, the Member State concerned shall prioritise the examination of those applications for international protection lodged by persons with special procedural or special reception needs as defined in [*Reception Conditions Directive recast* and in *Asylum Procedure Regulation*] and family members of minors. The Member State concerned may also prioritise the examination of applications for international protection which are likely to be well-founded or manifestly unfounded.
5. **Where applying paragraphs 2 or 3, Article 41bb of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*] shall not apply.**
6. In a situation of crisis [...] or *force majeure*, by way of derogation from Article 41c(2) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], the duration of the border procedure shall last no more than twenty weeks including appeal starting from the date of the registration of that application. Following this period, the applicant shall be authorised to enter the Member State's territory for the completion of the procedure for international protection
7. In a situation of [...] **crisis referred to in Article 1(2)(b)**, by way of derogation from Article 12(5) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]] the personal interview may be omitted also in case where the determining authority is able to take a positive decision on the basis of the evidence available with regard to the subsidiary protection status.



#### Article 4

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

1. In a situation of crisis **referred to in article 1(2)(a)** or *force majeure* **which renders it impossible for a Member State facing that situation to comply with the time limits set out in [...] Articles 29, 30, 31 and 35 of Regulation (EU) XXX/XXX [Asylum and Migration Management] or to receive persons it is responsible for pursuant to that Regulation, Member States may derogate from the time limits set out in Articles 29, 30, 31 and 35 of that Regulation.**
2. **Where applying paragraph 1, by way of derogation from Articles 29, 30, 31 and 35 of that Regulation, the Member State facing that situation shall:**
  - (a) submit a take charge request as referred to in Article 29 within four months of the date on which the application was registered;
  - (b) reply to a take charge request as referred to in Article 30 within two months of receipt of the request;
  - (c) submit a take back notification as referred to in Article 31 within one month of receiving the Eurodac hit or confirm the receipt within one month of such notification;  
**and**
  - (d) carry out a transfer as referred to in Article 35 within one year of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3) of that Regulation.

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

[...]

#### *Article 4a*

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

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

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

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

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

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

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

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

## Article 5

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

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

## Article 6

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

1. In a situation of crisis [...], **Member States may, in relation to illegally staying third-country nationals or stateless persons whose applications were rejected in the context of the border procedure pursuant to Article 3(2) and (3) of this Regulation, and who have no right to remain or are not allowed to remain, derogate from Article 41g(2) and 41h(3) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] as follows:**
  - (a) By way of derogation from Article **41g(2)** of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], the maximum period during which third-country nationals or stateless persons shall be kept at the locations referred to in that Article may be prolonged by an additional period of maximum eight weeks;
  - (b) By way of derogation from Article **41h(3)** of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], the period of detention set in that Article shall not exceed the period referred to in point (a);
  - (c) In addition to the cases provided for by Article 6(2) of Directive XXX [*recast Return Directive*], Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when the criterion referred to in Article 6(1), point (f) of Directive XXX [*recast Return Directive*] is fulfilled or when the applicant, third-country national or stateless person concerned is manifestly and persistently not fulfilling the obligation to cooperate established by Article 7 of that Directive.
2. Paragraph 1 shall also apply to applicants, third-country nationals and stateless persons subject to the procedure referred to in Article 41 of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*] whose application has been rejected before the adoption [...] **of the Council implementing decision referred to in Article 8(4)** and who have no right to remain and are not allowed to remain after the adoption of that decision.

## CHAPTER III

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

#### Article 7

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

1. Where a Member State is facing a situation of crisis [...], it may request support and solidarity measures from other Member States in order to manage that situation. The Member State facing that situation may request the following types of contributions:
  - a) relocations, to be conducted following the procedures set out in Articles 57 and 58 of Regulation (EU) XXX/XXX [*Asylum and Migration Management*],
    - (i) of applicants for international protection;
    - (ii) where bilaterally agreed by the contributing and benefitting Member State concerned, of beneficiaries of international protection who have been granted international protection less than three years prior to the adoption of the Council implementing act establishing the Solidarity Pool, or for the purpose of return of illegally staying third-country nationals or stateless persons;
  - b) responsibility offsets, as referred to in Article 44h of Regulation (EU) XXX/XXX [*Asylum and Migration Management*] and following the procedure set out in Article 58a thereof;

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

[...]

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

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



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

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

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

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

## CHAPTER IV

### PROCEDURAL RULES [...]

[...]

#### Article 8

##### *Authorisation procedure and adoption of implementing acts*

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

The Commission may also make such a proposal where it considers it appropriate on the basis of information provided by the requesting Member State and any other information available to it<sup>5</sup>.

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#### <sup>5</sup> RECITAL

- (xx) **In case of crisis or *force majeure*, a Member State can request the application of the relevant derogations set out in this Regulation on the basis of conclusive evidence demonstrating the existence of a situation of crisis or *force majeure*. The Commission should bring forward a proposal authorising a Member State to apply the derogatory rules provided for in this Regulation. The Commission should also be able to make a proposal where it considers it appropriate on the basis of information provided by the requesting Member State. Moreover to ensure a high level of political scrutiny and support and expression of the Union's solidarity, it is necessary in both cases to take into account whether the European Council has acknowledged that the Union or one or more of its Member States are facing a situation of instrumentalisation of migrants. The instrumentalisation of migrants is liable to put at risk the essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security. Therefore, implementing powers should be conferred upon the Council to adopt an Implementing Decision authorising a Member State to apply the derogations provided for by this Regulation. The Council should also be empowered to**

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

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

Where the Solidarity Pool does not contain enough solidarity pledges to cover the needs identified in the Solidarity Response Plan referred to in Article 7(3), additional needs shall be included in the proposal.

[...]

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**repeal, or prolong by up to 6 months, the derogations provided for in this Regulation on the basis of the Commission proposal depending on whether the circumstances justifying the introduction of the derogations persist or have come to an end. Prolongation decision may include amendment of the derogations applied. In exercising their powers and carrying out their responsibilities, the Commission and the Council should ensure at all times that the principle of proportionality is respected.**

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

The Council Implementing Decision shall:

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

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

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<sup>6</sup> A recital will be added to explain that the pledging exercise will take place at the latest during the Council meeting deciding on the implementing decision.

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

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

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

7. Member States shall continue for the the maximum period as referred to in Article 3 to apply the procedural derogations set out in the Council implementing decision referred to in paragraph 4 in respect of those applicants whose applications for international protection have been registered within the period during which those derogations may be applied until a final decision is taken on their application or until the third-country nationals or stateless persons concerned are returned in accordance with Article 6.
8. In exercising their powers and carrying out their responsibilities pursuant to this Article, the Commission and the Council shall ensure at all times that the principle of **necesssity and** proportionality is respected.
9. **When submitting the request referred to in paragraph 1, a Member State may notify the Commission that it considers it necessary to apply the derogation set out in Article 2 before it is authorised to do so in a Council Implementing Decision as referred to in paragraph 4 of this Article. In such a case, the Member State concerned may apply the derogation laid down in Article 2 from the day following the request and for a period not exceeding 15 days. The Member State shall indicate in the request the precise reasons for which an immediate action is required.**



## CHAPTER V

### FINAL PROVISIONS

#### *Article 10*

#### *Specific provisions and guarantees*

1. In a situation of **crisis referred to in Article 1(2)(b)**, where applying the derogations referred to in Articles 2 to 6, the Member State concerned shall duly inform third-country nationals or stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the measures applied, the location of the registration points, including the border crossing points, accessible for registering and lodging an application for international protection, and the duration of the measures. Information may be provided via information panels, this being without prejudice to [Articles 8 and 19(2) of Regulation (EU) XXX/XXX [*Asylum Procedure Regulation*]].
2. The extension of the time limit for registration of applications for international protection in accordance with Article 2 is without prejudice to [the obligations to comply with the deadlines set out in Article 10(1)(b) of [*Regulation on EURODAC*]].
3. The derogations in accordance with Article 2 do not affect the process of determining the Member State responsible within the framework of [*Asylum and Migration Management*]. In case the process of determining the Member State responsible is longer than the maximum duration of the emergency asylum procedure, the process shall be completed in the territory of the determining Member State.

4. The Member State facing a situation of crisis **referred to in Article 1(2)(b)** shall not apply Articles 2 to 6 longer than what is strictly necessary to address the situation of instrumentalisation [...], and in any case, no longer than the period set out in the Council Implementing Decision referred to in **Article 8(4)**.

#### *Article 11*

##### *Cooperation and assessment*

1. **In order to ensure the smooth functioning of Council implementing decision referred to in Article 8(4) of this Regulation, the Commission shall convene a first meeting of the Technical Level EU Migration Forum as referred to in Article 7d(4) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*] immediately following the adoption of that Council Implementing Decision. Following that first meeting of the Technical Level EU Migration Forum shall meet as many times as necessary.**
2. The Commission, relevant European Union institutions and agencies and the Member State facing a situation of crisis [...] **or force majeure** shall closely cooperate and regularly inform each other on the implementation of the **Council Implementing Decision [...]** referred to in Article 8. The Member State concerned shall continue reporting all relevant data including statistics that are relevant for the implementation of this Regulation, via the EU Migration Preparedness and Crisis Management Network<sup>7</sup>.

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#### <sup>7</sup> RECITAL

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

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

*Article 12*

*Entry into force*

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

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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