Council of the European Union

Brussels, 28 September 2020
(OR. en)

11207/20

Interinstitutional File: 2020/0277(COD)

JAI 748
MIGR 99
ASILE 8
CODEC 888

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	28 September 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 613 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL addressing situations of crisis and *force majeure* in the field of migration and asylum

Delegations will find attached document COM(2020) 613 final.

Encl.: COM(2020) 613 final

EUROPEAN
COMMISSION

Brussels, 23.9.2020
COM(2020) 613 final

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)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

In September 2019, European 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 Communication on a New Pact on Migration and Asylum, presented together with a set of legislative proposals, including this proposal addressing situations of crisis and *force majeure* in the field of migration and asylum, represents a fresh start on migration. The aim is to put in place a broad framework based on a comprehensive approach to migration management, promoting mutual trust among 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 and relations with third countries.

The New Pact builds on the Commission proposals to reform the Common European Asylum System from 2016 and 2018 and it adds new elements to ensure the balance needed for 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. As part of this framework, it is necessary to put in place a system with tools necessary to deal with crisis situations and situations of *force majeure*.

The solidarity mechanism established by the Regulation on Asylum and Migration Management 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 the same vein, the procedural rules set out in the new Asylum Procedures Regulation will increase the overall efficiency and coherence of the asylum and migration management systems. Taken together with the wider set of measures that should be applied as part of the comprehensive approach to asylum and migration management, the Union and its Member States should be better prepared to avoid that a situation of crisis arises in the field of migration and asylum.

However, it cannot be excluded that a situation of crisis will arise given the various factors operating outside the control of the Union and its Member States, as recent experience demonstrates. As our experience during the 2015 refugee crisis also shows, the Union needs a structured approach to handle crisis in order to avoid *ad hoc* responses. It is therefore appropriate that the legislative framework operating in this field is complemented by an instrument that ensures that the Union has at its disposal specific rules that can address the exceptional situation of crisis in an effective manner, complementing the compulsory solidarity mechanism and the procedures that normally would apply. Such rules would provide for appropriate procedural rules and derogations and a rapid triggering of solidarity to the benefit of one or more Member States to respond to crisis situations of such a magnitude

that put under significant strain even well prepared and functioning asylum and migration management systems.

This crisis instrument therefore covers exceptional situations of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State, being of such a scale and nature that it would render a 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. Situations where there is a risk of such arrivals will also be covered. The proposed Regulation also addresses situations of *force majeure* in the field of asylum and migration management within the Union. It provides the necessary adaptation to the EU rules on the asylum and return procedures as well as to the solidarity mechanisms set out in the Regulation (EU) XXX/XXX [Asylum and Migration Management].

This proposal, together with the proposal amending the 2016 proposal for an Asylum Procedures Regulation[1], the new proposal for a Regulation on Asylum and Migration Management[2], the proposal introducing a screening[3] and the proposal amending the Eurodac proposal[4], establish the legislative framework that puts this comprehensive approach to migration and asylum management into practice.

The proposal amending the 2016 proposal for a recast Eurodac Regulation[5] puts 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. It also supports the implementation of the new solidarity mechanism established by the Regulation on Asylum and Migration Management, provides the necessary consequential amendments that will allow Eurodac to function within the interoperability framework, and will support Member States in monitoring the granting of assistance for voluntary return and reintegration.

The reform aims to tackle the fact that, despite significantly increased cooperation at EU level, including as regards support from EU agencies, Member States' asylum, reception and return systems remain largely not harmonised. This creates inefficiencies and has the unintended consequence of not providing the same fair treatment to asylum seekers throughout Europe and incentivising therefore the movement of large numbers of migrants across Europe to seek better conditions and prospects for their stay. In this context, the Commission supports the provisional political agreements already reached on the Qualification Regulation, the Reception Conditions Directive, the EU Resettlement Framework Regulation and the EU Agency for Asylum Regulation. These should be finally adopted as soon as possible. The negotiations on the recast Return Directive[6] should also be swiftly concluded, together with the reform of the Common European Asylum System, to ensure that EU rules are successful in preventing absconding, providing assistance to voluntary returns and streamlining administrative and judicial procedures, reinforcing the effective functioning of the asylum and migration management systems.

---

1 OJ L […], […], p. […].
2 OJ L […], […], p. […].
3 OJ L […], […], p. […].
4 OJ L […], […], p. […].
5 OJ L […], […], p. […].
6 COM(2018) 634 final.

The overall objective of the proposal is to provide for the necessary adaptation of the rules on asylum and return procedures (Asylum Procedures Regulation and Return Directive[7]) as well as of the solidarity mechanism established in the Regulation on Asylum and Migration Management, in order to ensure that Member States are able to address situations of crisis and *force majeure* in the field of asylum and migration management within the EU. Such situations may occur very quickly and be of such a scale and nature that they require a specific set of tools in order to be effectively addressed. For this purpose, a simplified procedure and shortened timeframes are set out for triggering the compulsory solidarity mechanism provided for situations of pressure in the Regulation on Asylum and Migration Management. The rules and measures set out in this proposal to address a situation of crisis are in addition to the operational and technical support the European Union Agency for Asylum can provide[8] in case the Member State's asylum or reception systems are subject to disproportionate pressure.

Moreover, the solidarity mechanism procedure in situations of crisis provides for a wider scope for relocation and reinforces the possibility for Member States to provide assistance to each other in carrying out returns, in the form of return sponsorship. According to the normal rules established in the Regulation on Asylum and Migration Management, Member States providing return sponsorship commit to returning 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). When return is not finalised within eight months, the irregular migrants would be transferred to the territory of the sponsoring Member State in view of finalising the enforcement of return. The return sponsorship in situations of crisis provided for in this proposal differs from the one in the Regulation on Asylum and Migration Management because the obligation to transfer the irregular migrant is triggered if the person concerned does not return or is not removed within four months.

The proposal also includes provisions related to crisis situations which allow for certain derogations from the proposed Asylum Procedures Regulation. In particular, it will be possible to extend the scope of application of the border procedure to third-country nationals and stateless persons whose EU-wide first instance recognition rate is 75% or lower, in addition to the grounds already provided by the Asylum Procedures Regulation, as well as to extend the duration for the examination of an application of international protection under the border procedure by an additional eight weeks. It is also proposed to allow Member States to derogate from the provisions on registering applications for international protection with a longer deadline of four weeks.

Moreover, the proposal provides for the possibility to derogate from certain provisions on the border procedure to carry out return as set out in the proposed Asylum Procedures Regulation and in the Return Directive, in order to facilitate the enforcement of such procedures in situations of crisis, when specific adjustments are needed to allow the competent authorities under strain to exercise their tasks diligently and cope with significant workload. For this purpose, the proposal extends the maximum duration of the border procedure for carrying out return by an additional period of eight weeks (the proposed Asylum Procedures Regulation

---

7 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.

8 On the basis of the provisional agreement of the EUAA regulation (Article 16).

sets the maximum time-limit to twelve weeks) and introduces new specific and well-targeted cases, additional to the ones set in the proposal for a recast Return Directive, in which the existence of a risk of absconding in individual cases can be presumed, unless proven otherwise. The return crisis management procedure is without prejudice to the possibility for Member States to derogate from the application of the Return Directive by virtue of Article 2(2)(a) of that same Directive, in relation to illegally staying third-country nationals apprehended in connection with the irregular crossing by land, sea or air of the external border of a Member State and who, following the screening carried out in accordance with Regulation (EU) No XXX/XXX [*Screening Regulation*], have not subsequently obtained an authorisation or right to stay in that Member State (e.g. did not apply for international protection).

To enable Member States and the Union to deal effectively with situations of *force majeure*, as in the situation experienced due to the COVID-19 pandemic declared by the World Health Organisation on 11 March 2020, the proposed Regulation also provides for the possibility for a Member State to extend the time limits set out in the proposed Asylum Procedures Regulation for the registration of applications for international protection, and to extend the time limits for sending and replying to take charge requests and take back notifications and to carry out the transfer to the Member State responsible set out in the proposed Regulation on Asylum and Migration Management. This proposal also provides for an extension of the timeframe for the implementation of the obligation to relocate or undertake return sponsorship when a Member State is in a situation of *force majeure* which renders it impossible to fulfil these obligations as set out in this Regulation and in the Regulation on Asylum and Migration Management.

1.2. Consistency with existing policy provisions in the policy area

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 Regulation on Asylum and Migration Management, the proposal for a Regulation establishing a Screening and the proposed Asylum Procedures Regulation.

This proposal complements the proposal for a Regulation on Asylum and Migration Management insofar as it provides for specific rules for the application of the compulsory solidarity mechanism to cover the exceptional situation of a crisis.

This proposal is also consistent with both the proposed Asylum Procedures Regulation and the proposal to recast the Return Directive, in particular by providing derogatory rules applicable in the exceptional situation of crisis as regards the scope of application of the border procedure, the duration for the examination of an application for international protection under this procedure, the deadlines for the registration of applications for international protection as well as the scope and time frame of the border procedure to carry out return.

In addition, this proposal is fully consistent with and serves to complement the EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint) that provides for an operational framework for monitoring and anticipation of migration flows and migration situations, building resilience as well as organising a coordinated response to a migration crisis. Notably, the proposal makes full use of the reports issued and the activities of the network set-up under the Blueprint.

Finally, consistency is also ensured with the provisional political agreements already reached on the Qualification Regulation, the Reception Conditions Directive, the EU Resettlement Framework Regulation and the EU Agency for Asylum Regulation.

1.3. Interactions with Article 78(3) of the Treaty on the Functioning of the European Union

The present proposal establishes specific rules to ensure a wider scope and a faster procedure than that foreseen in the proposed Regulation on Asylum and Migration Management in order to ensure that an effective and efficient system is permanently in place to deal with a situation of crisis.

The establishment of specific rules for solidarity in a situation of crisis is without prejudice to the possibility for the Council to adopt, on a proposal from the Commission, provisional measures for the benefit of a Member State confronted by an emergency situation as characterised by Article 78(3) TFEU.

1.4. Consistency with other Union policies

This proposal is consistent with the comprehensive 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; creating effective legal pathways to the EU; integrating the external border into the EU's migration management; building seamless fair and efficient procedures on asylum and return; providing for a Schengen system able to command confidence; and developing dedicated policies to help the integration of third-country nationals into European societies.

The proposal implements the New Pact and in particular the objective to relaunch the asylum reform proposed by the Commission in 2016 by *inter alia* looking at ways to put in place a seamless asylum and return system and setting out a comprehensive approach to migration management. In this respect, this proposal ensures that all Member States make contributions to support countries in a situation of crisis. This proposal will ensure that the challenges that the comprehensive approach is facing, such as the need to sustain a reduced pressure from irregular arrivals and strong external borders, reduced onward movements and stress on the Schengen area as well as a swift and effective return and readmission are effectively addressed in a situation of crisis.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. Legal basis

This proposal contributes to the comprehensive approach to migration management and to the legislative proposals made together with the Pact on Migration and Asylum. It contains a number of provisions related to the proposed Asylum Procedures Regulation and the proposed Regulation on Asylum and Migration Management, as well as provisions on granting of immediate protection status in situations of crisis. It should therefore be adopted on the appropriate legal basis, namely Article 78, second paragraph, points (c), (d) and (e) and Article 79, second paragraph, point (c) 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 its 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 TEU and to the TFEU[9].

In accordance with the above-mentioned Protocol, Ireland may decide to take part in the adoption of this proposal. It also has 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[10], it shall, in accordance with Article 3 of that Agreement, notify the Commission of its decision whether or not to implement Article 8 of this Regulation.

The participation of Ireland and Denmark in the arrangements laid down in this proposal for a Regulation will be determined in the course of negotiations in accordance with these Protocols. These Protocols notably allow Ireland, but do not require it, to opt into initiatives in the policy area of freedom, security and justice while respecting their operability.

2.3. Impact of the proposal on non EU Member States

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[11].

---

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

10 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.

11 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).

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 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. 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 Article 8 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.

The proposal introduces specific rules on the application of the solidarity mechanism set out in the Regulation on Asylum and Migration Management with a view to structurally deal with crisis situations generated in any Member State by a mass influx of persons and achieve a fair sharing of responsibilities between Member States. By definition, this proposal deals with cases where a Member State cannot alone cope with the situation.

In addition, a number of procedural elements are provided for to assist a Member State or Member States facing such situations of crisis. The asylum and return procedures should be governed by the same rules across the Union, regardless of the number of Member States applying them, to ensure, in a situation of crisis, a common approach to the rules that may be derogated from. This also provides clarity and legal certainty to the individuals concerned by those procedures and ensures the respect of their rights. Furthermore, the trigger for such derogations, as well as their scope and time frame must be regulated at EU level, in order to ensure predictability and rule of law. Therefore, the objectives of this proposal cannot be sufficiently achieved by the Member States and can, by reason of the scale and effects of this proposed Regulation, be better achieved at Union level. The Union must therefore act and may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union.

The proposal also contains measures relating to *force majeure* which can be applied by a Member States or by the Union as a whole with respect to time limits set out in the proposed Regulation on Asylum and Migration Management or the proposed Asylum Procedures Regulation.

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(4) of the Treaty on the European Union, this Regulation sets out the exact conditions when derogatory rules can be applied as well as provide for the scope and time limit of applying such rules. A mechanism to govern the application of these derogatory rules is also set up to ensure that it does not go beyond what is necessary in order to achieve its objectives.

All the elements of the mechanism to deal with the specific situations of crisis caused by a mass influx of third country nationals onto the territory of a Member State or with the specific situation of *force majeure* are limited to what is necessary to set up and enable the appropriate procedural derogations and a rapid triggering of solidarity, to ensure equality of treatment in terms of rights and guarantees for applicants and to adapt the rules on asylum and return procedures.

The derogations from the proposed Regulation on Asylum and Migration Management and the proposed Asylum Procedures Regulation are proportionate, with a number of safeguards put in place that strike a balance between the immediate needs of Member States to manage situations of crisis or of *force majeure* and the need for legal certainty and uniformity in the application of such derogations.

In view of the extraordinary situations of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State which renders its asylum, reception or return system non-functional, it is considered proportionate that in the asylum and return crisis management procedure, the maximum durations of the border procedure for asylum and return set out in the Asylum Procedures Regulation are prolonged by a maximum period of eight weeks respectively.

The extension of time limits introduced in cases of *force majeure* is necessary in order to streamline across the Union the derogations from the proposed Regulation on Asylum and Migration Management and the proposed Asylum Procedures Regulation.

The limits imposed as to the duration of the application of the derogations allow for striking a balance between the need for national authorities facing a situation of *force majeure* to have more time to carry out their tasks and the need to protect the rights of applicants and third-country nationals or stateless persons whose application for international protection has been rejected.

2.6. Choice of the instrument

Given that this proposed Regulation provides for certain derogations to the proposed Regulation on Asylum and Migration Management and to the proposed Asylum Procedures Regulation, the same legal instrument is used for putting in place a set of rules to enable the Member States and the Union to deal with the specific situations of crisis caused by a mass influx of third country nationals onto the territory of a Member State or to deal with the specific situation of *force majeure*.

It is only a Regulation establishing derogations from the asylum and return procedures in the Union, and whose provisions shall be directly applicable, that can provide the necessary

degree of uniformity and effectiveness needed in the application of EU procedural rules on asylum in a situation of crisis and *force majeure*.

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

A detailed analytical Staff Working Document accompanies the legislative proposals which is based on publicly available EU data and statistics, as well as on the experience gathered by the Commission and its agencies about the asylum and migration situation on the ground. A compilation of these showcases that the Common European Asylum System needs an enhanced legal framework with new or amended rules in order to meet the current migration challenges.

The Staff Working Document identifies a number of challenges that the EU is currently facing, takes stock of the current situation, and describes the possible solutions to address them. It relies on data collected from the start of the 2015-2016 migration crisis and draws important lessons from them. Comparisons run throughout the paper in order to showcase trends, but also the gaps that have arisen in the management of that crisis. It underlines that in certain areas, more robust tools are necessary to fend off any future crises, such as situations of mass influx, but also flexibility in situations of *force majeure*, in light of the lessons learned from the COVID-19 pandemic.

One of the challenges identified is the lack of a mechanism to address situations of crisis which could result from a mass influx of irregular migrants capable of rendering a Member State's asylum or reception system non-functional, and have serious consequences on the functioning of the overall CEAS. As part of that challenge, it has been identified that, in such situations, the EU is still often incapable to ensure access to procedures at the borders, despite the fact that the EU is currently better prepared to address crisis situations than it was in 2015.

Recent events such as the COVID-19 pandemic and the political crisis witnessed at the Greek-Turkish border in March 2020 further point to areas where resilience is needed through specific rules that can be applied in situations of *force majeure*.

Even the best-prepared and well-managed system needs to have a framework within which to deal with crises or situations of *force majeure* where the flexibility under the various legislative instruments is insufficient. Member States need tools to deal with the various and different causes of migration as well as immediate measures to deal with the extreme pressure stemming from such situations.

In addition, in crisis situations, the effectiveness of response can be heavily influenced by effective foresight and preparation, moving from a reactive mode to one based on preparedness and anticipation. This is something that is still missing at EU level, and that is necessary as part of effort to make the current migration management system more resilient and responsive.

The implementation of the Commission Recommendation No XXX on an EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and

Crisis Blueprint) should help address this gap by monitoring and anticipating migration flows, increase resilience and improve technical coordination of the response to the crisis, in full respect of the legislation in force and while using and complementing the existing tools.

These challenges highlight the need for specific rules on crisis solidarity, which would include a compulsory solidarity scheme for relocation or return sponsorship to ensure a quick response to release the extreme pressure faced by affected Member States. They also call for procedural derogations that Member States can apply in their asylum and migration systems. Derogations from the asylum and return rules should ensure that Member States have the means and sufficient time to carry out relevant procedures in those fields.

As regards displaced persons from third countries who are facing a high degree of risk of being subject to indiscriminate violence, in exceptional situations of armed conflict, and who are unable to return to their country of origin and are in need of a quick form protection arriving to the EU, the Staff Working Document also reaches the conclusion that the existing measures to grant quick access to protection do not seem to be fit for purpose any more. It highlights that, according to the Study[12] on the Temporary Protection Directive[13] (TPD), stakeholders agreed that it has been hardly possible to attain Member State agreement on the possible activation of the TPD. The Staff Working Document therefore concludes that the Temporary Protection Directive no longer responds to Member States' current reality and needs to be repealed. It nevertheless recognises that certain groups of third country nationals at high risk must be granted protection on a quick – immediate – basis. In that respect, this proposal ensures that the persons who are granted immediate protection benefit from equivalent economic and social rights that subsidiary protection beneficiaries enjoy under Regulation (EU) XXX/XXX [Qualification Regulation]. These rights include the protection from *refoulement*, information on the rights and obligations relating to their status, maintaining family unity, the right to be issued a residence permit, freedom of movement within the Member State, access to employment, access to education, access to procedures for recognition of qualifications and validation of skills, social security and social assistance, healthcare, rights related to unaccompanied minors, access to accommodation, access to integration measures and repatriation assistance.

3.2. Stakeholder consultations

The Commission consulted the European Parliament, the Member States and stakeholders on a number of occasions to gather their views on the new Pact on Migration and Asylum. In parallel, the Romanian, Finnish and Croatian Presidencies have held both strategic and technical exchanges on the future of various aspects of migration policy, including asylum, return, relations with third countries on readmission and reintegration. These consultations showed support for a fresh start on European asylum and migration policy to urgently address the flaws in the CEAS, to improve the effectiveness of returns and establish a genuine European return system, to reinforce our relations with third countries on readmission and to ensure a sustainable reintegration of migrants following their return to the countries of origin.

---

12 Carried out for DG HOME by ICF, January 2016.

13 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.

Ahead of the launch of the new Pact on Migration and Asylum, the Commission has engaged in continuous intense consultations with the European Parliament. The Commisision has also held two rounds of visits and bilateral consultations with each Member State individually in the first 100 days in office and also, more recently, before the presentation of the Pact. The aim of the consultations was to gather views and ideas on the future European Pact on Migration and Asylum. Member States engaged actively in these consultations, with common ground emerging on the need for unity, for gradual progress in solving the weaknesses of the current system, for a new system of fair sharing of responsibility to which all Member States can contribute, for strong border protection, and on the importance of the external dimension of migration and improved returns.

In these discussions, several Member States stressed the need to distinguish between regular and crisis situations and expressed a preference for accommodating them in different instruments.

Member States and the European Parliament supported 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 can contribute, strong border protection, respect for fundamental rights in all aspects of the EU's migration policy, importance of the external dimension of migration, including legal and safe pathways, and improved returns.

A number of workshops and discussions were organised during the Finnish Presidency in various Council fora, 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, where Member States have called for the need to frame derogatory rules in times of crisis.

Commissioner Johansson held on several occasions targeted consultations with international organisations, civil society organisations, relevant local non-governmental organisations in the Member States, social and economic partners. In this consultation process, specific recommendations were presented in relation to the need for further developing a common approach on child-specific standards in line with the Communication of 2017 on Children in Migration[14]. Civil society has also been consulted in the process of the Consultative Forum set up by the European Asylum Support Office (EASO), on topics such as the initial steps in the asylum procedure (2019).

The Commission has also taken into consideration specific recommendations of national and local authorities[15], non-governmental and international organisations, such as UNHCR[16], IOM[17], as well as think-tanks and academia, on how to envisage a fresh start on migration and address the current migration challenges whilst safeguarding 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 solidarity including for persons disembarked further to a SAR operation. Non-governmental organisations also advocate for a common

---

14 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.

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

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

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

understanding of responsibility among Member States and called for the revised Dublin rules to include a more permanent relocation mechanism[18].

The Commission also took into account the contributions and studies of the European Migration Network[19], which have been launched at its initiative and which over the last years have produced several specialised studies and ad hoc queries.

Many Member States and stakeholders pointed to the need for a well-managed migration system that had as part of its arsenal the principle that in time of crisis caused by a mass influx of persons onto the territory of a Member State, relocation should be the default solidarity measure in order to quickly relieve the pressure from that Member State. In addition, in the light of the lessons learned from the COVID-19 pandemic, all Member States and stakeholders repeatedly called on the Commission to take into account these lessons and ensure that the legislative framework was able to deal in future with such situations of *force majeure*.

Against this background, the Commission carefully assessed the arguments brought forward and concluded that alongside the current legislative proposals, it is necessary to provide for a framework that can be activated in times of crises and *force majeure* in order to immediately support the Member State or Member States confronted with such situations either through specific rules on the application of the compulsory solidarity mechanism set out in the Regulation on Asylum and Migration Management or through other procedural elements that may be necessary for Member States or for the Union as a whole to put in place.

3.3. Fundamental rights

This proposal respects fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union, as well as the obligations stemming from international law.

The framework provided for in this Regulation shall be applied in full respect of fundamental rights as enshrined in the Charter, including the right to human dignity (Article 1), prohibition of torture and inhuman or degrading treatment or punishment (Article 4), the right to the protection of personal data (Article 8), the right to asylum (Article 18), the protection from *refoulement* (Article 19), non-discrimination (Article 21), equality of rights between men and women (Article 23), the rights of the child (Article 24) and the right to an effective remedy (Article 47). This proposal fully takes into account the rights of the child and the special needs of vulnerable persons.

The right to liberty and freedom of movement is protected given that, if detention is used in the context of the derogatory rules to the asylum and return border procedure, such derogatory rules can only be applied in a strictly regulated framework and for a limited time.

As regards the application of the asylum and return crisis management procedures, the guarantees provided by the Asylum Procedures Regulation and by the Return Directive

---

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

[19] 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.

remain applicable to applicants and illegally staying third-country nationals or stateless persons subject to the border procedure.

The rights of the child are protected in the proposal by excluding minors from the asylum crisis management procedure except in very limited circumstances, namely in cases where they would represent a danger to the national security or public order of the Member State concerned.

The principle of *non-refoulement* enshrined in Article 33 of the 1951 Refugee Convention and Article 19 of the Charter of Fundamental Rights of the European Union is also respected when the derogations from the border return procedure to carry out return and the Return Directive are applied. The proposal explicitly recalls the duty of Member States to always observe this principle.

4. BUDGETARY IMPLICATIONS

Due to the nature of this proposal linked to a crisis situation, it is not possible to estimate a priory the possible budgetary impact. It will be accommodated as far as possible within the budget of the existing instruments under the period 2021-2027 in the field of migration and Asylum, and where necessary, using the flexibility mechanisms provided within the MFF 2021-2027. Where persons granted immediate protection are also applicants for international protection within the meaning of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], the financing provisions of contributions for relocation of such persons are those found in the Regulation (EU) XXX/XXX [*Asylum and Migration Management]*.

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[20].

In terms of the asylum procedural aspects, this proposal does not impose any financial or administrative burden on the Union. On those parts, therefore, it has no impact on the Union budget.

5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

Definition of crisis

The situation of crisis covers exceptional situations of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State or disembarked on its territory following search and rescue operations, being of such a scale, in proportion to the population and GDP of the Member State concerned, and nature, that it renders the Member State's asylum, reception or return system non-functional, or an imminent risk of such exceptional situations of mass influx. Such situations are covered by the proposal only if it is demonstrated that they would have serious consequences for the functioning the Common

[20] 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.

European Asylum System or the Common Framework as set out in the proposed Regulation on Asylum and Migration Management.

Specific rules on the compulsory application, in a situation of crisis, of the solidarity mechanism set out in the Regulation on Asylum and Migration Management

5.1. Compulsory solidarity in a situation of crisis

The proposal introduces specific rules on the application, in situations of crisis, of the solidarity mechanism set out in the proposal for a Regulation on Asylum and Migration Management, which provides for compulsory measures in the form of relocation or return sponsorship. These specific rules provide for a wider scope for compulsory relocation that is extended to include all applicants, be they subject to the border procedure or not, irregular migrants, and persons granted immediate protection under this Regulation. In addition, shortened timeframes for triggering the compulsory solidarity mechanism procedure foreseen in the Regulation on Asylum and Migration Management are established. The return sponsorship provided for in this proposal differs from the one established in the Regulation on Asylum and Migration Management because the obligation to transfer the irregular migrant to the territory of the sponsoring Member State will be triggered if the person concerned has not returned or has not been removed within four months (instead of eight months foreseen in the Regulation on Asylum and Migration Management).

This proposal confers on the Commission the power to adopt implementing acts in accordance with Article 291 TFEU in respect of triggering relocation of applicants for international protection, irregular migrants and persons granted immediate protection under this regulation as well as return sponsorship implying the obligation to transfer illegally staying third-country nationals subject to return sponsorship who have not returned within the set time limits.

To trigger the specific rules for solidarity, the Commission must establish that a Member State is confronted with a crisis situation due to an exceptional situation of mass influx of third country nationals or stateless persons arriving irregularly, being of such a scale and nature that it renders the Member State's asylum, reception or return system non-funcational and which can have serious consequences for the functioning of the Common European Asylum System or the Common Framework as set out in the proposed Regulation on Asylum and Migration Management, or an imminent risk of such a situation.

The Commission shall assess the reasoned request by a Member State requesting the application of the specific rules for compulsory solidarity and determine whether there is a situation of crisis on the basis of substantiated information, in particular the information gathered by the Commission pursuant to the EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint, by EASO pursuant to Regulation (EU) No 439/2010, the European Border and Coast Guard Agency pursuant to Regulation (EU) 2019/1896 and the Migration Management report referred to in the proposed Regulation on Asylum and Migration Management.

Where a Member State is itself a Member State under pressure and is benefitting from solidarity support measures, including when it is benefitting from such measures under the Regulation on Asylum and Migration Management, it shall be excluded from the obligation to contribute to relocation or to do return sponsorship under this Regulation.

The Commission shall convene a Crisis Solidarity Forum in order to discuss the findings of its assessment and to define the solidarity response before adopting an implementing act.

5.2. Scope of compulsory solidarity measures and specific rules regarding the application of the solidarity mechansim in situations of crisis

With respect to relocation, the scope of this proposal is widened as compared to that provided for in the situations of pressure in the Regulation on Asylum and Migration Management, as it will also apply to applicants for international protection in the border procedure, irregular migrants and persons granted immediate protection under this Regulation. Transfer of illegally staying third-country nationals or stateless persons subject to return sponsorship, from the Member State in crisis to the sponsoring Member State, would intervene if return has not been successfully completed within four months, i.e. following a period shorter than the one set in the Regulation on Asylum and Migration Management (eight months).

The procedure for the implementation of solidarity measures under this proposal will be carried out within specific shortened timeframes as compared to those provided for in the Regulation on Asylum and Migration Management. Therefore, Member States would be required to submit a Crisis Solidarity Response Plan within one week from the finalisation of the assessment on the existence of a situation of crisis in the Member State concerned and after the convening of the Solidarity Forum by the Commission. Following this, the Commission shall adopt the implementing act setting out the solidarity measures for each Member State within one week.

The implementing act shall determine the number of persons to be relocated and/or subject to return sponsorship from the Member State in a crisis situation, determine the distribution of those persons between Member States on the basis of a distribution key based on 50% population and 50% GDP as defined in the proposed Regulation on Asylum and Migration Management.

Unlike the solidarity provisions of the proposed Regulation on Asylum and Migration Management, this proposal does not include solidarity measures in the field of capacity building, operational support and cooperation with third countries, since such measures which are of a longer-term nature, are more adapted to situations of pressure. Since in times of crisis there is a need to quickly alleviate the situation caused by the presence of a mass influx of persons, this proposed Regulation should focus on these aspects of solidarity. In addition, any needs that arise in the field of capacity building, operational support and cooperation with third countries would be covered under the EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint and the Union Civil Protection Mechanism (UCPM).

The implementing act shall be adopted according to Article 8 of Regulation (EU) No 182/2011 in conjunction with Article 5 thereof, whereby on duly justified imperative grounds of urgency due to the situation of crisis present in a benefitting Member States, the Commission is empowered to adopt immediately applicable implementing acts which remain in force for a period not exceeding one year.

5.3. Asylum and return procedures in a situation of crisis

Criteria and procedural provisions: Article 3 sets out the procedural steps for applying the derogatory rules laid down in subsequent Articles 4, 5 and 6. Member States have to submit a reasoned request to the Commission where they consider themselves to be in a situation of crisis and deem necessary the application of either an asylum crisis management procedure, or

a return crisis management procedure, or need to apply derogations from the provisions on registering applications for international protection. The screening of third-country nationals according to the rules laid down in the Screening Regulation should apply with the possibility to extend the five-day deadline by another five days, as specified in that Regulation. The derogations may be requested individually or cumulatively, however the conditions specified for the application of each Article need to be met individually. Upon the request of one or several Member States concerned, the Commission, by means of an implementing decision, which can apply to one or more Member States, authorises the application of the derogatory rules, for a period to be determined by the decision itself. In view of the possible need for immediate action, Member States may start to unilaterally apply the provision concerning the extension of the registration deadline for a maximum of fifteen days, upon which the Commission can either authorise its further application or decide not to do so. The application of the derogatory rules has a clear timeframe for all cases: six months, which can be extended to maximum one year for the provisions on the asylum crisis management procedure and the return crisis management procedure, and maximum four weeks for the application of derogation from registering applicants for international protection. This period of four weeks is renewable, upon a further request by the Member State concerned, but should not, in any case, exceed twelve weeks in total.

Asylum crisis management procedure: Article 4 lays down a possibility for Member States to derogate from the asylum border procedure under Article 41 of the proposed Asylum Procedures Regulation, by taking decisions in the context of a border procedure on the merits of an application where the applicant is of a nationality with below an EU-wide recognition rate of 75% or lower, in addition to the cases listed under Article 41 of the Asylum Procedures Regulation. The recognition rate threshold of 75% or lower is intended to constitute a basis for Member States to rapidly channel third-country nationals and stateless persons into a regular asylum procedure at the border, while not prejuding the outcome of their asylum application. This is different from the 20% recognition rate threshold in the Asylum Procedures Regulation, which constitutes an acceleration ground. Accordingly, Member States have to continue to apply the border procedure to all those cases provided by the Asylum Procedures Regulation (security threat, applicants coming from a country with less than 20% of the EU average recognition rate) but can apply the border procedure to all other applicants coming from a country with an EU-wide recognition rate of 75% or lower. In addition, in a situation of crisis, the border procedure may be applied by Member States for an additional period of eight weeks, extending the period of twelve weeks provided for by the Asylum Procedures Regulation.

Return crisis management procedure: Article 5 lays down a possibility for Member States to derogate from certain provisions of the border procedure for carrying out return established by Article 41a of proposed Asylum Procedures Regulation and of the Return Directive. Such derogations would apply to third-country nationals or stateless persons whose application was rejected in the context of the asylum crisis management procedure, as well as to those subject to the border procedure of Article 41 of the proposed Asylum Procedures Regulation whose application is rejected before the adoption by the Commission of a decision declaring that the

Member State concerned is confronted with a situation of crisis, and who have no right to remain and are not allowed to remain after the adoption of that decision. The derogatory provisions extend the maximum duration of the border procedure for carrying out return, including detention where necessary as a last resort, by an additional period of 8 weeks and introduces new specific and well-targeted cases, additional to the ones set in the proposal for a recast Return Directive, in which the existence of a risk of absconding in individual cases can be presumed, unless proven otherwise.

Derogations from the provision on registering applications for international protection: Article 6 provides for the possibility for Member States to delay the registration of applications for international protection up to four weeks, by derogation from Article 27 of the proposed Asylum Procedures Regulation.

5.4. Extension of time limits

Registration of applications for international protection: In situations of *force majeure*, where it is impossible for a Member State to apply the registration deadline, Article 7 provides for a four-week extension for Member States to register applications for international protection, by derogation from Article 27 of the proposed Asylum Procedures Regulation. Member States facing such situation of *force majeure* must inform the Commission of that situation and indicate precise reasons for the application of the derogation. The Member State concerned shall likewise inform the Commission of the termination of the situation of *force majeure*, upon which the extended time limit for registrations should no longer be applied.

Time limits in Regulation (EU) No XXX/XXX [*Asylum and Migration Management*]: In situations of *force majeure,* where it is impossible for a Member State to apply the procedure for sending and replying to take charge requests and take back notifications within the time limits set out in the proposed Regulation on Asylum and Migration Management, or to comply with the time limit to transfer an applicant to the Member State responsible, specific derogations are set out to allow Member States to extend the relevant time limits under strict conditions. Member States facing such situations of *force majeure* must inform the Commission of that situation and indicate precise reasons for the application of the derogation. The Member State concerned shall likewise inform the Commission of the termination of the situation of *force majeure*, after which the extended time limits should no longer be applied.

Extension of timeframe for solidarity obligations set out in Regulation (EU) XXX/XXX [*Asylum and Migration Management*] and in this Regulation: where for reasons of a situation of *force majeure* in a particular Member State that Member State is unable to fulfil its obligations set out in the solidarity mechanism of the proposed Regulation on Asylum and Migration Management or foreseen in this Regulation, a Member State may notify the Commission of the situation and extend the timeframe for the implementation of such solidarity measures by a maximum of six months.

Granting of immediate protection: Article 10 provides for the granting of immediate protection status to displaced persons who, in their country of origin, are facing an exceptionally high risk of being subject to indiscriminate violence, in a situation of armed conflict, and who are unable to return to that third country. The need to apply this Article and the precise group of people concerned is to be determined by the Commission in an implementing act. Member States may, during the period of application determined by the implementing act, suspend the examination of applications for international protection and grant immediate protection to those persons who meet the respective criteria. This suspension period can extend to a maximum of one year upon which the resumption of the examination of the asylum application needs to take place. This will ensure the required protection for the persons concerned while alleviating the pressure on the Member State to examine a large amount of asylum applications all at once.

Persons granted immediate protection remain applicants for international protection at the same time, but should enjoy the set of economic and social rights that are applicable to subsidiary protection beneficiaries as laid down in Regulation (EU) XXX/XXX [*Qualification Regulation*]. The granting of immediate protection does not relieve the Member State of the obligation to determine the Member State responsible for examining the application pursuant to Regulation (EU) XXX/XXX [*Asylum and Migration Management*], but allows the person concerned to have the status while the procedure pursuant to that Regulation is carried out. Where another Member State is determined as the Member State responsible, the immediate protection ceases when the transfer pursuant to that Regulation is carried out. Should the persons concerned move on to other Member States and apply for international protection there, the Member State responsible would also be obliged to take them back pursuant to Regulation (EU) XXX/XXX [*Asylum and Migration Management*]. Given that this proposal includes specific rules for relocation in situations of crisis caused by a mass influx of persons onto the territory of a Member State, and the key provisions for such relocation are contained in this proposal and the proposal for a Regulation on Asylum and Migration Management, the Commission intends to withdraw its proposal of 2015 for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person[21].

Given the development of the concepts and rules of qualification for international protection, and in view of the fact that this Regulation lays down rules for granting immediate protection status in crisis situations, the Temporary Protection Directive should be repealed. Under this proposal, immediate protection should be granted to displaced persons from third countries who are facing a high degree of risk of being subject to indiscriminate violence, in exceptional situations of armed conflict, and who are unable to return to their country of origin.

[21] COM(2015) 450 final.

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[1],

Having regard to the opinion of the Committee of the Regions[2],

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 external border control, 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 building mutual trust between Member States.

(3) The comprehensive approach should bring together policies in the areas of asylum, migration management, returns, external border protection and partnership with relevant third countries, recognising that the effectiveness of the overall approach depends on all components being jointly addressed and in an integrated manner. The comprehensive approach should ensure that the Union has at its disposal specific rules to effectively manage migration including the triggering of a compulsory solidarity mechanism and that all the necessary measures are put in place to prevent crisis to happen.

---

1 OJ C , , p. .
2 OJ C , , p. .

(4) Notwithstanding the putting in place of the necessary preventive measures, it cannot be excluded that a situation of crisis or *force majeure* in the field of migration and asylum arises due to circumstances beyond the control of the Union and its Member States.

(5) This Regulation should contribute to and complete the comprehensive approach by setting out the specific procedures and mechanisms in the field of international protection and return that should apply in the exceptional circumstances of a situation of crisis. It should ensure, in particular, the effective application of the principle of solidarity and fair sharing of responsibility and the adaptation of the relevant rules on asylum and return procedures, so that the Member States and the Union have the necessary tools at their disposal including sufficient time to carry out those procedures.

(6) A mass influx of persons crossing the border irregularly and 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. It is necessary to lay down specific rules and mechanisms that should enable effective action to address such situations.

(7) 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 make it impossible to respect the time limits set by Regulations (EU) XXX/XXX [*Asylum Procedures Regulation*] and (EU) XXX/XXX [*Asylum and Migration Management*] for registering applications for international protection or carrying out the procedures for determining the Member State responsible for examining an application for international protection. In order to ensure that the common asylum system continues functioning in an efficient and fair manner, while guaranteeing a timely examination of international protection needs and legal certainty, longer time limits for the registration of applications and for the procedural steps required for determining responsibility and transferring applicants to the responsible Member State should apply in such situations. Member States faced with a situation of *force majeure* should also be able to implement the solidarity measures that they have to take pursuant to the solidarity mechanism set out in this Regulation and in Regulation (EU) XXX/XXX [*Asylum and Migration Management*] within an extended time frame, where necessary.

(8) The solidarity mechanism for situations of migratory pressure as set out in Regulation (EU) XXX/XXX [*Asylum and Migration Management*] should be adapted to the specific needs of situations of crisis by extending the personal scope of the solidarity measures provided for in that Regulation and setting shorter deadlines.

(9) The adoption of measures in respect of a particular Member State should be without prejudice to the possibility for the Council to adopt provisional measures on a proposal from the Commission pursuant to Article 78(3) of the Treaty on the Functioning of the European Union in the event of an emergency situation in a Member State characterised by a sudden inflow of third-country nationals.

(10) In order to quickly help alleviate the pressure faced by a Member State in a situation of crisis, the scope of relocation should include all categories of applicants for international protection, including persons granted immediate protection, as well as beneficiaries of international protection and irregular migrants. Furthermore, a Member State that provides return sponsorship should transfer the illegally staying third-country national from the benefitting Member State if the person concerned does not return or is not removed within four months, instead of eight months as provided for by Regulation (EU) XXX/XXX [*Asylum and Migration Management*].

(11) The procedural rules set out in Regulation (EU) XXX/XXX [*Asylum and Migration Management*] for carrying out relocation and return sponsorship should be applied for the purpose of ensuring the proper implementation of the solidarity measures in a situation of crisis, although they should be adjusted in order to take into account the gravity and urgency of that situation.

(12) In situations of crisis, Member States might need a wider set of measures in order to manage a mass influx of third-country nationals in an orderly fashion and contain unauthorised movements. Such measures should include the application of an asylum crisis management procedure and a return crisis management procedure.

(13) In order to allow Member States to deal with large numbers of applications for international protection in situations of crisis, a longer time limit should be set for registering the applications for international protection made during such situations of crisis. Such an extension should be without prejudice to the rights of asylum applicants guaranteed by the Charter of Fundamental Rights of the European Union.

(14) In order to ensure that Member States have the necessary flexibility when confronted with a large influx of migrants expressing the intention to apply for asylum, the application of the border procedure, established by Article 41 of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*] should be broadened, and an asylum crisis management procedure should allow Member States to take a decision in the framework of a border procedure also 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 Union-wide is 75% or lower. As a result, in the application of the crisis border procedure, Member States should continue applying the border procedure as provided by Article 41 of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*] but could extend the application of the border procedure to nationals who come from third countries where the EU-wide average recognition rate is above 20% but under 75%.

(15) The screening of third-country nationals according to the rules laid down in Regulation (EU) No XXX/XXX [*Screening Regulation*] should apply with the possibility to extend the 5-day deadline by another five days, as specified in that Regulation.

(16) In a situation of crisis, in view of the possible strain on the asylum system, Member States should have the possibility not to authorise the entry in their territory of applicants subject to a border procedure for a longer period of time than the ones set in Article 41 (11) and (13) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*]. However, the procedures should be completed as soon as possible and in

any event the periods of time should only be prolonged by an additional period not exceeding eight weeks; if those procedures cannot be completed by the expiry of that prolonged period, applicants should be authorised to enter the territory of a Member State for the purpose of completing the procedure for international protection.

(17) The return crisis management procedure should facilitate, in a situation of crisis, the return of illegally staying third-country nationals whose applications were rejected in the context of a crisis asylum management procedure and who have no right to remain and are not allowed to remain, by providing the competent national authorities with the necessary tools and sufficient time-frame to carry out return procedures with due diligence. To be able to respond to situations of crisis in an effective manner, the return crisis management procedure should apply also to applicants, third-country nationals and stateless persons subject to the border procedure referred to in Article 41 of the of proposed Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], whose applications were rejected before the adoption of a Commission decision declaring that a Member State is confronted with a situation of crisis, and who have no right to remain and are not allowed to remain after such a decision.

(18) When applying the return crisis management procedure, illegally staying third-country nationals or stateless persons who have no right to remain and are not allowed to remain should not be authorised to enter the territory of the Member State concerned and should be kept at the locations referred to in Article 41a(2) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*] for a period that may be longer than the one established by that Article in order to enable authorities to cope with the situations of crisis and finalise return procedures; for this purpose, the maximum duration of 12 weeks of the border procedure for carrying out return set out in Article 41a(2) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*] could be prolonged by an additional period that may not exceed eight weeks. During that period, it should be possible to keep the illegally staying third-country nationals in detention, in application of Article 41(a)(5) and (6) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], provided that the guarantees and conditions for detention laid down in Directive XXX/XXX/EU [*recast Return Directive*] are respected, including the individual assessment of each case, judicial control of detention and adequate conditions of detention.

(19) In order to allow for the proper management of a crisis situation and ensure a proper adaptation of the relevant rules on the asylum and return procedure, the Commission should, by way of an implementing decision, authorise concerned Member States, upon their reasoned request, to apply relevant derogatory rules. Such an implementing decision could authorise one or more requesting Member States to derogate from the relevant rules.

(20) The Commission should examine a reasoned request submitted by a Member State while taking into account substantiated information gathered pursuant to Regulation (EU) XXX/XXX [*Asylum Agency Regulation*] and Regulation (EU) 2019/1896 of the

European Parliament and of the Council[3] and the Migration Management report referred to in Regulation (EU) XXX/XXX [*Asylum and Migration Management*].

(21) In order to provide Member States with additional time needed to deal with the situation of crisis and at the same time ensure an effective and as quick as possible access to the relevant procedures and rights, the Commission should authorise the application of the asylum crisis management procedure and the return crisis management procedure for a period of six months, which could be extended up to a period not exceeding one year. After the expiry of the relevant period, the extended deadlines provided for in the asylum and return crisis management procedures should not be applied to new applications for international protection.

(22) For the same reasons, the Commission should authorise the application of derogatory rules as regards the registration deadline for a period not exceeding four weeks, which should be renewable upon a new reasoned request submitted by the Member State concerned. The total period of application should nonetheless not exceed twelve weeks.

(23) In a crisis situation, Member States should have the possibility to suspend the examination of applications for international protection made by displaced persons from third countries who are unable to return to their country of origin, where they would face a high degree of risk of being subject to indiscriminate violence, in exceptional situations of armed conflict. In such a case, immediate protection status should be granted to those persons. Member States should resume the examination of their application one year at the latest from its suspension.

(24) Persons granted immediate protection should continue to be considered as applicants for international protection, in view of their pending application for international protection within the meaning of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], as well as within the meaning of Regulation (EU) XXX/XXX [*Asylum and Migration Management*].

(25) Member States should ensure that beneficiaries of immediate protection status have effective access to all the rights laid down in Regulation (EU) XXX/XXX [*Qualification Regulation*] applicable and equivalent to those enjoyed by beneficiaries of subsidiary protection.

(26) In order to carry out a proper assessment of applications for international protection submitted by beneficiaries of immediate protection, the asylum procedures should resume at the latest after one year from the suspension of such procedures.

(27) Since the adoption of Council Directive 2001/55/EC[4], the rules concerning the qualification of beneficiaries of international protection have evolved considerably.

---

[3] 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.

[4] 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.)

Given that this Regulation lays down rules for granting immediate protection status in crisis situations to displaced persons from third countries who are unable to return to their country of origin, and provides for specific rules for solidarity for such persons, Directive 2001/55/EC should be repealed.

(28) Specific rules should be set out for situations of *force majeure*, to allow Member States to extend the time limits set out in Regulation (EU) XXX/XXX [*Asylum and Migration Management*] under strict conditions where it is impossible to comply with those time limits due to the extraordinary situation. Such extension should apply to the time limits set out for sending and replying to take charge requests and take back notifications as well as the time limit to transfer an applicant to the Member State responsible.

(29) Specific rules should also be set out for situations of *force majeure*, to allow Member States to extend the time limits relating to registration of applications for international protection in Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], under strict conditions. In these cases, applications for international protection should be registered by that Member State at the latest four weeks from when they are made.

(30) In such situations of *force majeure*, the Member State concerned should notify the Commission and, where applicable, the other Member States, of its intention to apply the respective derogations from those time limits, as well as the precise reasons for their intended application, as well as the period of time during which they will be applied.

(31) In situations of *force majeure*, which render it impossible for a Member State to comply with the obligation to undertake solidarity measures within the timeframes established in the Regulation (EU) XXX/XXX [*Asylum and Migration Management*] and this Regulation, it should be possible for that Member State to notify the Commission and the other Member States of the precise reasons for which it considers that it is facing such a situation and extend the timeframe for undertaking solidarity measures.

(32) Where a Member State is no longer facing a situation of *force majeure*, it should, as soon as possible, notify the Commission, and where applicable, the other Member States, of the cessation of the situation. The time limits derogating from Regulation (EU) XXX/XXX [*Asylum and Migration Management*] should not be applied to new applications for international protection made or for third-country nationals or stateless persons found to be illegally staying after the date of that notification. Upon such notification, the time limits laid down in Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*] should start to apply.

(33) To support Member States who undertake relocation as a solidarity measure, financial support from the EU budget should be provided.

(34) 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[5].

(35) The examination procedure should be used for the adoption of solidarity measures in situations of crisis for authorising the application of derogatory procedural rules, and for triggering the granting of immediate protection status.

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

(37) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular respect for human dignity, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the right to asylum and the protection in the event of removal, expulsion or extradition. The Regulation should be implemented in compliance with the Charter and general principles of Union law as well as international law, including refugee protection, human rights obligation and the prohibition of *refoulement*.

(38) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and to the 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 Article 8 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[6], 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.

(39) [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

(40) [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.]

---

5 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).

6 OJ L 66, 8.3.2006, p. 38.

(41) As regards Iceland and Norway, Article 8 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[7].

(42) As regards Switzerland, Article 8 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[8].

(43) As regards Liechtenstein, Article 8 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[9] refers,

HAVE ADOPTED THIS REGULATION:

CHAPTER I- GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation addresses situations of crisis and *force majeure* in the field of migration and asylum within the Union and provides 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 Directive XXX [*recast Return Directive*].

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

(a) an exceptional situation of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State or disembarked on its territory following search and rescue operations, being of such a scale, in proportion to the population and GDP of the Member State concerned, and nature, that it renders the Member State's asylum, reception or return system non-functional and can have serious

[7] OJ L 93 , 3.4.2001 p. 40.
[8] OJ L 53, 27.2.2008, p. 5.
[9] OJ L 160, 18.6.2011, p. 37.

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

(b) an imminent risk of such a situation.

CHAPTER II – SOLIDARITY MECHANISM

Article 2

Solidarity in situations of crisis

1. For the purpose of providing solidarity contributions for the benefit of a Member State in situations of crisis as set out in Article 1(2)(a), Part IV of Regulation (EU) XXX/XXX [*Asylum and Migration Management*] shall apply *mutatis mutandis*, with the exception of Article 45(1), point (d), Article 47, Article 48, Article 49, Article 51(3)(b)(iii) and (4), Article 52(2) and (5) and Article 53(2), second and third subparagraphs.

2. By way of derogation from Article 50(3), the assessment referred to in that paragraph shall cover the situation in the Member State concerned during the preceding [one] month.

3. By way of derogation from Articles 51(1), 52(3) and 53(1) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*], the deadlines set in those provisions shall be shortened to one week.

4. By way of derogation from Article 51(2) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*] the report referred to therein shall indicate whether the Member State concerned is in a situation of crisis as defined in Article 1(2)(a) of this Regulation.

5. By way of derogation from Article 51(3)(b)(ii), Article 52(1) and 52(3) first sub-paragraph and Article 53(3)(a) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*], relocation shall include not only persons referred to in points (a) and (c) of Article 45(1) of that Regulation, but also persons referred to in points (a) and (b) of Article 45(2).

6. By way of derogation from Article 54 of Regulation (EU) XXX/XXX [*Asylum and Migration Management*], the share calculated in accordance with the formula set out in that Article shall also apply to measures set out in Article 45(2), points (a) and (b) of that Regulation.

7. By way of derogation from Article 55(2) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*], the deadline set therein shall be set at four months.

CHAPTER III - ASYLUM AND RETURN PROCEDURES IN A SITUATION OF CRISIS

Article 3

Criteria and procedural provisions

1. Where a Member State considers that it is facing a crisis situation as referred to in Article 1(2), that Member State shall submit a reasoned request to the Commission for the purpose of applying the rules laid down in Articles 4, 5 or 6 as necessary.

2. Where, on the basis of the examination carried out in accordance with paragraph 8, the Commission considers such a request justified, it shall, by means of an implementing decision, authorise the Member State concerned to apply the derogatory rules laid down in Articles 4, 5 or 6.

3. The implementing decision referred to in paragraph 2 shall be adopted within ten days from the request and shall set the date from which the rules laid down in Articles 4, 5 or 6 may be applied, as well as the time period for their application.

4. The Commission may authorise the application of the rules laid down in Articles 4 and 5 for six months. That period may be extended for a period not exceeding one year.

5. The Commission may authorise the application of the rules laid down in Article 6 for a maximum period of four weeks. If a Member State considers it necessary to further extend the application of the rules laid down in Article 6, it shall submit a reasoned request to the Commission at the latest five days before the expiry of the four-week period. The Commission may authorise the prolongation of the application of the rules laid down in Article 6 for an additional maximum period of four weeks, which shall be renewable once. The period of application shall not exceed twelve weeks in total, including, where paragraph 8 is applied, the period preceding the adoption of the implementing decision referred to in paragraph 2.

6. The implementing decision referred to in paragraph 2 shall be adopted in accordance with the procedure referred to in Article 11(1).

7. When submitting the request referred to in paragraph 1, a Member State may notify the Commission that it considers necessary to apply the rules laid down in Article 6 before the examination of this request by the Commission is concluded. In such a case, by way of derogation from paragraph 3 of this Article, the Member State concerned may apply the rules laid down in Article 6 from the day following the request and for a period not exceeding 15 days. The Member State shall indicate in the request the reasons for which an immediate action is required.

8. The Commission shall examine the reasoned request pursuant to paragraph 1, or the notification pursuant to paragraph 7 on the basis of substantiated information, in particular the information gathered by the Commission pursuant to the EU mechanism for Preparedness and Management of Crises related to Migration

(Migration Preparedness and Crisis Blueprint) and by the European Asylum Support Office (EASO) pursuant to Regulation (EU) No 439/2010[10], the European Border and Coast Guard Agency pursuant to Regulation (EU) 2019/1896 and the Migration Management Report referred to Article 6 of Regulation (EU) XXX/XXX [*Asylum and Migration Management*].

Article 4

Asylum crisis management procedure

1. In a crisis situation as referred to in Article 1(2), and in accordance with the procedures laid down in Article 3, Member States may, as regards applications made within the period during which this Article is applied, derogate from Article 41 of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*] as follows:

(a) By way of derogation from Article 41(2)(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*];

(b) By way of derogation from Article 41(11) and (13) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], the maximum duration of the border procedure for the examination of applications set out in that Article may be prolonged by an additional period of maximum eight weeks. Following this period, the applicant shall be authorised to enter the Member State's territory for the completion of the procedure for international protection.

Article 5

Return crisis management procedure

1. In a crisis situation as referred to in Article 1(2), and in accordance with the procedures laid down in Article 3, Member States may, in respect of illegally staying third-country nationals or stateless persons whose applications were rejected in the context of the asylum crisis management procedure pursuant to Article 4, and who have no right to remain and are not allowed to remain, derogate from Article 41a of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*] as follows:

(a) By way of derogation from Article 41a(2) of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], the maximum period during which third-country nationals

[10] Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ L 132, 29.5.2010, p. 11.)

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 41a(7) 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 by the Commission of a decision issued in accordance with Article 3 of this Regulation, and who have no right to remain and are not allowed to remain after the adoption of that decision.

Article 6

Registration of applications for international protection in situations of crisis

In a crisis situation as referred to in Article 1(2)(a) and in accordance with the procedure laid down in Article 3, applications made within the period during which this Article is applied shall be registered no later than within four weeks from when they are made by way of derogation from Article 27 of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*].

CHAPTER IV – TIMELIMITS IN A SITUATION OF *FORCE MAJEURE*

Article 7

Extension of registration time limit set out in Regulation (EU) XXX/XXX [Asylum Procedures Regulation]

1. Where a Member State is facing a situation of *force majeure* which renders it impossible to comply with the time limits set out in Article 27 of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], that Member State shall notify the Commission. After such notification, by way of derogation from Article 27 of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], applications may be registered by that Member State no later than four weeks from when they are made. In the notification, the Member State concerned shall indicate the precise reasons for

which it considers that this paragraph has to be applied and indicate the period of time during which it will be applied.

2. Where a Member State referred to in paragraph 1 is no longer facing a situation of *force majeure* as referred to in that paragraph which renders it impossible to comply with the time limits set out in Article 27 of Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*], that Member State shall, as soon as possible, notify the Commission of the termination of the situation. After such notification, the extended time limit set out in paragraph 1 shall no longer be applied.

Article 8

Extension of time limits set out in Regulation (EU) XXX/XXX [Asylum and Migration Management]

1. Where a Member State is facing a situation of *force majeure* which renders it impossible to comply with the time limits set out in Articles 29, 30, 31 and 35 of Regulation (EU) XXX/XXX [*Asylum and Migration Management*], the Member State concerned shall notify the other Member States and the Commission. Such information shall indicate the precise reasons for which the Member State considers that this paragraph has to be applied. After such notification, by way of derogation from Articles 29, 30, 31 and 35 of that Regulation, that Member State 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;

(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.

2. Where the Member State referred to in paragraph 1 does not comply with the time limits set out in paragraph 1, 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.

3. Where a Member State is facing a situation of *force majeure* which renders it impossible to receive persons it is responsible for pursuant to Regulation (EU) XXX/XXX [*Asylum and Migration Management*], it shall notify the other Member States and the Commission, indicating the precise reasons for such impossibility. In such cases, the requesting or notifying Member State shall not carry out the transfer until the Member State responsible is no longer facing a situation of *force majeure*.

Where, because of the persistence of the situation of *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 requesting or notifying Member State.

4. Where a Member State is no longer facing a situation of *force majeure* as referred to in paragraphs 1 and 3 which renders it impossible 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, that Member State shall as soon as possible notify the Commission and the other Member States of the termination of the situation. After such notification, the time limits set out in paragraphs 1 and 3 shall no longer be applied in respect of new applications for international protection made or third-country nationals or stateless persons who are found to be illegally staying on or after the date of that notification.

Article 9

Extension of the timeframes for solidarity measures

1. Where a Member State is facing a situation of *force majeure* which renders it impossible to comply with the obligation to undertake solidarity measures within the timeframes established in Articles 47 and 53(1) of Regulation (EU) XXX/XXX [*Asylum and Migration Management*] and Article 2 of this Regulation, it shall notify the Commission and the other Member States without delay. The Member State concerned shall indicate the precise reasons for which it considers that it is facing a situation of *force majeure* and provide all necessary information for that effect. After such notification, by way of derogation from the timeframes established by those Articles, the timeframe for undertaking solidarity measures established in those Articles shall be suspended for a maximum period of six months.

2. Where a Member State is no longer facing a situation of *force majeure*, that Member State shall immediately notify the Commission and the other Member States of the cessation of the situation. After such notification, the extended timeframe set out in paragraph 1 shall cease to apply.

CHAPTER V – GRANTING OF IMMEDIATE PROTECTION

Article 10

Granting of immediate protection status

1. In a crisis situation as referred to in Article 1(2)(a), and on the basis of an implementing act adopted by the Commission in accordance with paragraph 4 of this Article, Member States may suspend the examination of applications for international protection in accordance with Regulation (EU) XXX/XXX [*Asylum Procedures Regulation*] and Regulation (EU) XXX/XXX [*Qualification Regulation*] in respect of displaced persons from third countries who are facing a high degree of risk of being subject to indiscriminate violence, in exceptional situations of armed conflict, and who are unable to return to their country of origin. In such a case, Member States shall grant immediate protection status to the persons concerned, unless they represent a danger to the national security or public order of the Member State. Such status shall be without prejudice to their ongoing application for international protection in the relevant Member State.

2. Member States shall ensure that beneficiaries of immediate protection have effective access to all the rights laid down in Regulation (EU) XXX/XXX [*Qualification Regulation*] applicable to beneficiaries of subsidiary protection.

3. Member States shall resume the examination of the applications for international protection that have been suspended pursuant to paragraph 1 after a maximum of one year.

4. The Commission shall, by means of an implementing decision:

(a) establish that there is a situation of crisis on the basis of the elements referred to in Article 3;

(b) establish that there is a need to suspend the examination of applications for international protection;

(c) define the specific country of origin, or a part of a specific country of origin, in respect of the persons referred to in paragraph 1;

(d) establish the date from which this Article shall be applied and set out the time period during which applications for international protection of displaced person as referred to in point (a) may be suspended and immediate protection status shall be granted.

CHAPTER VI – GENERAL AND FINAL PROVISIONS

Article 11

Adoption of implementing acts

1. The Commission shall adopt implementing acts in respect of authorising the application of the derogatory procedural rules referred to in Articles 4, 5 and 6, and triggering the granting of immediate protection status in accordance with Article 10. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2).

2. On duly justified imperative grounds of urgency, due to the situation of crisis as defined in Article 1(2) in a Member State, the Commission shall adopt immediately applicable implementing acts in respect of authorising the application of the derogatory procedural rules referred to in Articles 4, 5 and 6, and triggering the granting of immediate protection status in accordance with Article 10. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 12(3).

3. The implementing acts shall remain in force for a period not exceeding one year.

Article 12

Committee procedure

1. For the implementing act referred to in Article 3, 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.

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Article 14

Repeal

Council Directive 2001/55/EC is repealed with effect from xxx (date).

Article 15

Entry into force

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

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*