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NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	11207/20
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 - Analysis of the final compromise with a view to agreement

I. BACKGROUND

1. On 23 September 2020, the Commission submitted to the Council and the European Parliament a proposal for a Regulation of the European Parliament and of the Council¹, which aims to address situations of crisis and *force majeure* in the field of migration and asylum.
2. The draft Regulation is based on Article 78(2)(d) and (e) of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).

¹ 11207/20; 2020/0277 (COD)

3. At its meeting on 4 October 2023, the Permanent Representatives Committee granted the Spanish Presidency a mandate to enter into negotiations with the European Parliament.
4. On 20 December 2023, a broad political agreement was reached between the Spanish Presidency and the rapporteur. Following further drafting this resulted in the final compromise text as set out in the annex to this note.
5. The cross-references to other legal instruments of the Pact are still subject to verification by the lawyer-linguists.

II. CONCLUSION

6. The Permanent Representatives Committee is therefore invited to:
 - a) analyse the final compromise text as set out in the annex to this note with a view to reaching an agreement at first reading with the European Parliament;
 - b) authorise the Chair of the Permanent Representatives Committee to send a letter to inform the Chair of the European Parliament's LIBE Committee that, should the European Parliament adopt its position at first reading on the text of the proposal in the exact form as set out in the annex to this note, and subject to revision of that text by the lawyer-linguists of both institutions, the Council will approve the European Parliament's position and the act will be adopted in the wording which corresponds to the European Parliament's position."

REGULATION (EU) No .../...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

addressing situations of crisis and force majeure
in the field of migration and asylum

I

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) (d) and (e) 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 Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

² OJ C , , p. .

³ OJ C , , p. .

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 ■ and *migration*, external border control *and returns as well as prevent unauthorized movements between Member States*, based on solidarity *and fair sharing of responsibility* between Member States, which is *also* fair towards third-country nationals *and stateless persons and in full respect of fundamental rights*.
- (2) To this end, a comprehensive approach is required, with the objective of *reinforcing* mutual trust between Member States ■, recognising that the effectiveness of the overall approach depends on all components being jointly addressed and *implemented* in an integrated manner.
- (3) *The EU and its Member States may be confronted with migratory challenges that can vary greatly, in particular with regard to the scale and the composition of the arrivals. It is therefore essential that the Union be equipped with a variety of tools to respond to all types of situations.* The comprehensive approach *as outlined in Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation], including through partnerships with relevant third countries*, should ensure that the Union has at its disposal specific rules to effectively manage migration, *in particular* the triggering of a *mandatory* solidarity mechanism and that all the necessary measures are put in place to prevent crisis to happen. *This Regulation sets out rules that are complementary to this approach as well as the rules set out in Council Directive 2001/55/EC, which may be used at the same time.*

- (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. ***Such exceptional situation can include the mass arrivals of third-country nationals and stateless persons into the territory of one or several Member States or a situation of instrumentalisation of migrants by a third country or hostile non-state actor with the objective to destabilise the Member State or the Union or a situation of force majeure in the Member State. In those circumstances, the measures and flexibility provided under Regulation XXX/XXX [Asylum and Migration Management Regulation] and Regulation XXX/XXX [Asylum Procedure Regulation] may not be sufficient to address such exceptional situations. These exceptional situations are different from those in which a Member State is facing a significant migratory situation due to the cumulative effect of arrivals on its well-prepared system or where a Member State is under migratory pressure because of the scale of arrivals which do not reach the levels of mass arrivals, but that creates disproportionate obligations on its well-prepared asylum, reception and migration systems, and for which said situations the Regulation XXX/XXX [Asylum and Migration Management Regulation] provides the measures applicable. Furthermore, this Regulation does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.***

- (5) *This Regulation intends to enhance the preparedness and resilience of the Union to manage situations of crisis and to facilitate operational coordination, capacity support and the availability of funding in situations of crisis.*
- (6) *This Regulation ensures the effective application of the principle of solidarity and fair sharing of responsibility **between Member States** and the adaptation of the relevant rules on asylum procedure, **including the application of expedited procedure** so that the Member States and the Union have the necessary **legal** tools at their disposal **to react swiftly to situations of crisis and force majeure**, including **the adaptation of the timelines** to carry out **all** procedures.*
- (7) *This Regulation ensures that Member States receive full support in situations of crisis and force majeure, including through the solidarity mechanism that ensures a fair sharing of responsibility and a balance of efforts between Member States in case of crisis.*

- (8) *This Regulation respects the fundamental rights of third-country nationals and stateless persons and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular respect and protection of human dignity, prohibition of torture and inhuman or degrading treatment or punishment, respect for private and family life, the principle of the best interests of the child, the right to asylum and protection in the event of removal, expulsion or extradition, as well as the Geneva Convention Relating to the Status of Refugees of 28 July of 1951, as amended by the New York Protocol of 31 January 1967 ('Geneva Convention'). The Regulation should be implemented in compliance with the Charter and general principles of Union law as well as international law. In order to reflect the primary consideration that must be given to the best interests of the child, in line with the 1989 United Nations Convention on the Rights of the Child, and the need to respect family life, as well as to ensure the protection of the health of the persons concerned, safeguards should be applied in respect of minors and their family members, and of applicants whose state of health requires a specific and adequate support. The rules and guarantees set out in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] should continue to apply in respect of persons subject to the derogations foreseen in this Regulation, except where this Regulation provides otherwise. The rules set out in Directive XXX/XXX [Reception Conditions Directive recast], including those concerning the detention of applicants for international protection, should continue to apply, from the moment an application for international protection is made.*

- (9) *This Regulation does not provide derogations from the rules and guarantees, including related to material reception conditions, under Directive XXX/XXX/EU [Reception Conditions Directive]. The Member State in a situation of crisis shall provide for additional and sufficient human and material resources to be able to meet its obligations under Directive XXX/XXX/EU [Reception Conditions Directive].*
- (10) *The rules and guarantees set out in Regulation (EU) XXX/XXX [Screening Regulation], Regulation (EU) XXX/XXX [Eurodac Regulation], Directive (EU) XXX/XXX [Trafficking in Human Beings] and Regulation (EU) XXX/XXX [Qualifications Regulation] should continue to apply irrespective of derogations under this Regulation. Member States may only apply the measures provided for in this Regulation under the conditions established thereto, to the extent provided in the Council Implementing Decision foreseen therein and where it is strictly necessary and proportionate.*
- (11) *The adoption of measures in respect of a particular Member State should be without prejudice to the possibility to apply Article 78(3) of the Treaty on the Functioning of the European Union.*

- (12) *Since the objectives of this Regulation, namely to provide for the necessary adaptation of the rules on asylum procedures and where relevant those on solidarity in order to ensure that Member States are able to address situations of crisis in the field of asylum and migration management within the Union and force majeure, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.*
- (13) *Mass arrivals of third-country nationals or stateless persons may lead to a situation where a Member State is not in a position to process the applications for international protection of third-country nationals and stateless persons in accordance with the rules set out in Regulation XXX/XXX [Asylum and Migration Management Regulation] and Regulation XXX/XXX [Asylum Procedure Regulation], having consequences for the functioning of the asylum and migration system, not only in that Member State but in the Union as a whole. Therefore, it is necessary to lay down specific rules and mechanisms that should enable effective action to address such situations.*

- (14) *Member States should have sufficient human and financial resources and infrastructure to effectively implement asylum and migration management policies and should ensure appropriate coordination between the relevant national authorities as well as with the national authorities of the other Member States to ensure their asylum, reception, including child protection services, or return system is well prepared, including preparedness and contingency planning and that each component has sufficient capacity.*
- (15) *A situation of instrumentalisation may arise where a third country or hostile non-state actor encourages or facilitates the movement of third country nationals and stateless persons to the external borders or to a Member State, where such actions are indicative of an intention of a third country or a hostile non-state actor to destabilise the Union or a Member State, where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.*

- (16) *Situations in which non-state actors are involved in organised crime, in particular smuggling, should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.*
- (17) *Humanitarian assistance should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.*
- (18) *Without prejudice to measures applicable under other policy fields and legal instruments, to ensure an immediate and appropriate response to hybrid threats in line with Union law and international obligations, this Regulation focuses on the specific measures applicable in the area of migration aimed at addressing the situations of instrumentalisation.*
- (19) *In a situation of instrumentalisation, third-country nationals and stateless persons may apply for international protection at the external border or in a transit zone of a Member State, often being persons apprehended in connection with unauthorised crossings of the external border by land, sea or air or who are disembarked following search and rescue operations. This may particularly lead to an unexpected significant increased caseload of applications for international protection at the external borders. In this regard, effective and genuine access to the international protection procedure must be ensured in accordance with Article 18 of the Charter of Fundamental Rights of the European Union and the Geneva Convention.*

- (20) *As regards Cyprus, Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession provides for specific rules that apply to the line between the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus exercises effective control and those areas in which the Government of the Republic of Cyprus does not exercise effective control. Although the line does not constitute an external border, it follows that a situation where a third country or hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to cross the line should be considered as instrumentalisation, when all the other elements of the definition of instrumentalisation are present.*
- (21) *A Member State may be also faced with abnormal and unforeseeable circumstances outside **its** control, the consequences of which could not have been avoided in spite of the exercise of all due care. Such situations of force majeure could **prevent the Member State to comply with obligations under Union law and could have consequences not only in that Member State but in the Union as a whole.** Examples of a situation of force majeure include, among others, pandemic or natural disasters.*

- (22) *Where a Member State considers itself to be in a situation of crisis or force majeure, that Member State may request for authorisation of the derogations and solidarity measures contained in this Regulation. This request should include the description of the situation, the measures requested to address the specific situation and the reasons why the situation requires to resort to the said measures and where relevant, the measures already taken to address the situation.*
- (23) *The use of measures comprised in the Permanent EU Migration Toolbox as established by Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] Article 5(3)] should not be a precondition to benefit from solidarity measures under this Regulation.*
- (24) *In a situation of crisis, the Member State facing such a situation should have the possibility to request from other Member States solidarity and support measures that are most suited to its needs to manage that situation and that call for enhanced solidarity compared to that provided for in Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] in alleviating the responsibility for handling a situation of crisis. The enhanced solidarity and support measures could take the form of relocations, financial contributions, alternative solidarity measures or a combination of the above.*

- (25) *In a situation of crisis and force majeure, the Member State facing such a situation should have the possibility to request the authorisation to apply derogations from relevant rules on the asylum procedure, including the asylum border procedure. Where relevant, this request should also include the choice of the Member State concerned as regard either the exclusion or the cessation of the border procedure for specific categories of applicants. Together with this request, the Member State concerned may notify the Commission of its intention to apply the derogation from the registration deadline before it is authorised in the Council Implementing Decision as well as the precise reasons for which an immediate action is required, which should not exceed 10 days from the day following the request, unless authorised in the Council Implementing Decision. The Commission and the Council, when fulfilling their respective responsibilities under the authorisation procedure, should proceed expeditiously in order to limit the time gap between the end of such period and the adoption of the corresponding Council Implementing Decision.*
- (26) *Considering that it may happen that a Member State faces several of the situations described in this Regulation at the same time, it should be possible for that Member State to request and be authorised concomitantly to apply or benefit from the measures set out in this Regulation, which are conceived as complementary.*

- (27) *In order to allow for the proper management of a situation of crisis, including instrumentalisation, or force majeure, and ensure predictability and a proper adaptation of the relevant rules on the asylum procedure, including the asylum border procedure, the Commission should be conferred the power to assess the situation, upon the reasoned request by the Member State concerned, and determine, by way of an implementing decision, whether the requesting Member State is facing a situation of crisis, including instrumentalisation, or force majeure.*

- (28) *In a situation of crisis, the solidarity measures to address such a situation should go beyond those provided for in Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]. For this reason, when assessing the situation, the Commission should take into account quantitative and qualitative indicators provided for in Article 7a of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] and substantiated information provided by the requesting Member State and information gathered pursuant to Regulation (EU) 2021/2303 of the European Parliament and of the Council and Regulation (EU) 2019/1896 of the European Parliament and of the Council and the Migration Management report referred to in Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] and indicate, in situations of instrumentalisation, why the EU Migration Support Toolbox is not sufficient to assess the situation. The Commission should gather sufficient information to properly assess whether the requesting Member State is facing a situation of crisis, including instrumentalisation, or force majeure, in consultation with the relevant Agencies, in particular the European Union Agency for Asylum (EUAA), the European Border and Coast Guard Agency and European Union Agency for the Fundamental Rights Agency, as well as international organisations, in particular the UNHCR and IOM, and other relevant organisations.*

- (29) *To ensure a high level of political scrutiny and support and expression of the Union's solidarity, it is a relevant consideration whether the European Council has acknowledged that the Union or one or more of its Member States are facing a situation of instrumentalisation of migrants. The instrumentalisation of migrants is liable to put at risk the essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.*
- (30) *In order to provide for an appropriate response that is proportionate and necessary to address the situation, the Commission proposal should identify, where relevant, the specific derogations that Member States should be authorised to apply. In a situation of instrumentalisation, the persons subject to instrumentalisation to whom the relevant derogations may be applied should be clearly identified. In a situation of crisis, where appropriate and after consultation with the Member State facing the situation of crisis, the Commission should include in its proposal a draft Solidarity Response Plan indicating the relevant solidarity measures and their level required for the specific situation, including the total amount of relocations, financial contributions or alternative solidarity measures and their level, and recognising that the various types of solidarity are of equal value and respecting the full discretion of Member States in choosing the solidarity measures.*

(31) *Whereas in a situation of migratory pressure relocation or responsibility offsets should cover 60% of the relocation needs under Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation], in a situation of crisis, it is important that all solidarity needs of the Member State concerned are addressed. For this reason, when the Council Implementing Decision establishes the Solidarity Response Plan, the Member State facing the situation of crisis should have priority to use the unallocated solidarity pledges or those that have not been implemented yet and are available in the Solidarity Pool under Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]. If that is not possible, or if the Solidarity Pool does not contain sufficient pledges to cover the identified needs, the Member State facing the situation of crisis should also make use of the contributions contained in the Council Implementing Decision, recognising that the various types of solidarity are of equal value. With a view to addressing all the needs of the Member State concerned, if the combination of the relocation pledges available in the Solidarity Pool and in the Council Implementing Decision is not sufficient, responsibility offsets should become mandatory to cover the needs set out in the Solidarity Response Plan. For this to happen, there need to be persons present on the territory of the contributing Member State to whom the offsets apply.*

(32) *Situations of crisis or force majeure are also liable to put at risk the essential functions of a Member State. In order to strengthen mutual trust between the Member States, to ensure their better coordination at EU level, implementing powers should be conferred upon the Council to adopt an Implementing Decision authorising a Member State to apply the derogations and the solidarity measures provided for by this Regulation where the conditions laid down are met. The time period for the application of the measures authorised by the initial Implementing Decision should be 3 months, which can be extended to further three months upon confirmation by the Commission of the persistence of the situation of crisis or force majeure. The Council should be empowered to further prolong the authorisation to apply the derogations and the solidarity measures, by up to three months on the basis of a Commission proposal depending on whether the circumstances justifying the prolongation of the derogations and solidarity measures persist, which can be extended to further three months upon confirmation by the Commission. The Council should be empowered to repeal the application of the measures on the basis of a Commission proposal when the circumstances justifying the application of the derogations and solidarity measures have come to an end. The prolongation decision may include an amendment of the derogations applied. In exercising their powers and carrying out their responsibilities, the Commission and the Council should ensure at all times that the principles of proportionality and necessity are respected.*

- (33) *The Council Implementing Decision should include, where appropriate, an authorisation of the specific derogations that the Member State facing a situation of crisis or force majeure could apply, depending on the nature of each derogation, and set the date from which they could be applied. Moreover, the Decision should state the grounds on which it is based and the personal scope of the derogations.*
- (34) *The Council Implementing Decision should establish, where appropriate, the said Solidarity Response Plan, indicating the specific solidarity and support measures required and their levels, as well as the pledges made by the contributing Member States. To that end, the pledging exercise should take place in the framework of the adoption of the Council Implementing Decision. It is important to ensure the full discretion of the contributing Member State to choose between the types of solidarity and support measures.*
- (35) *Given the importance of applying the measures set out in this Regulation only for as long and to the extent strictly necessary, the Commission and the Council should keep the situation under constant monitoring and review as regards the necessity and proportionality. In this context, the Commission should pay particular attention to compliance with fundamental rights and humanitarian standards and may request the European Union Asylum Agency to initiate a monitoring exercise of the concerned Member State's asylum or reception system pursuant to Article 15(2) of Regulation 2021/2303/EU.*

- (36) The procedural rules set out in Regulation (EU) XXX/XXX [Asylum and Migration Management **Regulation**] for carrying out relocation ■ should be applied for the purpose of ensuring the proper implementation of the solidarity measures in a situation of crisis, *taking* into account the gravity and urgency of that situation.
- (37) *To ensure a smooth implementation of the solidarity mechanism under this Regulation, further to the tasks mentioned in Regulation (EU) XXX/XXX [Asylum and Migration Management], the EU Solidarity Coordinator, should support relocation activities and promote a culture of preparedness, cooperation and resilience among Member States. In a situation of crisis, the EU Solidarity Coordinator should, every two weeks, provide a bulletin on the state of the implementation and functioning of the relocation mechanism. The office of the Solidarity Coordinator should be provided with sufficient staff and resources to effectively fulfil this role. When implementing relocation, primary consideration should be given to vulnerable persons.*

- (38) *Vulnerable persons in particular when they have special reception needs within the meaning of [Article 24 of Directive XXX/XXX/EU (Reception Conditions Directive)], or in need of special procedural guarantees as referred to in Articles 19 to 22 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] should be given primary consideration for relocation. According to Article 24 of Directive XXX/XXX/EU (Reception Conditions Directive), applicants falling within any of the following categories are more likely to have special reception needs: minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, lesbian, gay, bisexual, trans and intersex persons, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders including post traumatic stress disorder and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive.*

- (39) *In contrast to the rules set out in Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] where Member States should not be obliged to take responsibility above their fair share, in a situation of crisis the implementation of the Solidarity Response plan could potentially lead to one or several contributing Member States taking responsibility for examining applications for international protection above their fair share. In such cases, such a Member State should be entitled to reduce proportionally the part above the fair share from the implementation of solidarity pledges under the upcoming annual cycles of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] over a period of five years. Such reduction could also be applied in a Council Implementing Decision adopted pursuant to Article 4(3) with the corresponding amount of applications beyond the fair share and within five years from the date in which the Council Implementing Decision that led the Member State to go beyond its fair share is no longer in force. The reductions under the upcoming annual cycles and in a Council Implementing Decision may be applied alternatively or simultaneously, provided that they correspond to and do not go beyond the amount of applications for which that Member State went above its fair share.*

- (40) *When confronted with a situation of crisis or force majeure, the Member State concerned might need to divert resources to manage the influx of third-country nationals and stateless persons arriving at its borders. As a result, the Member State concerned may need time to reorganise its resources and increase its capacity, including with the support of the relevant EU agencies. The Member State facing a situation of crisis or force majeure may need more time to be able to take decisions on their applications without allowing entry into the territory. In such situation, it should be possible for the Member State concerned to derogate from deadlines for registration and border procedure.*
- (41) *Where a Member State applies one or more of the measures in this Regulation, the Member State should inform third-country nationals and stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the derogations applied and the duration of the measures. Member States are obliged to address special procedural and special reception needs of the applicants that may arise and provide information by an appropriate manner accordingly. Moreover [Article 10 on provision of information and Article 37(3) with regard to the information on the possibility to appeal the decision on the application, of the Regulation (EU) XXX/XXX [Asylum Procedure Regulation]] should apply.*

- (42) *Where derogations from the asylum procedure are applied, the safeguards for applicants with special procedural and special reception needs, including medical conditions should be a primary consideration for the competent authorities. For this reason, the Member State facing a situation of crisis or force majeure should not apply or should cease to apply the derogations from the asylum procedure in cases where there are medical reasons for not applying the border procedure in line with [Article 54(2)(d) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]] or where the necessary support cannot be provided to applicants with special procedural needs in line with [Article 54(2)(c) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]] or where the necessary support cannot be provided to applicants with special reception needs in accordance with Directive XXX/XXX [Reception Conditions Directive]. The Member State concerned should prioritise the examination of applications from persons with special procedural needs in line with Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and with special reception needs as defined in [Article 2(14) of Directive XXX/XXX [Reception Conditions Directive recast]], especially minors and their family members.*

- (43) In ■ situations of crisis *and force majeure*, the Member State should be *authorised to apply derogatory rules* for registering the applications for international protection *no later than within four weeks after they are made* ■. Such an extension should be without prejudice to the rights of asylum applicants guaranteed by the Charter of Fundamental Rights of the European Union, *Regulation (EU) XXX/XXX [Asylum Procedure Regulation]* and *Directive (EU) XXX/XXX [Reception Conditions Directive]*. *Without prejudice to the exception provided for during the period between the request and the adoption of the Council implementing decision, in a situation of crisis, characterised by mass arrivals of third-country nationals and stateless persons, the extension of the registration period may only be applied during the time period set out in the initial Council implementing decision.*
- (44) *When confronted with a situation of crisis or force majeure, it should be possible for the Member State concerned to extend the examination of applications for international protection at the border with an additional period of six weeks. The extension may not be used in addition to the period referred to in Article 52(2) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]] third sub-paragraph.*
- (45) *In situations of crisis or force majeure, the Member State concerned should be able to request from among several options with regard to the application of the border procedure, taking into account the composition of the flows and their diverse nature depending on the precise situation of crisis.*

- (46) *In situations of crisis, characterised by a mass arrivals of third-country nationals and stateless persons, or force majeure, it could be necessary to allow Member States not to apply the border procedure in respect of persons who come from third countries where the EU-wide average recognition rate is below 20%. In order to apply this derogation, the Council Implementing Decision should assess that the measures contained in the contingency plan of the concerned Member State referred to in [Article 32 of Directive (EU) XXX/XXX [Reception Conditions Directive]] are not sufficient to address that situation. In any event, Member States are obliged to apply the border procedure in the situations referred to in [points (c) and (f) of Article 43(1) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]].*
- (47) *In a situation of crisis characterised by mass arrivals of third-country nationals and stateless persons applying for international protection, it could be necessary to allow Member States to lower the threshold for the mandatory application of the border procedure foreseen in [Article 40(1)(j) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]]. In any event, the reduced threshold should not go below 5%. Member States are obliged to apply the border procedure in the situations referred to in [points (c) and (f) of Article 43(1) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]].*

(48) *In a situation of crisis characterised by mass arrivals of third-country nationals and stateless persons applying for international protection, it could be necessary to broaden the scope of* the application of the border procedure, established by [Article 44 of Regulation (EU) XXX/XXX [Asylum **Procedure** Regulation]] and *to* 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 **50 %** or lower. As a result, in the application of the crisis border procedure, Member States should continue applying the border procedure as provided by [Articles 44 *to* 55 of Regulation (EU) XXX/XXX [Asylum **Procedure** Regulation]] but could extend the application of the border procedure to *third-country* nationals *or stateless persons* who come from third countries where the EU-wide average recognition rate is above 20% but under **50%**, *taking into account the rapidly evolving protection needs that may take place in the country of origin as reflected in quarterly updates of Eurostat data. This broadening of the scope of the border procedure should not affect the grounds and other rules applicable to the mandatory border procedure under Regulation XXX/XXX [Asylum Procedure Regulation]. Where a Member State is authorised to broaden the scope of the border procedure, applications examined under that procedure should not be considered as part of the adequate capacity pursuant to [Article 48] or counted for the application of the annual cap pursuant to [Article 51 of Regulation XXX/XXX [Asylum Procedure Regulation]].*

- (49) *The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. In line with the Reception Conditions Directive, minors should, as a rule, not be detained but be placed in accommodation with special provisions for minors, including where appropriate in non-custodial, community-based placements. Given the negative impact of detention on minors, such detention could be used, in line with Union law, exclusively in exceptional circumstances, where strictly necessary, only as a last resort, for the shortest time possible, and never in prison accommodation or any other facility destined for law enforcement purposes. Minors should not be separated from their parents or care givers, and the principle of family unity should generally lead to the use of adequate alternatives to detention for families with minors, in accommodation suitable for them. Moreover, everything possible must be done to ensure that a viable range of adequate alternatives to detention of minors is available and accessible.*

(50) *In a situation of instrumentalisation and in order to avoid that a hostile third country or non-state actor targets specific nationalities or specific categories of third-country nationals or stateless persons, it should be possible to derogate from the asylum procedure set out in this Regulation for the Member State concerned to take a decision in the framework of the border procedure, as set out in [Articles 44 to 55 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]] on the merits of all applications for international protection. The principles and guarantees set out in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] have to be respected. The Council Implementing Decision authorising the Member State to apply the referred derogations should specify the third-country nationals or stateless persons subject to the situation of instrumentalisation. Where applying this derogation, specific attention should be given to certain categories of third-country nationals and stateless persons who have been subject to instrumentalisation, in particular minors under the age of 12 and their family members, and vulnerable persons with special procedural or special reception needs. These groups should therefore either be excluded from the border procedure, or, when an individual assessment concludes that their applications would likely to be well-founded, this procedure should cease to apply to them. The choice between these alternatives remains at the discretion of the Member State requesting the application of this derogation. The choice indicated in the request should be reflected in the Council implementing decision authorising the application of this derogation. The broadening of the scope of the border procedure in a situation of instrumentalisation should not affect the grounds and other rules applicable to the mandatory border procedure under Regulation XXX/XXX [Asylum Procedure Regulation]. Where a Member State is authorised to broaden the scope of the border procedure, applications examined under that procedure should not be considered as part of the adequate capacity pursuant to [Article 48] or counted for the application of the annual cap pursuant to [Article 51 of Regulation XXX/XXX [Asylum Procedure Regulation]].*

- (51) *In order to support the Member State concerned in providing the necessary assistance to third-country nationals and stateless persons falling under the scope of this Regulation, United Nations agencies, and the United Nations High Commissioner for Refugees in particular, and other relevant partner organisations entrusted with specific tasks by Member States, should have effective access to the border under the conditions set out in the Directive (EU) XXX/XXX [Reception Conditions Directive recast] and Regulation (EU) XXX/XXX [Asylum Procedure Regulation]. The United Nations High Commissioner for Refugees should be allowed access to applicants for international protection, including to those at the border. To this end, the Member State concerned should maintain cooperation with these organisations.*
- (52) *Specific rules should be set out for situations of crisis, characterised by mass arrivals, or force majeure, to allow Member States to extend the time limits set out in Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] under strict conditions where it is impossible to comply with those time limits due to the extraordinary situation. Such extension should apply simultaneously 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. The time limits should be extended irrespective of whether Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] provides for shorter time limits for certain situations.*

- (53) *In order to ensure effective access to the procedure for granting international protection, where the transfer does not take place due to the persistence of the situation of crisis characterised by a mass influx, or force majeure or the transferring Member State does not implement the transfer when the applicant is available to the competent authorities of the transferring Member State, a maximum time limit to carry out the transfer to a Member State facing that situation should be set out. That time limit should not be longer than 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 Regulation (EU) No XXX/XXX [Asylum and Migration Management Regulation]]. This is without prejudice to the possibility to extend the time limits pursuant to [Article 35(2) of Regulation XXX/XXX [Asylum and Migration Management Regulation]] for carrying out a transfer.*

(54) *In order to avoid that the Common European Asylum System would become non-functional due to a mass arrivals of such an extraordinary scale and intensity that, if not addressed by the Union as a whole, even if a Member State has a well-prepared asylum, reception and return system, it may create a serious risk of serious deficiencies in the treatment of applicants for international protection, a Member State should, in these most exceptional circumstances, be able to derogate from the obligation to take back an applicant pursuant to [Articles 8(2) and 28(4) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]]. However, in order to ensure that such derogation does not lead to additional pressure on the Member State facing that situation, it should only apply retroactively to applications already registered in that Member State within four months before the date on which the Council Implementing Decision is adopted.*

- (55) *Where, in line with Regulation (EU) XXX/XXX [Qualification Regulation], objective circumstances suggest that applications for international protection from groups of applicants from a specific country of origin or former habitual residence or a part of that country or on the basis of the criteria drawn from Regulation (EU) XXX/XXX [Qualification Regulation] could be well-founded, it is in the interest of both the determining authorities and the applicants concerned to have the examination of the merits of the application concluded as soon as possible and allow for a swift and efficient granting of international protection in a situation of crisis.*
- (56) *Applicants for international protection, whose applications are examined in the context of the expedited procedure provided for in this Regulation should enjoy all of the rights and guarantees, to which applicants are entitled in accordance with Regulation (EU) XXX/XXX [Asylum Procedure Regulation], including the right to information and to an effective remedy.*

- (57) *When applying the Commission Recommendation on expedited procedure, there should be no interview on the merits, but if there are doubts whether the applicant belongs to the category (ies) of persons identified in the Commission Recommendation or whether the exclusion grounds apply, an interview might be needed. In all cases, the procedure should not last longer than four weeks from the date of the lodging of the application. Where a Member State has established that an applicant for international protection is a threat to internal security, that Member State should be able not to apply the expedited procedure in respect of that applicant. In such circumstances, the application should* **█** *be examined in accordance with Articles 36 and 40 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] █ .*
- (58) *Applicants for international protection, whose applications are examined in the context of the expedited procedure provided for in this Regulation, should, in accordance with Article 30 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], receive a document certifying their status in a language they can understand or can reasonably be expected to understand.*
- (59) *The relevant Union Agencies, UNHCR and other relevant organisations may be consulted at the different stages of the application of the expedited procedure.*

- (60) *To ensure a sufficient level of preparedness for a situation of crisis, Member States should include in their contingency plans measures needed to respond to and resolve a situation of crisis, including measures needed to overcome challenges in the functioning of the Common European Asylum System and to protect the rights of applicants for and beneficiaries of international protection as well as foster future resilience in the Member State concerned. Member States should also use all the tools available under national and Union law, including making use of anticipation and early warning tools under the EU mechanism for preparedness and management of crises related to migration foreseen in Commission Recommendation (EU) 2020/1366 of 23 September 2020.*
- (61) *Without prejudice to the above and where relevant, in a situation of crisis, all mechanisms for crisis foreseen in the Permanent EU Migration Toolbox should be mobilised, particularly the financial and operational support that Union agencies, Union Funds and the Union Civil Protection Mechanism can provide in accordance with their respective legislation. Thereafter, the Commission should, in the context of the Technical-Level Migration Forum, ensure coordination and exchange of information with other platforms that are relevant to manage the crisis situation, including the EU Migration Preparedness and Crisis Management Network in accordance with Commission Recommendation (EU) 2020/1366, and the Integrated Political Crisis Response ('IPCR') arrangements.*

- (62) *A Member State facing a situation of crisis or force majeure may request support from the EU Asylum Agency, the European Border and Coast Guard Agency or Europol in accordance with their mandates. In addition and as appropriate, the EU Asylum Agency may propose assistance on its own initiative in accordance with Article 16(1)(d) of Regulation 2021/2303 ('EUAA Regulation'), whereas the European Border and Coast Guard Agency may propose assistance in the field of return in accordance with Articles 48, 50, 52 and 53 of Regulation (EU) 2019/1896 in agreement with the Member State concerned and Europol may propose assistance in accordance with Article 6(1) of Regulation (EU) 2016/794.*
- (63) To support Member States *that* undertake relocation as a solidarity measure, financial support from the EU budget should be provided, *including from the thematic facility as set out in Regulation 2021/1147.*

(64) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union (*TEU*) and to the *Treaty on the Functioning of the European Union (TFEU)* 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 *Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13* 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 Convention⁴, 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.

⁴ OJ L 66, 8.3.2006, p. 38.

- (65) 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.
- (66) As regards Iceland and Norway, *Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13* 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 Norway⁵.
- (67) As regards Switzerland, *Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13* 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 Switzerland⁶.

⁵ *OJ L 93, 3.4.2001, p. 40.*

⁶ *OJ L 53, 27.2.2008, p. 5.*

(68) As regards Liechtenstein, *Articles 12 and 13, and Articles 1 to 6 insofar as they concern the derogations in Articles 12 and 13* 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 Switzerland⁷ refers.

HAVE ADOPTED THIS REGULATION:

⁷ OJ L 160, 18.6.2011, p. 37.

Chapter I
General provisions

Article 1
Subject matter

1. This Regulation addresses ***exceptional*** situations of crisis, ***including instrumentalisation***, and force majeure in the field of migration and asylum within the Union. ***It*** provides for ***enhanced solidarity and support measures building upon Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] while ensuring the fair sharing of responsibility, and for temporary*** specific rules derogating from those set out in Regulations (EU) XXX/XXX [Asylum and Migration Management ***Regulation***] and (EU) XXX/XXX [Asylum ***Procedure*** Regulation].
2. ***Temporary measures adopted pursuant to this Regulation shall meet the requirements of necessity and proportionality, be appropriate to achieving their stated objectives and ensuring the protection of the rights of the applicants and beneficiaries of international protection, and be consistent with the obligations of the Member States under the Charter of the Fundamental Rights of the European Union, international law and the Union asylum acquis. This Regulation shall not affect the fundamental principles and guarantees, established by the acts from which derogations are allowed pursuant to this Regulation.***

3. *The measures in this Regulation shall be applied only to the extent strictly required by the exigencies of the situation, in a temporary and limited manner and only in exceptional circumstances. Member States may only apply the measures provided for in Chapter IV and benefit from the measures provided for in Chapter III upon request and to the extent provided for in the Decision referred to in Article 4(3) without prejudice to Article 10(5).*
4. For the purposes of this Regulation, a situation of crisis *means*:
- (a) an exceptional situation of mass *arrivals* of third-country nationals or stateless persons ■ in a Member State *by land, air or sea, including persons* disembarked ■ following search and rescue operations, being of such a scale *and nature, taking into account, inter alia*, the population, GDP *and geographical specificities, including the size of the territory* of the Member State concerned ■ that it renders the *well-prepared* Member State's asylum, reception, *including child protection services*, or return system non-functional - *including as a result of a situation at local or regional level - such that there may be* serious consequences for the functioning the Common European Asylum System ■

- (b) *a situation of instrumentalisation where a third country or hostile non-state actor encourages or facilitates the movement of third country nationals and stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security. Member States may request the authorisation to apply the measures included in Chapter III and IV particularly where there is an unexpected significant increase in the caseload of applications for international protection at the external borders. Member States may apply the derogations provided for in a Council Implementing Decision referred to in Article 4(3) of this Regulation in the situation referred to in this point only in respect of third-country nationals or stateless persons who are subject to instrumentalisation and who are either apprehended or found in the proximity of the external border, meaning the Member State's land borders, including river and lake borders, sea borders and its airports, river ports, sea ports and lake ports, provided that they are not internal borders, in connection with an unauthorised crossing by land, sea or air, or who are disembarked following search and rescue operations or who have presented themselves at border crossing points.*

5. *For the purposes of this Regulation, force majeure refers to abnormal and unforeseeable circumstances outside the Member State's control, the consequences of which could not have been avoided notwithstanding the exercise of all due care, which prevent the Member State from complying with obligations under Regulations (EU) XXX/XXX [Asylum and Migration Management Regulation] and (EU) XXX/XXX and [Asylum Procedure Regulation].*

Chapter II

Governance

Article 2

Request by the concerned Member State

1. *Where a Member State considers itself to be in a situation of crisis or force majeure, that Member State may, given those exceptional circumstances, submit a reasoned request to the Commission, in order to receive solidarity allowing for the proper management of the said situation and to allow for possible derogations from the relevant rules on the asylum procedure, while ensuring that the applicants' fundamental rights are respected.*

2. *The reasoned request referred to in the first paragraph of this Article shall include*

(a) a description of

- (i) how as a result of a situation of crisis as referred to in Article 1(4)(a), the Member State's asylum and reception system, including its child-protection services, has become non-functional, as well as the measures taken so far to address the situation and a justification proving that its system, while being well-prepared and despite the measures already taken, is unable to address the situation; or*
- (ii) how the Member State is facing a situation of instrumentalisation as referred to in Article 1(4)(b) putting at risk its essential functions, including the maintenance of law and order or the safeguard of its national security; or*
- (iii) how the Member State is faced with abnormal and unforeseeable circumstances outside its control, the consequences of which could not be avoided in spite of the exercise of all due care, and how such situation of force majeure prevents it from fulfilling their obligations set out in the Articles 28, 46(1), [52(2)] of the Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and in the Articles 29, 30, 31 and [35] of the Regulation (EU) XXX/XXX [Asylum and Migration Management].*

- (b) where relevant, the type and level of solidarity measures provided for in Article 8(1) that it considers necessary.*
- (c) where relevant, the derogations provided for in Articles 10 to 13 that it considers necessary; and*
- (d) when requesting to apply the derogation provided for in Article 11(6), whether it intends to provide for the exclusion of specific categories of applicants referred to in paragraph 8(a) or paragraph 8(b) of that Article or the cessation of the border procedure for specific categories of applicants following an individual assessment provided for in paragraph 10 of that Article.*

Article 3

Commission Implementing Decision establishing a situation of crisis or force majeure

- 1. Following the submission of the reasoned request referred to in Article 2, the Commission, in close cooperation with the requesting Member State and in consultation with relevant Union agencies and international organisations, in particular UNHCR and IOM, shall expeditiously assess the situation pursuant to this Article and, where the conditions set out in Article 1 are met, adopt an implementing decision referred to in paragraph 7.*

2. *The Commission may also adopt a Recommendation on the application of an expedited procedure for granting international protection to certain categories of applicants as referred to in Article 14.*
3. *The Commission shall immediately notify the European Parliament, the Council and the Member States that it is undertaking the assessment referred to in paragraph 1.*
4. *When assessing whether the Member State is facing a situation of instrumentalisation pursuant article 1(4)(b) of this Regulation, the Commission shall assess inter alia the following information:*
 - (a) *whether a third country or hostile non state actor is facilitating the movement of third-country nationals or stateless persons onto the European Union;*
 - (b) *whether the information provided by the requesting Member State adequately reflects that the actions in point (a) have the aim of destabilising the Union or the Member State concerned;*
 - (c) *whether there is an unexpected significant increase in the caseload of applications for international protection at the external borders or in the Member State concerned compared to the average number of applications;*

(d) whether the response to the implications of the situation of instrumentalisation on the migration and asylum system of the Member State concerned cannot be sufficiently addressed with the measures contained in the EU Migration Support Toolbox in accordance with Article 5(3) of Regulation XXX/XXX.

5. The Commission shall determine whether the conditions with regard to the situation faced by the Member State as set out in Article 1 are met, taking into account the reasoned request referred to in Article 2 and in the light of the information provided and the indicators on the concerned Member State referred to in Article 7a of Regulation (EU) XXX/XXX [Asylum and Migration Management

Regulation]. The Commission shall assess the information provided in the reasoned requests against the situation in the concerned Member State during the preceding two months and compared it to the overall situation in the Union.

6. The Commission shall determine in particular:

(a) whether the requesting Member State's asylum, reception, including child-protection services, or migration system has become non-functional as a result of a situation of mass arrivals of third-country nationals or stateless persons, while being well-prepared, and despite the measures already taken, is unable to address the situation and whether there might be serious consequences for the functioning of the Common European Asylum System.

- (b) whether the Member State ■ is *facing* a situation of *instrumentalisation* as *referred to* in Article 1(4)(b) *to be addressed with the necessary and proportionate use of the measures contained in* this Regulation.
- (c) *whether the Member State is faced with abnormal and unforeseeable circumstances outside its control, the consequences of which could not be avoided in spite of the exercise of all due care, and how such situation of force majeure prevents it from fulfilling their obligations set out in the [Articles 28, 46(1), [52(2)]] of the Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and in the [Articles 29, 30, 31 and [35]] of the Regulation (EU) XXX/XXX [Asylum and Migration Management].*
7. *When adopting the implementing decision referred to in paragraph 8 of this article, the Commission shall indicate why the response to the situation of instrumentalisation cannot be sufficiently addressed with the measures set out in EU Migration Support Toolbox in accordance with Article 5(3) of Regulation XXX/XXX.*

8. *Where the assessment referred to in paragraph 1 demonstrates the existence of the conditions set out in Article 1, taking into account the reasoned request referred to in Article 2 and in the light of the information provided and the indicators on the concerned Member State referred to in Article 7a ■ of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] the Commission shall adopt, without delay and in any case no later than two weeks from the submission of the request referred to in Article 2, an implementing decision determining whether the requesting Member State is in a situation of crisis referred to in Article 1(4)(a) or Article 1(4)(b) or force majeure. The Commission shall transmit the implementing decision to the Council and the European Parliament.*

Article 4

Commission proposal and Council Implementing Decision authorising derogations and establishing solidarity measures

1. *Simultaneously with the adoption of the Commission implementing decision referred to in Article 3, the Commission shall, where appropriate, make a proposal for a Council implementing decision. The Commission shall immediately inform the European Parliament of its proposal for a Council implementing decision.*

2. *The Commission proposal shall ensure that the principles of proportionality and necessity are respected and include:*
- (a) where appropriate, the specific derogations referred to in Articles 10 to 13 that the concerned Member State should be authorised to apply;*
 - (b) where appropriate and where the concerned Member State is facing a situation of crisis, a draft Solidarity Response Plan, after consultation with the requesting Member State and that ensures the full discretion of contributing Member States in choosing between the types of solidarity measures, that includes*
 - (i) where appropriate, the total amount of relocation contributions needed to address the situation of crisis;*
 - (ii) where appropriate, the other relevant solidarity measures referred to in Articles 8(1)(b) and 8(1)(c) and their level needed to address the required for the specific situation of crisis;*
 - (iii) where applicable, the total amount of solidarity measures to be taken from the available pledges in the annual Solidarity Pool established in accordance with [Article 44b] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation];*

- (iv) *when the available pledges in the annual Solidarity Pool established in accordance with [Article 44b] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] do not cover the needs identified in points (i) and (ii), the Solidarity Response Plan shall also establish the additional pledges needed to cover such needs; and*
- (v) *the indicative contributions for each Member State to contribute with their fair share calculated in accordance with the **distribution key** set out in [Article 44k] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]; and*
- (c) *where the concerned Member State ■ is facing a ■ situation **of crisis** referred to in Article 1(4)(b), the identification of ■ the **third-country nationals or stateless persons** subject to that situation.*

Where setting up the solidarity needs of the concerned Member State, the Commission shall take into account whether the Member State is already a benefitting Member State pursuant to [Articles 44c and 44d of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]].

Where the concerned Member State has considered, in the request referred to in Article 2, relocation as the primary or only solidarity measure to address the situation, the Commission shall take this request into account in its proposal, without prejudice to the possibility of the contributing Member States to choose between the types of solidarity measures.

3. *Within two weeks of receiving the Commission proposal referred to in paragraph 1, the Council shall assess the proposal and adopt an implementing decision authorising the concerned Member State ■ to apply the derogations provided for in Articles 10 to 13 and establishing a Solidarity Response Plan referred to in paragraph 2(b) with the solidarity measures that the concerned Member State can benefit from to address the situation.*
4. *Where appropriate, when adopting the proposal for a Council Implementing Decision referred to in paragraph 1, the Commission may adopt a Recommendation on the application of an expedited procedure for granting international protection to certain categories of applicants as referred to in Article 14.*

5. The **Council** implementing decision ■ shall *ensure that the principles of proportionality and necessity are respected* and shall *state the grounds on which it is based and* set the date from which the *derogations* laid down in Articles *10 to 13* may be applied, as well as the time period for their application, *in accordance with Article 5. The Council implementing decision shall include:*

- (a) *where appropriate, identify the specific derogations referred to in Articles 10 to 13 that the concerned Member State is be authorised to apply;*
- (b) *where appropriate, establish a Solidarity Response Plan that includes:*
 - (i) *the total amount of relocation contributions needed to address the situation of crisis in full consideration of the assessment of the Commission;*
 - (ii) *the other relevant solidarity measures referred to in Articles 8(1)(b) and 8(1)(c) and their level needed to address the situation of crisis;*
 - (iii) *the total amount of solidarity measures contributions to be taken from the annual Solidarity Pool established in accordance with [Article 44b] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation];*

- (iv) *the additional pledges to cover the needs to address a situation of crisis, when the existing pledges in the solidarity pool established in accordance with [Article 44b] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] are not enough;*
- (v) *the specific contribution by each Member State pledged under the mandatory fair share established in accordance with the reference key set out in [Article 44k of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation];*
- (c) *where the concerned Member State is facing a situation of crisis referred to in Article 1(4)(b), identify the third-country nationals or stateless persons subject to that situation.*

The Council shall transmit immediately to the European Parliament and the Commission the final implementing decision.

Article 5

Duration

1. *Without prejudice to paragraph 3, the time period for the application of the derogations and solidarity measures set out in the Council Implementing Decision referred to in Article 4(3) shall be three months. Unless repealed under the terms of Article 6 (3), it may be extended once by a three month period upon confirmation by the Commission of the persistence of the situation of crisis or force majeure.*

2. *At the end of the period referred to in paragraph 1 and upon request of the concerned Member State, the Commission may submit a proposal for a new Council Implementing Decision to amend or prolong the specific derogations or the Solidarity Response Plan referred to in Article 4(5) for a period that shall not exceed three months and that, unless repealed under the terms of Article 6(3), may be extended once upon confirmation by the Commission of the persistence of the situation of crisis or force majeure. Articles 4(3) and 4(5) shall apply. ■*
3. *The Member States facing a situation of crisis or force majeure, shall not apply Articles 10 to 13 longer than what is strictly necessary to address such situations, and in any case, no longer than the period set out in the Council Implementing decision referred to in Article 4(3). The total duration of the application of the measures shall not exceed the duration of a situation of crisis or force majeure, which shall be a maximum of 12 months.*

Article 6

Monitoring

1. *The Commission and Council shall constantly monitor whether a situation of crisis referred to in Article 1(4)(a) or Article 1(4)(b) or force majeure identified in a Commission Implementing Decision as referred to in Article 3(8) persists.*

2. *The Commission shall pay particular attention to the compliance with fundamental rights and humanitarian standards and the Commission may request the EUAA to initiate a specific monitoring exercise pursuant to Article 15(2) of the Regulation (EU) 2021/2303 of 15 December 2021 on the European Union Agency for Asylum.*
3. *Where the Commission considers that the circumstances having led to the establishment of the situation of crisis or force majeure have ceased to exist, it shall propose the repeal of the Council Implementing Decision referred to in Article 4(3). Where the Commission considers it appropriate on the basis of relevant information, it shall propose the adoption of a new Council Implementing Decision authorising the amendment or prolongation of the measures as established in accordance with Article 5(1).*
4. *The Commission shall report to the European Parliament and the Council, every three months after its entry into force, on the application of the Council Implementing Decision as referred to in Article 4(3), in particular on the effectiveness of the measures undertaken in resolving the situation of crisis or force majeure and shall conclude whether the situation persists and that the measures continue to be necessary and proportionate.*

Article 7
Solidarity coordinator

The EU Solidarity Coordinator, as established by [Article 7d] and [Article 44e] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] shall, in addition to the tasks listed under these Articles:

- (a) support the relocation activities from the concerned Member State to the contributing Member State under this Regulation;*
- (b) promote a culture of preparedness, cooperation and resilience among Member States in the field of asylum and migration, including through the sharing of best practices. For this purpose, the EU Solidarity Coordinator shall be updated by the EU Migration Preparedness and Crisis Management Network in the framework of the relevant stages of the Migration Preparedness and Crisis Blueprint pursuant to the Commission Recommendation No. 2020/1366 of September 2020 on an EU Mechanism for Preparedness and Management of crisis related to migration in its original version.*

The EU Relocation Coordinator shall, every two weeks, provide a bulletin on the state of the implementation and functioning of the relocation mechanism. That bulletin shall be transmitted to the European Parliament and to the Council.

Chapter III
Solidarity measures applicable in a situation of crisis

Article 8
Solidarity and support measures in a situation of crisis

1. *The Member State facing a ■ situation of crisis may request the following types of contributions in the request referred to in Article 2:*
 - (a) *relocations, to be conducted following the procedures set out in [[Articles 57 and 58] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]],*
 - (i) *of applicants for international protection*
 - (ii) *where bilaterally agreed by the contributing and benefitting Member State concerned, of beneficiaries of international protection who have been granted international protection less than three years prior to the adoption of the Council implementing act establishing the Solidarity Pool;*
 - (b) *financial contributions aiming at projects that are relevant to address the situation of crisis in the Member State concerned or in relevant third countries, in full respect of human rights, to be provided by other Member States following the rules set out in [[Article 44(i)] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]];*

- (c) *alternative solidarity measures as referred to in [[Article 44a(2)(c)] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]], specifically needed to address the crisis situation and following the rules set out in [[Article 44j(2) and (3)] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]]; such measures shall be counted as financial solidarity, and their actual value shall be established based on objective criteria.*
2. *When implementing relocations referred to in paragraph 1(a), Member States shall give primary consideration to the relocation of vulnerable persons in accordance with [[Article 44e] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]].*

Article 9

Responsibility offsets

1. *Where the additional relocation pledges set out in the Council Implementing Decision referred to in Article 4(3) and the pledges available in the Solidarity Pool under Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] are below the relocation needs as identified in the Council implementing decision:*
- (a) *the contributing Member States shall take responsibility for applications for international protection for which the Member State facing a situation of crisis has been determined as responsible up to 100% of the relocation needs identified in the Solidarity Response Plan established in the Council implementing decision.*

- (b) *Where applying (a) and where necessary, the contributing Member States shall take responsibility above their fair share by way of derogation from [Article 44h(5) third subparagraph of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]].*
- (c) *Where applying (a) and (b), [Article 44h(5), except for its third subparagraph, (6) and (7) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] shall apply mutatis mutandis.*

When Directive 2001/55/EC is activated in relation to the same situation as referred to in Article 1(4)(a) and Member States agree at the moment of activation not to apply Article 11 thereof, mandatory offsets pursuant to Article 9 shall not apply.

When the Council implementing decision authorises the Member State concerned to apply Article 13, mandatory offsets pursuant to Article 9 shall not apply.

2. *Where the application of paragraph 1 is not sufficient to cover 100% of the relocation needs identified in the Council implementing decision referred to in Article 4(3), the High-Level EU Solidarity Forum shall be reconvened as a matter of urgency, in accordance with [Article 44g] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] and following the procedure set out in [Article 44b] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation].*

3. *A benefiting Member State may request the other Member States to take responsibility for examining applications for international protection for which the benefiting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]*
4. *Where a contributing Member State has become responsible for applications above its fair share in accordance with paragraph 1(b) or Article 13, it shall be entitled to:*
- (a) proportionally reduce from its fair share in relation to future solidarity contributions under the upcoming annual cycles of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation], with the corresponding amount of applications for which that Member State went above its fair share over a period of five years; or*
 - (b) reduce from its fair share in relation to future solidarity contributions set out in a Council implementing decision adopted pursuant to Article 4(3) with the corresponding amount of applications for which that Member State went above its fair share. Such reduction can only be claimed within five years from the date in which the Council implementing decision that led the Member State to go beyond its fair share is no longer in force.*

5. *Where a Member State intends to avail itself of the possibility provided for in paragraph 3, it shall notify the Commission accordingly. The notification shall contain the number of applications for which the Member State took responsibility above its fair share and the reduction it intends to apply under the upcoming annual cycles of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] or during the implementation of a given Council implementing decision adopted pursuant to Article 4(3).*

On completion of the examination, made by the Commission of the notification referred to in the preceding subparagraph, where the Commission has confirmed that the Member State concerned has contributed above its fair share, the Commission shall authorise, by means of an implementing act, the Member State concerned to reduce from its fair share the corresponding amount of applications for which that Member State went above its fair share under the upcoming annual cycles of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] or when implementing a Council Implementing Decision adopted pursuant to Article 4(3) within the period referred to in paragraph 3 to support another Member State, or where responsibility offsets are required pursuant to paragraph 1(b).

6. *Where the solidarity needs of other Member States that are benefitting Member States pursuant to [Articles 44c or 44d of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] cannot be addressed as a result of the use made by the Member State facing a situation of crisis of the pledges available in the Solidarity Pool pursuant to Article 4(5)(b), the High-Level Migration Forum shall be reconvened as matter of urgency, in accordance with [Article 44g of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] and following the procedure set out in [Article 44b of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]].*
7. *Where, as a result of the measures required to support the Member State facing a situation of crisis that are included in the Council Implementing Decision as referred to in Article 1(4)(a), another Member State considers itself as under migratory pressure or facing a significant migratory situation within the meaning of [Article 2 of Regulation (EU) XXX/XXX [Asylum Migration Management Regulation]] or facing a situation of crisis, the Member State concerned may request solidarity measures or full or partial reductions of its solidarity contributions in accordance with Regulation (EU) XXX/XXX [Asylum Migration Management Regulation], or solidarity and support measures in accordance with this Regulation.*

When assessing the Member State's request referred to in Article 2, the Commission shall also take into account if this Member State has taken responsibility for examining applications for international protection above its fair share, in addition to the information set out in [Articles 7a and 7b of Regulation XXX/XXX [Asylum and Migration Management Regulation]].

Chapter IV
Derogations

Article 10

Registration of applications for international protection in situations of crisis or force majeure

1. *In a situation of crisis or force majeure, by way of derogation from [Article 28 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], the Member State facing that situation may register applications, made within the period during which this paragraph is applied, no later than within four weeks after they are made.*
2. *Where applying paragraph 1, the concerned Member State shall prioritise the registration of those applications of persons with special reception needs as defined in [Reception Conditions Directive recast] and of minors and their family members.*
3. *Where applying paragraph 1, Member States may prioritise the registration of applications which are likely to be well founded.*
4. *In a situation of crisis referred to in Article 1(4)(a), the derogation referred to in paragraph 1, may only be applied during the time period set out in the initial Council implementing decision referred to in Article 4(3) and not during any subsequent extensions thereof pursuant to Article 5(1) or 5(2).*

5. *In accordance with Article 3 of Directive XXX/XXX/EU [Reception Conditions Directive] and Regulation (EU) XXX/XXX [Asylum Procedure Regulation], Member States shall ensure that applicants for international protection are able to access and exercise their rights effectively under those instruments as soon as they make an application, regardless of when the registration takes place. The Member State concerned shall duly inform third-country nationals or stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the measure applied, the location of the registration points, including the border crossing points accessible for registering and lodging an application for international protection, and the duration of the measure.*
6. *When submitting the request referred to in Article 2(1), a Member State may notify the Commission that it considers it necessary to apply the derogation referred to in paragraph 1 before it is authorised to do so in the Council Implementing Decision referred to in Article 4(3), indicating the precise reasons for which immediate action is required. In such a case, the Member State concerned may apply the derogation referred to in paragraph 1 from the day following the request and for a period not exceeding 10 days, unless the Member State concerned is authorised to continue applying that derogation in the Council Implementing Decision referred to in Article 4(3).*

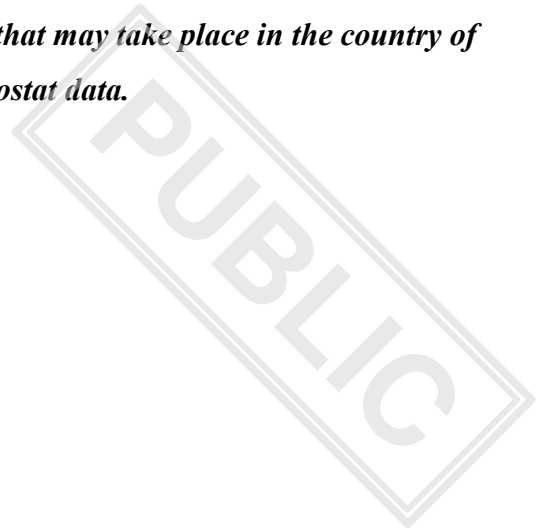
7. *The extension of the time limit for registration of applications for international protection is without prejudice to the obligations to comply with the deadlines set out in [Article 15(1)(b) of Regulation (EU) XXX/XXX [Eurodac Regulation]].*

Article 11

Measures applicable to the asylum border procedure in a situation of crisis or force majeure

1. *In a situation of crisis or force majeure, Member States may, as regards applications made within the period during which this Article is applied, derogate from [Article 52(2) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]], by prolonging the maximum duration of the border procedure for the examination of applications set out in that Article by an additional period of maximum six weeks. This period may not be used in addition to the period referred to in Article 52(2), third sub-paragraph Regulation (EU) XXX/XXX [Asylum Procedure Regulation].*
2. *In a situation of crisis referred to in Article 1(4)(a) or force majeure, by way of derogation from [Article 46(1) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]], Member States may not be required to examine in a border procedure applications made by applicants referred to in [Article 40(1)(j) of that Regulation], when the measures in the contingency plan of the concerned Member State referred to in [Article 32 of Directive (EU) XXX/XXX [Reception Conditions Directive]] are not sufficient to address that situation.*
3. *In a situation of crisis referred to in Article 1(4)(a), by way of derogation from [Article 46(1) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]], Member States may reduce the threshold provided for in Article 40(1)(j) to 5%.*
4. *In a situation of crisis referred to in Article 1(4)(a), by way of derogation from [Article 45(1)(b) of Regulation (EU) XXX/XXX [Asylum Procedure 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, is 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, 50 % or lower, in addition to the cases referred to in [Article*

40(1)(j) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], taking into account the rapidly evolving protection needs that may take place in the country of origin as reflected in quarterly updates of Eurostat data.



5. *Where applying paragraphs 3 or 4, the Member State concerned shall prioritise the examination of those applications for international protection lodged by persons with special procedural or special reception needs as defined in Directive (EU) XXX/XXX [Reception Conditions Directive] and in Regulation (EU) XXX/XXX [Asylum Procedure Regulation], and minors and their family members. Where applying paragraphs 3, 4 or 6, the concerned Member State may also prioritise the examination of applications for international protection which are likely to be well founded.*
6. *In a situation of crisis referred to in Article 1(4)(b), by way of derogation from [Articles 45(1)(b) and 54(2)(a) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]], Member States may in a border procedure take decisions on the merits of all applications made by any third-country national or stateless person who is subject to instrumentalisation and registered within the period during which this paragraph is applied.*
7. *Where applying paragraph 6, Member States shall:*
- (a) *exclude from the border procedure minors under the age of 12 and their family members, and persons with special procedural or special reception needs as defined in Directive (EU) XXX/XXX [Reception Conditions Directive] and in Regulation (EU) XXX/XXX [Asylum Procedure Regulation]; or*

- (b) cease to apply the border procedure in respect of the following categories of applicants where it is determined, on the basis of an individual assessment, that their applications are likely to be well-founded:*
- (i) minors under the age of 12 and their family members; and*
 - (ii) vulnerable persons with special procedural or special reception needs as defined in Directive (EU) XXX/XXX [Reception Conditions Directive] and in Regulation (EU) XXX/XXX [Asylum Procedure Regulation].*

The application of this paragraph shall be without prejudice to the mandatory nature of the border procedure as referred to in [Article 46] of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].

8. *When the concerned Member State is authorised to apply the derogation referred to in paragraph 6, the Council implementing decision referred to in Article 4(3) shall specify whether paragraph 7(a) or paragraph 7(b) applies based on the indication made by the concerned Member State in Article 2(2)(d).*

9. *The Member State facing a situation of crisis or force majeure should not apply or should cease to apply the derogation from the asylum procedure provided for in paragraph 4 and paragraph 6 in cases where there are medical reasons for not applying the border procedure in line with [Article 54(2)(d) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]] or where the necessary support cannot be provided to applicants with special reception needs in accordance with Directive XXX/XXX [Reception Conditions Directive] or with special procedural needs in line with [Article 54(2)(c) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation]].*
10. *Where applying the derogations referred to in this Article, the basic principles of the right to asylum and the respect of the principle of non-refoulement as well as the guarantees foreseen in Chapters I and II of the Regulation (EU) XXX/XXX [Asylum Procedure Regulation] shall apply to ensure that the rights of those who seek international protection, including the right to an effective remedy, are protected.*

Organisations and persons permitted under national law to provide advice and counselling shall have effective access to applicants held in detention facilities or present at border crossing points. Member States may impose limits to such actions where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of a detention facility, provided that access is not thereby severely restricted or rendered impossible.

11. *The derogations in accordance with this Article do not affect the process of determining the Member State responsible within the framework of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]. In case the process of determining the Member State responsible is longer than the maximum duration of the asylum border procedure in a situation of crisis or force majeure, the process and the remainder of the asylum procedure shall be completed in the territory of the determining Member State in accordance with Article [...] of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].*

Article 12

Extension of time limits set out for take charge requests, take back notifications and transfers in a situation of crisis referred to in Article 1(4)(a) or force majeure

1. *In a situation of crisis referred to in Article 1(4)(a) or force majeure which renders it impossible for a Member State facing that situation to comply with the time limits set out in [Articles 29, 30, 31 and 35 of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] or to receive persons it is responsible for pursuant to that Regulation, Member States may derogate from the time limits set out in [Articles 29, 30, 31 and 35(1) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] simultaneously.*

2. *Where applying paragraph 1, by way of derogation from [Articles 29, 30, 31 and 35(1) of that Regulation], the Member State facing that situation shall:*

- (a) submit a take charge request as referred to in [Article 29] within four months of the date on which the application was registered;*
- (b) reply to a take charge request as referred to in [Article 30] within two months of receipt of the request;*
- (c) submit a take back notification as referred to in [Article 31] within one month of receiving the Eurodac hit or confirm the receipt within one month of such notification; and*
- (d) carry out a transfer as referred to in [Article 35(1)] within one year of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3) of that Regulation.*

3. *Where the Member State referred to in paragraph 1 does not comply with the time limits set out in points (a), (b) or (d) of paragraph 2, the responsibility for examining the application for international protection pursuant to Regulation XXX/XXX [Asylum and Migration Management Regulation] shall lie with it or be transferred to it.*
4. *Where paragraph 1 is applied, transfers pursuant to [Article 35 of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] to the responsible Member State facing a situation of crisis referred to in Article 1(4)(a) or force majeure, shall not be carried out until that Member State is no longer facing that situation, unless, due to the individual circumstances of the applicant, the responsible Member State has agreed to receive the person concerned. Where, 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 Regulation XXX/XXX [Asylum and Migration Management Regulation]], including due to the persistence of the situation of crisis referred to in Article 1(4)(a) or force majeure, by way of derogation from [Article 35(1) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]], the Member State responsible, facing that situation, shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the transferring Member State.*

Article 13

Derogations from the obligation to take back an applicant in a situation of extraordinary mass arrivals

1. *In a situation of crisis referred to in Article 1(4)(a), where the mass arrivals is of such extraordinary scale and intensity that it may create a serious risk of serious deficiencies in the treatment of applicants for international protection, thereby creating a serious risk that it renders the Common European Asylum System non-functional, by way of derogation from [Article 26(1)(b) and Article 28(4) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]], a Member State facing that situation may be relieved of its obligation to take back an applicant or a third-country national or stateless person in relation to whom that Member State has been indicated as the Member State responsible under [Article 16(1) of Regulation (EU) XXX/XXX [Eurodac Regulation]] where that responsibility was determined pursuant to [Article 8(2) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]], or to take back an applicant pursuant to [Article 28(4) of that Regulation]. This paragraph shall only apply where the application was registered in the Member State facing that situation within a period to be defined in the Council Implementing Decision referred to in Article 4(3) and not exceeding four months before the date of adoption of this Council Implementing Decision.*

2. *Where paragraph 1 is applied, and the Member State facing that situation was determined as responsible pursuant to [Article 8(2) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]], it shall be relieved of its obligation to take back the person concerned and responsibility shall be transferred to the Member State where the second application was registered. The Member State which becomes responsible pursuant to the first subparagraph of this paragraph shall indicate that it has become the Member State responsible pursuant to [Article 16(3) of Regulation (EU) XXX/XXX [Eurodac Regulation]].*
3. *Where paragraph 1 is applied, and the Member State facing that situation is obliged to take back an applicant pursuant to [Article 28(4) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]], by way of derogation from [paragraphs 2 and 4 of Article 28 of that Regulation], the Member State where the second application is registered shall apply the procedures set out in [Part III of that Regulation, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5) and Article 21(1) and (2)], and the obligation to take back an applicant pursuant to [Article 28(4)] shall be transferred to that Member State. Where no Member State responsible can be designated under the first subparagraph, the Member State where the second application was registered shall be responsible for examining the application for international protection. Applications for international protection for which a Member State has sent a take back notification pursuant to [Article 31 of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] before the date of adoption of the Council Implementing Decision shall not be affected by this provision. The Member State that becomes responsible shall indicate its responsibility in Eurodac pursuant to [Article 16(1) of Regulation (EU) XXX/XXX [Eurodac Regulation]].*

Chapter V
Expedited procedure

Article 14
Expedited procedure

1. *Where objective circumstances suggest that applications for international protection from groups of applicants from a specific country of origin or former habitual residence or a part of that country or on the basis of the criteria drawn from Regulation (EU) XXX/XXX [Qualification Regulation] could be well-founded the Commission may, after consultation with the High Level EU Solidarity Forum, adopt a recommendation for the application of an expedited procedure by providing all relevant information in view of facilitating, in particular, the application by the determining authorities of Articles 12(12)(a) and 35(5)(a) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].*
2. *When following the Recommendation referred to in paragraph 1 the determining authority applies Articles 12(12)(a) to omit the personal interview and 35(5)(a) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] to prioritise the examination of the application because it is likely to be well-founded, it shall ensure, by way of derogation from Article 36(4) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], that the examination of the merits of the application is concluded no later than four weeks from the lodging of the application.*

3. *When considering whether to adopt a Recommendation referred to in paragraph one, the Commission may consult the relevant Union agencies, UNHCR and other relevant organisations.*

Chapter VI

Final provisions

Article 15

Specific provisions and guarantees

In a situation of crisis, where applying the derogations referred to in Articles 10 to 13 the Member State concerned shall duly inform third-country nationals or stateless persons in a language which the third-country national or stateless person understands or is reasonably supposed to understand about the measures applied, the location of the registration points, including the border crossing points, accessible for registering and lodging an application for international protection, and the duration of the measures.

Article 16
Crisis preparedness

- 1. *National strategies established by Member States in accordance with [Article 5a] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] shall also include***
 - (a) *preventive measures to ensure a sufficient level of preparedness and to reduce the risk of situations of crisis and contingency planning, taking into account the contingency planning pursuant to Regulation (EU) 2021/2303 of the European Parliament and of the Council, Regulation (EU) 2019/18961 and Directive (EU) XXX/XXX [Reception Conditions Directive] and the reports of the Commission issued within the framework of the Migration Preparedness and Crisis Blueprint.***
 - (b) *an analysis of measures needed to respond to and resolve situations of crisis and force majeure in the Member State concerned, including measures to protect the rights of applicants for and beneficiaries of international protection and other forms of protection***
- 2. *When applying paragraph 1, Member States may consult the Commission and relevant Union bodies, offices and agencies, in particular the Asylum Agency, as well as regional and local authorities, as appropriate and in accordance with national law.***

3. *The Member State shall revise, where necessary, the national strategies established in accordance with [Article 5a] of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation] and in any case, no later than one year from the date on which the situation of crisis ended in accordance with Article 5 of this Regulation.*

Article 17

Cooperation and assessment

1. *In order to ensure the smooth application of the measures included in the Council Implementing Decision referred to in Article 4(3), the Commission shall convene a first meeting of the Technical Level Solidarity Forum as referred to in [Article 7d(4) of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]] immediately following the adoption of that Council Implementing Decision. Following that first meeting, the Technical-Level Solidarity Forum shall meet as many times as necessary.*
2. *The Member State in a situation of crisis may request the assistance of all authorities that are able to increase, at short notice, the human resources of its responsible authorities in accordance with Article 5(3) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and the assistance of experts deployed by the EUAA in accordance with Article 5(7), point (b) of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], and Article 16(2), point (b) and Article 21(3), point (d) of Regulation (EU) 2021/2303.*

3. *The Commission, the Council, the European Parliament, the relevant EU agencies and the Member State facing a situation of crisis or force majeure shall closely cooperate and regularly inform each other on the implementation of the Council Implementing Decision referred to in Article 4(3).*
4. *The Member State concerned shall continue reporting all relevant data including statistics that are relevant for the implementation of this Regulation. The Member State concerned shall also provide the Commission with the specific information needed for it to carry out the review under Article 6(3) and to make the proposal for repeal or prolongation of the Council Implementing Decision as well as any other information the Commission may request on that basis.*
5. *The Member State facing a situation of crisis or force majeure shall maintain close cooperation with the United Nations High Commissioner for Refugees and any other organisations entrusted by the Member State with tasks in accordance with this Chapter and Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and Directive XXX/XXX [Reception Conditions Directive recast].*
6. *In exercising their powers and carrying out their responsibilities pursuant to this Article █, the Commission and the Council shall ensure at all times that the principles of necessity and proportionality are respected.*

Article 18
Financial support

1. *Member States undertaking relocation as a solidarity measure shall be able to benefit from EU financial support under the conditions set out in Article 11(9) of Regulation 2021/1147, including for early integration measures implemented by regional and local authorities.*
2. *Emergency funding support for a Member State in a situation of crisis may be allocated pursuant to Article 31(1), point (a) of Regulation (EU) 2021/1147, including for the construction, maintenance and renovation of reception facilities required for the application of this Regulation, in line with the standards provided for in Directive XXX/XXX/EU [Reception Conditions Directive].*
3. *In Regulation (EU) 2021/1147, Chapter II, Section 4, Article 31 is amended as follows: In paragraph 1, point (ba) is added: (ba) a situation of crisis within the meaning of [Article 1(4)(a)] of Regulation (EU) XXX/XXX [Crisis Regulation].]*

Article 19

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.

It shall apply from [the first day of the twenty-fifth month following its entry into force].

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President