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NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	11213/20; 11213/20 ADD 1; 11213/20 ADD 1 COR 1; 11213/20 ADD 2
Subject:	Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] - 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 Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund][1]. The proposal aims to replace the current Dublin III Regulation and builds on it as regards the criteria and mechanisms for determining the Member State responsible for examining an application for international protection. It establishes a common framework for asylum and migration management and includes a new solidarity mechanism.

[1] 11213/20 + ADD 1 + ADD 1 COR 1.

2. The draft Regulation is based on Article 78(2)(e) and Article 79(2)(a)(b) and (c) of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).

   At its meeting on 8-9 June, the Council reached a general approach on the abovementioned proposal and at its meeting on 23 June 2023, Coreper agreed on the technical adjustments that were necessary in order to reflect the general approach agreement as regards the financial contributions. These constituted the mandate for negotiations with the European Parliament in the context of the ordinary legislative procedure.[2]

3. 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.

4. The cross-references to other legal instruments of the Pact are still subject to verification by the lawyer-linguists.

II. CONCLUSION

5. 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."

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[2] 10443/1/23 REV 1.

PUBLIC

ANNEX

2020/0279 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on asylum and migration management and amending *Regulation (EU) 2021/1147 and* **Regulation (EU)** *2021/1060*

PUBLIC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[3],

Having regard to the opinion of the Committee of the Regions[4],

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

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3 OJ C , , p. .

4 OJ C , , p. .

(2) To this end, a comprehensive approach is required with the objective of reinforcing mutual trust between Member States which should bring together ***internal and external components***, recognising that the effectiveness of such an approach depends on all components being ***addressed*** jointly ***and implemented consistently*** and in an integrated manner.

(3) This Regulation should contribute to that comprehensive approach by setting out a common framework for the actions of the Union and of the Member States***, each within their respective competencies,*** in the field of asylum and ***relevant*** migration management policies, by ***upholding and*** elaborating on the principle of solidarity and fair sharing of responsibility***, including its financial implications, between the Member States, which governs the policies in the area of asylum and migration*** in accordance with Article 80 of the Treaty on the Functioning of the European Union (TFEU). ***The principle of solidarity and fair sharing of responsibility should be the premise on the basis of which*** the Member ***States as a whole share the responsibility to manage*** migration***, in particular in the area governed by the set of common rules included in the Common European Asylum System***.

(3a) Member States should therefore take all necessary measures, inter alia, to provide access to international protection and adequate reception conditions to those in need, to promote legal pathways, to enable the effective application of the rules on determining the Member State responsible for examining an application for international protection, to effectively manage the return of those third-country nationals who do not or no longer fulfil the conditions for residence in the territory of the Member States, to prevent irregular migration and unauthorised movements of third country nationals and stateless persons between them, to combat migrant smuggling and human trafficking including reducing the vulnerabilities caused by them, and to provide support to other Member States in the form of solidarity contributions, as their contribution to the comprehensive approach.

PUBLIC

(3b) ***To strengthen cooperation with third countries on asylum and migration, including readmission and addressing root causes and drivers of irregular migration and forced displacement, it is necessary to promote and build tailor-made and mutually beneficial partnerships with those countries. Such partnerships should provide a framework for better coordination of the relevant EU policies and tools with third countries, and be based on human rights, rule of law and the respect of the Union's common values. As regards the external components, nothing in this Regulation affects the pre-existing division of competences between the Member States and the Union, or between the institutions of the Union. Those competences will continue to be exercised in full respect of the procedural rules of the Treaty and in line with the case law of the Court of Justice, particularly as regards non-binding instruments of the Union.***

▌

(5) The common framework is needed in order to effectively address the increasing phenomenon of mixed arrivals of persons in need of international protection and those who are not and in recognition that the ***responsibility for*** irregular arrivals of migrants ***and asylum-seekers*** in the Union should not have to be assumed by individual Member States alone, but by the Union as a whole. ▌ The scope of this Regulation should also include ▌ , resettled or admitted persons ▌ .

(6) In order to ▌ ensure coherence and effectiveness of the actions and measures taken by the Union and its Member States acting within their respective competencies, ***in the field of asylum and migration management*** there is a need for integrated policy-making ***and a comprehensive approach***, including both its internal and external components***. The Union and Member States should ensure, each within their respective competencies, and in compliance with the applicable Union law and international obligations, the coherence and implementation of asylum and migration management policies***.

PUBLIC

(7) ***In order to ensure that their asylum, reception and migration system is well prepared and that each part of that system has sufficient capacity,*** Member States should have ***the necessary*** human***, material*** and financial resources and infrastructure to effectively implement asylum and migration management policies***, and allocate the necessary staff for their competent authorities for implementing this Regulation. They*** should ***also*** ensure appropriate coordination between the relevant national authorities as well as with the national authorities of the other Member States.

(8) Taking a strategic approach, ***Member States*** should ***have national strategies, which should serve to ensure their capacity to effectively implement their*** asylum and migration management ***system, in full compliance with their obligations under Union and international law. They should include preventive measures to reduce the risk of migratory pressure as well as information on contingency planning, including as provided for under the Directive (EU) No XXX/XXX/EU [Reception Conditions Directive]*** relevant ***information as regards the principles of integrated policy-making and of solidarity and fair sharing of responsibility of this Regulation and legal obligations stemming therefrom at national level. The Commission and relevant*** Union ***bodies, offices and*** agencies***, and in particular the Asylum Agency, should be able to support the Member States when establishing their*** national strategies***. The consultation of local and regional authorities by*** Member States***, in accordance with national law and as appropriate, could also improve and strengthen national strategies. To ensure that the national strategies are comparable on specific core elements, a common template should be established by the Commission***.

PUBLIC

(8a) ***In order to ensure that an effective monitoring system is in place to ensure the application of the asylum acquis, the results of the monitoring undertaken by, the European Union Asylum Agency and the European Border and Coast Guard Agency, and other relevant bodies, offices, agencies or organisations, relevant parts of the evaluation carried out in accordance with Council Regulation (EU) 2022/922[5] as well as those carried out in line with Article 7 of Regulation (EU) XXX/XXX [Screening Regulation] should also be taken into account in these strategies[1a]. Member States could also consider the results of other relevant monitoring mechanisms.***

(9) ***The Commission should adopt a long-term European Asylum and Migration Management Strategy (the 'Strategy') setting out the strategic approach to ensure a consistent*** implementation of ***national strategies at Union level, in accordance with the principles set out in*** this Regulation and ***in Union primary law and applicable international law***.

▌

(11) ***Considering*** the importance of ensuring that the Union is prepared and able to adjust to the developing and evolving realities of asylum and migration management, the Commission should annually adopt a ***European Annual Asylum and*** Migration ***Report ('the Report'). This*** Report ***should assess the asylum, reception and migratory situation over the previous 12-month period along all*** migratory ***routes to and in all Member States, serve as an early warning and awareness tool for the Union in the area of migration and asylum, and provide a strategic situational picture and forward-looking projections for the coming year. The Report should set out, inter alia,*** the preparedness of the Union and the Member States to respond and adapt to ***the evolution of the migratory situation and*** the results of ***monitoring by the relevant Union Agencies. The data and information as well as the assessments contained in the report*** should ***be taken into account in the decision-making procedures relating to the Solidarity Mechanism set out in Part IV of this Regulation***.

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5 ***Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013 (OJ L 160, 15.6.2022, p. 1).***

(11a) ***The Report should be prepared in consultation with Member States and relevant Union agencies. For the purpose of the Report, the Commission should use existing reporting mechanisms, primarily the Integrated Situational Awareness and Analysis (ISAA), provided that the Integrated Political Crisis Response is activated, and the Migration Preparedness and Crisis Blueprint[6]. It is of the utmost importance for ensuring that the Union is prepared and able to adjust to the developing and evolving realities of asylum and migration management, and hence for the successful functioning of the annual asylum and migration cycle and the solidarity mechanism, that the Member States, the Council, the Commission, the European External Action Service (EEAS) and the Union Agencies contribute to such existing reporting mechanisms and ensure the adequate and timely exchange of information and data. Information provided by other relevant sources, including the European Migration Network (EMN), the United Nations High Commissioner for Refugees (UNHCR), and the International Organization for Migration (IOM) should also be taken into consideration. The Commission should only request additional information from Member States when not available through those reporting mechanisms and relevant Union agencies, in order to avoid a duplication of efforts.***

(12) In order to ensure that the necessary tools are in place to assist Member States in dealing with challenges that may arise due to the presence on their territory of third-country nationals ***or stateless persons***, regardless of how they crossed the external borders, the Report should ***be accompanied by a Decision determining which*** Member States are ***under migratory pressure, at risk of migratory pressure during the upcoming year or facing a significant migratory situation.*** Member States ***under migratory pressure should*** be able to rely on the use of the ▌ solidarity ***contributions included in the Solidarity Pool***.

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[6] ***Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration (Migration Preparedness and Crisis Blueprint)***

(12a) In order to provide predictability to Member States under migratory pressure and to contributing Member States, the Report and the Decision should be accompanied by a Commission proposal identifying concrete annual solidarity measures, including relocations, financial contributions and, where applicable, alternative solidarity measures, and their numerical scale likely to be needed for the upcoming year at Union level, recognising that the various types of solidarity are of equal value. The types and numerical scale of the measures identified in the Commission proposal should at minimum correspond to annual minimum thresholds for relocation and financial measures, which should be set out in this Regulation to ensure the predictable planning by contributing Member States and to provide minimum guarantees for the benefitting Member States. Where it is considered necessary, the Commission proposal might identify higher annual numbers for relocation or financial measures. In order to preserve the equal value of solidarity measures, the ratio set out between the annual numbers identified in this Regulation should be maintained. In the same vein, when identifying the annual numbers, the Commission proposal should take into account exceptional situations where there would be no projected need for solidarity for the coming year. In order to ensure better coordination at Union level and in view of the particular features of the system of solidarity provided for by this Regulation, which is based on pledges made by each Member State, exercising full discretion as to the type of solidarity, in the High Level Forum, the implementing power to establish the Annual Solidarity Pool should be conferred on the Council, acting on a Proposal by the Commission. The Council implementing act should identify concrete annual solidarity measures, including relocations, financial measures and, where applicable, alternative solidarity measures, as well as their numerical scale likely to be needed for the upcoming year at Union level (recognising that the various types of solidarity are of equal value). The Council implementing act should also include the specific pledges that each Member State has made.

(12-a) Benefitting Member States should be granted the possibility to implement actions in or in relation to third countries, in accordance with the scope and purposes of this Regulation and of the AMIF Regulation.

PUBLIC

(12aa) Member States and the Commission should ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the actions funded by the financial contributions. The enabling conditions laid down in Article 15 of the Regulation (EU) 2021/1060, including the horizontal enabling condition on the "Effective application and implementation of the Charter of Fundamental Rights" should apply to the Member States' programmes supported by the financial contributions. For the selection of the actions supported by the financial contributions, Member States should apply the provisions laid down in Article 73 of the Regulation (EU) 2021/1060, including taking account of the Charter of Fundamental Rights of the European Union. For the actions funded by the financial contributions, Member States should apply the management and control systems established for their programmes in accordance with the Regulation (EU) 2021/1060. Member States should protect the Union budget and should apply financial corrections by cancelling all or part of the support from the financial contributions, where expenditure declared to the Commission is found to be irregular, in line with the Regulation (EU) 2021/1060.The Commission may interrupt the payment deadline, suspend all or part of payments, and apply financial corrections in accordance with the provisions laid down in Regulation (EU) 2021/1060.

(12b) During the operationalisation of the Annual Solidarity Pool contributing Member States should, upon the request of a benefitting Member State, be able to provide alternative solidarity contributions. Alternative contributions should have practical and operational value. Where the Commission, following the consultation with the Member State concerned, considers that such measures as indicated by the concerned Member State are needed, such contributions should be identified in the Commission proposal for a Council implementing act establishing the Annual Solidarity Pool. Contributing Member States should be able to pledge such contributions, even if they are not identified in the Commission proposal for a Council implementing act, and these should be counted as financial solidarity and their financial value should be assessed and applied in a realistic manner. In case these contributions are not requested by the benefitting Member State in a given year, they should be converted into financial contributions, at the end of the year.

PUBLIC

(12c) In order to facilitate the decision-making process, the Commission proposal for a Council Implementing Act establishing the Solidarity Pool should not be made public until its adoption by the Council.

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

▌

(16) In order to ensure a fair sharing of responsibility***, solidarity as enshrined in Article 80 of the TFEU*** and a balance of effort between Member States, a ***mandatory*** solidarity mechanism should be established which ***provides*** effective ***support to Member States under migratory pressure and ensures*** swift access to ***fair and efficient*** procedures for granting international protection. Such a mechanism should provide for different types of solidarity measures ***of equal value*** and should be flexible and able to ***swiftly*** adapt to the evolving nature of the migratory challenges***. The solidarity response should be designed on a case-by-case basis in order to be tailor-made to the needs of the*** Member State ***in question***.

(16a) To ensure a smooth implementation of the solidarity mechanism under this Regulation, an EU Solidarity Coordinator should be appointed by the Commission. The EU Solidarity Coordinator should monitor and coordinate the operational aspects of the solidarity mechanism and should act as a central point of contact. The EU Solidarity Coordinator should facilitate communication between Member States in the implementation of this Regulation. The EU Solidarity Coordinator should, in cooperation with the Asylum Agency, promote coherent working methods for the identification of persons eligible for relocation and their matching with Member States of relocation, in particular to ensure that meaningful links are taken into account. To effectively fulfil this role, the office of the EU Solidarity Coordinator should be provided with sufficient staff and resources and the EU Solidarity Coordinator should be able to participate in High Level Solidarity Forum meetings.

PUBLIC

(17) Given the need to ensure the ***effective implementation*** of the solidarity mechanism established in this Regulation, ***representatives of the Member States at the ministerial or other senior political level should be convened in a High-Level EU Solidarity Forum, which should consider the Report, Decision and Commission proposal for a Council implementing act and take stock of the overall situation and come to a conclusion on the solidarity measures and their levels needed for establishment of the Annual Solidarity Pool and where needed other migratory response measures. In order to ensure the smooth functioning and operationalisation of the Solidarity Pool, a Technical Level*** Solidarity Forum comprising ***sufficiently senior level representatives, such as high level officials of the relevant authorities of the*** Member States***,*** should be ***convened and chaired by the EU Solidarity Coordinator, on behalf of*** the Commission. ***The Asylum Agency and, where appropriate and invited by the EU Solidarity Coordinator, the European Border and Coast Guard and the European Union Agency for Fundamental Rights, should participate in the Technical level Solidarity Forum.***

(18) ***Considering that search and rescue stems from international obligations, Member States confronted with recurring*** disembarkations arising in the context of search and rescue operations ***might be among the*** Member States ***benefitting from solidarity measures. It should be possible to identify an indicative percentage of the solidarity measures that might be required for the Member States concerned. In addition, Member States should take into account the vulnerabilities of persons arriving from such disembarkations***.

▌

(20) In order to provide a timely response to the ▌ situation ***of migratory pressure, the EU Solidarity Coordinator*** should ***support*** the swift relocation of eligible applicants for ***and beneficiaries of*** international protection***. The benefitting Member State should draw up the list of eligible persons to be relocated***, ***with the assistance of the*** Asylum Agency ***if requested and possibly using tools developed by the Solidarity Coordinator. Applicants*** should ***be given the opportunity to inform about the existence of meaningful links with specific Member States but not a right to choose a specific*** Member ***State of relocation***.

▌

PUBLIC

(23) In order to ensure ***an adequate solidarity response, and where Member States contributions are insufficient in relation to the needs identified, the Council should be able to reconvene the High Level EU Solidarity Forum to allow the*** Member States ***to pledge any additional solidarity*** contributions [redacted] .

[redacted]

(25) When assessing whether a Member State is under migratory pressure***, at risk of migratory pressure or facing a significant migratory situation,*** the Commission, based on a broad ***quantitative and*** qualitative assessment, should take account of a broad range of factors, including the ***relevant recommendations provided by the Asylum Agency and information gathered pursuant to the Union Mechanism for Preparedness and Management of Crisis related to Migration including, the*** number of ***applications for international protection***, irregular border crossings, ***unauthorised movements of third country nationals and stateless persons between the Member States,*** return decisions issued and enforced, ***transfer decisions issued and carried out, level of arrivals by sea including through disembarkations following search and rescue operations, vulnerabilities of asylum applicants and the capacity of a Member State in managing its asylum and reception caseload, the specificities stemming from*** the Member ***States' geographical location and relations with relevant third countries and possible situations of instrumentalisation of migrants***.

[redacted]

PUBLIC

(28) ***A mechanism should be set out for the*** Member States ***identified in the Decision as being under migratory pressure or those that consider themselves as so being, to make use of the*** Solidarity ***Pool. Those*** Member States ***that have been identified in the Decision as being under pressure*** should ***be able to do it in a simple manner by merely informing the Commission and the Council of its intention to use the Solidarity Pool, following which the EU Solidarity Coordinator, on behalf of the Commission should convene the technical level Solidarity Forum. The*** Member ***States that consider themselves as being under*** migratory ***pressure should, in order to make use of the Pool, provide a duly substantiated reasoning of the existence and extent of the migratory pressure and other relevant information in the form of notification which the Commission should expeditiously assess. Benefitting*** Member ***States should use the Pool in a reasonable and proportionate manner, taking into account*** solidarity ***needs of the other*** Member States under migratory pressure***. The EU Solidarity Coordinator should ensure a balanced distribution of the solidarity contributions available*** among the ***benefitting*** Member States***. Where a Member State considers itself in a situation of crisis, the procedure of Regulation (EU) XXX/XXX [Crisis Regulation] should apply***.

(28a) Where Member States are themselves benefitting Member States they should not be obliged to implement their pledged contributions to the Solidarity Pool. At the same time, where a Member State is facing or considers itself as facing migratory pressure or a significant migratory situation, which might hinder its possibility to implement its pledged contribution due to challenges this Member State needs to address, it should be possible for that Member State to request a full or partial reduction of its pledged contribution.

PUBLIC

(31) A ***reference*** key based on the size of the population and of the ***GDP*** of the Member States should be applied ***in accordance with the mandatory fair share principle*** for the operation of the solidarity mechanism enabling the determination of the overall contribution of each Member State. ***A Member State could, on a voluntary basis, provide an overall contribution above its mandatory fair share to assist Member States under migratory pressure. In the operationalisation of the Solidarity Pool, contributing Member States should implement their pledges in proportion to their overall pledge, meaning that each time solidarity is drawn from the pool these Member States contribute according to their fair share. In order to safeguard the functioning of this Regulation, the contributing Member States should not be obliged to implement their solidarity pledges towards the benefitting Member State where the Commission has identified systemic shortcomings in that benefitting Member State with regard to the rules set out in Part III of this Regulation that could result in serious consequences for the functioning of this Regulation.***

(31a) In addition to the Solidarity Pool, Member States, in particular when under migratory pressure or facing a significant migratory situation, as well as the Union, have at their disposal the Permanent EU Migration Support Toolbox. This Toolbox comprises measures that can assist in responding to the needs and alleviating pressure and which are foreseen in the Union acquis or policy tools. In order to ensure that all relevant tools are used effectively to respond to specific migratory challenges, the Commission should have the possibility to identify the necessary measures from the Toolbox, without prejudice to the relevant Union legislation where applicable. Member States should endeavour to use components of the Toolbox in conjunction with the Solidarity Pool. However, the use of measures comprised in the toolbox should not be a precondition to benefit from solidarity measures.

PUBLIC

(31b) Responsibility offsets should be introduced as a secondary level solidarity measure, pursuant to which the responsibility for examining an application is transferred to the contributing Member State, subject to whether or not the relocation pledges reach certain thresholds as set out in this Regulation. In certain circumstances, in order to provide sufficient predictability for the benefitting Member States, their application becomes mandatory. Contributions to solidarity through responsibility offsets should be counted as part of the mandatory fair share of the contributing Member State. A system of guarantees should be established, to avoid to the extent possible, incentives for irregular migration into the Union, unauthorized movements of third country nationals and stateless persons between Member States and to support the smooth functioning of the rules for determining responsibility for examining applications for international protection. Where the application of the responsibility offsets becomes mandatory, a contributing Member State which has pledged relocations and has no applications for international protection for which the benefitting Member State has been determined as responsible to offset remains bound to implement its relocation pledge.

(31c) While relocation should primarily apply to applicants for international protection, and where primary consideration should be given to vulnerable persons, its application should be kept flexible. Given its voluntary nature, contributing and benefitting Member States should have the possibility to express their preferences in terms of persons to be considered. Such preferences should be reasonable in light of the needs identified and the profiles available in the benefitting Member State in order to ensure that the pledged relocations can be effectively implemented.

▌

(32a) Upon request, Union bodies, offices and agencies in the field of asylum and border and migration management should be able to provide support to the Member States and the Commission in implementing this Regulation by providing expertise and operational support as foreseen by their respective mandates.

PUBLIC

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

(34) It is appropriate that a clear and workable method for determining the Member State responsible for the examination of an application for international protection should be included in the Common European Asylum System[7]. That method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee ***swift and*** effective access to the ***fair and efficient*** procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

(34a) In order to significantly increase the understanding of the applicable procedures, Member States should, as soon as possible, provide persons subject to this Regulation, and in a language that they understand or are reasonably supposed to understand, with all relevant information regarding the application of this Regulation, in particular information relating to the criteria for determining the Member State responsible, the respective procedures as well as information on their rights and obligations under this Regulation, including the consequences of non-compliance. In order to ensure that the best interest of the child is preserved and to guarantee inclusiveness of the minors in the procedures set out in this Regulation, Member States should provide information to minors in a child-friendly manner and taking into account their age and maturity. The Asylum Agency should in this regard develop common information material, as well as specific information for unaccompanied minors and vulnerable applicants, in close cooperation with national authorities.

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

(34b) Providing good quality information and legal support on the procedure to be followed to determine the Member State responsible as well as the rights and obligations of the applicants in this procedure is in the interests of both Member States and applicants. To increase the effectiveness of the procedure for determining the Member State responsible and ensure correct application of the responsibility criteria as set out in this Regulation, legal counselling should be introduced as integral part of the system for determining the Member State responsible. For that purpose, legal counselling should be made available for the applicants, upon their request, to provide guidance and assistance on the application of the criteria and mechanisms for determining the Member State responsible.

(35) This Regulation should ***build*** on the principles underlying Regulation (EU) No 604/2013 of the European Parliament and of the Council[1] while ***addressing the challenges identified and*** developing the principle of solidarity and fair sharing of responsibility as part of the common framework***, in line with Article 80 of TFEU***. To that end, a new ***mandatory*** solidarity mechanism should enable a strengthened preparedness of Member States to manage migration, to address situations where Member States are faced with migratory pressure and to facilitate regular solidarity support among Member States. ***The effective implementation of such solidarity mechanism is, together with an effective system for determining the Member State responsible, a key prerequisite to the functioning of the whole Common European Asylum System.***

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

▌

PUBLIC

(38) In order to ▌ ensure that ***third country nationals and stateless persons that are resettled or admitted in accordance with the Regulation (EU) XXX/XXX [Union Resettlement Framework Regulation] or granted international protection or humanitarian status under national resettlement schemes are taken back*** to the Member State ***that admitted or resettled them***, this Regulation should ▌ apply ***also to*** resettled or admitted ***persons*** who are ***present without authorisation on the territory of another Member State***.

▌

(40) For reasons of efficiency and legal ***certainty***, it is essential that the Regulation is based on the principle that responsibility is determined only once, unless ***one*** of the ***cessation grounds set out in this Regulation applies***.

(41) Directive XXX/XXX/EU [Reception Conditions Directive] of the European Parliament and of the Council[8] should apply to ***all procedures involving applicants*** as regulated under this Regulation, subject to the limitations in the application of that Directive.

(42) Regulation (EU) XXX/XXX [Asylum Procedure Regulation] of the European Parliament and of the Council[9] should apply in addition and without prejudice to the provisions concerning the procedural safeguards regulated under this Regulation, subject to the limitations in the application of that Regulation.

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

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8 Directive XXX/XXX/EU (full text)

9 ***Regulation (EU)*** XXX/XXX/EU (full text)

(43a) To ensure effective application of the guarantees for minors established with this Regulation Member States should ensure that staff of the competent authorities who deal with requests concerning unaccompanied minors should receive the appropriate training, for example in accordance with the relevant EUAA guidelines, in areas such as the rights and individual needs of the minor, early identification of victims of trafficking in human beings or abuse, as well as best practices to prevent disappearance of the minor.

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

(44a) Without prejudice to the competence of Member States on the acquisition of nationality and, that under international law, it is for each Member State, having due regard to Union law, to lay down the conditions for the acquisition and loss of nationality, in applying this Regulation, Member States should respect their international obligations towards stateless persons in accordance with international human rights law instruments including where applicable under the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954. Where appropriate, Member States should endeavour to identify stateless persons and strengthen their protection thus allowing stateless persons to enjoy core fundamental rights and reducing the risk of discrimination or unequal treatment;

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

PUBLIC

(46) ***For the purpose of ensuring that*** applications for international protection of the members of one family ***are examined thoroughly*** by a single Member State ▌, the decisions taken in respect of them are consistent and the members of one family are not separated***, it should be possible to conduct the process for determining the Member State responsible for examining these applications together***.

(47) ▌ The scope of the definition of family member should ▌ reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The definition should therefore include families formed outside the country of origin, but before their arrival on the territory of the Member State. ▌

(48) In order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent on account of the applicant's pregnancy or maternity, state of health or old age, should be a binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a family member or relative on the territory of another Member State who can take care of him or her should also become a binding responsibility criterion. In order to discourage unauthorised movements of unaccompanied minors, which are not in their best interests, in the absence of a family member or a relative, the Member State responsible should be that where the unaccompanied minor's application for international protection was first registered, ***if*** it is in the best interests of the ***minor. Where the unaccompanied minor has applied for international protection in multiple Member States, and a Member State considers that it is not in the best interests of the child to transfer him or her to the responsible Member State based on an individual assessment, that Member State should become responsible for examining the new application.***

PUBLIC

(49) The rules on evidence should allow for a swifter family reunification than until now. It is therefore necessary to clarify that formal proof, such as original documentary evidence and DNA testing, should not be necessary in cases where the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility for examining an application for international protection. ***Member States' authorities should consider all available information, such as photos, proof of contact and witness statements to make a fair appraisal of the relationship. In order to facilitate the early identification of possible family cases, the applicant should receive a template developed by the Asylum Agency. Where possible, the applicant should complete the template before the personal interview. Taking into account the importance of the family link criteria within the hierarchy of the responsibility criteria, all family-related cases should be prioritised during the relevant procedures set out in this Regulation.***

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

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

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

PUBLIC

(53) In order to ensure that the procedures set out in this Regulation are respected and to prevent obstacles to the efficient application of this Regulation, in particular in order to avoid absconding and unauthorised movements ***of third country nationals and stateless persons*** between Member States, it is necessary to establish clear obligations to be complied with by the applicant in the context of the procedure, of which he or she should be duly informed in a timely manner. ***Non-compliance with*** those legal obligations should lead to appropriate and proportionate procedural consequences for the applicant and ***his or her reception conditions. When assessing the compliance with the obligations of the applicant and*** his or her ***cooperation with the competent authorities, in accordance with the rules set out in this Regulation, Member States should take into account the individual circumstances of the applicant.*** In line with the Charter of Fundamental Rights of the European Union, the Member State where such an applicant is present should in any case ensure that the immediate material needs of that person are covered.

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

PUBLIC

(55) A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection unless the applicant has absconded, has not attended the interview without justified reasons or the information provided by the applicant is sufficient for determining the Member State responsible. ***In order to ensure that all relevant information is gathered from the applicant to correctly determine the Member State responsible, the Member State omitting the interview should give the applicant the opportunity to present all further information, including duly motivated reasons for the authority to consider the need for a personal interview.*** As soon as the application for international protection is registered, the applicant should be informed in particular of the application of this Regulation, the fact that the Member State responsible for examining his or her application for international protection is based on objective criteria, of his or her rights as well as of the obligations under this Regulation and of the consequences of not complying with them.

(55a) In order to ensure that the personal interview facilitates as much as possible the determination of the Member State responsible in a swift and efficient manner, the staff interviewing applicants should have received sufficient training, including general knowledge of problems which could adversely affect the applicant's ability to be interviewed, such as indicators showing that the person may have been the victim of torture or trafficking.

(56) In order to guarantee ***the*** effective protection of the ***applicants' fundamental*** rights ***to respect of family life, the rights of the child*** and the ***protection against inhuman and degrading treatment because of a transfer, applicants should have a right to an effective remedy, limited to those rights***, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union ***and the relevant case-law*** of the ***Court of Justice of the European Union***.

PUBLIC

(57) In order to facilitate the smooth application of this Regulation, Member States should in all cases indicate the Member State responsible in Eurodac after having concluded the procedures for determining the Member State responsible, including in cases where the responsibility results from the failure to respect the time limits for sending or replying to take charge requests, carrying ***out*** a transfer, as well as in cases where the Member State of first application becomes responsible or it is impossible to carry out the transfer to the Member State primarily responsible due to ***a real risk for the applicant of being subjected to*** inhuman or degrading treatment ***within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union because of the transfer to that Member State*** and subsequently another Member State is determined as ***responsible***.

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

(59) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality thereby only being allowed as a measure of last resort. In particular, the detention of applicants must be in accordance with Article 31 of the Geneva Convention. The procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. As regards the general guarantees governing detention, as well as detention conditions, where appropriate, Member States should apply the provisions of Directive XXX/XXX/EU [Reception Conditions Directive] also to persons detained on the basis of this Regulation. ***Minors, as a rule, should not be detained and efforts should be made to place them in accommodation with special provisions for minors. In exceptional circumstances, as a measure of last resort, after it has been established that other less coercive alternative measures cannot be applied effectively, and after detention is assessed to be in their best interests, minors could be detained in limited circumstances.***

PUBLIC

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

(60a) Fair and sincere cooperation between Member States is essential for the proper functioning of the Common European Asylum System. Such cooperation entails the proper application of, inter alia, the procedural rules of this Regulation, including that all appropriate practical arrangements necessary to ensure that transfers are indeed carried out are put in place and implemented.

(61) In accordance with Commission Regulation (EC) No 1560/2003[10], transfers to the Member State responsible for examining an application for international protection may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers by providing adequate information to the person concerned and should ensure that supervised or escorted transfers are undertaken in a humane manner, in full compliance with fundamental rights and respect for human dignity, as well as the best interests of the child and taking utmost account of developments in the relevant case law, in particular as regards transfers on humanitarian grounds.

(61a) Provided it is necessary for the examination of the application for international protection, Member States should be able to share specific information relevant for that purpose without the consent of an applicant where such information is necessary for the competent authorities of the Member State responsible to carry out their obligations, in particular those stemming from Regulation (EU) XXX/XXX [Asylum Procedure Regulation].

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

(62) In order to ensure a clear and efficient relocation procedure, specific rules for a benefitting and a contributing Member State should be set out. ***Where responsibility was not determined prior to the relocation, the Member State of relocation should become responsible, except for the cases where the family-related criteria would apply.*** The rules and safeguards relating to transfers set out in this Regulation should apply to transfers for the purpose of relocation except where they are not relevant for such a procedure. ***Such rules should ensure that family unity is preserved and that persons that may pose a threat to internal security are not relocated.***

(63) ***Where*** Member States ▌ undertake relocation as a solidarity ***contribution***, ***appropriate and proportionate*** financial support from the Union budget should be provided. In order to incentivise Member States to give priority to the relocation of unaccompanied minors a higher incentive contribution should be provided.

(63a) The resources of the Asylum, Migration and Integration Fund (AMIF), as established by the Regulation (EU) 2021/1147, and of other relevant Union Funds, can be mobilised to provide support to Member States' efforts in applying this Regulation, in line with the rules governing the use of the Funds and without prejudice to other priorities underpinned by the Funds. In this context, Member States will be able to make use of the allocations under their respective programmes, including the amounts that will be made available following the mid-term review. Additional support under the Thematic Facilities would be made available, in particular to those Member States which may need to increase their capacities at the borders or are faced with specific pressures or needs on their asylum and reception systems and on their borders.

(63b) Regulation (EU) 2021/1147 should be amended to guarantee a full contribution by the Union budget to the total eligible expenditure of solidarity actions, as well as to introduce specific reporting requirements in relation to these actions, as part of the existing reporting obligations on the implementation of the Funds.

(63c) When defining the eligibility period for expenditure of solidarity actions, the need to implement solidarity actions in a timely manner should be considered. In addition, due to the solidarity nature of the financial transfers under this Regulation, such transfers should be used in full to fund solidarity actions.

PUBLIC

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

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

(66) ***One or more networks*** of competent Member State authorities should be set up and facilitated by the European Union Agency for Asylum to enhance practical cooperation and information sharing on all matters related to the application of this Regulation, including the development of practical tools and guidance. ***These networks should aim at meeting regularly to enhance trust-building and common understanding of the challenges of the implementation of this Regulation in the Member States.***

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

(68) The operation of the Visa Information System, as established by Regulation (EC) No 767/2008 of the European Parliament and of the Council[11], and in particular the implementation of Articles 21 and 22 thereof, should facilitate the application of this Regulation.

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

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

(70) Regulation (EU) 2016/679 of the European Parliament and of the Council[12] applies to the processing of personal data by the Member States under this Regulation. Member States should implement appropriate technical and organisational measures to ensure and be able to demonstrate that processing is performed in accordance with that Regulation and the provisions specifying its requirements in this Regulation. In particular those measures should ensure the security of personal data processed under this Regulation and in particular to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed. The competent supervisory authority or authorities of each Member State should monitor the lawfulness of the processing of personal data by the authorities concerned, including of the transmission to the authorities competent for carrying out security checks. ***In particular, data subjects should be notified without undue delay when a personal data breach is likely to result in a high risk to their rights and freedoms in accordance with Regulation (EU) 2016/679.***

(70a) Member States as well as the Union agencies should, when implementing this Regulation, take all proportionate and necessary measures to ensure that personal data is stored in a secure manner.

(71) In order to ensure uniform conditions for the implementation of this Regulation, ***certain*** implementing powers should be conferred on the Commission. ***These*** powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[13]***, with the exception of Commission implementing decisions determining whether a Member State is under migratory pressure, at risk of migratory pressure or facing a significant migratory situation***.

▌

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

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

(74) In order to provide for supplementary rules, the power to adopt acts in accordance with Article 290 ▌ TFEU should be delegated to the Commission in respect of the identification of family members or relatives of an unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State; the elements for assessing a dependency link; the criteria for assessing the capacity of a person to take care of a dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time***, whilst fully respecting*** the best interests of the child as provided for in this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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

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

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

PUBLIC

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

(78a) With a view to ensuring a coherent implementation of this Regulation by the time of its application, implementation plans at Union and national levels that identify gaps and operational steps for each Member States, should be developed and implemented.

(79) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that Parts III, V and VII of this Regulation constitute amendments within the meaning of Article 3 of the Agreement concluded between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention[14], 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.

▌

[14] OJ L 66, 8.3.2006, p. 38

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

(82) As regards Iceland and Norway, Parts III, V and VII of this Regulation constitute new legislation in a field which is covered by the subject matter of the Annex to the Agreement concluded by the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway[15].

(83) As regards Switzerland, Parts III, V and VII of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland[16].

(84) As regards Liechtenstein, Parts III, V and VII of this Regulation constitute acts or measures amending or building upon the provisions of Article 1 of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland to which Article 3 of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland[17] refers.

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15 OJ L 93, 3.4.2001 p. 40.
16 OJ L 53, 27.2.2008, p. 5.
17 OJ L 160, 18.6.2011, p. 37.

HAVE ADOPTED THIS REGULATION:

PUBLIC

PART **I**

SCOPE AND DEFINITIONS

Article 1

Aim and subject matter

In accordance with the principle of solidarity and fair sharing of responsibility, ***as enshrined in Article 80 Treaty of the Functioning of the European Union (TFEU),*** and with the objective of reinforcing mutual trust, this Regulation:

(a) sets out a common framework for the management of asylum and migration in the Union***, and the functioning of the Common European Asylum System***;

(b) establishes a mechanism for solidarity;

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

Article 2

Definitions

For the purposes of this Regulation:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) of the ***TFEU*** and who is not a person enjoying the right to free movement under Union law as defined in Article 2, point (5) of Regulation (EU) 2016/399 of the European Parliament and of the Council[18];

(aa) 'stateless person' means a person who is not considered as a national by any State under the operation of its law;

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

(c) ***'***applicant***'*** means a third-country national or a stateless person who has made an application for international protection in respect of which a ***final*** decision has not ***yet*** been taken ▌ ;

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

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

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

(f) ‘beneficiary of international protection’ means a third-country national or a stateless person who has been granted international protection as defined in Article 3(4) of Regulation (EU) XXX/XXX [Qualification Regulation];

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

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

PUBLIC

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

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

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

▌

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

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

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

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

PUBLIC

(l) 'residence document' means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;

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

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

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

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

(n) 'diploma or qualification' means a diploma or qualification which is obtained ***and attested in a Member State*** after at least a ***period of one academic year*** of study ***on the territory of a Member State*** in a recognised, state or regional programme of education or vocational training at least equivalent to level 2 of the International Standard Classification of Education, operated by an education establishment ***pursuant to legislative, regulatory*** or administrative ***provisions of that*** Member ***State and excluding online training or other forms of distance learning***;

PUBLIC

(o) 'education establishment' means ***a*** public or private education or vocational training establishment established in ▌ and recognised by ***a*** Member State ▌ in accordance with national law or ***administrative practice on the basis of transparent criteria***;

(p) 'absconding' means the action by which ***a person concerned*** does not remain available to the competent administrative or judicial authorities such as by leaving the territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the ***person'***s control ***or failure to notify absence from a particular accommodation centre, or assigned area of residence, where so required by a Member State, or failure to present himself or herself to the competent authorities where so required by these authorities***;

(q) 'risk of absconding' means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria defined by national law to believe that ***a person concerned*** who is subject to ***procedures set out in this Regulation*** may abscond;

(r) 'benefitting Member State' means the Member State benefitting from the solidarity ***contributions*** as set out in ▌ Part IV of this Regulation;

(s) 'contributing Member State' means a Member State that ***provides*** or is obliged to ***provide*** solidarity ***contributions*** to a benefitting Member State ***as*** set out in ▌ Part IV of this Regulation;

▌

(ta) 'transfer' means the implementation of the decision pursuant to Article 32;

(u) 'relocation' means the transfer of ***an applicant or a beneficiary of international protection*** from the territory of a benefitting Member State to the territory of a contributing Member State;

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

PUBLIC

(w) 'migratory pressure' means a situation ***which is generated by arrivals by land, sea or air or applications of third country*** nationals or stateless persons ***that are of such a scale that they create disproportionate obligations on Member States, taking into account the overall situation in the Union, even on well-prepared asylum, reception and migration systems and require immediate action, in particular solidarity contributions pursuant to Part IV of this Regulation. Taking into account the specificities*** of the geographical location of a Member State***, it covers situations where there is a large number of arrivals of third-country nationals or stateless persons or a risk of such arrivals, including where this stems from recurring disembarkations following search and rescue operations, or from unauthorised movements of third country nationals or stateless persons between the Member States***;

(wa) 'significant migratory situation' means a situation different from migratory pressure where the cumulative effect of current and previous annual arrivals of third country nationals or stateless persons leads a well prepared asylum, reception and migration system to reach the limits of its capacity;

(wb) 'reception conditions' means the reception conditions, as defined in Article 2(6) of Directive (EU) XXX/XXX [Reception Conditions Directive];

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

(xa) 'EU Solidarity Coordinator' means the person appointed by the Commission and with the mandate as defined in Article 7f of this Regulation;

(y) 'Asylum Agency' means the European Union Agency for Asylum as established by Regulation (EU) ***2021/2303[19].***

▌

[19] Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, OJ L 468, 30.12.2021, p. 1.

PUBLIC

PART II

COMMON FRAMEWORK FOR ASYLUM AND MIGRATION MANAGEMENT

Chapter I

THE COMPREHENSIVE APPROACH

Article 3

Comprehensive approach to asylum and migration management

1. ***The common actions taken by*** the Union and the Member States ▌ in the field of asylum and migration management***, within their respective competences, shall be based on the principle of solidarity and fair sharing of responsibility as enshrined in Article 80 TFEU*** on the basis of a comprehensive approach***, and be guided by the principle of integrated policy-making, in compliance with international and Union law, including fundamental rights, ensuring coherence between*** asylum and migration management ***policies in managing migration flows to the Union, addressing the relevant migratory routes, and unauthorised movements between the Member States, with the overall aim of effectively managing asylum and migration within the framework*** of the ***applicable Union law.***

2. ***The Commission, the Council and the Member States shall ensure the consistent implementation of asylum and migration management policies, including both the internal and external components of those policies, in consultation with institutions and agencies responsible for external policies.***

▌

Article 3a

Internal components of the Comprehensive Approach

With a view to achieving the objectives set out in Article 3, the internal components of the comprehensive approach shall consist of the following elements:

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

(b) effective management of the Union's external borders, based on the European integrated border management as set out in Article 3 of Regulation (EU) 2019/1896 of the European Parliament and of the Council[20];

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

(d) swift and effective access to fair and efficient procedure for international protection on the Union territory, including at the external border of Member States, in the territorial sea or in the transit zones of the Member States and recognition of third-country nationals or stateless persons as refugees or beneficiaries of subsidiary protection, in accordance with Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and Regulation (EU) XXX/XXX [Qualification Regulation];

(e) determination of the Member State responsible for the examination of an application for international protection;

(f) effective measures to reduce incentives for and to prevent unauthorised movements of third country nationals and stateless persons between Member States;

(g) access for applicants to adequate reception conditions, in accordance with Directive XXX/XXX/EU [Reception Conditions Directive];

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

(h) effective management of the return of illegally staying third-country nationals in accordance with the Return Directive;

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

(j) measures aimed at fighting exploitation and reducing illegal employment in line with Directive 2009/52/EC of the European Parliament and the Council;

(k) where applicable, deployment and use of the operational tools set up at Union level, including by the European Border and Coast Guard Agency and the Asylum Agency, and the EU Information systems operated by EU-LISA.

Article 3b

External components of the Comprehensive Approach.

With a view to achieving the objectives set out in Article 3, the Union and the Member States shall, within their respective competences, promote and build tailor-made and mutually beneficial partnerships, in full compliance with international and Union law and based on the full respect for human rights, and foster close cooperation with relevant third countries at bilateral, regional, multilateral and international levels, including to:

(a) promote legal migration and legal pathways for third-country nationals in need of international protection and for those otherwise admitted to reside legally in the Member States;

(b) support partners hosting large numbers of migrants and refugees in need of protection and build their operational capacities in migration, asylum and border management in full respect of human rights;

(c) effectively prevent irregular migration and combat migrant smuggling and trafficking in human beings, including reducing the vulnerabilities caused by them, while ensuring the right to apply for international protection;

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(d) address the root causes and drivers of irregular migration and forced displacement;

(e) enhance effective return, readmission and reintegration;

(f) ensure full implementation of the common visa policy.

PUBLIC

Article 5

Principle of solidarity and fair sharing of responsibility

1. In implementing their obligations, the ***Union and the*** Member States shall observe the principle of solidarity and fair sharing of responsibility ***as enshrined in Article 80 TFEU,*** and shall take into account the shared interest in the effective functioning of the Union's asylum and migration management policies.

2. In fulfilling their obligations, Member States shall cooperate closely and shall:

(a) establish and maintain national asylum and migration management systems that provide ***effective*** access to international protection procedures, grant such protection to those who are in need***,*** and the ***effective and dignified*** return of those who are illegally staying***, in accordance with the Return Directive, and provide and invest in adequate reception of applicants for international protection, in accordance with the Reception Conditions Directive***;

(aa) ensure that necessary resources and sufficient competent personnel are allocated for the implementation of this Regulation and, where they consider it necessary or where applicable, request support from Union bodies, offices and agencies for that purpose;

(b) take all measures necessary and proportionate***, in full compliance with fundamental rights, to prevent and reduce*** irregular migration to the territories of the Member States, ***including preventing and combating migrant smuggling and trafficking in human beings and protecting the rights of smuggled and trafficked people***;

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

(d) provide ***effective*** support to other Member States in the form of solidarity contributions on the basis of needs set out in ***Part II/Part*** IV;

(e) take ***effective measures to reduce incentives for and to prevent*** unauthorised movements ***of third country nationals and stateless persons*** between ***the*** Member States.

3. To support Member States in fulfilling their obligations the permanent EU Migration Support Toolbox comprises at least the following:

(a) operational and technical assistance by the relevant Union agencies in accordance with their mandates, in particular the Asylum Agency in accordance with Regulation (EU)2021/2303, the European Border and Coast Guard Agency in accordance with Regulation (EU) 2019/1896 and the European Union Agency for Law Enforcement Cooperation in accordance with Regulation (EU) 2016/794.

(b) support provided by the Union funds for the implementation of the common framework set out in this Part in accordance with Regulation (EU) 2021/1147[21], and where relevant Regulation (EU) 2021/1148[22];

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[21] Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund, OJ L 251, 15.7.2021, p. 1.

[22] Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy, OJ L 251, 15.7.2021, p. 48.

(c) derogations foreseen in the Union acquis providing Member States with the necessary tools to react to specific migratory challenges as referred to in Regulation XXX/XXX [Crisis and Force Majeure Regulation], and Regulation XXX/XXX [Asylum Procedure Regulation];

(d) activation of the Union Civil Protection Mechanism in accordance with Regulation 2021/836;

(e) measures to facilitate return and reintegration activities, including through cooperation with third countries, and in full compliance with fundamental rights;

(f) strengthened actions and cross-sectoral activities in the external dimension of migration;

(g) enhanced diplomatic and political outreach;

(h) coordinated communication strategies;

(i) supporting effective and human rights based migration policies in third countries;

(k) promoting legal migration and well-managed mobility, including by strengthening bilateral, regional and international partnerships on migration, forced displacement, legal pathways and mobility partnerships.

PUBLIC

Article 5a

Strategic approach to managing asylum and migration at national level

1. Member States shall have national strategies in place that establish the strategic approach to ensure they have the capacity to effectively implement their asylum and migration management system, in full compliance with their obligations under Union and international law, taking into account their specific situation, in particular their geographical location.

When establishing their national strategies, 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. Those strategies shall, at least, include:

(a) preventive measures to reduce the risk of migratory pressure 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) 2019/1896[23] 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) information on how the Member States implement the principles set out in this Part and legal obligations stemming therefrom at national level;

(c) information on how the results of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, of the evaluation carried out in accordance with Regulation (EU) 2022/922[24] as well as of the monitoring carried out in accordance with Article 7 of Regulation (EU) XXX/XXX [Screening Regulation] have been taken into account.

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

24 ***Council Regulation (EU) Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013.***

2. The national strategies shall take into account other relevant strategies and existing support measures in particular those support measures under Regulation (EU) 2021/1147 of the European Parliament and of the Council[25] and Regulation (EU) 2021/2303 and be coherent with and complementary to the national strategies for European integrated border management established in accordance with Article 8(6) of Regulation (EU) 2019/1896.

4. Member States shall transmit their national asylum and migration management strategies to the Commission six months before the adoption of the Strategy as referred to in Article 5b.

5. Financial and operational support by the Union for implementation of the obligations, including operational support from its agencies, shall be provided in accordance with the Regulation (EU) 2021/2303, Regulation (EU) 2019/1986, Regulation (EU) 2021/1147 and where relevant Regulation (EU) 2021/1148[26].

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

7. The Commission shall, by means of implementing acts, establish a template to be used by Member States to ensure that their national strategies are comparable on specific core elements, such as the contingency planning. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

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25 Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021, p. 1).

26 Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (OOJ L 251, 15.7.2021, p. 48).

Article 5b

A long-term European Asylum and Migration Management Strategy

1. The Commission, after consultation of the Member States, taking into account relevant reports and analysis from Union agencies and building upon national strategies referred to in Article 5a, shall draw up a five-year European Asylum and Migration Management Strategy (the 'Strategy') setting out the strategic approach, with a view to ensuring consistent implementation of national strategies. The Commission shall transmit the Strategy to the European Parliament and the Council. The Strategy shall not be legally binding.

2. The first Strategy shall be adopted by 18 months after the entry into force of this Regulation and every five years thereafter.

3. The Strategy shall include the components listed in Article 3a and Article 3b, give a prominent role to the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights and also take into account:

(a) the implementation of the national asylum and migration management strategies of the Member States, referred to in Article 5a, and their compliance with Union and international law;

(b) relevant information gathered by the Commission under the Commission Recommendation No 2020/1366 of September 2020 on an EU Mechanism for Preparedness and Management of crisis related to migration (Migration Preparedness and Crisis Blueprint);

(c) information collected by the Commission and the Asylum Agency on the implementation of the asylum acquis;

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(d) information gathered from the European External Action Service and relevant Union bodies, offices and agencies, in particular reports by the Asylum Agency, European Border and Coast Guard Agency and the European Union Agency for Fundamental Rights;

(e) any other relevant information, including from Member States, monitoring authorities, international organisations, and any other relevant body and organisations.

Chapter II
THE ANNUAL MIGRATION MANAGEMENT CYCLE

Article 7a

The European Annual Asylum and Migration Report

1. The Commission shall adopt a European Asylum and Migration Report on an annual basis assessing the asylum, reception and migratory situation over the previous 12 month period and any possible developments providing a strategic situational picture of the area of migration and asylum that also serves as an early warning and awareness tool for the Union.

2. The Report shall be based on relevant quantitative and qualitative data and information provided by the Member States, the European External Action Service, the Asylum Agency, the European Border and Coast Guard Agency, the European Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Fundamental Rights, and may also take into account information provided by other relevant bodies, offices, agencies or organisations.

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3. The Report shall contain the following elements:

(a) an assessment of the overall situation covering all migratory routes to the Union and in all the Member States, in particular;

- *the number of applications for international protection and the nationalities of the applicants;*
- *the number of identified unaccompanied minors and where available, persons with special reception or procedural needs;*
- *the number of third-country nationals or stateless persons who have been granted international protection, in accordance with Regulation XXX/XXX [Qualification Regulation];*
- *the number of first instance and final asylum decisions;*
- *the reception capacity of the Member States;*
- *the number of third-country nationals who have been detected by Member States authorities while not fulfilling or no longer fulfilling the conditions for entry, stay or residence in the Member State, including overstayers within the meaning of Article 3(1), point (19), of Regulation (EU) 2017/2226 of the European Parliament and of the Council;*
- *the number of return decisions issued by the Member States and the number of third-country nationals who left the territory of the Member States in accordance with a return decision that respect Directive 2008/115/EC;*
- *the number of third-country nationals admitted by the Member States through Union and national resettlement or humanitarian admission schemes;*
- *the number of third-country nationals subject to the border procedure provided for in Regulation (EU) XXX/XXX [Asylum Procedure Regulation] and their nationalities;*

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- *the number of incoming and outgoing take charge requests or take back notifications in accordance with Articles 29 and 31, the number of transfer decisions and the numbers of transfers carried out in accordance with this Regulation;*

- *the number and nationality of third-country nationals disembarked following search and rescue operations and activities, and the number of applications for international protection lodged by those third-country nationals;*

- *the Member States which experienced recurring arrivals by sea, in particular through disembarkations following search and rescue operations and activities;*

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

- *the number of third country nationals or stateless persons enjoying temporary protection in accordance with Directive 2001/55/EC;*

- *the number of persons apprehended in connection with an irregular crossing of the external land, sea or air border and, provided that the data is available and verifiable, the number of attempted irregular border crossings;*

- *the support provided by Union bodies, offices and agencies to the Member States.*

(b) A forward-looking projection for the coming year, including the number of projected arrivals by sea, based on the overall migratory situation in the previous year and considering the current situation, while also reflecting the previous pressure;

(c) information about the level of preparedness in the Union and in the Member States and the possible impact of the projected situations;

(d) information on the capacity levels of the Member States, in particular on the reception capacity;

PUBLIC

(e) the result of the monitoring undertaken by the Asylum Agency and the European Border and Coast Guard Agency, and the evaluation carried out in accordance with Regulation (EU) 2022/922[27] as well as the monitoring carried out in accordance with Article 7 of Regulation (EU) XXX/XXX [Screening Regulation] as referred to in [Article 5a (1)(c)];

(f) an assessment of whether solidarity measures and measures under the permanent EU Toolbox are needed to support the Member State or Member States concerned.

4. The Commission shall adopt the Report by 15 October of each year and transmit them to the Council and the European Parliament.

5. The Report shall provide the basis for decisions at the Union level on the measures needed for the management of migratory situations.

6. The first Report shall be issued by 15 October of the year after the year of the entry into force of this Regulation.

7. For the purpose of the Report, the Member States and the Asylum Agency, the European Border and Coast Guard Agency, Europol and Fundamental Rights Agency shall provide the information referred to in Article 7b by 1 June of each year.

8. The Commission shall convene a meeting of the EU Mechanism for Preparedness and Management of Crisis Related to Migration during the first half of July of each year to present the initial assessment of the situation and exchange information with members of the Mechanism. The composition and mode of operation of the EU Mechanism for Preparedness and Management of Crisis Related to Migration shall be governed by Recommendation (EU) 2020/1366 in its original version.

9. The Member States and the relevant Union agencies shall provide the Commission with updated information by 1 September of each year.

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[27] Council Regulation (EU) Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013.

10. The Commission shall convene a meeting of the EU Mechanism for Preparedness and Management of Crisis Related to Migration by 30 September of each year to present the consolidated assessment of the situation. The composition and mode of operation of the EU Mechanism for Preparedness and Management of Crisis Related to Migration shall be governed by Commission Recommendation (EU) 2020/1366 in its original version.

Article 7b

Information for assessing the overall migratory situation, migratory pressure, risk of migratory pressure or significant migratory situation

1. When the Commission assesses the overall migratory situation, or whether a Member State is under migratory pressure, risk of migratory pressure or confronted with a significant migratory situation, it shall use the European Annual Asylum and Migration Report referred to in Article 7a and take into account any further information pursuant to Article 7a(3)(a).

2. The Commission shall also take into account the following:

(a) the information presented by the Member State, including the estimation of needs, capacity and preparedness measures and any additional relevant information provided in the national strategy referred to in Article 6(3);

(b) the level of cooperation on migration as well as in the area of return and readmission, including by taking into account the annual report in accordance with Article 25a of the Visa code, with third countries of origin and transit, first countries of asylum, and safe third countries as defined in Regulation (EU) XXX/XXX [Asylum Procedure Regulation];

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(c) the geopolitical situation in relevant third countries as well as root causes of migration and possible situations of instrumentalisation of migrants and possible developments in the area of irregular arrivals through Union external borders that may affect migratory movements;

(d) the relevant Recommendations provided for in Article 15 of Council Regulation (EU) No 1053/2013[28], Article 13, 14 and 22 of Regulation (EU) 2021/2303[29] and Article 32(7) of Regulation (EU) 2019/1896[30];

(e) information gathered pursuant to Commission Recommendation of 2020/1366 on an EU mechanism for Preparedness and Management of Crisis related to Migration (Migration Preparedness and Crisis Blueprint)

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

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

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

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28 [1] Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.

29 [2] Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010

30 [3] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624

(j) the support provided by Union Agencies to the Member States;

(k) relevant parts of the vulnerability assessment report as referred to in Article 32 of the Regulation 2019/1896 European Border and Coast Guard Agency;

(l) scale and trends of unauthorised movements of third country nationals or stateless persons between Member States building on the available information from the relevant Union agencies and data analysis from relevant information systems.

3. In addition, for assessing whether a Member State is facing a significant migratory situation, the Commission shall also take into account the cumulative effect of current and previous annual arrivals of third country nationals or stateless persons.

Article 7ba

Commission implementing decision on determining Member States under migratory pressure, at risk of migratory pressure or facing a significant migratory situation

1. Together with the Report referred to in Article 7a, the Commission shall adopt an implementing decision determining whether a particular Member State is under migratory pressure, at risk of migratory pressure during the upcoming year, or is facing a significant migratory situation.

For this purpose, the Commission shall consult the Member States concerned. The Commission may set a time limit for such consultations.

2. For the purpose of paragraph one, the Commission shall use the information gathered pursuant to Article 7b, taking fully into account all elements of the report referred to in Article 7a, all migratory routes, including the specificities of the structural phenomenon of disembarkations after search and rescue operations and unauthorised movements of third country nationals and stateless persons between the Member States, as well as the previous pressure and considering the current situation.

PUBLIC

3. Where a Member State has faced large number of arrivals due to recurring disembarkations following search and rescue operations during the past 12 months, the Commission shall consider that Member State to be under migratory pressure provided these are of such a scale that they create disproportionate obligations on even the well-prepared asylum, reception and migration systems of the Member State concerned.

4. The Commission shall adopt its implementing decision by 15 October of each year and transmit it to the Council and the European Parliament.

Article 7c

Commission proposal for a Council implementing act establishing the Solidarity Pool

1. Each year, based on and together with the Report referred to in Article 7a, the Commission shall submit a proposal for a Council implementing act establishing the Solidarity Pool necessary to address the migratory situation in the upcoming year in a balanced and effective manner, that reflects the annual projected solidarity needs of the Member States under migratory pressure.

2. The Commission proposal for a Council implementing act shall identify the total annual numbers of required relocations and financial contributions for the Solidarity Pool at Union level, which shall at least be:

(a) 30 000 for relocations;

(b) EUR 600 million for financial contributions.

The Commission proposal for a Council implementing act shall also set out the annual indicative contributions for each Member State resulting from applying the reference key set out in Article 44k with a view to facilitating the pledging exercise pursuant to Article 7d.

PUBLIC

3. When identifying the level of the Union-wide responsibility that should be shared by all Member States and the consequent level of solidarity, the Commission shall take into account relevant qualitative and quantitative criteria, including, for the relevant year, the overall number of arrivals, the average recognition rates as well as the average return rates. The Commission shall also take into account that the Member States which will become benefitting Member States as referred to in Article 44c(1) are not obliged to implement their pledged solidarity contributions.

The Commission may identify a higher number for relocations and financial contributions than those provided for in paragraph 2 and may identify other forms of solidarity as set out in Article 44a(2)(c) depending on the needs for such measures arising from the specific challenges in the area of migration in the Member State concerned. In order to preserve the equal value of the different types of solidarity measures, the ratio between the numbers set out in paragraph 2(a) and paragraph 2(b) shall be maintained.

4. Notwithstanding paragraph 2 of this Article, in exceptional situations, where the information provided by the Member States and the Union agencies pursuant to Article 7a(2), or the consultation carried out by the Commission pursuant to Article 7ba(1) do not indicate a need for solidarity measures for the upcoming year, the Commission proposal for a Council implementing act shall duly take this into account.

5. Where the Commission has identified in its implementing decision referred to in Article 7b that one or more Member State is under migratory pressure as a result of large numbers of arrivals stemming from recurring disembarkations following search and rescue operations, taking into account the specificities of the Member States concerned, the Commission shall set out the indicative percentage of the Solidarity Pool to be made available to such Member States.

PUBLIC

6. The Commission shall adopt its proposal for a Council implementing act by 15 October of each year and transmit it to the Council. The Commission shall simultaneously transmit the proposal to the European Parliament. Until the adoption by the Council implementing act pursuant to Article 44b, the Commission proposal for a Council implementing act shall not be made public. It shall be classified "RESTREINT UE/EU RESTRICTED[31] and shall be handled as such in accordance with Council Decision 2013/488 on the security rules for protecting classified information.

Article 7d

The High-Level EU Solidarity Forum

1. In order to ensure the effective implementation of Part IV of this Regulation, a High-Level EU Solidarity Forum is hereby established, consisting of the representatives of the Member States and chaired by the Member State holding the Presidency of the Council. Member States shall be represented at the level of responsibility and decision-making power that is appropriate in order to carry out the tasks conferred on the Forum.

Third countries that have concluded with the Union an agreement on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or lodged in that third country may, for the purpose of contributing to solidarity on an ad hoc basis be invited to participate in the High-Level Solidarity Forum as appropriate.

2. The Council shall convene the High-Level Solidarity Forum within 15 days following the adoption of the Report referred to in Article 7a, the implementing decision referred to in Article 7ba and the Commission proposal for a Council implementing act referred to in Article 7c.

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[31] Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU).

3. In this meeting, the High-Level EU Solidarity Forum shall consider the Report referred to in Article 7a, the implementing decision referred to in Article 7ba and the Commission proposal for a Council implementing act referred to in Article 7c and take stock of the overall situation. It shall also come to a conclusion on the solidarity measures and their levels needed pursuant to the procedure set out in Article 44b and, where deemed necessary, on other migratory response measures in the areas of responsibility, preparedness and contingency, as well as on the external dimension of migration. During this High-Level EU Solidarity Forum meeting, Member States shall pledge their solidarity contributions for the creation of the solidarity pool pursuant to Article 44b.

4. Where the Council, at the initiative of a Member State or upon invitation from the Commission, considers that the solidarity contributions to the Solidarity Pool are insufficient in relation to the needs identified, including where significant deductions have been granted according to Articles 44f and 44fa, or one or more Member States under migratory pressure have higher needs than anticipated, or the overall situation requires additional solidarity support, it shall by simple majority reconvene the High-Level EU Solidarity Forum to request Member States to provide additional solidarity contributions. Any pledging exercise shall follow the procedure set out in Article 44b.

Article 7e

The Technical-Level EU Solidarity Forum

1. In order to ensure the smooth functioning of Part IV of this Regulation, a Technical-Level EU Solidarity Forum shall be established and the EU Solidarity Coordinator shall, on behalf of the Commission, convene and chair this Forum.

2. A Technical-Level EU Solidarity Forum shall comprise representatives of the relevant authorities of the Member States at a level sufficiently senior to carry out the tasks conferred on the Forum.

PUBLIC

3. Third countries that have concluded with the Union an agreement on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or lodged in that third country may, for the purpose of contributing to solidarity on an ad hoc basis be invited to participate in the Technical-Level EU Solidarity Forum as appropriate.

4. The Asylum Agency shall participate in the Technical-Level EU Solidarity Forum. The European Border and Coast Guards Agency and the European Union Agency for Fundamental Rights shall, where appropriate and invited by the EU Solidarity Coordinator, participate in the Technical-Level EU Solidarity Forum. UN agencies, depending on their involvement in the solidarity mechanism, may also be invited to participate.

5. Following the adoption of the Council implementing act referred to in Article 44b, the EU Solidarity Coordinator shall convene a first meeting of the Technical-Level EU Solidarity Forum. Following that first meeting, the Technical Level EU Solidarity Forum shall meet on a regular basis and as frequently as necessary, in particular pursuant to Articles 44c(3) and 44d(6), to operationalize the solidarity mechanism between the Member States and address the solidarity needs with the contributions identified.

Article 7f

The EU Solidarity Coordinator

1. The Commission shall appoint an EU Solidarity Coordinator, who will coordinate at technical level the implementation of the solidarity mechanism in accordance with Part IV of this Regulation.

PUBLIC

2. The EU Solidarity Coordinator shall:

(a) support the relocation activities from the benefitting Member State to the contributing Member State;

(aa) coordinate and support the communication between the Member States and agencies and entities that are involved in the implementation of the solidarity mechanism;

(b) keep an overview of the needs of the benefitting Member States, the contributions of the contributing Member States and follow up on the ongoing implementation of solidarity measures;

(c) organise, at regular intervals, meetings between the authorities of the Member States to ensure an effective and efficient operationalisation of the Solidarity Pool, in order to facilitate the best interaction and cooperation among Member States;

(d) promote best practices in the implementation of the solidarity mechanism;

(e) convene and chair the Technical-Level EU Solidarity Forum as referred to in Article 7e;

3. For the purpose of paragraph 2, the EU Solidarity Coordinator shall be assisted by an Office and provided with the necessary financial and human resources to effectively carry out its tasks. The EU Solidarity Coordinator shall coordinate closely with the Asylum Agency, including in relation to the practical details of relocation under this Regulation.

4. The report referred to in Article 7a shall present the state of implementation and functioning of the solidarity mechanism.

5. Member States shall provide the EU Solidarity Coordinator with the necessary data and information for the EU Solidarity Coordinator to effectively carry out its tasks.

6. The EU Solidarity Coordinator shall also carry out the tasks in accordance with Article 7 of Regulation (EU) xx/xx [Crisis Regulation].

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PART III

CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE

CHAPTER I

GENERAL PRINCIPLES AND SAFEGUARDS

Article 8

Access to the procedure for examining an application for international protection

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

2. ***Without prejudice to the rules set out in part IV of this Regulation,*** where no Member State ▌ can be designated ***as responsible for examining the application for international protection*** on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was registered shall be responsible for examining it.

3. Where it is impossible for a Member State to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that ***the applicant, because of the transfer to*** that Member State, ***would face a real*** risk of ***violation of applicant's fundamental rights that amounts to*** inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter II ***or the clauses set out in Chapter III*** of Part III in order to establish whether another Member State can be designated as responsible. ▌

Where a Member State cannot carry out the transfer pursuant to the first subparagraph to any Member State designated on the basis of the criteria set out in Chapter II ***or the clauses set out in Chapter III*** of Part III or to the first Member State with which the application was registered, ***and cannot establish whether another Member State can be designated as responsible,*** that Member State shall become the Member State responsible ***for examining the application for international protection***.

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

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

PUBLIC

Where the security check carried out in accordance with Article 11 of Regulation (EU) XXX/XXX [Screening Regulation] or in accordance with the first and second subparagraphs of this paragraph shows that there are reasonable grounds to consider the applicant a ***threat to internal*** security***,*** the Member State carrying out the security check ▌ shall be the Member State responsible***, and Article 29 shall not apply***.

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

Article 9

Obligations of the applicant *and cooperation with the competent authorities*

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

2. By derogation from paragraph 1, where a third-country national or stateless person ***who intends to make an application for international protection*** is in possession of a valid residence permit or a valid visa, the application shall be made and registered in the Member State that issued the residence permit or visa. ▌

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

PUBLIC

3. The applicant shall fully cooperate with the competent authorities of the Member States in ***collecting the biometric data in accordance with Regulation EU XXX/XXX [Eurodac Regulation] and in*** matters covered by this Regulation, in particular by submitting ***and disclosing,*** as soon as possible and at the latest during the interview referred to in Article 12, all the elements and information available to him or her ***that are*** relevant for determining the Member State responsible***, including by submitting his or her identity documents if the applicant is in possession of such documents***. Where the applicant is not in a position at the time of the interview to submit evidence to substantiate the elements and information provided, ***or to complete the template referred to in Article 12(1),*** the competent authority ***shall*** set a ***reasonable*** time limit***, taking into account the individual circumstances of the case,*** within the period referred to in Article 29(1) for submitting such evidence.

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

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

   (b) the Member State responsible;

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

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

PUBLIC

Article 10

Consequences of non-compliance

1. ***Provided that the applicant has been informed of the consequence pursuant to Article 5(1) of Directive XXX/XXX/EU [Reception Conditions Directive] or Article 8(1), point (aa) of Regulation (EU) XXX/XXX [Screening Regulation],*** the applicant shall not be entitled to the reception conditions set out in Articles 17 to 20 of Directive XXX/XXX/EU [Reception Conditions Directive] ***in accordance with*** Article 21 of that Directive in any Member State other than the one in which he or she is required to be present pursuant to Article 9(4) of this Regulation from the moment he or she has been notified of a decision to transfer him or her to the Member State responsible ▌. This shall be without prejudice to the need to ensure a standard of living in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations.

2. Elements and information relevant for determining the Member State responsible submitted after expiry of the time limit ***shall be taken into account only if they provide evidence which is decisive for the correct application of the regulation, in particular regarding unaccompanied minors and family reunification***.

2a. Paragraph 1 shall not apply where the applicant is not in the Member State where he or she is required to be present and the competent authorities of the Member State in which the applicant is present have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3 of Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims.

3. Member States shall take into account the individual circumstances of the applicant, including the real risk of violations of fundamental rights in the Member State where the applicant is required to be present, when applying this Article. Any measures taken by the Member States shall be proportionate.

PUBLIC

Article 11

Right to information

1. As soon as possible and ***in any event by the date*** when an application for international protection is registered in a Member State, its competent authorities shall ***provide*** the applicant ***with information*** of the application of this Regulation***, his or her rights set out in this Regulation,*** and of the obligations set out in Article 9 as well as the consequences of non-compliance set out in Article 10***. That information shall include*** in particular :

▌

(aa) the objectives of this Regulation;

(ab) the cooperation expected by the applicant with the competent authorities as set out in Article 9;

(ac) that the right to apply for international protection does not encompass a choice by the applicant as to which Member State is responsible for examining the application for international protection or is the Member State of relocation;

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

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

(ca) the provisions relating to family reunification and, in that regard, the applicable definition of family members and relatives, the right to request and receive the template referred to in Article 12 (1), including information on persons and entities that may provide assistance in completing the template, as well as information on national, international or other relevant organisations that may facilitate the identification and tracing of family members;

PUBLIC

(d) ***the right and*** the aim of the personal interview ***in accordance with*** Article 12***, the procedure*** and the obligation to submit ▌ orally or through the provision of documents ***or other*** information***, including where applicable the template as referred to in Article 12 (1),*** as soon as possible in the procedure any relevant information that could help to establish the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information, as well as any assistance that the Member State can offer with regard to the tracing of family members or relatives;

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

(ea) of the opportunity to present duly motivated reasons for the competent authorities to consider applying Article 25(1);

(eb) of the obligation for the applicant to submit his or her identity documents where the applicant is in possession of such documents and to cooperate with the competent authorities in collecting the biometric data in accordance with the Regulation (EU) XXX/XXX [Eurodac Regulation]

(f) of the ***existence of the right to an effective remedy before a court or tribunal*** to challenge a transfer decision within the time limit set out in Article 33(2) and of the fact that the scope of that challenge is limited as laid down in Article 33(1);

(fa) of the right to be granted legal counselling free of charge on matters relating to the application of the criteria set out in Chapter II or the clauses set out in Chapter III of Part III at all stages of the procedure for determining the Member State responsible as set out in Article 11c;

(g) ***in case of an appeal or review,*** of the right to be granted, on request, legal assistance free of charge where the person concerned cannot afford the costs involved;

PUBLIC

(ga) of the fact that absconding will lead to an extension of the time limit in accordance with Article 35;

(h) ***the fact*** that the competent authorities of Member States and the Asylum Agency will process personal data of the applicant including for the exchange of data on him or her for the sole purpose of implementing their obligations arising under this Regulation ***and in full compliance with the protection of natural persons with regard to the processing of personal data in accordance with Union or national law***;

(i) of the categories of personal data concerned;

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

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

(ka) of the fact that where the circumstantial evidence is not coherent, verifiable and sufficiently detailed to establish responsibility, the Member State may request a DNA or blood test to prove the existence of family links, or an assessment of the age of the applicant;

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

PUBLIC

1a. The applicant shall have the possibility to request information regarding the progress of the procedure and the authorities shall inform the applicant about this possibility. Where the applicant is a minor, both the minor, the parent or the representative shall have the possibility to request information.

▌

Article 11a

Accessibility of information

1. The information referred to in Article 11 shall be provided in writing in a concise, transparent, intelligible and easily accessible form, using clear and plain language and in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common information material drawn up in clear and plain language pursuant to paragraph 2 for that purpose. The common information material shall also be available online, on an open and easily accessible platform for applicants for international protection.

Where necessary for the applicant's proper understanding, the information shall also be supplied orally, where appropriate in connection with the personal interview as referred to in Article 12. For that purpose, the applicant shall have the opportunity to ask questions to clarify the information provided. Member States may use the support of multimedia equipment.

2. The Asylum Agency shall, in close cooperation with the responsible national authorities, draw up common information material, as well as specific information for unaccompanied minors and vulnerable applicants, where necessary for applicants with specific reception or procedural needs, containing at least the information referred to in Article 11. That common information material shall also include information regarding the application of Regulation (EU) XXX/XXX [Eurodac Regulation] and, in particular, the purpose for which the data of an applicant may be processed within Eurodac.

The common information material shall be drawn up in such a manner as to enable Member States to complete it with additional Member State-specific information.

PUBLIC

3. Where the applicant is a minor, the information referred to in Article 11 shall be provided in a child-friendly manner by appropriately trained staff and in the presence of the applicant's representative.

Article 11c

Right to legal counselling

1. Applicants shall have the right to consult, in an effective manner, a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to the application of the criteria set out in Chapter II or the clauses set out in Chapter III of Part III at all stages of the procedure for determining the Member State responsible as regulated under this Regulation.

2. Without prejudice to the applicant's right to choose his or her own legal adviser or other counsellor at his or her own cost, an applicant may request free legal counselling in the procedure for determining the Member State responsible.

3. Free legal counselling shall be provided by legal advisers or other counsellors, admitted or permitted under national law to counsel, assist or represent the applicants or non-governmental organisations accredited under national law to provide legal services or representation to applicants.

For the purposes of the first subparagraph, effective access to free legal counselling may be assured by entrusting a person with the provision of legal counselling in the administrative stage of the procedure to several applicants at the same time.

4. Member States may organize the provision of legal counselling in accordance with their national systems.

4a. Member States shall lay down specific procedural rules concerning the modalities for filing and processing requests for the provision of free legal counselling as provided for in this Article.

PUBLIC

5. For the purposes of the procedure for determining the Member State responsible, the free legal counselling shall include the provision of:

(a) guidance and explanations of the criteria and procedures for determining the Member State responsible including information on rights and obligations during all the stages of the procedure;

(b) guidance and assistance in providing information that could help establish the Member State responsible in accordance with the criteria set out in chapter II of Part III of this Regulation;

(c) guidance and assistance on the template referred to in Article 12(1).

6. Without prejudice to paragraph 1, the provision of free legal counselling in the procedure for determining the Member State responsible may be excluded where the applicant is already assisted and represented by a legal adviser.

7. For the purpose of implementing this Article, Member States may request the assistance of the European Union Agency for Asylum. In addition, financial support may be provided through Union funds to the Member States, in accordance with the legislation governing such funding.

PUBLIC

Article 12

Personal interview

1. In order to facilitate the process of determining the Member State responsible, the ***competent authorities of the*** determining Member State ***referred to in Article 28(1)*** shall conduct a personal interview with the applicant ***for the purpose of application of Article 29***. The interview shall also allow the proper understanding of the information [redacted] the applicant ***received*** in accordance with Article 11.

The competent authorities shall collect information on the specific individual situation of the applicant by proactively asking questions that would allow the determination of the Member State responsible for the purpose of application of Article 29.

Where there are indications that the applicant may have family members or relatives in a Member State, the applicant shall receive a template, to be developed by the Asylum Agency. The applicant shall fill in the information available to him or her in order to facilitate the application of Article 29. Where possible, the applicant shall complete the template before the personal interview set out in this Article.

The Asylum Agency shall develop the template at the latest by 10 months after entry into force of the Regulation. The Asylum Agency shall also develop Guidelines for identification and tracing of family members to support the application of Articles 15-18 and Article 24 by the requesting and the requested Member State in accordance with Articles 29 and 30.

The applicant shall have the opportunity to present duly motivated reasons for the competent authorities to consider applying Article 25(1).

PUBLIC

2. The personal interview may be omitted where:

(a) the applicant has absconded;

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

(c) after having received the information referred to in Article 11, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible within the period referred to in Article 29(1)***, including duly motivated reasons for the authority to consider the need for a personal interview***.

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

4. The personal interview shall be conducted in ***the*** language ***preferred by*** the applicant ***unless there is another language which he or she understands and*** which he or she is able to communicate ***clearly***. Interviews of unaccompanied***, and where applicable, accompanied*** minors shall be conducted ***by a person who has the necessary knowledge of the rights and special needs of minors, in a child-sensitive and context-appropriate*** manner, ***taking into consideration the age and maturity of the minor***, in the presence of the representative and, where applicable, the minor's legal advisor. Where necessary, ▌ an interpreter, ▌ who is able to ensure appropriate communication between the applicant and the person conducting the personal interview***, shall be provided. The presence of a cultural mediator may be provided during the personal interview. Where requested by the applicant and where possible, the person conducting the interview and interpreters shall be of the sex that the applicant prefers.***

4a. By way of derogation, the Member State may conduct the personal interview by video conference where duly justified by the circumstances. In such case, the Member State shall ensure the necessary arrangements for the appropriate facilities, procedural and technical standards, legal assistance and interpretation taking into account guidance from the EUAA.

5. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law. Applicants who are identified as being in need of special procedural guarantees pursuant to Regulation (EU) XXX/XXX [Asylum Procedure Regulation], shall be provided with adequate support in order to create the conditions necessary for effectively presenting all elements allowing for the determination of the Member State responsible. ***Staff interviewing applicants shall also have acquired general knowledge of factors which could adversely affect the applicant's ability to be interviewed, such as indications that the person may have been tortured in the past or a victim of trafficking.***

6. The Member State conducting the personal interview shall make ***an audio recording of the interview and make*** a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. ***The applicant shall be informed in advance of the fact that such a recording is being made and the purpose thereof. In case of doubt as to the statements made by the applicant during the personal interview, the audio recording shall prevail.*** The summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant or the legal advisor or other counsellor***, admitted or permitted as such under national law,*** who is ***legally*** representing the applicant have timely access to the summary***, as soon as possible after the interview and in any event before the competent authorities take a decision on the Member State responsible. The applicant shall be given the opportunity to make comments or provide clarification orally or in writing with regard to any incorrect translations or misunderstandings or other factual mistakes appearing in the written summary at the end of the personal interview or within a specified time limit***.

PUBLIC

Article 13

Guarantees for minors

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

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

Where an application is made by a person who claims to be a minor, or in relation to whom there are objective grounds to believe that he or she is a minor, and who is unaccompanied, the competent authorities shall designate:

(a) as soon as possible and in any case in a timely manner for the purposes of assisting the minor in the process of determining the Member State responsible, a person with the necessary skills and expertise to provisionally assist the minor in order to safeguard his or her best interest and general well-being which enables the minor to benefit from the rights under this Regulation and, if applicable, act as a representative until a representative has been designated;

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(b) a representative as soon as possible but not later than fifteen working days from when the application is made.

In case of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations, the time limit for designating a representative as referred in point (b) of the second subparagraph may be extended by ten working days.

Where the competent authority has concluded that an applicant who claims to be a minor is without any doubt above the age of eighteen years, it need not designate a representative in accordance with this paragraph.

The duties of the representative or the person referred to in point (a) of the second subparagraph shall cease where the competent authorities, following the age assessment referred to in Article 26(1) of Regulation XXX/XXX [Asylum Procedure Regulation], do not assume that the applicant is a minor or consider that the applicant is not a minor or where the applicant is no longer an unaccompanied minor.

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

The representative provided for in the first subparagraph may be the same person or organisation as provided for in Article 24 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation].

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

PUBLIC

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

(a) family reunification possibilities;

(b) the minor's well-being and social development ***in the short, medium and long term, including situations of additional vulnerabilities such as trauma, specific health needs and disability***, taking into particular consideration the minor's ***ethnic, religious, cultural and linguistic*** background***, and having regard to the need for stability and continuity in the social and educational care***;

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

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

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

(ea) any other reasons relevant to the assessment of the best interest of the child.

5. Before transferring an unaccompanied minor ▌, the transferring Member State shall ***notify*** the Member State responsible or the Member State of relocation***, which shall confirm that all appropriate*** measures referred to in Articles 16 and 27 of Directive XXX/XXX/EU [Reception Conditions ▌ and Article 24 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation ***will be taken*** without delay***, including appointment of a representative in the Member State of transfer***. Any decision to transfer an unaccompanied minor shall be preceded by an ***individual*** assessment of his/her best interests. The assessment shall be based on the ***relevant*** factors listed in paragraph 4 and the conclusions of the assessment on these factors shall be clearly stated in the transfer decision. The assessment shall be done ***without delay by appropriately trained*** staff with the ***necessary*** qualifications and expertise to ensure that the best interests of the minor are taken into consideration.

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

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

The staff of the competent authorities referred to in Article 41 who deal with requests concerning unaccompanied minors shall ▌ receive ▌ appropriate training concerning the specific needs of minors ***relevant for the application of this Regulation***.

7. With a view to facilitating the appropriate action to identify the family members or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph 6, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(2).

PUBLIC

CHAPTER II
CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

PUBLIC

Article 14

Hierarchy of criteria

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

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

Article 15

Unaccompanied minors

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

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

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

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

5. In the absence of a family member***, sibling*** or a relative as referred to in paragraphs 2 and 3, the Member State responsible shall be that where the unaccompanied minor's application for international protection was first registered, ***if*** it is in the best interests of the minor.

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

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

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

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

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

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

PUBLIC

Article 16

Family members who *legally reside in a Member State*

1. ***Where the applicant has a family member who has been allowed to*** reside as a beneficiary of international protection in a Member State ***or has a family member that resides in a Member State on the basis of a long term residence in accordance with Directive 2003/109/EC or long-term residence granted in accordance with national law, if Directive 2003/109/EC does not apply in the Member State concerned , that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.***

2. ***Where the family member had previously been allowed to reside as a beneficiary of international protection, but has later become a citizen of a Member State, that Member State shall be responsible for examining the application, provided that the persons concerned expressed their desire in writing.***

3. ***The rules set out in paragraphs 1 and 2 shall also apply to children born after the family member arrived on the territory of the Member State.***

Article 17

Family members who are applicants for international protection

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

PUBLIC

Article 18

Family procedure

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

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

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

Article 19

Issue of residence documents or visas

1. Where the applicant ***holds*** a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.

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

PUBLIC

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

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

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

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

4. Where the applicant ***holds*** one or more residence documents ***which have expired, were annulled, revoked or withdrawn less than three years,*** or one or more visas ***whose validity has*** expired***, which were annulled, revoked or withdrawn*** less than ***18 months,*** before the application was registered, paragraphs 1, 2 and 3 shall apply.

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

PUBLIC

Article 20

Diplomas or other qualifications

1. Where the applicant is in possession of a diploma or qualification issued by an education establishment established in a Member State***, the Member State in which that education establishment is established shall be responsible for examining the application for international protection, provided that the application is registered less than six years after the diploma or qualification was issued***.

2. Where the applicant is in possession of more than one diploma or qualification issued by education establishments in different Member States, the responsibility for examining the application for international protection shall be assumed by the Member State which issued the diploma or qualification following the longest period of study or, where the periods of study are identical, by the Member State in which the most recent diploma or qualification was obtained.

Article 20a

Visa waived entry

1. If a third-country national or a stateless person enters into the territory of the Member States through a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection.

2. The principle set out in paragraph 1 shall not apply if the application for international protection of the third-country national or the stateless person is registered in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In that case, that other Member State shall be responsible for examining the application for international protection.

PUBLIC

Article 20b

Application in an international transit area of an airport

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

Article 21

Entry

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [Eurodac Regulation], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the first Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than ***20 months*** after the date on which that border crossing took place.

2. ***Notwithstanding the first paragraph, where it is established, on the basis of proof or circumstantial evidence as described in the two lists referred to in Article 30(4) of this Regulation, including the data referred to in Regulation (EU) XXX/XXX [Eurodac Regulation], that an*** applicant ***has been*** disembarked on the territory ***of a Member State*** following a search and rescue operation***, that Member State shall be responsible for examining the application for international protection. That responsibility shall cease if the application is registered more than 12 months after the date on which that disembarkation took place.***

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

PUBLIC

CHAPTER III
DEPENDENT PERSONS AND DISCRETIONARY CLAUSES

PUBLIC

Article 24

Dependent persons

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

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

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

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

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

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

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

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

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

Article 25

Discretionary clauses

1. By way of derogation from Article 8(1), each Member State may decide to examine an application for international protection by a third-country national or a stateless person registered with it, even if such examination is not its responsibility under the criteria laid down in this Regulation.

PUBLIC

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

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

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

PUBLIC

CHAPTER IV
OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

PUBLIC

Article 26

Obligations of the Member State responsible

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

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

(b) take back, under the conditions laid down in Articles 31 and 35 of this Regulation, an applicant or a third-country national or a stateless person in relation to whom that Member State has been indicated as the Member State responsible under Article 16(1) of Regulation (EU) XXX/XXX [Eurodac Regulation];

▌

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

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

Notwithstanding the requirement for written consent in Article 16, where a new procedure for taking charge of a child is initiated towards a Member State which is indicated as the Member State responsible pursuant to Article 16, no written consent shall be required by the persons concerned, unless it is demonstrated that it is not in the best interests of the minor.

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

PUBLIC

Article 27

Cessation of responsibilities

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

▌

The Member State which becomes responsible pursuant to the first subparagraph of this Article shall indicate that it has become the Member State responsible pursuant to Article 16(3) of Regulation (EU) XXX/XXX [Eurodac Regulation].

1a. Following an examination of the application in a border procedure pursuant to Regulation (EU) XXX/XXX [Asylum Procedure Regulation], the obligations laid down in Article 26(1) of this Regulation shall cease 15 months after a decision rejecting an application as inadmissible, as unfounded or as manifestly unfounded with regard to refugee status or subsidiary protection status, a decision rejecting or an act declaring an application as implicitly withdrawn or an act or a decision declaring an application as explicitly withdrawn has become final.

An application registered after the period referred to in the first subparagraph shall be regarded as a new application for the purpose of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.

PUBLIC

1b. ***Notwithstanding the first subparagraph of paragraph 1a, where the person applies for international protection in another Member State within the 15 months period referred to in that subparagraph and a take back procedure is pending at the date of the expiration of that 15 months period, responsibility shall not cease until that take back procedure is completed or the time limits for the transferring Member State to carry out the transfer in accordance with Article 35 have expired.***

1c. ***The obligations laid down in Article 26(1) of this Regulation shall cease where the Member State responsible can establish, on the basis of data recorded and stored in accordance with Regulation (EU) 2017/2226[32] or other evidence, that the person concerned has left the territory of the Member States for at least nine months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.***

An application registered after the period of absence referred to in the first subparagraph shall be regarded as a new application for the purpose of this Regulation, thereby giving rise to a new procedure for determining the Member State responsible.

2. The obligation laid down in Article 26(1), point (b), of this Regulation to take back a third-country national or a stateless person shall cease where it can be established, on the basis of the update of the data set referred to in Article 16(2)(c) of Regulation (EU) XXX/XXX [Eurodac Regulation], that the person concerned has left the territory of the Member States, on either a compulsory or a voluntary basis, in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.

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

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

CHAPTER V
PROCEDURES

PUBLIC

SECTION I
START OF THE PROCEDURE

Article 28

Start of the procedure

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

2. The Member State where an application is first registered or, where applicable, the Member State of relocation shall continue the process of determining the Member State responsible if the applicant ***absconds***.

3. The Member State which has conducted the process of determining the Member State responsible or which has become responsible pursuant to Article 8(4) of this Regulation shall indicate in Eurodac without delay pursuant to Article 16(1) of Regulation (EU) XXX/XXX [Eurodac Regulation]:

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

   (aa) its responsibility pursuant to Article 8(3);

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

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

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

(da) its responsibility pursuant to Article 58(3).

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

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

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

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

PUBLIC

SECTION II

PROCEDURES FOR TAKE CHARGE REQUESTS

PUBLIC

Article 29

Submitting a take charge request

1. If ***the*** Member State ***referred to in Article 28(1)*** considers that another Member State is responsible for examining the application, it shall, ***immediately*** and in any event within two months of the date on which the application was registered, request that other Member State to take charge of the applicant. ***Member States shall prioritise requests made on the basis or Articles 15 to 18 and Article 24.***

   Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Articles 22 and 24 of Regulation (EU) XXX/XXX [Eurodac Regulation] or of a VIS hit with data recorded pursuant to Article 21 of Regulation (EC) No 767/2008, the request to take charge shall be sent within one month of receiving that hit.

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

   Where the applicant is an unaccompanied minor, the determining Member State ***shall, at any time before a first decision regarding the substance is taken***, where it considers that it is in the best interest of the minor, continue the procedure for determining the Member State responsible and request another Member State to take charge of the applicant***, in particular if the request is based on Article 16, 17 or 24,*** despite the expiry of the time limits laid down in the first and second subparagraphs.

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

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

3. ***The take charge request shall include full and detailed reasons, based on all the circumstances of the case including the relevant elements from the applicant's statement, relating to the relevant criteria of the hierarchy set out in Chapter II and, where applicable, the template referred to in Article 12 (1). It*** shall be made using a standard form and including proof or circumstantial evidence as described in the two lists referred to in Article 30(4) and/or ***any other documentation or information*** relevant ***for justifying the request***, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation. ▌

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

Article 30

Replying to a take charge request

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant ***without delay and in any event*** within one month of receipt of the request. ***Member States shall prioritise requests made on the basis of Articles 15 to 18 and Article 24. To that end, the requested Member State may call for assistance of national, international or other relevant organisations to verify the relevant elements of proof and circumstantial evidence submitted by the requesting Member State, in particular for identification and tracing of family members.***

PUBLIC

2. Notwithstanding the first paragraph, in the case of a Eurodac hit with data recorded pursuant to Article 22 and 24 of Regulation (EU) XXX/XXX [Eurodac Regulation] or of a VIS hit with data recorded pursuant to Article 21(2) of Regulation (EC) No 767/2008, the requested Member State shall give a decision on the request within two weeks of receipt of the request.

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

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

   (a) Proof:

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

      (ii) the Member States shall provide the ***Commission*** with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs;

   (b) Circumstantial evidence:

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

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

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

PUBLIC

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

Where the request is made on the basis of Articles 15 to 18 and Article 24, and the requested Member State does not consider that the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility, it shall justify the reasons in the reply referred to in paragraph 8.

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

8. Where the requested Member State does not object to the request within the one-month period set out in paragraph 1***, or where applicable within the two-week period set out in paragraphs 2 and 7,*** by a reply which gives ***substantiated reasons, based on all the circumstances of the case relating to the relevant criteria*** set out in ***Chapter II***, this shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival. ***The substantiated reasons shall be supported by proof and circumstantial evidence where available. The Commission shall, by means of implementing acts, draw up a standard form for the reasoning of the replies required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 67(2).***

PUBLIC

SECTION III

PROCEDURES FOR TAKE BACK NOTIFICATIONS

PUBLIC

Article 31

Submitting a take back notification

1. In a situation referred to in Article 26(1), point (b) ▌ or (d) the Member State where the person is present shall make a take back notification ***immediately*** and in any event within two weeks after receiving the Eurodac hit. ***Failure to make the take back notification within the time limit shall be without prejudice to the obligation of the Member State responsible to take back the person concerned.***

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

3. The notified Member State shall confirm receipt of the notification to the Member State which made the notification within ***two weeks***, unless the notified Member State can demonstrate within that time limit that ***it is not responsible*** pursuant to Article 27 ***or that the take back notification is based on an incorrect indication of the Member State responsible pursuant to Regulation (EU) XXX/XXX [Eurodac Regulation]***.

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

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

SECTION IV

PROCEDURAL SAFEGUARDS

PUBLIC

Article 32

Notification of a transfer decision

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

2. Where the requested ***or notified*** Member State accepts to take charge of an applicant or ***confirms*** to take back a person referred to in Article 26(1), point (b) ▌ or (d), the ***transferring*** Member State shall notify the person concerned in writing***, in a plain language,*** without delay of the decision to transfer him or her to the Member State responsible and, where applicable, of the fact that it will not examine his or her application for international protection***, the time limits for carrying out the transfer and the obligation to comply with the decision pursuant to Article 9(5)***.

3. ***Where*** a legal advisor or other counsellor***, admitted or permitted as such under national law, is legally*** representing the person concerned, Member States may ▌ notify the decision to such legal advisor or counsellor instead of to the person concerned and, where applicable, communicate the decision to the person concerned.

4. The decision referred to in paragraph 1 shall ***also include*** information on the legal remedies available ***pursuant to Article 33***, including on the right to apply for suspensive effect, and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned is required to appear, if that person is travelling to the Member State responsible by his or her own means. ▌

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

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

PUBLIC

Article 33

Remedies

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

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

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

   (aa) whether there are circumstances subsequent to the transfer decision that are decisive for the correct application of the Regulation;

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

2. Member States shall provide for a period of ***at least one week but no more than three*** weeks after the notification of a transfer decision within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

PUBLIC

3. The person concerned shall have the right to request, within a reasonable period of time from the notification of the transfer decision ***but in any event no longer than the period provided for by Member States pursuant to paragraph 2***, a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States ***may provide in national law that the request to suspend the implementation of the transfer decision must be lodged together with the appeal pursuant to paragraph 1. Member States*** shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within one month of the date when that request reached the competent court or tribunal. ▌

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

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

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

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

PUBLIC

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

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

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

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

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

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

PUBLIC

SECTION V

DETENTION FOR THE PURPOSES OF TRANSFER

PUBLIC

Article 34

Detention

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

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

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

3a. As regards the detention conditions and the guarantees applicable to applicants detained in order to secure the transfer procedures to the Member State responsible, Articles 11, 12 and 13 of Directive XXX/XXX/EU [Reception Conditions Directive] shall apply.

▌

4. Where a person is detained pursuant to this Article, the detention shall be ordered in writing by ***administrative or*** judicial authorities. The detention order shall state the reasons in fact and in law on which it is based. ***Where detention is ordered by an administrative authority, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted ex-officio or at the request of the applicant, or both.***

▌

Article 34a

Time limits for detained applicants

1. By way of derogation from Articles 29 and 31, where a person is detained pursuant to Article 34, the period for submitting a take charge request or a take back notification shall not exceed two weeks from the registration of the application for international protection or two weeks after receiving the Eurodac hit when no new application has been registered in the notifying Member State.

Where a person is detained at a later stage than the registration of the application, the period for submitting a take charge request or a take back notification shall not exceed one week from the date on which the person was placed in detention.

2. By way of derogation from Article 30(1), the requested Member State shall reply as soon as possible, and in any event within one week of receipt of the request. Failure to reply within the one-week period shall be tantamount to accepting the take charge request and shall entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

3. By way of derogation from Article 35, where a person is detained, the transfer of that person from the transferring Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within five weeks of:

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

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

4. Where the transferring Member State fails to comply with the time limits for submitting a take charge request or take back notification or to take a transfer decision within the time limit laid down in Article 32(1) or where the transfer does not take place within the period of five weeks referred to in paragraph 3 of this Article, the person shall no longer be detained. Articles 29, 31 and 35 shall continue to apply accordingly.

PUBLIC

SECTION VI

TRANSFERS

Article 35

Detailed rules and time limits

1. The transfer of an applicant or of another person as referred to in Article 26(1), point (b) ***and (d)*** from the ***transferring*** Member State to the Member State responsible shall be carried out in accordance with the national law of the ***transferring*** Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of the acceptance of the take charge request or of the confirmation of the take back notification by another Member State or of the final decision on an appeal or review of a transfer decision where there is a suspensive effect in accordance with Article 33(3). ▌

Member States shall prioritise transfers of applicants following acceptance of requests made on the basis of Articles 15 to 18 and Article 24

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

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

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

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

PUBLIC

2. Where the transfer does not take place within the time limits set out in paragraph 1, first subparagraph, the Member State responsible shall be relieved of its obligations to take charge of or to take back the person concerned and responsibility shall be transferred to the ***transferring Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of three years from when the requesting Member State informed the*** Member State ***responsible if the person concerned, or a family member that were to be transferred together with the person concerned, absconds, is physically resisting the transfer, is intentionally making himself or herself unfit for the transfer, or is not complying with medical requirements for the transfer***.

If the person concerned ***becomes available to the authorities again and the time remaining from the period referred to*** in paragraph 1 ***is less than three months***, the transferring Member State shall ***have a period of three months in order to carry out the transfer.***

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

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

PUBLIC

Article 36

Costs of transfer

1. In accordance with Article ***20*** of Regulation (EU) ***2021/1147*** , a contribution shall be paid to the Member State carrying out the transfer for the transfer of an applicant or another person as referred to in Article 26(1), point (b)▌ or (d), pursuant to Article 35.

2. Where the person concerned has to be transferred back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal or review after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.

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

Article 37

Exchange of relevant information before a transfer is carried out

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

PUBLIC

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

(a) any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care that may be required ***and, where necessary, any arrangements needed to uphold the best interest of the child***;

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

(c) in the case of minors, information on ***the best interest of the child assessment as set out in Article 13, and on*** their education;

(d) ***where applicable,*** an assessment of the age of an applicant;

(e) ***where applicable,*** the screening ***form pursuant to*** Article 13 of Regulation (EU) XXX/XXX [***Screening Regulation***]***, including any evidence referred to on the form;***

(ea) any other relevant information.

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

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

PUBLIC

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

Article 38

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

For the purpose of application of Article 31, where the Member State carrying out a transfer is in possession of information that indicates that there are reasonable grounds to consider the applicant or another person as referred to in Article 26(1), point (b) ▌ or (d), a danger to national security or public order in a Member State, ***the competent authorities of*** that Member State shall ***indicate the existence of*** such information to the Member State responsible. ***The information shall be shared between the law enforcement authorities or other competent authorities of the Member States through the appropriate channels for such information exchange.***

Article 39

Exchange of health data before a transfer is carried out

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

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

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

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

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

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

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

PUBLIC

CHAPTER VI
ADMINISTRATIVE COOPERATION

PUBLIC

Article 40

Information sharing

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

   (a) determining the Member State responsible;

   (b) examining the application for international protection;

   (c) implementing any obligation arising under this Regulation.

   (ca) implementing a return decision.

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

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

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

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

(d) places of residence and routes travelled;

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

(f) the place where the application was ***registered***;

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

3. Provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. ***Where the Member State responsible applies Article 56 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation], that Member State may also request information enabling the competent authorities to establish whether new elements have arisen or have been presented by the applicant.*** The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests or the protection of the liberties and fundamental rights of the person concerned or of others. ***The applicant*** shall be ***informed about the specific information requested*** by the requesting Member State ***and the reason for the request in advance***.

4. Any request for information shall only be sent in the context of an individual application for international protection or transfer for the purpose of relocation. It shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. Such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to an individual applicant.

PUBLIC

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

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

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

   (a) determining the Member State responsible;

   (b) examining the application for international protection;

   (c) implementing any obligation arising under this Regulation.

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

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

PUBLIC

Article 41

Competent authorities and resources

1. Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. The Member States shall ensure that those authorities have the necessary ***human, material and financial*** resources for carrying out their tasks ***relating to the application of the procedures for determining the Member State responsible for examining an application for international protection in a rapid and efficient manner,*** and in particular for ***safeguarding procedural and fundamental rights, ensuring a swift procedure for reuniting family members and relatives present in different Member States,*** replying within the prescribed time limits to requests for information, requests to take charge, take back notifications and, if applicable, complying with their obligations under Chapters I-III of Part IV.

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

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

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

PUBLIC

Article 42

Administrative arrangements

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

   (a) exchanges of liaison officers;

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

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

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

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

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

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

PUBLIC

Article 43

Network of responsible units

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

The European Border and Coast Guard Agency and other relevant Union bodies, offices and agencies may be represented in a network or networks when necessary.

CHAPTER VII
CONCILIATION

Article 44

Conciliation

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

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

PUBLIC

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

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

The procedure set out in this Article shall not affect the time limits set out in this Regulation in individual cases.

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

PUBLIC

PUBLIC

PART IV *SOLIDARITY*

CHAPTER I
SOLIDARITY *MECHANISM*

Article 44a

Solidarity Pool

1. The Solidarity Pool, which includes the contributions contained in the Council implementing act referred to in Article 44b as pledged by the Member States during the meeting of the High Level EU Solidarity Forum, shall serve as the main solidarity response tool for Member States under migratory pressure on the basis of the needs identified in the Commission proposal for a Council implementing act referred to in Article 7c.

2. The Annual Solidarity Pool shall consist of the following types of solidarity measures, which shall be considered of equal value:

(a) relocation, in accordance with Articles 57 and 58:

(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 provided by Member States primarily aiming at actions in Member States related to the area of migration, reception, asylum, pre-departure reintegration border management and operational support. Financial contributions provided by Member States may also provide support for actions in or in relation to third countries that may have a direct impact on the flows at the Member States' external borders or may improve the asylum, reception and migration systems of the third country concerned, including assisted voluntary return and reintegration programmes, in accordance with Article 44i. Such actions in or in relation to third countries shall be implemented by benefitting Member States in accordance with the scope and objectives of this Regulation and of the AMIF Regulation.

(c) alternative solidarity measures in the field of migration, reception, asylum, return and reintegration and border management, focusing on operational support, capacity building, services, staff support, facilities and technical equipment in accordance with Article 44j.

3. Financial contributions referred to in paragraph 2 point (b) for projects in third countries shall, in particular, focus on:

(a) enhancing the capacity of asylum and reception in third countries, including by strengthening, human and institutional expertise and capacity;

(b) promoting legal migration and well-managed mobility, including by strengthening bilateral, regional and international partnerships on migration, forced displacement, legal pathways and mobility partnerships;

(c) supporting assisted voluntary return and sustainable reintegration programmes of returning migrants and their families;

(d) reducing the vulnerabilities caused by human trafficking and smuggling as well as anti-trafficking and anti-smuggling programmes;

(e) supporting effective and human rights based migration policies.

PUBLIC

Article 44b

Council implementing act establishing the Solidarity Pool

1. *On the basis of the Commission Proposal referred to in Article 7c and in accordance with the pledging exercise carried out at the High-Level EU Solidarity Forum referred to in 7d, the Council shall adopt, on an annual basis, before the end of each calendar year, an implementing act to establish the Solidarity Pool, including, the reference number of required relocations and financial contributions for the Annual Solidarity Pool at Union level and the specific pledges that each Member State has made for each type of solidarity contributions referred to in Article 44a(2) during the High Level Solidarity Forum. The Council shall adopt the implementing act referred to in this paragraphs, acting by qualified majority. The Council may amend the Commission proposal, acting by qualified majority.*

2. *The Council implementing act shall, where necessary also set out the indicative percentage of the Annual Solidarity Pool that may be made available to Member States under migratory pressure as a result of large number of arrivals stemming from recurring disembarkations following search and rescue operations, taking into account the geographical specificities of the Member States concerned. It may also identify other forms of solidarity as set out in Article 44a(2)(c), depending on the needs for such measures arising from the specific challenges in the area of migration in the Member States concerned.*

3. *During the High-Level Solidarity Forum meeting referred to in Article 7d, Member States shall come to a conclusion regarding an overall reference number for each solidarity measure in the Solidarity Pool, based on the Commission proposal referred to in Article 7c. During that meeting, the Member States shall also pledge their contributions to this Pool, in accordance with paragraph 4 of this Article and the mandatory fair share calculated according to the reference key set out in Article 44k.*

PUBLIC

4. In implementing paragraph 2, Member States shall have full discretion in choosing between the types of solidarity measures listed in Article 44a(2), or a combination of them. Member States pledging alternative solidarity measures shall indicate their financial value, based on objective criteria. In case the alternative solidarity measures are not identified in the Commission proposal for a Council implementing act referred to in Article 7c, Member States may still pledge these measures. In case those measures are not requested by the benefitting Member States in a given year, they shall be converted into financial contributions.

Article 44c

Information regarding the intention to use the Solidarity Pool by a Member State identified in the Commission Decision as being under migratory pressure

1. A Member State that has been identified in the Decision referred to in Article 7ba as being under migratory pressure shall, after the adoption of the Council implementing act referred to in Article 44b, inform the Commission where it intends to make use of the Solidarity Pool. The Member State shall also inform the Council and the Commission shall inform the European Parliament.

2. The Member State concerned shall include information on the type and level of solidarity measures as referred to in Article 44a(2) needed to address the situation, including where relevant any use made of the components of the Toolbox. Concerning an intention to use financial measures, the Member State concerned shall also identify the EU spending programme(s) concerned.

3. Following the receipt of this information, the Member State concerned shall have access to the Solidarity Pool in accordance with Article 44e. The EU Solidarity Coordinator shall without delay and in any case within 10 days of receiving the information convene the Technical Level Solidarity Forum to operationalise the solidarity measures.

PUBLIC

Article 44d

Notification of the need to use the Solidarity Pool by a Member State that consider itself under migratory pressure

1. A Member State that has not been identified in the Decision referred to in Article 7ba as being under migratory pressure, shall notify the Commission where it considers itself to be under migratory pressure and of its need to make use of the Solidarity Pool. The Member State shall also inform the Council and the Commission shall inform the European Parliament.

2. The notification shall include:

(a) a duly substantiated reasoning on the existence and extent of the migratory pressure in the notifying Member State, including updated data on the indicators referred to in Article 7a(3)(a);

(b) information on the type and level of solidarity measures as referred to in Article 44a needed to address the situation, including where relevant any use made of the components of the Toolbox. Concerning an intention to use financial measures, the Member State concerned shall also identify the EU spending programme(s) concerned;

(c) a description of how the proposed Solidarity Pool could stabilise the situation;

(d) how that Member State intends to address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience.

3. The Asylum Agency, the European Border and Coast Guard Agency and the Agency for Fundamental Rights as well as the concerned Member State, shall, where requested by the Commission, assist the Commission in drawing up the assessment of migratory pressure.

PUBLIC

4. The Commission shall expeditiously assess the notification, taking into account the information set out in Articles 7a and 7b, whether the notifying Member State was identified as being at risk of migratory pressure in the Commission Decision referred to in Article 7ba, the overall situation in the Union, the situation in the notifying Member State during the preceding 12 months, and the needs expressed by the notifying Member State and adopt a Decision on the notification to consider the Member State as being under migratory pressure. Where the Commission decides that that Member State is under migratory pressure, it shall become a benefitting Member State, unless it is denied access to the Solidarity Pool in accordance with paragraph 6.

5. The Commission shall transmit its decision to the Member State concerned, the Council and the European Parliament without delay.

6. Where the Commission Decision establishes that the notifying Member State is under migratory pressure, the EU Solidarity Coordinator shall convene the Technical-Level EU Solidarity Forum without delay and no later than within two weeks of the transmission of its decision to the Member State concerned, the Council and the European Parliament to operationalise the solidarity measures. The EU Solidarity Coordinator shall convene the Technical EU Level Solidarity Forum unless the Commission considers, or the Council by way of an Implementing Act decides within two weeks of the transmission of the Commission's decision to the Member State concerned, the Council and the European Parliament that there is insufficient capacity in the Solidarity Pool for the Member State concerned to get access to the Solidarity Pool or other objective reasons for not allowing that Member State to get access to the Pool.

7. Where the Council decides that there is insufficient capacity in the Solidarity Pool, Article 7d(4) shall apply and the High level EU Solidarity Forum shall be convened no later than one week after the Commission decision.

In case of a Commission Decision rejecting a request by a Member State to be considered as being under migratory pressure, the notifying Member State may submit a new notification to the Commission and the Council with additional relevant information.

PUBLIC

Article 44e

Operationalisation and coordination of solidarity contributions

1. *In the Technical-Level EU Solidarity Forum chaired by the EU Solidarity Coordinator, Member States shall cooperate among themselves and with the Commission to ensure an effective and efficient operationalisation of the Solidarity Pool for the year concerned, in a balanced and timely manner, in light of the needs identified and assessed and the solidarity contributions available.*

2. *The EU Solidarity Coordinator, taking into account developments in the migratory situation, shall coordinate the operationalisation of the solidarity contributions to ensure a balanced distribution of the solidarity contributions available among the benefitting Member States.*

3. *With the exception of the implementation of financial contribution, in operationalising the solidarity measures identified, Member States shall implement their pledged solidarity contributions referred to in Article 44a for the given year before the end of that year, without prejudice to , Article 44j(3) and Article 57(9a).*

   Contributing Member States shall implement their pledges in proportion to their overall pledge to the Solidarity Pool for that year before the end of the year.

   Member States which have been granted a full deduction in accordance with Article 44f or 44fa or are themselves benefitting Member States as referred to in Article 44c(1) and 44d(4) are not obliged to implement their pledged solidarity contributions referred to in Article 44a(2) for the given year.

   Contributing Member States shall not be required to implement their pledges made pursuant to Article 44a(2) and to apply responsibility offsets pursuant to Article 44h towards a benefitting Member State, where the Commission has identified, in the Decision referred to in Article 7ba or Article 44d(4), systemic shortcomings in that benefitting Member State with regard to the rules set out in Part III of this Regulation that could result in serious consequences for the functioning of this Regulation.

4. In the course of the first meeting of the Technical-Level EU Solidarity Forum in the annual cycle, contributing and benefitting Member States may express reasonable preferences, in light of the needs identified, for the profiles of available relocation candidates and a potential planning for the implementation of their solidarity contributions, taking into account the need for urgent actions for the benefitting Member States. The EU Solidarity Coordinator shall facilitate interaction and cooperation between the Member States on these aspects. When implementing relocations, Member States shall give primary consideration to the relocation of vulnerable persons.

5. The Union bodies, offices and agencies acting in the field of asylum, border and migration management shall, when requested and within their respective mandates, provide support to the Member States and the Commission, with a view to ensuring the proper implementation and functioning of Part IV this Regulation. Such support may take the form of analysis, expertise and operational support. The EU Solidarity Coordinator shall coordinate any assistance by experts or teams deployed by the Asylum Agency, or the European Border and Coast Guard Agency or any other Union office, body or agency, in relation to the operationalisation of the solidarity contributions.

6. As of the first year after the entry into application of this Regulation, in January of each year, Member States shall confirm to the EU Solidarity Coordinator the levels of each solidarity measure implemented during the preceding year.

PUBLIC

Article 44f

Deduction of solidarity contributions in situations of migratory pressure

1. A Member State that is identified in the Decision referred to in Article 7ba as being under migratory pressure or that considers itself as so being and which has not made use of the Solidarity Pool in accordance with Article 44c or notified the need to use the Solidarity Pool in accordance with Article 44d, may, at any time, request a partial or full deduction of its pledged contributions set out in the Council implementing act referred to in Article 44b(1).

The Member State concerned shall submit its request to the Commission. For information purposes, the Member State concerned shall submit its request to the Council.

2. Where the requesting Member State referred to in paragraph 1 is a Member State that is not identified in the Decision referred to in Article 7a as being under migratory pressure, but considers itself as so being, that Member State shall include in its request:

(a) a description of how the full or partial deduction could help stabilising the situation;

(b) whether the pledged contribution could be replaced with a different type of solidarity contribution;

(c) how that Member State will address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience;

(d) a duly substantiated reasoning on the existence and extent of the migratory pressure in the requesting Member State.

When assessing such a request, the Commission shall also take into account the information set out in Article 7a and 7b.

4. The Commission shall inform the Council of its assessment of the request within four weeks. For information purposes, the Commission shall also inform the European Parliament.

5. Following the receipt of the Commission's assessment, the Council shall adopt an implementing act to determine whether or not to authorise the Member State to derogate from the Council implementing act establishing the Solidarity Pool.

Article 44fa

Deduction of solidarity contributions in significant migratory situations

1. A Member State that is identified in the Decision referred to in Article 7ba as facing a significant migratory situation or considers itself as so being, may at any time request a partial or full reduction of its pledged contributions set out in the Council implementing act referred to in Article 44b(1).

The Member State concerned shall submit its request to the Commission. For information purposes, the Member State concerned shall submit its request to the Council.

2. Where the requesting Member State is identified in the Decision referred to in Article 7ba as facing a significant migratory situation, the request shall include:

(a) a description of how the full or partial deduction could help stabilising the situation;

(b) whether the pledged contribution could be replaced with a different type of solidarity contribution;

(c) how that Member State will address any possible identified vulnerabilities in the area of responsibility, preparedness or resilience;

(d) a duly substantiated reasoning pertaining to the area of the asylum, reception and migration system in which the capacity has been reached, and how reaching the limits of its capacity in the specific area affects its capacity to fulfil its pledge.

PUBLIC

3. Where the requesting Member State is not identified in the Decision referred to in Article 7ba as being confronted with a significant migratory situation, but considers itself as so being, the request shall in addition to the information referred to in paragraph 2 include also a duly substantiated reasoning on the significance of the migratory situation in the requesting Member State. When assessing such a request, the Commission shall also take into account the information set out in Article 7a and 7b and whether the Member State was identified as being at risk of migratory pressure in the Commission Decision referred to in Article 7ba.

4. The Commission shall inform the Council of its assessment of the request within four weeks. For information purposes, the Commission shall also inform the European Parliament.

5. Following the receipt of the Commission's assessment, the Council shall adopt an implementing act to determine whether or not to authorise the Member State to derogate from the Council implementing act establishing the Solidarity Pool.

Article 44h

Responsibility offsets

1. Where the relocation pledges to the Solidarity Pool contained in the Council Implementing act referred to in Article 44b are equal to or above 50 % of the number indicated in the Commission proposal for a Council implementing act referred to in Article 7c, a benefitting Member State may request the other Member States to take responsibility for examining applications for international protection for which the benefitting Member State has been determined as responsible instead of relocations in accordance with the procedure set out in Article 58a.

PUBLIC

2. A contributing Member State may indicate to benefitting Member States its willingness to take responsibility for examining applications for international protection for which a benefitting Member State has been determined as responsible instead of relocations:

(a) where the threshold set out in paragraph 1 has been reached; or

(b) where the contributing Member State has pledged 50 % or more of its mandatory fair share to the Solidarity Pool contained in the Council Implementing act referred to in Article 44b as relocations.

Where a contributing Member State has indicated such willingness and the benefitting Member State agrees, the benefitting Member State shall apply the procedure set out in Article 58a.

3. Where, following the meeting of the High Level Solidarity Forum convened in accordance with Article 7d(4), the relocation pledges to the Solidarity Pool contained in the Council Implementing act referred to in Article 44b are:

(a) below the number referred to in Article 7c(2)(a), or

(b) below 60% of the reference number used to calculate each Member State's mandatory fair share for relocation for the purpose of establishing the Solidarity Pool in accordance with Article 44b,

the contributing Member States shall take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the higher of the two numbers referred to in points (a) or (b).

3a. Paragraph 3 also applies where the pledges to be implemented during the given year fall below the higher of the two numbers referred to in points (a) or (b) as a result of full or partial reductions granted in accordance with Articles 44f or 44fa or because benefitting Member States as referred to in Articles 44c(1) and 44d(4) are not obliged to implement their pledged solidarity contributions for a given year.

PUBLIC

4. A contributing Member State which has not implemented its pledges or accepted relocations pursuant to Article 57(7) equal to its pledged relocations as referred to in Article 44b(3) by the end of the given year shall, at the request of the benefitting Member State, take responsibility for applications for international protection for which the benefitting Member State has been determined as responsible up to the number of relocations pledged in accordance with Article 44b(3) as soon as possible after the end of the given year.

5. The contributing Member State shall identify the individual applications for which it takes responsibility pursuant to paragraphs 2 and 3, and shall inform the benefitting Member State, using the electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

The contributing Member State shall become the Member State responsible for the identified applications and shall indicate its responsibility pursuant to Article 11(3) of Regulation (EU) XXX/XXX [Eurodac Regulation].

5a. Member States shall not be obliged to take responsibility pursuant to the first subparagraph of paragraph 5 above their fair share calculated according to the reference key set out in Article 44k.

6. This Article shall only apply where:

(a) the applicant is not an unaccompanied minor;

(b) the benefitting Member State was determined as responsible for examining the application for international protection on the basis of the criteria set out in Articles 19-21;

(c) the transfer time limit set out in Article 29(1) has not yet expired;

(d) the applicant has not absconded from the contributing Member State;

(e) the person is not a beneficiary of international protection;

(f) the person is not a resettled or admitted person.

PUBLIC

7. The contributing Member State may apply this Article to third-country nationals or stateless persons whose applications have been finally rejected in the benefitting Member State. Articles 56 and 57 in Regulation XXX/XXX [Asylum Procedure Regulation] shall apply.

Article 44i

Financial contributions

1. Financial contributions shall consist of financial transfers of amounts from the contributing Member States to the Union budget and shall constitute external assigned revenues in accordance with Article 21(5) of Regulation (EU, Euratom) 2018/10461[33]. Financial contributions shall be used for the purpose of implementing the actions of the Solidarity Pool referred to in Article 44a(2)(b).

2. Benefitting Member States shall identify actions which may be funded by such financial contributions and submit these to the Technical Level Solidarity Forum. The Commission shall liaise closely with benefitting Member States with the objective of ensuring that those actions correspond to the objectives as set out in Article 44a(2)(b) and (3). The EU Solidarity Coordinator shall maintain an inventory of the actions and make it available through the Technical Level Solidarity Forum.

5. The Commission shall adopt an implementing act concerning rules on the operation of the financial contributions. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 67(2).

6. Where the amount referred to in Article 44b(1) is not fully allocated, the remaining amount may be added to the amount referred to in point (b) of Article 10(2) of Regulation (EU) 2021/1147.

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33 1. Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1.

7. Member States shall report to the Commission and to the Technical-Level Solidarity Forum on the progress in the implementation of actions financed by financial contributions pursuant to this Article.

8. The Commission shall include in its Annual Report referred to in Article 7a information on the implementation of actions financed by financial contributions pursuant to this Article, including on issues that may affect the implementation and any measure taken to address them.

Article 44j

Alternative solidarity measures

1. Alternative solidarity measures shall be based on the specific request of the benefitting Member State. Such contributions shall be counted as financial solidarity, and their concrete value shall be established, jointly, in a realistic manner, by the contributing and the benefitting Member States concerned and communicated to the EU Solidarity Coordinator before these contributions are implemented.

2. Member States shall only provide alternative solidarity measures in addition to, and that do not duplicate, those provided by operations of Union agencies or by Union funding in the field of asylum and migration management in the benefitting Member States. Member States shall only provide alternative solidarity measures in addition to what they are required to contribute through Union agencies.

3. The benefitting and the contributing Member States shall finalise the implementation of agreed alternative solidarity measures even if the relevant implementing acts have expired.

PUBLIC

Article 44k

Reference key

The share of solidarity contributions to be provided by each Member State referred to in Article 44b(2) shall be calculated in accordance with the formula set out in Annex III and shall be based on the following criteria for each Member State, according to the latest available Eurostat data:

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

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

PUBLIC

CHAPTER II
PROCEDURAL REQUIREMENTS

PUBLIC

Article 57

Procedure before relocation

1. The procedure set out in this Article shall apply to ***the relocation of persons referred to in Article Article 44a(2) point (a).***

▌

2. Before applying the procedure set out in this Article, the benefitting Member State shall ensure that there are no reasonable grounds to consider ***that*** the person concerned ***poses a threat to internal*** security ▌ . If there are reasonable grounds to consider ***that*** the person ***poses a threat to internal*** security ***before or during the procedure set out in this Article, including where a threat to internal security has been determined in accordance with Article 11 of Regulation (EU) XXX/XXX [Screening Regulation]***, the benefitting Member State shall not apply ***or immediately terminate*** the procedure set out in this Article***. The benefitting Member State shall*** exclude the person ***concerned from any future relocation or transfer to any Member State. Where the person concerned is an applicant for international protection, the benefitting Member State shall be the Member State responsible in accordance with 8(4)***.

2a. Where relocation is to be applied, the benefitting Member State shall identify the persons who could be relocated. Upon request of the benefitting Member State, the Asylum Agency shall support the benefitting Member State in the identification of persons to be relocated and in their matching with Member States of relocation in accordance with Article 2(1)(k) of the Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010.

The Member State shall take into account, where applicable, the existence of meaningful links such as those based on family or cultural considerations, between the person concerned and the Member State of relocation. For this purpose, the benefitting Member State shall give the person to be relocated the opportunity to inform about the existence of meaningful links with specific Member States and to present relevant information and documentation to determine those links. This does not imply a right to choose a specific Member State of relocation pursuant to this Article.

2b. For the purpose of identifying persons to be relocated and matching them with contributing Member States, benefitting Member States may use tools developed by the EU Solidarity Coordinator.

Applicants who do not have links to any other Member State shall be fairly shared among the remaining contributing Member States.

Where the identified person to be relocated is a beneficiary for international protection, the person concerned shall be relocated only after that person has consented to the relocation in writing.

PUBLIC

3. Where relocation is to be applied, the benefitting Member State shall ***inform*** the persons ***referred to in paragraph 1 of the procedure set out in this Article and Article 58, as well as***, where applicable, ***of the obligations set out in Article 9(3), (4) and (5) and the consequences of non-compliance set out in Article 10***.

▌

The first subparagraph shall not apply to applicants for whom the benefitting Member State can be determined as the Member State responsible pursuant to the criteria set out in Articles 15 to ***18*** and 24, with the exception of Article 15(5). Those applicants shall not be eligible for relocation.

4. Member States shall ensure that family members are relocated to the territory of the same Member State.

▌

5. ***In the cases referred to in paragraphs 2 and 2a,*** the benefitting Member State shall transmit to the ***contributing*** Member State ▌ as quickly as possible ***all*** relevant information and documents on the person referred to ***by using a standard form, including to enable the authorities of the Member State of relocation to check whether there are grounds to consider that the person concerned poses a threat to internal security***.

6. The ***contributing*** Member State ▌ shall examine the information transmitted by the benefitting Member State pursuant to paragraph 5, and verify that there are no reasonable grounds to consider the person concerned ***poses a threat to internal security. The Member State of relocation may choose to verify this information during a personal interview with the person concerned***. ***The person concerned shall be duly informed about the nature and the purpose of this interview. The personal interview shall take place within the time limits provided for in paragraph 7.***

PUBLIC

7. Where there are no reasonable grounds to consider the person concerned ***poses a threat to internal*** security ▌ , the ***contributing*** Member State ▌ shall confirm within one week ***of receipt of the relevant information from the benefitting Member State*** that it will relocate the person concerned. ▌

Where the checks confirm that there are reasonable grounds to consider the person concerned ***poses a threat to internal*** security ▌ , the ***contributing*** Member State ***shall inform the benefitting Member State,*** within one week ***of receipt of the relevant information from that*** Member State of the nature of and underlying elements for an alert from any relevant database. In such cases, relocation of the person concerned shall not take place.

In exceptional cases, where it can be demonstrated that the examination of the information is particularly complex or that a large number of cases need checking at that time, the ***contributing*** Member State ▌ may give its reply after the one-week time limit mentioned in the first and second subparagraphs, but in any event within two weeks. In such situations, the ***contributing*** Member State ▌ shall communicate its decision to postpone a reply to the benefitting Member State within the original one-week time limit.

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

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

Where the person to be relocated is an applicant, he or she shall comply with the relocation decision.

PUBLIC

9. The transfer of the person concerned from the benefitting Member State to the ***contributing*** Member State ▌ shall be carried out in accordance with the national law of the benefitting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within 4 weeks of the confirmation by the ***contributing*** 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).

9a. The benefitting and the contributing Member States shall continue the process of relocation even after the timeframe for the implementation or the validity of implementing acts has expired.

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

The benefitting Member State carrying out the transfer of a beneficiary of international protection shall transmit to the Member State of relocation all the information referred to in Article 40(2), information on which grounds the beneficiary based his or her application, and the grounds for any decisions taken concerning the beneficiary.

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

Article 58

Procedure after relocation

1. The ***contributing*** Member State ▌ shall inform the benefitting Member State***, Asylum Agency and the EU Solidarity Coordinator*** of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

PUBLIC

2. Where the Member State of relocation has relocated an applicant for whom the Member State responsible has not yet been determined, that Member State shall apply the procedures set out in Part III, with the exception of Article 8(2), Article 9(1) and (2), Article 15(5), ***Article 19, Article 20*** and Article 21(1) and (2).

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

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

3. Where ***an applicant has been relocated,*** for whom the benefitting Member State had previously been determined as responsible on other grounds than the criteria referred to in Article 57(3) ***second*** subparagraph, the responsibility for examining the application for international protection shall be transferred to the ***contributing*** Member State ▌ . ▌

Responsibility for examining any further representations or a subsequent application of the person concerned in accordance with Articles 42 and 43 of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] shall also be transferred to the Member State of relocation.

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

4. Where ▌ a beneficiary for international protection ***has been relocated, the contributing*** Member State ▌ shall automatically grant international protection status respecting the respective status granted by the benefitting Member State.

▌

PUBLIC

Article 58a

Procedure for Responsibility Offsets under Article 44h(1) and (2)

1. Where a benefitting Member State may request another Member State to take responsibility for examining a number of applications for international protection pursuant to Article 44h(1) and (2), it shall transmit its request to the contributing Member State and include the number of applications for international protection to be taken responsibility for instead of relocations.

2. The contributing Member State shall give a decision on the request within 30 days of receipt of the request.

The contributing Member State may decide to accept to take responsibility for examining a lower number of applications for international protection than requested by the benefitting Member State.

3. The Member State which has accepted a request pursuant to paragraph 2 shall identify the individual applications for international protection for which it takes responsibility for and shall indicate its responsibility pursuant to Article 11(3) of Regulation (EU) XXX/XXX [Eurodac Regulation].

Article 59

Other obligations

Member States shall keep the Commission***, in particular the EU Solidarity Coordinator*** informed on the implementation of solidarity measures including measures of cooperation with a third country.

PUBLIC

CHAPTER III
FINANCIAL SUPPORT PROVIDED BY THE UNION

Article 61

Financial support

In accordance with the principle of solidarity and fair sharing of responsibility, funding support following relocation pursuant to Chapters I and II of Part IV shall be implemented in accordance with Article ***20*** of Regulation (EU) ***2021/1147***.

PART V
GENERAL PROVISIONS

Article 62

Data security and data protection

-1. This Regulation is without prejudice to Union law on the protection of personal data, in particular Regulation (EU) 2016/679, Regulation (EU) 2018/1725[34] [and Directive (EU) 2016/680].

1. Member States shall implement appropriate technical and organisational measures to ensure the security of personal data processed under this Regulation and in particular to prevent unlawful or unauthorised access or disclosure, alteration or loss of personal data processed.

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[34] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 29).

2. The competent supervisory authority or authorities of each Member State shall monitor ***independently*** the lawfulness of the processing of personal data by the authorities referred to in Article 41 of the Member State in question***, in accordance with its respective national law***.

Article 63

Confidentiality

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

Article 64

Penalties

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

Article 65

Calculation of time limits

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

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

PUBLIC

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

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

Article 66

Territorial scope

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

Article 67

Committee

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

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

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

PUBLIC

Article 68

Exercise of the delegation

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

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

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

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

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

6. A delegated act adopted pursuant to Articles 15(6) and 24(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ***four*** months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

PUBLIC

Article 69

Monitoring and evaluation

By [18 months after entry into force] and from then on annually, the Commission shall review the functioning of the measures set out in ***Part IV of this Regulation and report on the implementation of the measures set out in*** this Regulation. ***The report shall be communicated to the European Parliament and the Council.***

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

On a regular basis and as a minimum every three years, the Commission shall review the relevance of the numbers set out in Article 7c(2), points (a) and (b) and the overall functioning of Part III of this Regulation, including whether the definition of family members should be modified and the length of the time limits set out in that Part, against the overall migratory situation.

No ***later than five*** years after the date of application of this Regulation, and every five years thereafter, the Commission shall carry out an evaluation of this Regulation***, with particular regard to the principle of solidarity and fair sharing of responsibility as enshrined in Article 80 TFEU***. The Commission shall present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. Member States shall provide the Commission all information necessary for the preparation of that report, at the latest six months before the ***abovementioned*** time limit expires.

PUBLIC

Article 70

Statistics

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council[35], Member States shall communicate to the Commission (Eurostat), statistics concerning the application of this Regulation and of Regulation (EC) No 1560/2003.

PUBLIC

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

PART VI

AMENDMENTS TO OTHER UNION ACTS'

PUBLIC

Article 72

Amendments to Regulation (EU) ***No 2021/1147 [= AMIF Regulation*****]**

Regulation (EU) ***No 2021/1147*** is amended as follows:

-1. ***Article 2 is amended as follows:***

"(1) 'applicant for international protection' means an applicant as defined in Article, 2 point (c), of [AMMR]

(2) 'beneficiary of international protection' means a beneficiary of international protection as defined in Article 2, point (f), of [AMMR]

(4) 'family member' means a family member as defined in Article 2, point (g), of [AMMR]

(11) 'third country national' means a third country national as defined in Article 2, point (a), of [AMMR]

(12) 'unaccompanied minor' means an unaccompanied minor as defined in Article 2, point (j), of [AMMR]

(15) 'solidarity action' means an action funded through financial contributions provided by Member States, as referred to in of Article 44i(1) of [AMMR]. The scope of those actions is set out in Article 44a(2), point (b), of [AMMR]."

-1a. ***In Article 15, new paragraph (6a) is added:***

"6a. The contribution from the Union budget may be increased to 100% of the total eligible expenditure for solidarity actions."'

▌

2. Article ***20*** is replaced by the following:

"1. ▌ A Member State shall receive***, in addition to its allocations under Article 13(1), point (a), of this Regulation, an amount*** of:

(a) EUR ▌ 10 000 ▌ per applicant for ***international protection for*** whom that Member State becomes responsible as a result of relocation in accordance with Articles ***57 and 58 of*** Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation];

(b) EUR ▌ 10 000 ▌ per beneficiary of international protection relocated in accordance with Articles ***57 and 58*** of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation];

▌

The ***amounts referred to*** in points (a) ***and (b) of the first subparagraph shall be*** increased to EUR ▌ 12 000 ▌ for each ***applicant for international protection or beneficiary of international protection, respectively, who is an*** unaccompanied minor relocated in accordance with ***Articles 57 and 58*** of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation].

PUBLIC

2. ***The*** Member State ***covering the cost of transfers referred to in paragraph 1*** shall receive a contribution of EUR 500 ***for each applicant for international protection or beneficiary of international protection transferred to another Member State***.

3. ***The*** Member State ***covering the costs of transfers*** referred to in Article ***26(1), points (a), (b) or (d),*** of Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation]***, and carried out in accordance with Article 35 of that Regulation shall receive a contribution of EUR 500 for each applicant for international protection transferred to another Member State***.

4. ***The*** amounts referred to in paragraphs 1 to 3 ***of this Article shall be allocated to the Member State's programme,*** provided that the person in respect of whom the ***amount*** is allocated was ***effectively transferred to a Member State or was registered as an applicant in the Member State responsible in accordance with Regulation (EU) XXX/XXX [Asylum and Migration Management Regulation], as applicable. Those amounts shall not be used for other actions in the Member State's programme except in duly justified circumstances, as approved by the Commission through the amendment of that programme***.

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

6. ***For the purposes of control and audit,*** Member States shall ***retain*** the information necessary to allow the proper identification of the persons transferred and of the date of their transfer***.***

PUBLIC

7. ***To take account of current inflation rates, relevant developments in the field of relocation and other factors which might optimise the use of the financial incentive brought by*** the amounts referred to in paragraphs 1, 2 and 3 of this Article***, the Commission is empowered to adopt delegated acts in accordance with Article 37 to adjust, if deemed appropriate, and within the limits of available resources,*** those amounts.***"***

3. In Article 35(2), new point (ha) is added:

"(ha) the implementation of solidarity actions, including a breakdown of the financial contributions by action and a description of the main results achieved as a result of the funding;"

4. In Annex II, point 4, new point (c) is added:

"(c) supporting solidarity actions, in line with the scope of support set out in Annex III."

5. In Annex VI, Table 1, point IV., new code 007 is added:

"007 Solidarity Actions"

6. In Annex VI, Table 3, new codes 006 to 009 are added:

"006 Resettlement and humanitarian admissions

007 International protection (transfers in)

008 International protection (transfers out)

009 Solidarity Actions"'

PUBLIC

Article 72b

Amendments to Regulation (EU)2021/1060 [= CPR Regulation]

1. In Article 36, new paragraph 3a is added:

"3a. By way of derogation from paragraph 3 of this Article, no Union contribution for technical assistance shall be made to the support of solidarity actions, as defined in Article 2, point (15), of the AMIF Regulation and Article 2, point (11), of the BMVI Regulation."

2. In Article 63(6), new subparagraph is added:

"The first subparagraph of this paragraph shall not apply to support to solidarity actions, as defined in Article 2, point (15), of the AMIF Regulation and Article 2, point (11), of the BMVI Regulation."

3. In Article 63(7), a fourth subparagraph is added:

"Where a programme is amended to introduce financial support to solidarity actions, as defined in Article 2, point (15), of the AMIF Regulation and Article 2, point (11), of the BMVI Regulation, the programme may provide that the eligibility of expenditure relating to such amendment starts from ... [the date of entry into force of this amending Regulation]."

PUBLIC

PART VII

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

PUBLIC

Article 73

Repeal

Regulation (EU) No 604/2013 is repealed ***with effect from [the date referred to in the second paragraph of Article 75]***.

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

Regulation 1560/2003 shall remain in force unless and until amended by implementing acts adopted pursuant to this Regulation.

Article 74

Transitional measures

1. Where an application has been registered after ***the date referred to in the second paragraph of Article 75***, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date.

2. ***The Member State responsible for the examination of an application for international protection registered before the date specified in paragraph 1 shall be determined in accordance with the criteria set out in Regulation 604/2013.***

3. Three months after the entry into force of this Regulation, the Commission, in close cooperation with the relevant Union agencies and Member States, shall present a common implementation plan to the Council to ensure that Member States are adequately prepared to implement this Regulation by the date of its application, assessing gaps and operational steps required, and inform the European Parliament thereof.

Based on this common implementation plan, each Member State shall, with the support of the Commission and relevant Union agencies, establish a national implementation plan setting the actions and the timeline for their implementation, six months after the entry into force of this Regulation. Each Member State shall complete the implementation of its plan by the date of application of this Regulation.

For the purpose of implementing this Article, Member States may use the support of the relevant Union agencies and Union Funds may provide financial support to the Member States, in accordance with the legislation governing those agencies and funds.

The Commission shall closely monitor the implementation of the national plans.

The Commission shall, within the first two European Annual Asylum and Migration Reports referred to in Article 7a, provide a state of play of the implementation of the common implementation plan and national implementation plans.

Pending the reports mentioned in the preceding paragraph, the Commission shall inform the European Parliament and the Council of the state of play of implementation of the common implementation plan and national implementation plans every six months.

PUBLIC

Article 75

Entry into force and applicability

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

It shall apply ▌ from [the first day of the ***twentyfifth*** 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	*For the Council*
The President	*The President*

▌

PUBLIC

Formula for the distribution key pursuant to Article *44k* of the Regulation:

PUBLIC

$$\text{Population effect}_{MS} = \frac{\text{Population}_{MS}}{\sum_{i=1}^{n} \text{Population}_{MS}}$$

$$\text{GDP effect}_{MS} = \frac{\text{GDP}_{MS}}{\sum_{i=1}^{n} \text{GDP}_{MS}}$$

$$\text{Share}_{MS} = 50\% \text{ Population effect}_{MS} + 50\% \text{ GDP effect}_{MS}$$

n: the overall number of MS